

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 28 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 MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

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

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

THE HONOURABLE SZETO WAH

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE 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 FRED LI WAH-MING

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

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

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

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

THE HONOURABLE JAMES TO KUN-SUN

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.

SECRETARY FOR HOUSING

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

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

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

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

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

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

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

MRS STELLA HUNG KOWK WAI-CHING, C.B.E., J.P.
SECRETARY FOR HOME AFFAIRS

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

Sessional Papers 1996-97

- No. 100 — Report by the Commissioner of Correctional Services on the Administration of the Prisoners' Welfare Fund for the year ended 31 March 1996
- No. 101 — Regional Council
Revised Estimates of Expenditure 1996-97
- No. 102 — Urban Council
Schedule of revisions to the 1996-97 Estimates approved by the Urban Council during the fourth quarter of the 1996/97 financial year

ANNOUNCEMENT

PRESIDENT (in Cantonese): The Council today shall start now. Honourable Members, during the debate on the motion moved by the Honourable SZETO Wah at the last sitting, I said that I would announce at this sitting whether it was appropriate for the Honourable Albert CHAN to use the phrase "卑劣的手法" (base and disgusting means) in his speech. Having watched the video tape afterwards, I found out that Mr CHAN actually said on that day that the Hong Kong Association for Democracy and People's Livelihood (ADPL) employed "卑劣的手法" (base and disgusting means) in handling the application for erecting the "Pillar of Shame". According to the Xiandai Hanyu Cidian (Dictionary of Modern Chinese), "卑劣" means "base and disgusting" and thus renders the term insulting. If the term is used in this Council to refer to Members' moral integrity, it should be regarded as unparliamentary.

Later, I had a meeting with Mr CHAN, who clarified that at that moment, he was not referring to the moral integrity of Legislative Council Members belonging to the ADPL. Instead, he was talking about the way in which the application for erecting the "Pillar of Shame" was handled. Hence, I think it is acceptable for Mr CHAN to use the term then. I must however emphasize that the term "卑劣" (base and disgusting) itself is insulting and should be avoided in this Council even if it is not used to refer to the personal moral integrity of any

Members. If in future any Member happens to use the term "卑劣" (base and disgusting) again, I would ask him/her to clarify that it does not refer to the moral integrity of Members of this Council and to apologize for any misunderstandings so caused.

As regards any direct use of the term "卑劣" (base and disgusting) against Members, I would regard it as unparliamentary and would order the Member concerned to withdraw it and apologize.

ORAL ANSWERS TO QUESTIONS

Tuberculosis

1. **MR MICHAEL HO** asked (in Cantonese): *Regarding the recent spate of tuberculosis cases involving workers in the service industries, will the Government inform this Council whether the number of people suffering from tuberculosis in Hong Kong is higher than those in Western European countries and developed regions in Asia; if so, what the reasons are, and what specific plans does the Government have to bring the number of tuberculosis patients in the territory down to the level in Western European countries?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the present average notification rate for tuberculosis (TB) in Hong Kong is about 100/100 000. According to data released by the World Health Organization, in 1994, the average notification rates in Asia are about 270/100 000 in the Philippines, 80/100 000 in Thailand, 35/100 000 in Japan and 60/100 000 in Singapore. As for Western Europe, the average notification rates are about 10/100 000 in the United Kingdom and Italy and 15/100 000 in France and Germany.

When comparing the above notification rates, we should take note of differences in the notification systems of infectious diseases in different countries. Moreover, the notification rate for TB is affected by such factors as population density, aging population, living conditions, and so on.

In fact, the notification rate for TB in Hong Kong has dropped from 360/100 000 in the 1960s to about 100/100 000 at present, which represents a decrease of more than 70%. During the same period, the notification rate in such West European countries as the United Kingdom has also declined by approximately 70% from about 40/100 000 to about 10/100 000.

The Government will continue to adopt a three-pronged approach — prevention, treatment and public education to fight TB. A number of anti-TB measures are implemented:

Regarding preventive measures, almost all new-born babies are vaccinated against TB. They will be vaccinated again while in primary school. Upon detection of the disease, the Department of Health will follow up the case immediately so that patients can receive treatment as early as possible. Those who have had close contact with the patients will be screened in order to prevent the disease from spreading.

Regarding the treatment of TB, the Department of Health operates 17 tuberculosis and chest clinics which provide free services for patients. Five specialist units under the Tuberculosis and Chest Service in public hospitals under the Hospital Authority provide in-patient services for TB patients in more acute condition. In the 1970s, we took the lead in adopting "Directly Observed Treatment" through which patients received treatment under the supervision of medical staff. The treatment, designed to facilitate the early recovery of patients, has been recognized and recommended by the World Health Organization.

The Government will continue to step up public education on TB. Various programmes, including exhibitions and talks, will be organized jointly with professional bodies to promote the prevention of TB and give publicity to the tuberculosis and chest services available, and to encourage people with TB symptoms to undergo screening as soon as possible. We will, of course, continue to promote a healthy lifestyle, a balanced diet, adequate rest and appropriate amount of exercise which will strength on our resistance to diseases.

We will spare no effort in implementing the above anti-TB measures with a view to minimising the number of TB cases in Hong Kong and bringing down the notification rate to the level in Western countries.

MR MICHAEL HO (in Cantonese): *Mr President, we can see from the reply of the Secretary for Health and Welfare that the notification rate for tuberculosis in Hong Kong is more than 10 times of that in Western Europe. In my original question I asked what specific plans there were to bring the number of TB cases in Hong Kong down to the level in Western Europe, but the Government's reply only mentioned the existing measures. If our notification rate is still more than 10 times of those of other countries despite our existing measures, could the Government tell this Council what other specific measures can be taken in order to bring down the notification rate for TB?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the preventive measures and treatment we are now adopting are those generally adopted by the World Health Organization and other advanced countries and are recognized as the best. We can of course do much more and better in this area but our general approach, especially the "Directly Observed Treatment", is a more advanced practice in Hong Kong, which has been in use since 1970s. We must understand that there is definitely a notification rate, which cannot possibly be brought down to zero, but we also recognise that there is still a lot to do and that our notification rate is indeed higher than that of the Western European countries. This is due to the environment in Hong Kong. For example, the population density and the aging population are some of the factors.

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

MR MICHAEL HO (in Cantonese): *Mr President, the Secretary for Health and Welfare has not answered my question. My question is about other measures that can be taken to step up efforts in this area. Just now in her reply the Secretary for Health and Welfare has said there is still a lot of work to do and my question is exactly what the work is.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): The efforts that we need to step up are that, for example, we seldom in the past paid attention to the promotion of a healthy lifestyle and the strengthening of our population's

resistance to diseases. We will step up our efforts in this aspect in future. The most important thing is to ensure that the local population has adequate resistance to diseases.

PRESIDENT (in Cantonese): Five more Members wish to raise supplementary questions. I shall draw a line there.

MR HOWARD YOUNG (in Cantonese): *Mr President, just now the Secretary for Health and Welfare quoted the data of the World Health Organization and some neighbouring and advanced countries in comparison with those of Hong Kong. I consider that these data can facility our formulation of policies and deployment of resources. Could the Secretary for Health and Welfare advise this Council whether such a comparison between the authoritative data and the situation in Hong Kong is an inherent internal system within the Government of Hong Kong or whether such information is available only because a Legislative Council Member has raised a question? If such a system is an inherent one, may I ask whether the same comparing mechanism is available for other common serious diseases?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, we adopt comparative figures of other countries for notification rates and general health indicators. However, I have already pointed out clearly in my main reply that we should not rely solely on such comparisons because the notification system varies from place to place. We must note that Hong Kong's notification system is more comprehensive because most of the information comes from public bodies. Other methods are also used to follow up the health indicators. We do not rely alone on comparisons with other countries.

DR HUANG CHEN-YA (in Cantonese): *Mr President, could the Government inform this Council whether any clear analysis has been made on the types of risk factors of tuberculosis patients in recent years? For example, are the aged, Chinese immigrants and singletons whose living conditions and nutrition are extremely poor more prone to the disease? Could this Council be provided with such data, if they are available, so that we know the Government could adopt some more precise and target-oriented preventive measures?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Our record shows that the notification rate of those aged above 65 is very high while that of those aged below 19 is very low. Perhaps I could give you all some figures for comparison. The notification rate of those aged above 65 accounts for almost 30% while that of those aged below 19 is probably 5%. We do not have proofs that the risk of contracting the disease of Chinese immigrants is greater than that of local residents.

DR LEONG CHE-HUNG (in Cantonese): *Mr President, we can see from the reply of the Health and Welfare Branch that the notification rate in the 1960s was 360/100 000 while the prevailing rate is 10/100 000. This is a comparison with the figure 37 years ago. May I ask whether the Government has more recent comparative figures? In other words, can it be shown whether the trend of contracting tuberculosis in recent years has been rising or dropping, or has been steady? If it has been steady, can some progress be achieved? If it has been rising, has the Government identified the cause?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): In the past three to four years, there were 6 300 to 6 500 cases a year, without much increase or decrease. One of the reasons is that our population structure has undergone changes. The population has been gradually aging in the past 10 years and the elderly account for a larger percentage of the notification rate.

DR JOHN TSE (in Cantonese): *Mr President, in the area of prevention, the Secretary for Health and Welfare mentioned that almost all new-born babies were vaccinated against tuberculosis. By "almost", it means it is not 100%. As far as I know, the Government's present target is only 98% to 99%. May I ask when more resources will be allocated to ensure that 100% of the new-born babies in Hong Kong will be vaccinated against tuberculosis? And may I also ask what special arrangements will be made to ensure that Chinese immigrants are also vaccinated?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, our immunization programme is voluntary in nature rather than compulsory, but

we have the support and co-operation of many mothers. In the maternal and child health centres, 90% of the babies have been vaccinated. The present situation is not due to inadequacy of resources. In fact we have full resources. Any person's baby can be taken to a maternal and child health centre for vaccination. As to schools, we have sent colleagues in the Department of Health to schools to remind parents that if their children have not been vaccinated, they can be taken to a maternal and child health centre for vaccination. As for Chinese immigrants, we will remind them through contacts with schools and organizations providing services to them that if there is the need, they can be vaccinated. In fact, apart from tuberculosis vaccination, they can receive other immunization vaccination in the maternal and child health centres. In this area, the response we get is quite satisfactory.

MR LAW CHI-KWONG (in Cantonese): *Mr President, the Secretary for Health and Welfare mentioned the problem of aging population. Just now when she answered Dr HUANG's question, she also mentioned that 30% of those contracting the disease were old people. Since a majority of the babies are vaccinated, does the Government have any specific measure to reduce the chance of old people contracting the disease? There are some 6 000 people contracting the disease every year, 300 to 400 of whom eventually die. I believe that such a figure is indeed very unsatisfactory.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, maybe I did not express myself clearly just now. Not every patient dies. The figure I mentioned was the notification rate, not the death rate. The medical service in Hong Kong now is quite advanced. Even if one contracts the disease, the possibility of dying is very low. Maybe we are still influenced by the era depicted in the old Cantonese films in which once one contracted tuberculosis, one would die. In fact, the medical system and medication in Hong Kong are very advanced and the disease is now curable. The mortality rate is therefore very low. However, it is true that the notification rate of persons aged above 65 is very high. In fact, that of those aged above 75 is even higher.

MR LAW CHI-KWONG (in Cantonese): *Mr President, my question is what specific measures are in place to reduce the chance of old people contracting the disease and dying from it. The figure I mentioned just now, that is, 300 to 400*

tuberculosis patients die every year, has been provided by the Census and Statistical Department.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, if one contracts the disease, one should go to a clinic as soon as possible to seek treatment. If the situation is very serious, one can go to the hospital for further treatment. If an old person contracts the disease, he will also be given treatment. The most important thing is that they take good care of themselves by following the medical staff's instructions. This is something that can be done.

Prosecutions against Smokers in No Smoking Areas

2. **MR YUM SIN-LING** asked (in Cantonese): *Currently, certain types of areas are designated as no-smoking areas under the relevant legislation which also prescribes penalties for offenders. In this connection, will the Government inform this Council:*

- (a) of the number of persons prosecuted in the past three years for smoking in designated no smoking areas, and the number of such persons being sentenced to pay the maximum fine of \$5,000;*
- (b) which government department is currently responsible for instituting prosecutions against smokers contravening the law, and whether any officers in the department concerned are specifically charged with the duty of instituting prosecutions;*
- (c) whether the person responsible for the management of a designated no smoking area is liable to criminal proceedings for failing to enforce the no smoking regulations; and*
- (d) of the channels open to the public for reporting cases of smoking in designated no-smoking area?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): The existing statutory no smoking areas prescribed under the Smoking (Public Health) Ordinance (Cap. 371) include public transport carriers, cinemas, theatres, concert

halls, amusement game centres and public lifts. The number of people prosecuted for smoking in these areas in 1994, 1995 and 1996 were 2 648, 1 809 and 1 784 respectively. These figures do not include cases which occurred in land transport carriers other than the Mass Transit Railway (MTR), Kowloon Canton Railway (KCR) and Light Rail Transit (LRT), where statistics are not available. As far as we know, no offender has been fined the maximum penalty of \$5,000.

The primary responsibility for enforcement in designated no smoking areas rests with the managers of these areas. The Ordinance empowers the manager of a no-smoking area to stop people from smoking there. Where the person fails to stop smoking, the manager is empowered to obtain the name, address and proof of identity of the person to enable the relevant department to take follow-up action. Where necessary, the manager can call for the assistance of the police.

Prosecution against smokers in cinemas, theatres and concert halls is the responsibility of the prosecution units of the two municipal departments. In relation to smoking in ferries, action rests with Marine Department's prosecution unit. For smoking in the MTR, KCR and LRT, the companies make the necessary arrangements themselves. The police take responsibility for the remaining prosecutions.

The law only makes it an offence to smoke in no smoking areas and empowers the manager of the area to enforce the law. The manager concerned is not liable to criminal proceedings for failing to enforce the no smoking provisions.

If members of the public find people smoking in statutory no smoking areas, they can report to the manager of the premises concerned for him to take action. Obviously there is a need for such report to be made on the spot, otherwise there will be no evidence for the manager to act on. Alternatively, members of the public may remind smokers that smoking in the area is not allowed. They may also make their general observations regarding any smoking offences found in the premises known to the manager concerned, so as to urge the manager to pay more attention to the enforcement of the law.

To encourage more public places to be designated as no smoking areas, we have introduced into this Council the 1997 Smoking (Public Health)

(Amendment) (No. 2) Bill, which proposes that managers of restaurants, banks, supermarkets and shopping malls should be given the right to decide whether or not to set up statutory no-smoking areas in their premises in order to protect non-smokers from passive smoking. The enforcement action will rest with the managers. When the managers voluntarily choose to designate their premises as statutory no smoking areas, I am sure they will be prepared to take active action to enforce the requirement.

MR YUM SIN-LING (in Cantonese): *Mr President, it is mentioned in paragraph five of the main reply that managers of the premises concerned are not liable to proceedings. Accordingly, apart from reporting the offence to the manager of the premises as stated in the reply, which department can members of the public report the offence to?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): I already mentioned in my main reply that should members of the public encounter such a situation and wish to lodge a complaint, they should do so to the manager of the premises.

MR YUM SIN-LING (in Cantonese): *Sorry, what I asked was that if the offence was reported to the manager of the premises but because he was not liable to proceedings, no effective action was taken, what department could members of the public report to?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): We receive letters from members of the public or organizations every now and then lodging complaints. I welcome their writing to me so that I can follow up.

DR LEONG CHE-HUNG (in Cantonese): *Mr President, it can be seen from the Government's main reply that those who were prosecuted for smoking in no smoking areas accounted for an extremely small percentage of their large number. As for the fine, none of the offenders has been imposed the maximum fine of \$5,000 and therefore, it has no deterrent effect at all. The Government has indicated that a new bill was introduced to propose the addition of no*

smoking areas, but this does not mean more effective enforcement. May I ask what measures the Government has that are really effective in deterring smokers from smoking in no smoking areas?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, prosecuting offenders is just one of our ways to enforce the law. We consider that the most effective long-term way is public education. We can see that this has had certain effect in recent years. Many organizations are abiding by the law voluntarily and on their own accord, and there are also many offenders who stop smoking after verbal admonition. Accordingly, prosecution is not the only way to stop smokers from causing nuisance to non-smokers.

MR CHOY KAN-PUI (in Cantonese): *Mr President, could the Government advise us on the number of officers responsible for prosecution work and what their establishment and distribution are?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): The officers responsible for law enforcement and prosecutions belong to different government departments and organizations while the relevant prosecution teams are also responsible for other duties. Hence it is not possible to identify the officers responsible for instituting prosecution under the Smoking (Public Health) Ordinance. The Marine Department has its own prosecution team, and so do the MTR, LRT and KCR. The two municipal councils have their own prosecution teams too. It is therefore not possible to give a breakdown specifying the officers responsible for prosecution work under the Ordinance.

Litigation Proceedings Arising from Localization Policy

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

Hong Kong were held to be unlawful. Will the Government inform this Council:

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

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

The judgement by the High Court and the Court of Appeal on the judicial review sought by the Association of Expatriate Civil Servants (AECS) is directed primarily at certain arrangements, introduced since July 1993, for overseas agreement officers who are permanent residents of Hong Kong to transfer to local agreement terms, and the restriction on these officers to apply for transfer to local permanent and pensionable terms.

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

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

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

Thank you.

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

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

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, would you please raise your question?

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

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

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

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

MRS ELIZABETH WONG: *Can the Secretary advise this Council whether he has considered the possibility of the use of an independent arbitration or enquiry — a proposal of part of the mechanism suggested in 1968 which would expedite the solution to the problem and enable an early agreement to be reached? And if not, why not?*

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

Rehousing Urban Squatters

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

- (a) *the reasons for the authorities concerned not being able to rehouse all the urban squatters on government land by the above target date;*

- (b) *the date at which the remaining urban squatters on government land and private land are expected to be rehoused; and*
- (c) *the measures which will be taken by the authorities concerned to safeguard the safety of urban squatters before they are rehoused?*

Thank you.

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

As regards part (b) of the question, we will continue to encourage eligible urban squatters residing on government land to accept our rehousing offers. For squatters residing on urban mixed lots, such as those in the Diamond Hill squatter area, the Government's pledge did not cover them. Under existing policy, they will not be evacuated and the land resumed unless there is a specific public requirement for the land involved, such as development for a public purpose, or unless the land is susceptible to geotechnical risk. In other words, the Government does not have a plan at present to clear the squatters on these mixed lots.

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

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

MR BRUCE LIU (in Cantonese): *Mr President, it is known that a special team under the Planning Department is studying and planning for the development of the land on these mixed lots. Unfortunately, no development plans have been confirmed by the study so far because no public use can be designated yet. Accordingly, the squatters on these mixed lots have not been cleared to date, so much so that a lot of this type of squatters still exist today on these lots in the urban centre of Hong Kong, an international metropolis. Could the Government make a public commitment of according priority treatment to the issue of urban squatters (mixed lots), and deciding and confirming a development programme at an early date, under which all the squatters on the urban mixed lots will be cleared as soon as possible within a reasonable period, say about three to five years, so as to prevent candidates for the position of Chief Executive from using these urban squatters again as tools for establishing their image, canvassing and befriending the people?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, as I mentioned from the outset, in the Long Term Housing Strategy Review Consultative Document prepared by the Administration, we considered in the review process whether there was a need to clear the squatters on the mixed lots. We did put forth a proposal for the Housing Authority's consideration. In fact, when we put up the consultation proposal, we certainly had the intention to carry out the job, but at the present stage we cannot make any promise. Nevertheless, I strongly believe that after the consultation exercise is completed and the issue of resources is considered by the Housing Authority, a feasible plan can be put up.

MR CHOY KAN-PUI (in Cantonese): *Mr President, has the Government laid down a specific clearance programme for the squatters to be cleared? If so, what are the details?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, about the squatters on the urban mixed lots, I have just given my explanation. As for the squatters in the other areas of Hong Kong, such as those in the New Territories, the Government has no specific plan yet. If they are to be cleared, it will have to depend on whether there is any designated use or development plan. Sometimes no clearance programme will be made unless there is the geotechnical issue, and the squatters there will not be cleared.

PRESIDENT (in Cantonese): I believe that the question was whether there were any clearance plans for the urban squatters on government land.

SECRETARY FOR HOUSING (in Cantonese): Mr President, concerning the urban squatters on government land, I have already given my answer in the main reply. The Government made a pledge and fulfilled it as scheduled, which was stated in paragraph one of the main reply. We made housing offers to 33 000 squatter residents and 32 000 of them accepted the offers. The remaining 1 000 stay put in the squatter areas because they do not want to move out. Thank you, Mr President.

MR FREDERICK FUNG (in Cantonese): *Mr President, I want to follow up the question. According to the Government's pledge made in 1992, all the urban squatters on government land were to be cleared by March 1996. After a debate between the Panel on Housing of the Legislative Council and the Housing Branch, the deadline for clearance was changed from "by March 1999" to "by March 1996", but now, further changes have been made in that the residents are only given housing offers. This is in fact no more than changes in wording. According to the original pledge, they must be cleared, even if there are only some 1 000 people remaining. In fact when will all the squatters on government land be cleared? Even if there is only one resident remaining, clearance must go ahead. When will they be cleared? Or are they not going to be cleared at all?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, the Government's pledge was to provide public housing to the then squatter residents to rehouse them. So far the Government has already fulfilled its pledge, except for a small minority who has refused to accept the Government's proposal. I can tell you that some of the Members of this Council too proposed that they should not be forced to leave the squatters. In this respect, the Government has not resorted to any violence and forced them to move out. However, if the residents do not accept the Government's housing offers, I consider that under such circumstances, there is really nothing the Government can do. Thank you, Mr President.

MR LEE WING-TAT (in Cantonese): *Mr President, a number of squatters had been cleared before the urban squatters were cleared. As far as I know, in every urban squatter area to be cleared, there are bound to be various amounts of private land, that is, there is the question of "mixed lots" in every clearance area. I want to ask the Secretary for Housing why in other clearance areas, all the crown land and private mixed land are cleared while the Diamond Hill, where the amount of private land is undoubtedly comparatively large, is not covered by the pledge? On what principle is this so? My question is: was private land included in the squatter areas that were cleared in the past?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, as far as I know, when the Government cleared the squatters on government land, the squatters on private land were not included.

MR LEE WING-TAT (in Cantonese): *Mr President, could the Secretary for Housing provide us in writing the information showing that no private land was included in the urban squatters the clearance of which has been completed, because from the information I got from the Panel on Housing, I understand that some squatter areas did include private land.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I could provide a written reply. (Annex)

Life Span of Public Rental Housing Flats

5. **MR FREDERICK FUNG** asked (in Cantonese): *Does the Government know of:*

- (a) *the respective numbers of public rental housing (PRH) flats demolished in each of the past five years;*
- (b) *the net increase in the number of PRH flats (the number of new PRH flats minus the number of demolished PRH flats) in each of the past five years; and*

(c) *the longest, shortest and average lifespan of the PRH flats demolished in the past five years?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, the numbers of PRH flats demolished and constructed in each of the past five years, together with the corresponding net increases, are given in the Annex.

As regards part (c) of the question, the longest and shortest lifespan of public rental housing flats demolished during the past five years are 39 years and 19 years respectively. The average lifespan of these flats is 28 years.

Annex

Public rental housing flats demolished and new flats constructed

	<i>Flats demolished</i>	<i>Flats constructed</i>	<i>Net balance</i>
1992-93	21 599	22 852	1 253
1993-94	17 099	20 274	3 175
1994-95	7 434	24 440	17 006
1995-96	16 418	14 828	(1 590)
1996-97	14 535	15 917	1 382

() denotes negative figure

MR FREDERICK FUNG (in Cantonese): *Mr President, according to the estimate of the trade, the normal lifespan of a building is 40 years, but the average lifespan of the public housing blocks demolished in the past five years is 28 years. May I ask the Secretary for Housing how the lifespan of the housing blocks built by the Housing Authority can be guaranteed to keep up with that of the buildings on the market, that is, 40 years?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, I consider that as far as the lifespan of buildings is concerned, just the number of years after which the building is demolished does not indicate whether it is durable or not. A lot of urban buildings in Hong Kong are quite new, but they too are demolished.

When the Housing Authority and the Housing Society demolish any PRH, the main consideration is whether these housing flats are self-contained or not. Some of the housing built in the early period are not self-contained. For example, toilets are not provided within the flats. Therefore, when redevelopment is planned, these buildings will be accorded priority. Some buildings might have other problems, while others are demolished for redevelopment together with the adjacent block which need to be demolished. Accordingly, when buildings with shorter lifespan is demolished, it does not mean at all that it is of poor quality.

MR FREDERICK FUNG (in Cantonese): *Mr President, the Secretary for Housing has not answered my question. I asked him how to assure the public that in terms of lifespan, the buildings constructed by the Housing Authority can be kept for about 40 years, which is the normal lifespan of the buildings on the market. This has not been mentioned in his reply.*

SECRETARY FOR HOUSING (in Cantonese): Mr President, on the question of the lifespan of buildings, that of the buildings constructed by the Housing Authority in recent years is in fact rather long. As far as I know, there would not be any problem even if the buildings reached the age of 50. The buildings constructed in the past were demolished earlier than this simply because of the reasons I have just given.

MR LEE WING-TAT (in Cantonese): *Mr President, it can be seen from the Annex that the net growth of PRH is in fact very limited. In 1995-96, the overall growth in the number of rental flats was even in the negative, meaning that instead of any increase, there was a decrease of 15%. My calculation shows that the annual net increase of public rental flats in the past five years was only 4 500. May I ask the Secretary for Housing whether he is confident in fulfilling its performance pledge that by 2001 that people on the Waiting List will be allocated a public rental flat within five years on average, in the face of the small net increase?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, although this question is irrelevant to the main question, I would still like to let Mr LEE know

that we should not simply look at the net increase, because a lot of flats in the existing PRH are available for allocation, such as those vacated by tenants who have bought Home Ownership Scheme flats or private housing, or for other reasons. After these vacated flats are refurbished, they will be allocated to other eligible applicants. Hence, there is a large pool of flats which can be allocated to those in need. Generally speaking, at least some 18 000 flats are available every year on average. Furthermore, the number of flats constructed in the coming few years will gradually increase. Hence the Government is confident that there will be enough flats for allocation to the people by 2001.

MR FREDERICK FUNG (in Cantonese): *Mr President, the numbers of flats constructed and demolished in the past five years were roughly the same. Just now Mr LEE pointed out that the difference on average was about 4 000 flats. May I ask whether the Government has ever conducted a review to find out the reasons for the small production in the past five years and its small difference from the number of flats demolished? If so, what were the reasons?*

SECRETARY FOR HOUSING (in Cantonese): Mr President, the main reason was that in the early 1990s, the amount of land allocated to the Housing Authority was comparatively small. Accordingly, the production rate in the past year was comparatively low and so will the production rate in the next couple of years. However, with the increase in the amount of land allocated to the Housing Authority in recent years, there will certainly be a corresponding growth in production in the ensuing years.

WRITTEN ANSWERS TO QUESTIONS

Floating Class System

6. **DR LAW CHEUNG-KWOK** asked (in Chinese): *As the floating class system is still being adopted in some secondary schools, will the Government inform this Council:*

- (a) *of the number of secondary schools in which the floating class system is still being adopted; and*

- (b) *whether it has any plan to abolish the floating class system completely; if so, what the details are (including the estimated number of new secondary schools to be built and the amount of public funds involved)?*

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

- (a) At present, 316 Government and aided secondary schools in Hong Kong still operate floating classes.
- (b) The Government's policy is to abolish floating classes in Secondary 1 to 5. We plan to achieve this by the year 2000. For this purpose, the Government will build seven additional secondary schools at a cost of about \$440 million, and will provide a total of about 200 additional classrooms for those secondary schools which require extra classrooms under the "School Improvement Programme" at a cost of about \$230 million. The Government will review the situation of Secondary 6 and 7 after floating classes in Secondary 1 to 5 have been completely abolished.

Fixed Telecommunication Network Service Operators

7. **MRS MIRIAM LAU** asked (in Chinese): *In 1995, the Government issued a new type of licence for the provision of fixed telecommunication network services in order to bring in competition. In this connection, will the Government inform this Council:*

- (a) *whether the three new operators of fixed telecommunication network services have fully complied with the licence conditions stipulated in the Telecommunication Ordinance since obtaining their licenses; if not, which of the licence conditions have not been complied with;*
- (b) *how the authority concerned monitors the three operators to ensure that they comply with the relevant licence conditions; and*
- (c) *given that the three operators had undertaken to invest in the construction of exchange buildings and other infrastructure*

facilities, of the progress to date in the construction of such facilities?

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Mr President, the three new operators of local fixed telecommunications network services have fully complied with their licence conditions.

The Office of the Telecommunications Authority (OFTA) monitors the operators' compliance with the licence conditions. OFTA has the power to intervene when necessary to resolve disputes between operators on interconnection, sharing of facilities and other matters relating to the compliance with licence conditions. OFTA would actively deal with any complaints from consumers or operators about non-compliance with licence conditions and take action as necessary. The operators have deposited performance bonds with OFTA under which the bonded sums could be forfeited if specific licence conditions are not complied with.

Under the licences issued, the three new operators are committed to achieving specific investment milestones by the dates specified in the licences. These milestones include the injection of capital of \$500 million into each of the licensee companies. The milestones to be achieved by the end of 1996 include the completion of an optical fibre backbone network on Hong Kong Island and Kowloon Peninsula, the installation of the necessary exchanges and the provision of services to specified numbers of buildings. OFTA has verified that the three operators have satisfactorily achieved the milestones due by the end of 1996.

In the coming year, there are additional milestones to be achieved concerning the extension of the network to reach commercial and residential customers. To meet these milestones, the new operators are installing additional optical fibre cables through the Mass Transit Railway tunnels. They are installing equipment in the exchange buildings of the Hong Kong Telephone Company Limited (HKTC) to interconnect with its local loops. For new buildings, the new operators and HKTC are co-ordinating with the developers for the provision of in-building block wiring.

Local Software Development Technology

8. **MR JAMES TIEN** asked (in Chinese): *The findings of a survey conducted recently by the Hong Kong Productivity Council (HKPC) show that there is an increasing demand for application software in the local import and export industry and that the software required is becoming increasingly complex. In this connection, will the Government inform this Council of the following:*

- (a) *whether, in the past three years, the HKPC has provided assistance to the import and export industry in such areas as software development, technology transfer, technological support and the training of technical staff, if so, what the details are; and*
- (b) *what plans does the HKPC have to ensure that, in the long run, the local software development technology can match the development of the import and export industry and trade developments in the territory?*

SECRETARY FOR TRADE AND INDUSTRY (in Chinese): Mr President, the Hong Kong Productivity Council (HKPC) has spent more than \$57 million (including staff costs) over the past three years in software development and promotion of software applications, principally to assist our import and export (I/E) industry in the areas of software development, technology transfer, technology support and the training of technical staff, as follows:

- (a) Software development — enhancement of GM-SYS, which is a garment management information system for use by garment exporters and I/E firms; development of a low cost software, TRENDS, for the Trade electronic data interchange (EDI) service introduced by the Hong Kong Article Numbering Association (HKANA); and customized software for their clients in the I/E trade.
- (b) Technology transfer — co-operation with the HKANA to train software vendors to use world-wide EDI standards and implement EDI enabled software; and provision of software quality assurance service to software developers on EDI standards.
- (c) Technology support — co-operation with the HKANA and the CargoNet to promote the use of electronic commerce, so as to improve the efficiency of the I/E trade; establishment of the

Software Industry Information Centre which completed a survey on the I/E sector entitled 1997 Software Study; co-operation with the Chinese Manufacturers' Association to organize training programmes and seminars on the use of internet for small and medium enterprises (SMEs), a number of which are engaging in the I/E trade; and development of the SME Net information network to facilitate information search and promotion.

- (d) Training — co-operation with Tradelink to train up more than 800 staff from 300 companies to use the EDI technology for lodging Trade Declarations and applications for Restrained Textile Export Licences; and organization of over 100 advanced IT training courses with leading IT vendors.

In order to ensure that software development technology in Hong Kong meets the changing needs of our trade and the I/E industry in the long run, the HKPC has devised the following strategies:

- (a) further strengthening of the services provided by the Software Industry Information Centre to support software developers and to increase the communication with I/E trade associations;
- (b) promotion of the convergence of internet, EDI and the World Wide Web to form an Extranet for the use of the services industry, especially the I/E industry;
- (c) development of a management information software package for small and medium I/E firms;
- (d) development of a model trading desk which demonstrates the latest IT technologies;
- (e) development of new programmes on software quality improvement; and
- (f) continued promotion of new IT technology and products and provision of advanced training on state-of-the-art IT technologies.

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

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

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

SECRETARY FOR TRANSPORT: Mr President,

- (a) Following allocation of funds by the Finance Committee of the Legislative Council, we embarked on the Consultancy Study for the Central-Wan Chai Bypass and Island Eastern Corridor Link in March 1995. The scope of the study involved:
 - (a) detailed investigation and design of the proposed trunk road; and
 - (b) associated site investigations.

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

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

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

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

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

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

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

(留空一頁貼表)

Income Groups Profile

10. **MR CHENG YIU-TONG** asked (in Chinese): *Will the Government inform this Council:*

- (a) *whether it can provide a breakdown of the data in respect of the following five income groups by "type of housing resided", "geographical area", "household size" and "household composition" in 1986, 1991 and 1996 respectively:*
 - (i) *below \$4,000;*
 - (ii) *\$4,000 to \$5,999;*
 - (iii) *\$6,000 to \$6,999;*
 - (iv) *\$7,000 to \$7,999;*
 - (v) *\$8,000 to \$8,999; and*
- (b) *if not, what the reasons are; and whether it will consider collecting such information and publishing it on a regular basis?*

SECRETARY FOR FINANCIAL SERVICES (in Chinese): Mr President, the requested statistics are given in the following tables:

- Table 1: No. of employees by monthly earnings from main employment by type of housing
- Table 2: No. of employees by monthly earnings from main employment by district of residence
- Table 3: No. of employees by monthly earnings from main employment by household size
- Table 4: No. of employees by monthly earnings from main employment by household composition

These four tables are compiled based on findings from the Population Census/By-census. The monthly earnings from main employment refers to the overall amount earned from main employment excluding New Year bonus and double pay.

(留 10 頁貼表)

Missing Hong Kong Residents

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

- (a) *the number of Hong Kong residents currently listed as missing persons, together with a breakdown of their sex and age group;*
- (b) *the longest period of disappearance among the above missing persons, and whether there are special measures to deal with cases of people missing for a long period of time;*
- (c) *whether the Government will take the initiative to offer various kinds of assistance to family members of the missing persons, including financial assistance and psychological counselling; and*
- (d) *in the event of such missing persons being found in places outside the Chinese territory after the transfer of sovereignty, whether assistance will continue to be given to them and their family members?*

SECRETARY FOR SECURITY (in Chinese): Mr President,

- (a) There are 291 Hong Kong residents currently listed as missing persons. Below is their breakdown by sex and age:

<i>Age Group</i>	<i>Sex</i>	
	<i>Male</i>	<i>Female</i>
0-6	3	3
7-15	10	38
16-20	9	39
21 and above	99	90
Total	121	170

- (b) The longest period of disappearance among the missing persons in part (a) is seven years.

Police officers in the Regional Missing Person Units are responsible for investigation of missing person cases. They will review each reported case every seven days. A police officer of the rank of Superintendent will review all reported cases of missing persons after 28 days. Taking into account the circumstances of each individual case, the Superintendent will then decide whether further actions should be taken. The review will continue until the Superintendent is satisfied that all reasonable steps have been taken and further enquiries will serve no useful purpose.

- (c) The Police will refer appropriate cases of missing persons to the Social Welfare Department (SWD). Depending on individual circumstances, caseworkers of the SWD will contact family members of the missing persons to offer appropriate assistance. The SWD will provide services such as counselling service and referrals for welfare assistance including financial assistance and psychological service.
- (d) We do not have statistics on the number of requests for assistance in respect of Hong Kong residents found missing abroad but our experience shows this happens rarely. Any Hong Kong resident in distress can request help for assistance through consular posts or the Immigration Department. Such assistance will continue to be given to them and their family members after the transfer of sovereignty.

Altars and Temples in Private Buildings

12. **DR JOHN TSE** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the current total number of altars and temples situated in private buildings, and the main districts in which they are located;*
- (b) *whether the above-mentioned altars and temples are required to be registered; if so, of the total number of such altars and temples which are not currently registered, as well as the number of these*

not registered altars and temples which are privately managed or owned;

- (c) whether there are any laws regulating the altars and temples situated in private buildings; if so, of the monitoring measures in place to ensure that they are in compliance with the provisions of the Deed of Mutual Covenant and the relevant fire safety regulations; and*
- (d) if vegetarian food is provided in these altars and temples, whether there are currently any laws stipulating that the food provided in these premises should be up to the required hygiene standards; if so, of the details of the monitoring measures?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Mr President,

- (a) According to the records of the Chinese Temples Committee, there are a total of 79 registered Chinese temples situated in private buildings. They are mainly located in Central and Western District, Eastern District, Wan Chai, Sham Shui Po, Yau Tsim Mong District, Kowloon City, Kwun Tong and Tsuen Wan.
- (b) According to the Chinese Temples Ordinance (Cap. 153), the above-mentioned Chinese temples are required to be registered. The Chinese Temples Committee or the Government has no record of altars and temples which are not registered.
- (c) At present, altars and temples situated in private buildings must comply with the provisions of the Deed of Mutual Covenant and relevant ordinances. First, if the establishment or operation of an altar or temple contravenes the provisions of the Deed of Mutual Covenant, the owners of the building or the Owners' Corporation may apply to the Lands Tribunal for arbitration under the Building Management Ordinance (Cap. 344). In addition, the Buildings Ordinance (Cap. 123) stipulates that prior approval of the Building Authority is needed if the establishment of an altar or temple inside a private building causes a material change in the use of the flat(s). The Building Authority may reject the application or prohibit the owners from using the flat(s) for the existing or similar purpose on

the ground that the altar or temple in question may affect the structural conditions of the building or impede fire safety measures and so on. Furthermore, the Fire Services Department may institute proceedings under the Fire Services Ordinance (Cap. 95) and the Dangerous Goods Ordinance (Cap. 295) if it discovers fire hazards in an altar or temple inside a building, or that excess dangerous goods are stored in it.

- (d) If these temples inside private buildings provide vegetarian food service, food hygiene is subject to regulation by the Food Business (Regional Council) By-laws and the Food Business (Urban Council) By-laws under the Public Health and Municipal Services Ordinance (Cap. 132). According to the two by-laws, a temple which provides vegetarian meals needs to apply for a food premises licence from the Regional or the Urban Council. The temple must meet the hygiene standards required by the Regional or the Urban Council, as one of the conditions for the grant of licence. After being granted the licence, the licensee of the temple canteen has to follow a set of licence conditions to ensure good hygiene standards of the premises. On the other hand, health inspectors pay regular visits to these licensed food premises to make sure that the licensees and the staff who handle the food abide by hygiene laws. The health inspectors will institute prosecution for violation of the licence conditions and hygiene laws as well as give guidance to the licensees for improvement. Inspections will be stepped up as and when necessary. If a temple canteen repeatedly violates the law, the Regional or the Urban Council may mete out punishment by suspending or revoking its licence.

Increasing Aircraft Movements at Kai Tak

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

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

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

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

Regulation on Transfer of Stock Exchange Membership

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

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

A transaction involving the transfer of membership of the Stock Exchange of Hong Kong is a sale of a share in the Exchange Company which is a private company. Such a transfer is a private transaction and the payment of a commission is in itself not a criminal offence. In the trial to which the Member refers, the issue was whether the commission was accepted as an inducement to or reward for favouring an applicant. Since such a transaction requires approval by the Council of the Exchange Company, the parties concerned in the transaction could be liable criminally under section 9 of the Prevention of

Bribery Ordinance (the Ordinance) if, in connection with approving the transfer, a commission is paid to a Council Member as an inducement or reward to that Council Member for refraining from exercising his or her duty as a Council Member or for acting in breach of that duty.

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

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

Sites for New Multi-storeyed Car Parks

15. **MR WONG WAI-YIN** asked (in Chinese): *It is learnt that the Government's Working Group on Parking has proposed the inclusion of 10 sites in the Land Sales Programme in the coming three years for building multi-storey car parks. In this connection, will the Government inform this Council of:*

- (a) *the exact locations of the above sites for building multi-storey car parks;*
- (b) *the estimated number of parking spaces to be provided by these car parks upon their completion; and*
- (c) *the scheduled dates on which these car parks will come into operation, and how the commissioning of these car parks can contribute to alleviating the shortage of parking spaces in the territory?*

SECRETARY FOR TRANSPORT (in Chinese): Mr President, the locations of the 10 multi-storey vehicle park sites recommended by the Working Group on Parking for inclusion in the Land Sales Programme in the coming three years, and the number of parking spaces tentatively planned for each site are shown in the attached table. They will provide parking spaces for a total of 1 900 goods vehicles and 1 100 private cars. One site has already been brought forward for inclusion in the Land Sales Programme of 1996-97 and sold.

The dates on which the new vehicle parks will come into operation will depend upon the successful sale of the sites and the length of time required for the design and construction of the individual developments by the private sector. The Working Group will monitor the progress.

These 10 multi-storey car parks alone will not be sufficient to meet the territory wide shortfall of goods vehicle parks. The Working Group has implemented and will continue to pursue other measures recommended in the Parking Demand Study to increase spaces for parking goods vehicles, including the provision of Short Term Tenancy Sites, identification of additional on-street parking spaces, in particular overnight parking spaces. The implementation of the revised Hong Kong Planning Standards and Guidelines will also provide more parking spaces in residential, commercial and community facilities.

Proposed Multi-storey Vehicle Park Sites

<i>Land Sales Programme</i>	<i>Location</i>	<i>Estimated No. of Spaces</i>
1. (Sold by auction on 25 March 1997)	Siu Sai Wan Reclamation, Chai Wan	336 PCs and 35 motorcycles
2. 1997-98	Kowloon Bay	200 PCs, 75 LGVs, 25 MHGVs
3. 1997-98	Sai Kung	90 LGVs, 35 MHGVs
4. 1997-98	Shek Mun, Sha Tin	100 PCs, 110 LGVs, 120 MHGV
5. 1997-98	Shek Mun, Area 11 Sha Tin	100 PCs, 35 LGVs, 120 MHGVs
6. 1998-99	Kwun Tong	200 PCs, 75 LGVs, 25 MHGVs
7. 1998-99	Hung Hom Bay Reclamation	200 LGVs, 25 HGVs
8. 1998-99	West Kowloon Reclamation	300 LGVs, 100 MHGVs
9. 1999-2000	Lo Shue Pai, Chai Wan, Reclamation	200 LGVs, 200 MHGVs
10. 1999-2000	Kowloon Bay	200 PCs, 75 LGVs, 25 HGVs

Notes:

PC= Private Car

LGV= Light Goods Vehicle

MHGV= Medium/Heavy Goods Vehicle

Chinese Descriptions of Imported Health Food

16. **MR DAVID CHU** asked (in Chinese): *Will the Government inform this Council:*

- (a) *whether there is any legislation which stipulates that packages of imported health food on sale in drug stores or health-food shops must contain labels with Chinese descriptions; if so, whether the contents of such labels are subject to regulation under the relevant legislation; and*
- (b) *whether there is currently any legislation which regulates the direct sale of imported health food; if so, what monitoring measures have been put in place to ensure that such health food possesses the effects as claimed by the manufacturers?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, at present, "health food" is not defined in law. All food items, including those imported health food on sale in drug stores or health-food shops, or through direct sale, are subject to the control of the legislation which governs foods.

- (a) Labelling of pre-packaged foods and the labels' contents are controlled through the Food and Drugs (Composition and Labelling) Regulations made under the Public Health and Municipal Services Ordinance (PHMSO), (Cap. 132). The Regulations allow, in general, the use of either Chinese or English or both languages in food labels. They also require that both English and Chinese must be used in relation to certain parts of the food label, such as indication of durability, and labels of stipulated food items, such as milk products.
- (b) Although there is no specific legislation which requires that imported health food must have the efficacy as claimed by the

manufacturers, the legal framework for control of foods in general is also applicable to health food. For example, Part V of the PHMSO and its subsidiary legislation provide that the sale of any food intended for, but unfit for, human consumption is an offence. Any substance with claims for treatment or prevention of specific diseases is required to be registered under the Pharmacy and Poisons Ordinance (Cap. 138). The registration criteria of a pharmaceutical product include examination of the safety, quality and efficacy of the product, which have to be substantiated by scientific evidence. There are also provisions in the Undesirable Medical Advertisement Ordinance (Cap. 231) to prohibit the advertising of any substance for the purpose of treatment and prevention of specified diseases. We believe that the existing legal framework is sufficient for the purpose of protecting public health.

Policy on Training Courses for Paging Operators

17. **MR JAMES TIEN** asked (in Chinese): *According to the statistical data provided by the Office of the Telecommunications Authority, the number of pager users has been decreasing since October last year whereas the number of portable phone users has been on the rise. In this connection, will the Government inform this Council:*

- (a) *what changes the Employees Retraining Board has adopted in its policy on the provision of training for employees in the paging industry in the face of the above market trend;*
- (b) *of the number of training courses for paging operators offered this year, together with the number of trainees in each of these courses; and*
- (c) *of the comparison between the employment situation of trainees who completed the training courses for paging operators in the first four months of this year and the employment situation of those who completed such courses in the past two years?*

SECRETARY FOR EDUCATION AND MANPOWER (in Chinese): Mr President, whilst the number of mobile phone users in Hong Kong is indeed increasing, mobile phones have yet to be able to take over a substantial share of the market of radio pagers, let alone displacing it. In fact, many mobile phone users are also customers of paging services. Moreover, many mobile phone service providers offer messaging services that need to be supported by paging operators.

There is no evidence that this market trend has led to a significant fall in the labour demand of the paging industry or to an increasing number of paging operators being displaced from the industry.

Against this background, my replies to the specific parts of the questions are as follows:

- (a) As a matter of principle, all specific skills training courses provided by the Employees Retraining Board (ERB), of which retraining courses for paging operators form a part, aim at equipping trainees with the skills required of the relevant jobs.

To ensure that trainees who have completed these courses can subsequently re-enter the labour market, the ERB requires all training bodies providing courses to set up a steering committee comprising representatives from employers of the relevant industry, trainers and retrainees to monitor the design and operation of the courses, so that these can be adjusted in response to changes in market demand. In addition, training bodies are also expected to attain an average overall placement rate of around 70% before they are allowed to continue running the same courses.

The ERB has also been organizing tailor-made training courses for paging operators in that such courses are specifically designed in accordance with the needs of employers of particular paging companies offering a relatively large number of vacancies at the same time. The employment opportunities of retrainees attending such courses are thus basically secured before the commencement of such courses.

The contents of the retraining courses for paging operators comprise not only training in job-specific skills of paging operators, but also training in basic computer operating skills and basic customer service techniques for the services sector. As a result, retrainees completing such courses are able to take up other jobs outside the paging industry, such as clerks, sales persons, and customer service assistants.

We will continue to work closely with the ERB to monitor developments in the communications industry and their impact on the labour market so that suitable and timely changes can be made to the relevant retraining courses.

- (b) Since the commencement of the retraining courses for the paging industry and up to the end of April 1997, the ERB has provided 75 classes for 1 310 persons. For the first four months this year, the ERB have provided 14 such classes for 251 retrainees. As of 30 April 1997, two classes for 42 retrainees were in progress.
- (c) During the past two years, the retraining courses for the paging industry were able to achieve an average overall placement rate of about 73%. Of this, 68% were employed by the paging industry, while the remaining 32% rejoined the labour market in a wide range of posts, including clerks, salespersons, cashiers, customer service assistants and shop assistants.

For those classes which were completed in the first four months of 1997, the preliminary average placement rate was 65%. The overall placement rate will be available when the placement records are finalized later.

Adult Education

18. **MR CHENG YIU-TONG** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the following information concerning adult education in the past three years:*

- (i) *the numbers and types of formal retrieval education courses from primary school to Secondary 6 levels provided by the Adult Education Section of the Education Department, and the numbers of persons who completed such courses;*
 - (ii) *the numbers and types of informal courses provided by the 10 Adult Education and Recreation Centres of the Education Department respectively, and the numbers of persons who completed such courses;*
 - (iii) *the voluntary organizations which had received subsidy from the Education Department for running adult education courses, the amounts of subsidy involved, and the types and numbers of such courses;*
 - (iv) *whether the Education Department can provide a breakdown of the data in respect of persons who completed the above three types of courses, by "sex and age"; "sex and industry"; "age and industry"; "sex and occupation"; and "age and occupation";*
 - (v) *whether other types of adult education courses were provided by the Education Department; if so, of the types and numbers of such courses, together with a breakdown of the persons who had completed the courses, by "sex and age"; "sex and industry"; "age and industry"; "sex and occupation"; and "age and occupation";*
- (b) *if the answers to (a)(iv) and (v) above are in the negative, of the reasons why the Education Department has not collected such information, and whether it will consider collecting the relevant information and publishing it on a regular basis; and*
- (c) *whether the Education Department will consider expanding the adult education currently offered; if so, what the details are; if not, why not?*

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

- (a) (i) The formal education courses run by the Adult Education Section of the Education Department and the number of persons who completed such courses in the past three years are as follows:

<i>Course</i>	<i>1994-95</i>	<i>1995-96</i>	<i>1996-97</i>
1. Adult Education (General Background) Course (primary level)	229	201	258
2. Government Evening Secondary School Course (Secondary 5)*	1 568	1 558	1 693
3. English Course (primary, secondary and General Certificate of Education levels)	808	802	646

* The matriculation classes of the Government Evening Secondary School Course started in 1995-96. The first batch of students have not yet completed the course.

- (ii) The 10 Adult Education and Recreation Centres ceased operation in September 1996. In the past, these Centres provided two types of short courses in the form of hobby groups: (i) educational hobby groups such as Putonghua classes, English classes and so on, and (ii) cultural/leisure hobby groups such as photography classes, Chinese calligraphy classes, social dance classes and so on.

A total of 4 506 and 1 742 persons completed the courses at the Adult Education and Recreation Centres in 1994-95 and 1995-96 respectively.

- (iii) Voluntary organizations which participate in the Subvention Scheme of the Education Department to run adult education courses include religious bodies and social services agencies. There are seven major types of courses including basic

literacy, prevocational and job-oriented training, labour and career education, moral and social education, pre-retirement and retirement education, re-orientation for newcomers to Hong Kong and special education.

The number of these voluntary organizations, the amount of subsidy and the number of persons who attended such courses are as follows:

	<i>1994-95</i>	<i>1995-96</i>	<i>1996-97</i>
No. of Organizations	74	78	83
Amount of Subsidy (\$M)	11.2	12.9	14.8
No. of Participants	17 796	20 042	21 070

- (iv) The relevant statistics are at the Appendix. For formal adult education courses, the Education Department can only provide statistics with breakdown by sex and age as the Department does not have information on the occupation or position held by the students. For informal adult education courses run by the Adult Education and Recreation Centres or voluntary organizations, the Education Department can only provide statistics with breakdown by sex as the Department has only kept records on the sex of the students.
- (v) The Education Department does not provide other adult education courses.
- (b) The Education Department has no plan to collect statistics on the occupation or position held by the students of the formal adult education courses and subsidized courses, as such information is not directly relevant to the design of the curriculum or the administration of the courses.
- (c) The Education Department regularly reviews the adult education courses in order to meet changing needs. A three-year Secondary 6 course leading to the Hong Kong Advanced Level Examination was

introduced in the 1995-96 school year. Besides, with effect from the 1996-97 school year, the minimum admission age of adult education courses was lowered from 18 to 15.

Appendix

(i) Number of students who completed the Adult Education (General Background) Course

	<i>1994-95</i>		<i>1995-96</i>		<i>1996-97</i>	
<i>Age</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
20 or below	0	6	2	21	2	24
21-30	7	39	7	40	9	42
31-40	15	111	14	68	18	104
41-50	4	40	2	38	3	46
51 or above	0	7	0	9	0	10
Subtotal	26	203	25	176	32	226
Total	229		201		258	

(ii) Number of students who completed the Government Evening Secondary School Course

	<i>1994-95</i>		<i>1995-96</i>		<i>1996-97</i>	
<i>Age</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
20 or below	244	484	363	501	325	531
21-30	260	400	200	349	251	404
31-40	49	84	22	69	37	92
41-50	16	31	14	40	18	35
51 or above	0	0	0	0	0	0
Subtotal	569	999	599	959	631	1 062
Total	1 568		1 558		1 693	

(iii) Number of students who completed the English Course

	<i>1994-95</i>		<i>1995-96</i>		<i>1996-97</i>	
<i>Age</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>	<i>Male</i>	<i>Female</i>
20 or below	9	11	10	11	9	10
21-30	64	132	61	135	48	110
31-40	61	296	54	299	42	239

41-50	45	170	46	168	38	135
51 or above	4	16	3	15	2	13
Subtotal	183	625	174	628	139	507
Total	808		802		646	
(iv) Number of persons who completed courses run by Adult Education and Recreation Centres						
		1994-95	1995-96		1996-97	
Male		1 208	496		ceased	
Female		3 298	1 246		operation	
Total		4 506	1 742			
(v) No. of Persons who completed courses run by voluntary organizations						
		1994-95	1995-96		1996-97	
Male		4 054	4 298		4 660	
Female		13 742	15 744		16 410	
Total		17 796	20 042		21 070	

Blood Bags Discarded by Public Hospitals

19. **MR WONG WAI-YIN** asked (in Chinese): *Does the Government know:*

- (a) *of the breakdown of the number of blood bags discarded by each public hospital each month in the past three years, and the proportion of the discarded blood bags to the total number of blood bags obtained each month from the Hong Kong Red Cross, in the corresponding period;*
- (b) *of the reasons for public hospitals discarding such blood bags; and*
- (c) *whether the Hospital Authority has issued any guidelines to public hospitals on how to handle blood bags approaching their expiry dates; if so, what the details are, and what mechanism is in place to ensure that the guidelines are being followed in public hospitals?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, hospitals need to maintain an adequate blood supply for day-to-day clinical operations. Blood however has a limited shelf life and given the fluctuation in demand, the shelf life of some blood units stored in public hospitals may expire before it can be used for transfusion and require to be discarded. Some of these expired blood units are used for various laboratory tests, such as blood typing and anti-body studies.

According to the Hospital Authority's records, in the past three years, an annual average of only 1.1% of the blood units obtained from the Hong Kong Red Cross Blood Transfusion Service (HKRCBTS) becomes expired. A detailed breakdown by hospital is at Annex. Members may wish to note that in major hospitals, the percentage of expired blood units to the total number of blood units received is generally lower. Due to the higher number of patients requiring blood transfusion, major hospitals have been able to adopt a universal compatibility matching procedure (that is, a pool of blood units is allocated to a large number of patients requiring transfusion instead of reserving a number of blood units to individual patient) to improve the utilization of donated blood units.

To maximize the utilization of donated blood, the HKRCBTS and concerned public hospitals have in place some agreed procedures to handle blood units approaching their expiry dates. Each bag of blood is clearly marked with an expiry date indicating the period during which it can be safely used. They are distributed to hospitals by the HKRCBTS on a daily or weekly basis, and used in hospitals for transfusion on "first-in first-out" basis. Hospitals are required to redirect blood units approaching expiry to other hospitals in the cluster to enable them to be used before expiry.

All hospitals with blood banks report regularly to the HKRCBTS on the blood stock level, including the amount of blood units redirected and expired. In addition, they also conduct regular audits to ensure proper utilization of blood units and that the agreed procedures are strictly followed.

GOVERNMENT MOTION**COMPANIES ORDINANCE*****THE SECRETARY FOR FINANCIAL SERVICES to move the following motion:***

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

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

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

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

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

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

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

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

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

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

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

GOVERNMENT BILLS

First Reading of Bills

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

CIVIL AVIATION (AMENDMENT) BILL 1997

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

Second Reading of Bills

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

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

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

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

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

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

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

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

CIVIL AVIATION (AMENDMENT) BILL 1997

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

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I move that the Civil Aviation (Amendment) Bill 1997 (hereafter referred to as the Bill) be read a Second time.

The Civil Aviation Ordinance enacted in 1994 represents the first stage in the localization of relevant United Kingdom civil aviation enactments applying to Hong Kong. The Civil Aviation (Amendment) Bill 1997 before Members represents the second and final stage in the localization of such United Kingdom enactments and reflects our agreement with the Chinese side last month. It is essential for ensuring the continuation of Hong Kong's civil aviation management system beyond the transition. It is also necessary to maintaining Hong Kong's position as a centre of international and regional aviation.

The purpose of the Bill is to localize section 8 of the United Kingdom Civil Aviation Act 1949 (hereafter referred to as the 1949 Act) as extended to Hong Kong under the United Kingdom Civil Aviation Act 1949 (Overseas Territories) Order 1969, and to save the Air Navigation (Hong Kong) Order 1995 (hereafter referred to as 1995 Order) so that they will continue in effect after 30 June 1997. Section 8(1) of the 1949 Act is an enabling provision, which empowers Her Majesty in Council to make provisions for implementing the

Chicago Convention of 1944, and its Annexes relating to international standards and recommended practices, and for regulating air navigation generally. Section 8(2) of the 1949 Act sets out specific matters on which provisions could be made. The 1995 Order was made by Her Majesty in Council under section 8 of the 1949 Act, and provides the legal basis for Hong Kong's civil aviation management system covering matters such as the registration and marking of aircraft, air operators' certificates, airworthiness and aircraft equipment, aircraft crew and licensing, the operation of aircraft and the control of air traffic.

The Bill amends the principal Ordinance by adding provisions of section 8 of the 1949 Act and saving the 1995 Order, both with appropriate modifications. The important modifications are:

- (a) the power to make provision for implementing the Chicago Convention and its Annexes and for regulating air navigation generally is vested in the Governor in Council in place of Her Majesty in Council;
- (b) such provision deals with routine business and technical management of civil aviation;
- (c) the Governor in Council may, by order, make provision for prohibiting aircraft from flying over such areas in Hong Kong as may be specified, except by reason of national defence or during a state of emergency or state of war. In those exceptional circumstances, he shall only make such an order upon the instruction of a Secretary of State. The power of the Governor to make regulations for such prohibition under the 1995 Order is also similarly modified; and
- (d) commensurate with the offence, the maximum fine for non-compliance with the 1995 Order, or any instruments made thereunder, is increased from the existing level of 400, set over 20 years ago, to level six, which is equivalent to HK\$100,000.

Mr President, with these words, I commend the Civil Aviation (Amendment) Bill 1997 to this Council.

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

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

Resumption of Second Reading Debate on Bills

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

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

MR ALBERT CHAN (in Cantonese): Mr President, I rise to speak on behalf of the Bills Committee on Government Rent (Assessment and Collection) Bill of which I was elected Chairman. The Bill seeks to implement the provisions in paragraphs two and three of Annex III to the Sino-British Joint Declaration regarding charging of Government rent. Although the Administration has put to members of the Bills Committee that the Bill only provides for the assessment and collection of Government rents payable for leases as specified in these provisions, the Bills Committee, in the course of deliberations, has found that the legal effect of the Bill is far more than what is intended. This explains why the Bills Committee has held ten meetings with the Administration. As I will move an amendment to the Bill at the Committee stage, I do not intend to touch on the issue relating to the amendment now. My speech will focus on other concerns raised by members of the Bills Committee.

At present tenements specified in section 36 of the Rating Ordinance are exempted from assessment to rates. These tenements fall into 12 different categories, including agricultural land, agricultural dwelling houses, village type houses and tenements wholly or mainly used for the purpose of public religious worship. Unless these tenements are held by a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, they are liable to pay Government rent under the Bill. Although the Bill has provided for ascertainment of rateable values of these tenements, members have questioned the legal basis upon which the rateable values of these tenements are capable of being so ascertained for the purpose of charging Government rent. It should be noted that if a tenement is exempted from

assessment to rates under section 36 of the Rating Ordinance, the question of ascertainment of rateable value does not arise. Apart from the doubtful legal basis for charging Government rent on these tenements, members of the Bills Committee are also concerned about the effect of payment of Government rent on the financial position of churches and temples. In an example given by the Administration, the estimated rateable value of a large church is \$1,452,000 and the Government rent payable will be \$43,560 per annum. Members of this Council will probably agree that this is not an insignificant amount to a church. Since the estimated total Government rents for churches, temples, monasteries and agricultural land will only be \$20 million per annum, the overall effect on public revenue is minimal. The Bills Committee has proposed to add a new clause to the Bill to deem the rateable value of each of the tenements exempted from assessment to rates under section 36 of the Rating Ordinance below the prescribed minimum rateable value. This, in effect, means that the rateable value of each of these tenements will be deemed to be \$1 per annum. Although this amendment has been ruled by Mr President to have charging effect, I consider it necessary to state the stance of the Bills Committee on the issue.

Members may wish to note that paragraph two of Annex III to the Joint Declaration specifically excludes short-term tenancies and special purpose leases from block extension. Their extension is considered on a case-by-case basis. This being the case, members doubt whether the charging of Government rent should apply to short-term tenancies and special purpose leases. The Bills Committee is concerned in particular about special purpose leases which have been granted at a concessionary premium. The Administration has admitted that it is not obliged under Annex III to charge Government rent at 3% of the rateable value for extension of special purpose leases. This arrangement has been discussed and agreed by the Land Commission. The Administration contends that new leases that are granted from the entry into force of the Joint Declaration until 30 June 1997 are required to pay Government rent under paragraph three of Annex III. These new leases include special purpose leases which are granted at a concessionary premium. The Administration argues that it will be anomalous not to charge the same rate of Government rent on all special purpose leases.

May I remind Members that the Administration has all along been saying in public that the charging of Government rent for extension of non-renewable leases has been enshrined in the Joint Declaration and there leaves no room for negotiation. It has now come to light that the charging of Government rent on

special purpose leases is not derived from this basis but from an agreement reached in the Land Commission. Members of the Bills Committee have every reason to believe that the Administration has misled the special purpose lessees into believing that payment of Government rent is a prerequisite condition for extension of leases in accordance with Annex III to the Joint Declaration. It is not therefore surprising that none of the special purpose lessees have raised any objection to this condition. Most, if not all, special purpose leases granted at a concessionary premium before the entry into force of the Joint Declaration have now been extended. The Administration has created a *fait accompli* situation. Although members of the Bills Committee have no intention of overriding contractual liabilities by legislative means and consider it more appropriate for individual lessees to take up the matter with the Government through civil action if necessary, I have to stress that the majority of members of the Bills Committee have expressed great disappointment at the way the Administration has handled the extension of special purpose leases.

I would like to draw Members' attention to another issue which has been discussed in depth by the Bills Committee. The Bill empowers the Government to demand Government rent from the lessees of an applicable lease, or the person who is liable to pay the rates for a tenement erected on land under an applicable lease. The liability to pay Government rent therefore does not rest with the lessee alone but the ratepayer too. The Administration has advanced several reasons for such an arrangement. The main reasons are that the Administration does not have an accurate list of lessees' names and addresses and it will take 70 man-years to compile this list. Since over 90% of ratepayers are lessees, the Administration considers it sensible to demand Government rent from ratepayers. I have to say that members do not consider this an entirely satisfactory arrangement although members appreciate the Administration's practical difficulties in issuing a rent demand note to lessees. Members' concern is however allayed to a certain extent by a provision in the Bill which provides that where the ratepayer is not the lessee but pays the rent, the sum so paid is a debt due to the ratepayer by the lessee unless there is an express agreement otherwise. At members' suggestion, the Administration has agreed to move an amendment to the effect that the relevant provision in the Bill will prevail any agreement which contains a general prohibition against the setting off of monies owed from any monies, including rent, payable under the agreement.

Mr President, albeit divergent views held by the Administration and the Bills Committee on various issues, the Administration does take on board some

suggestions made by members. These include specifying in the Schedule to the Bill the relevant standard lease conditions which will be overridden by the Bill and amending the existing form for notifying ratepayers to set out clearly the reasons for refusing an objection to assessment of rateable values.

Mr President, these are my remarks on the deliberations of the Bills Committee.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, as a member of the Bills Committee, I must state my position and that of the Democratic Alliance for the Betterment of Hong Kong (DAB).

The Government Rent (Assessment and Collection) Bill is aimed at providing a mechanism to allow the Administration to assess and collect Government rent payable for leases for which Government rent has to be paid in accordance with the provisions in Annex III to the Sino-British Joint Declaration. Such an arrangement enables the people to extend their leases without having to pay any premium. Hence the DAB supports the Bill.

Mr Albert CHAN, on behalf of the Bills Committee, proposed to move an amendment to the Bill at the Committee stage, whereby clause (4) would be added to section 8, to deem the rateable value of each of the tenements exempted from assessment to rates under section 36 of the Rating Ordinance below the prescribed minimum rateable value. Although this amendment could not be put forth eventually because it had been ruled by the President of this Council to have charging effect, I still wish to make one point clear and that is, Mr CHAN's proposed amendment is contrary to the provision in Annex III to the Joint Declaration.

As I pointed out earlier in my letter to Members, according to Annex III to the Joint Declaration, only the properties specified in paragraph two are exempted from Government rent. The rateable value of those tenements which are now exempted from assessment to rates should be assessed according to their land use, instead of, as Mr CHAN proposed, compulsorily exempting through legislation the leases for which Government rent is payable. Anyone who is not satisfied with the assessment of Government rent could petition the Lands Tribunal on the value assessed instead of asking for exemption.

In fact, tenements which are exempted from assessment to and collection of rates under section 36 of the Rating Ordinance are obliged legally to pay Government rent and the legal responsibility does not depend on whether any rates has been paid or is now being paid. Moreover, there is no reference in Annex III to the Joint Declaration stipulating that a tenement must be assessed to rates before it is obliged to pay Government rent.

As for those churches/temples and cemeteries for which some Members have requested exemption from Government rent, they were granted at a concessionary premium when the lease was first granted and the payment of Government rent in lieu of payment of premium itself was already a concessionary measure. The Government is simply charging, under Annex III to the Joint Declaration, 3% of the rateable value from time to time when the land is leased, instead of charging a lump-sum premium when these leased properties are renewed. Moreover, the terms of lease of most of the churches/temples for which special-purpose leases have been granted already stipulate that 3% of the rateable value of the leased land from time to time is payable as Government rent.

Furthermore, the Government's assessment to rates of these tenements is not too high. The rate of 3% is not too much and its impact on the tenements is not likely to be too great. Government statistics show that there are about 362 churches/temples in Hong Kong and 513 churches/temples situated in commercial and residential buildings and that their Government rent ranges only from \$9,000-plus to \$26,000 a year on average, generating a total annual revenue of about \$15 million. As for subsidized non-government bodies, they can even apply for reimbursement of the Government rent already paid.

Mr President, it is the wish of the people of Hong Kong that both the Chinese and British governments will abide by the Sino-British Joint Declaration. As a member of the Hong Kong legislature, we should set an example by upholding the Joint Declaration. We should not challenge the law by being the ones to violate it. If we misbehave, how can we expect others to act properly?

Mr President, with these remarks, I support the Government Rent (Assessment and Collection) Bill.

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

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

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

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

On the first issue, rateable value is given a statutory meaning in clause 2 of the Bill, which sets out that a rateable value may be ascertained under the Bill apart from under the Rating Ordinance. A tenement has a rateable value for the purposes of the Bill which could be ascertained whether or not it is exempted from assessment to or payment of rates under the Rating Ordinance. The fact

that a property did not have one or was not assessed for rates as at the entry into force of the Joint Declaration does not mean that it cannot have a rateable value for government rent purposes.

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

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

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

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

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

Bill read the Second time.

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

PATENTS BILL

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

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

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

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

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

After establishing the need for a short-term patent system, the Bills Committee then deliberated when a search report should be submitted. A search report gives information on users on the prior art and assists them in assessing the validity of a patent. Both the Law Society and the Institute of Trade Mark Practitioners object to the proposed requirement to submit a search report at the point of application. They are of the view that the high costs of

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

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

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

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

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

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

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

However, unlike standard patent, it is an unexamined system. All you have to do for registration is to meet certain formal requirements, including the filing of a search report. In other words, you do not have to prove that the invention you want to patent is inventive, or that you are the rightful innovator. But once registered, you get the same protection as standard patent owners. The only difference is that under the standard patent, your right is for a longer period; whereas under the short-term patent, you enjoy the right for eight years.

Moreover, there is nothing in the Bill to prevent anyone from applying for both a standard patent and a short-term patent at the same time in respect of the

same invention. While your application for a standard patent is being examined with all the usual high standards, you can already enjoy all the rights under a short term patent without having to prove anything.

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

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

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

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

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

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

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

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

Thank you, Mr President.

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

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

The new patent system set out in the Bill will preserve the well-recognized virtues that the existing United Kingdom-based regime already offers. It will also bring us three additional advantages. Firstly, while still requiring applicants for standard patents to complete their substantive search and examination requirements at reputable designated patent offices elsewhere, our Registrar of Patents will be able to administer the patent once granted

independently of the status of that patent in the relevant designated patent office. Once granted in Hong Kong, each patent will be capable of being tested for validity, amended, revoked and enforced in the Hong Kong courts in accordance with Hong Kong law.

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

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

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

The purpose of providing short-term patents is to allow proprietors of inventions with a short-term commercial life to have recourse to a quicker and less costly form of patent protection as compared with standard patents. The need for doing so was identified by the Patents Steering Committee which recommended that the Registrar of Patents should grant a short-term patent upon completion of a formality examination only. The Government has accepted this recommendation. The Government's position is strongly supported by the professional bodies with the exception of the Bar as well as the business sector. Here I would like to state for the record that in recent years, a trend to non-examination systems can be seen being practised more and more widely. In this connection, I refer to Australia's practice in respect of innovation patents. I

also refer to the practice in mainland China in respect of utility models, as well as the practice adopted in Japan.

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

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

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

Secondly, we note that the principles for the grant of interlocutory injunctions are authoritatively laid down in the House of Lords case *American Cyanamide v. Athecon*. A key guiding principle, for example, is that the action must not be frivolous or vexatious. Further, if granted an interlocutory

injunction, the plaintiff must give a cross-undertaking to the court to pay the defendant damages if he is unsuccessful at full trial. There are also practice directions issued by the Chief Justice relating to the practice and procedures of the application of interlocutory injunctions.

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

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

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

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

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

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

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

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

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

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

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.

CHAIRMAN (in Cantonese): Before the Government Rent (Assessment and Collection) Bill is committed to a Committee of the whole Council, I wish to explain briefly why for the purpose of Standing Order 45(6) I ruled that the amendment to clause 8 of the Bill, which Mr Albert CHAN proposed to move, had "a charging effect". I understand that this amendment was proposed by Mr Albert CHAN on behalf of the Bills Committee tasked with the deliberation of the Bill.

Under the Bill, there are two categories of leases for which Government rent is payable. The first is leases extended until 30 June 2047 by the operation of section 6 of the New Territories Leases (Extension) Ordinance. Apart from the rare exception of rural holding specified in section 9 of the Ordinance, it is stipulated in section 8 that the annual Government rent of the land leased shall be 3% of the rateable value determined from time to time.

The second category covers those leases which have been extended to or granted up to 30 June 2047. The contractual liability of payment of the annual rent has already been clearly specified in these leases, which is also equivalent to 3% of the rateable value determined from time to time.

On 19 May 1997, Mr CHAN gave notice that he would propose amendments to Clauses 8 and 36 of the Bill. The proposed amendment to Clause 36 did not require my ruling.

As for clause 8, Mr CHAN's amendment was to add a new clause 4, that is, "for the purpose of the Ordinance, to deem the rateable value of each of the tenements exempted from assessment to rates under section 36 of the Rating Ordinance (Cap. 116) below the prescribed minimum rateable value". According to an amendment proposed by a public officer later to clause 2 of the Bill, for the purpose of the first Government Rent Roll, "the minimum rateable value" will be \$3,000. This public officer later will also propose an amendment to clause 8 so that the Bill will provide that if the rateable value of an tenement considered by the Commissioner of Rating and Valuation does not exceed the minimum rateable value, its rateable value shall be deemed to be \$1. If these two amendments are passed, and if Mr CHAN is allowed to move his proposed amendment and if the amendment is also passed, then the total effect would be that the Government rent that the Government can collect from the tenements covered by Mr CHAN's amendment would be fixed at 3 cents (that is, 3% of \$1, the minimum rateable value). It is claimed by the Government that under such circumstances, there would be a loss of \$35 million in revenue in a full year, or \$26 million for the remainder of the current financial year.

It can be seen that there is a statutory requirement that the Government is entitled to collect Government rent of an amount equal to 3% of the rateable value during the extension period of the first category of leases. Although collection has not yet started, the Government does have the authentic and prevailing right to collect the rent. Accordingly, if Mr CHAN's proposed amendment is passed, the Government will no longer be able to collect the appropriate rent payable for the tenements covered by the clause 8(4) proposed by Mr CHAN while there is indeed a long list of such tenements in section 36(1) of the Rating Ordinance!

As for the second category of leases, which are new leases granted in the form of contract up to 30 June 2047, or leases extended to 30 June 2047 in the form of contract since the Sino-British Joint Declaration came into force, although they are in the form of contract, the same bottom-line has been laid down in respect of the annual rent payable, that is, 3% of the rateable value.

According to the Government, there are about 130 such leases, covering about 4 000 properties, for which rent has already been paid. The passing of Mr CHAN's amendment would also render it impossible for the Government to collect the appropriate rent from the tenements covered by section 36(1) of the Rating Ordinance.

Accordingly, I consider that for the purpose of Standing Order 45(6), Mr CHAN's proposed amendment has "a charging effect" on the Government's revenue and as such, the proposal can only be put forth with the authorization of the Governor.

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

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

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

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

Clause 16, as suggested by the Bills Committee, has been reworded to make clear that it is the entry in the government rent roll and its rateable value that can be objected to or appealed against. Clause 38, as suggested by Members, has been amended to show, by reference to a schedule, the covenants and conditions in a lease which are to be overridden by the Bill. Clause 43 has been amended to provide that the period in which complaints can be made is

reduced from six years to one year. The process of raising an interim valuation of the tenement takes up to one year to be completed and the complaint period is to be at least to match this.

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

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

Proposed amendments

Clause 1

That clause 1 be amended —

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

Clause 2

That clause 2 be amended —

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

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

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

"exemption from liability to pay Government rent" (繳交地租的法律責任的豁免) means the exemption from liability to pay Government rent under section 4, and "exempted from liability to pay Government rent" (獲

豁免繳交地租的法律責任) shall be construed accordingly;

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

- (a) for the first Government Rent Roll, \$3,000;
- (b) for subsequent Government Rent Rolls, the amount prescribed by resolution of the Legislative Council for the purposes of section 36(1)(l) of the Rating Ordinance (Cap. 116);

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

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

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

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

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

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

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

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

Clause 4

That clause 4(1) be amended —

- (a) by deleting "An" and substituting "Subject to other provisions of this section, an".
- (b) by deleting "in land".
- (c) in paragraph (b), by adding "or" at the end.
- (d) in paragraph (c)(ii), by adding "or" at the end.
- (e) by deleting paragraph (ii) and substituting -
 - "(ii) which -
 - (A) has not since its ceasing to be held by the indigenous villager been conveyed to any person who is not a lawful successor in the male line of the indigenous villager; and
 - (B) continues to be held by a person who is a lawful successor in the male line of the indigenous villager."

That clause 4(2) be amended —

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

That clause 4(3) be amended —

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

That clause 4(4) be amended —

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

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

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

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

- (a) held by 1 or more eligible indigenous villagers, or by 1 or more eligible tsos or tongs, or by any combination of both; and
- (b) exempted from liability to pay Government rent under subsection (1) or (1A).

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

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

That clause 4(6) be amended —

- (a) by adding "in respect of an interest held under an applicable lease" after "Government rent".
- (b) by deleting "ownership of an interest under a lease" and substituting "the interest".

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

That clause 4(7) be amended —

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

That clause 4(8) be amended —

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

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

That clause 4 be amended, by adding —

- "(12) (a) For the purposes of subsections (2) and (3), a reference to an undivided share in relation to any land leased shall be

regarded as a reference to an undivided share in a lot comprised in the land leased, the owner of which share is, as between himself and the owners of the other undivided shares in that lot, entitled under the terms of an instrument registered in the Land Registry to the exclusive possession of any part of any building erected on the lot or of any part of the lot.

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

Clause 6

That clause 6(1) be amended —

- (a) by deleting "The" and substituting "Subject to section 4, the".

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

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

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

That clause 6(2)(d) be amended —

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

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

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

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

That clause 6(5) be amended —

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

That clause 6(6) be amended —

- (a) by deleting "erected on" and substituting "comprised in".
- (b) by adding "express" after "is an".

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

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

That clause 6(8) be amended —

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

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

Clause 7

That clause 7 be amended —

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

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

- (a) the Government Rent Roll; or
- (b) if an interim valuation has been made, the notice of interim valuation,

and the rateable value so set out in the Government Rent Roll or the notice of interim valuation, as the case may be, shall, subject to other provisions of this Ordinance, be regarded as the rateable value of the land leased or the tenement, as the case may be."

Clause 8

That clause 8(1) be amended —

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

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

That clause 8 be amended, by adding —

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

Clause 9

That clause 9(2) be amended —

- (a) by deleting "the land leased" and substituting "any land leased under an applicable lease".
- (b) by deleting "該租出土地" and substituting "該土地".

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

That clause 9(4) be amended —

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

Clause 10

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

",in respect of the rateable values of tenements comprised in land leased under an applicable lease which are situated in the Urban Council area or of such tenements situated in the Regional Council area or of both, a new

Government Rent Roll or any new part of a Government Rent Roll, whether or not by way of replacement of an existing Government Rent Roll or any part of an existing Government Rent Roll, in accordance with section 11; and".

That clause 10(1)(b) be amended —

- (a) by deleting "roll" and substituting "Government Rent Roll or that new part of the Government Rent Roll, as the case may be".
- (b) by deleting "tenements in the Urban Council area or Regional Council area" and substituting "any of the tenements".

Clause 11

That clause 11(1) be amended —

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

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

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

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

That clause 11(3) be amended —

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

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

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

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

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

Clause 13

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

Clause 15

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

Clause 16

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

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

That clause 16(2) be amended —

- (a) by deleting "amount of an assessment" and substituting "rateable value of a tenement recorded in the Government Rent Roll".
- (b) by deleting "his tenement recorded in the Government Rent Roll" and substituting "the tenement".

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

Clause 18

That clause 18(2) be amended —

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

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

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

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

Clause 19

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

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

Clause 23

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

Clause 24

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

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

That clause 24(6) be amended —

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

- (b) by deleting "the lessee, owner or occupier" and substituting "the lessee or the owner or occupier".

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

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

- (a) subject to paragraph (c), for a tenement where the effective date of deletion is prescribed by regulations made for the purposes of this section, the effective date so prescribed;
- (b) subject to paragraph (c), for any other tenement, the date on which the notice of the deletion could have first been served had the Commissioner proposed so to do; or
- (c) the date the Commissioner may determine in any particular case."

That clause 24(8) be amended —

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

- (ii) by deleting "a date that is so determined" and substituting "the effective date so prescribed".

That clause 24(9) be amended —

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

Clause 25

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

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

Clause 26

That clause 26(2)(a) be amended —

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

Clause 29

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

Clause 30

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

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

Clause 31

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

That clause 31(1)(b) be amended —

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

That clause 31(1)(c) be amended —

- (a) by deleting "to make copies of" and substituting "for making copies".

- (b) by deleting "tenement," and substituting "interest held under the applicable lease or the tenement, which have been".

That clause 31(1)(d) be amended —

- (a) by deleting "the tenement or of the lessee" and substituting "a tenement comprised in land leased under an applicable lease or of the lessee of the applicable lease".
- (b) by deleting "a tenement" and substituting "the tenement".
- (c) in subparagraphs (i) and (iv), by deleting "interest in the applicable lease" and substituting "interest held under the applicable lease".
- (d) in subparagraph (i), by adding "的應課差餉租值" after "權益".
- (e) in subparagraph (iii), by deleting "未" and substituting "沒有".
- (f) in subparagraph (iv), by adding "的估價" after "權益".

That clause 31(2) be amended —

- (a) by deleting "the tenement under" and substituting "a tenement under".
- (b) by deleting "lessee, owner" and substituting "lessee of the applicable lease, or the owner".
- (c) by deleting "tenement for the" and substituting "land or the tenement, as the case may be, for the".
- (d) by deleting "during day-light".
- (e) by deleting "and tenement" and substituting "or the tenement, as the case may be,".

- (f) by adding "或獲估價署長書面授權的人" before "可向".

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

Clause 32

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

That clause 32(2) be amended, by deleting "The" and substituting "Upon an application to him under subsection (1), the".

Clause 33

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

Clause 34

That clause 34(1) be amended —

- (a) in paragraphs (a), (b), (f) and (g), by deleting "determining" and substituting "ascertaining".
- (b) in paragraphs (a) and (b), by deleting "interests in applicable leases" and substituting "interests held under applicable leases".
- (c) in paragraph (d), by deleting "of the assessment".

- (d) in paragraph (f), by deleting "a partial re-development" and substituting "a development or a partial development or a redevelopment or a partial redevelopment".
- (e) in paragraph (h), by adding "a deletion and of" after "effective date of".
- (f) in paragraph (i), by deleting everything after "Government rent for" and substituting "tenements and interests held under applicable leases with rateable values not exceeding the minimum rateable value;".
- (g) by adding -
 - "(ja) submission of certificates, reports and information in connection with eligibility for exemption from liability to pay Government rent;
 - (jb) prescribing any matter or thing which is referred to in this Ordinance as prescribed;".

Clause 35

That clause 35(2) be amended —

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

Clause 38

That clause 38 be amended —

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

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

- (b) For so long as an interest held under an applicable lease is exempted from liability to pay Government rent, the rent which would apart from this section have been payable in respect of that interest under the applicable lease shall remain payable and shall be so payable in the same manner as such rent would have been payable under the applicable lease."

That clause 38(2) be amended —

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

That clause 38(3) be amended —

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

- (c) by adding "現有" before "權利、法律".

Clause 40

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

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

Clause 41

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

That clause 41(b) be amended —

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

That clause 41(c) be amended —

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

Clause 43

That clause 43 be amended —

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

Clause 44

That clause 44(1) be amended —

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

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

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

Clause 46

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

"46. Inadvertent misnomer

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

Clause 47

That clause 47 be amended, by deleting the clause.

Clause 48

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

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

MR ALBERT CHAN (in Cantonese): Mr Chairman, the amendment proposed by the Secretary for Planning, Environment and Lands is supported by the Bills Committee. I wish to take this opportunity to respond to some of the comments made by the Honourable NGAN Kam-chuen on the Bills Committee when the Bill was read the Second time just now. He accused the Bills Committee of proposing the amendment, that is, the one ruled by Mr Chairman to have charging effect and vetoed. Just now Mr NGAN said that in proposing this amendment, the Bills Committee had violated the provisions in the Joint Declaration.

I wish to clearly explain and point out here that in proposing the amendment, the Bills Committee did not have any intention. Neither did it have any factual evidence or any legal analysis or arguments when arriving at the conclusion. Just as I pointed out in my speech during the Second Reading of the Bill, when the Bills Committee studied the Bill, most of the members, especially those members in the legal field, pointed out clearly that there is a big

question concerning the legal basis for collecting Government rent from property owners who are now exempted from rates. The question lies in the fact that Government rent is based on 3% of the ascertained rateable value — I stress, the ascertained rateable value — but since the property owners concerned are exempted from rates under the Rating Ordinance, the question of ascertainment of rateable value should not arise at all. The properties concerned have an "assessed" rateable value, but in the law, they do not have any "ascertained" rateable value. By logic, if there was no ascertained rateable value, there would be no legal basis at all to collect Government rent from properties which do not have an ascertained rateable value. This is purely an analysis and a comment from the legal point of view. In the course of discussion, with the Commissioner of Rating and Valuation

CHAIRMAN (in Cantonese): Mr CHAN, are you referring to Mr NGAN's speech made just now or my ruling?

MR ALBERT CHAN (in Cantonese): I am referring to Mr NGAN's speech. I have no objection to Mr Chairman's ruling made just now.

CHAIRMAN (in Cantonese): I will explain after you have finished. Please go on.

MR ALBERT CHAN (in Cantonese): Hence, after discussion, the Bills Committee considered that the proposal should be put forth in the form of legal definition, in order to keep as close as possible in line with the intent of the Joint Declaration and the Rating Ordinance. Of course, in the end it was up to Mr Chairman to make the ruling, which the Bills Committee respected and accepted. However, I must clarify once again that throughout the deliberation, there was neither any intention nor basis. Although Mr NGAN voiced his views at the

Bills Committee meetings, he did not, throughout the discussion, advance any new arguments on the explanation and interpretation of the legal point of view to challenge the rationale I mentioned just now. Hence I am disappointed and regret that Mr NGAN has brought up this accusation again today.

Thank you, Mr Chairman.

CHAIRMAN (in Cantonese): I wish to mention two points as supplementary explanation on my ruling, because some of Mr NGAN's arguments mentioned by Mr CHAN in his speech might have something to do with my ruling. The first point is that my ruling has absolutely nothing to do with the Sino-British Joint Declaration. What I said is related to the prevailing laws of Hong Kong some existing leases of the Government and lessees.

Regarding the 3% Government rent, as a base rateable value, I consider it a rateable value determined in the normal manner. Under section 36(1) of the Rating Ordinance, some properties are exempted from assessment to rates but the Government still has the right to determine their rateable value. Accordingly, when Members proposed that the rate of Government rent be lowered from 3% to 2%, a "charging effect" was created. When the proposal of lowering the rate from 3% to 2% has a "charging effect", the Government has the right to speak out. As to whether in so doing, it would violate the international undertaking of the leases, it is up to the Government to be held responsible. My ruling is purely related to the "charging effect". I hope I have made myself clear on this point. In particular, if the base for the assessment of rateable value is lowered because of some different means, a "charging effect" will be created.

MR NGAN KAM-CHUEN (in Cantonese): Mr Chairman, I too regret that Mr CHAN expressed his regret.

I did not make any accusation against him in the speech I made just now. I was only commenting that this had violated the Joint Declaration and expressed my opinion on the issue.

I already expressed my reservation about this during the liberation of the Bills Committee, but when he spoke just now, no mention was made of the fact that there was such a view in the Bills Committee. Hence I feel regret.

Thank you, Mr Chairman.

Question on the amendments put and agreed to.

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

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

Clause 36

CHAIRMAN (in Cantonese): Both the Secretary for Planning, Environment and Lands and Mr Albert CHAN have given notice to move an amendment to clause 36. In accordance with Standing Order 25(4), I would first of all ask Mr CHAN to move his amendment.

MR ALBERT CHAN (in Cantonese): Mr Chairman, on behalf of the Bills Committee on the Government Rent (Assessment and Collection) Bill, I move an amendment to delete clause 36 from the Bill.

Clause 36 provides, *inter alia*, that a demand for or recovery of Government rent does not give lawful authority to the occupation of or any form of legal title to a tenement which includes an unauthorized structure. Members of this Council must be aware that the Administration has long been criticized for collecting rates on a tenement which is an unauthorized structure without recognizing its legal status. Clause 36 extends this unreasonable policy further to the collection of Government rent. Only after a series of meetings has the Administration agreed to disregard any known unauthorized structure in assessing the rateable value of a tenement and to refund the Government rent paid for such a structure. Although the Administration is prepared to amend

clause 36 to delete reference to unauthorized structures, members are of the view that the amended version fails to allay their concern. The legal effect of clause 36, if amended, will be that payment of Government rent *per se* will not create a legally binding lessor-lessee relationship. May I advise Members that this is exactly the crux of the issue. The Bills Committee cannot consent to the spirit of the provision which allows the Administration to demand Government rent from a person but at the same time deprive him of any right which payment of such rent may entail. This is apparently an inequitable arrangement and should in no way be enshrined in the law. Enactment of clause 36 may prejudice any right a person may have arising from payment of Government rent, in particular the equitable remedy of estoppel if such a person is taken to court. Albeit members' understanding of the rationale for clause 36 as put by the Administration, that is, to avoid the inadvertent creation of a lessor-lessee relationship between the Government and the payee, members remain of the view that it is the onus of the Administration to avoid any inadvertent inclusion of a tenement which is not liable to payment of Government rent in the Government Rent Roll.

With these remarks, Mr Chairman, I beg to move the amendment.

Proposed amendment

Clause 36

That clause 36 be amended, by deleting the clause.

CHAIRMAN (in Cantonese): I propose that the amendment to clause 36, proposed separately by Mr Albert CHAN and the Secretary for Planning, Environment and Lands, be debated together in a joint debate.

Committee shall debate the amendments to clause 36, proposed separately by Mr Albert CHAN and the Secretary for Planning, Environment and Lands to

speak on the amendment proposed by Mr Albert CHAN as well as his own proposed amendment, but will not ask the Secretary to move his amendment unless Mr Albert CHAN's amendment has been negatived. If Mr CHAN's amendment is agreed, that will by implication mean that the Secretary for Planning, Environment and Land's proposed amendment is not approved.

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

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

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

Thank you, Mr Chairman.

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

CHAIRMAN (in Cantonese): Secretary for Planning, Environment and Lands, as the amendment moved by Mr Albert CHAN to Clause 36 has already been agreed, you cannot move any further proposed amendment to the clause, because

it is not compatible with the decision just made. The decision just made was to delete clause 36.

New clause 38A	Deed of mutual covenant overridden
Heading before New clause 49	Consequential Amendments
New clause 49	Lands Tribunal Ordinance Ordinances under which matters may be submitted to the Tribunal for determination
Heading before New clause 50	Rating Ordinance
New clause 50	Interpretation
New clause 51	Section added
New clause 52	Payment and recovery of rates
New clause 53	Payment of rates under an interim valuation
New clause 54	Rounding down of amounts due
Heading before New clause 55	Rating (Effective Date of Interim Valuation) Regulation
New clause 55	Effective date of interim valuation
Heading before New clause 56	Crown Rent and Premium
New clause 56	(Apportionment) Ordinance Application

Heading before New clause 57	New Territories Leases
New clause 57	(Extension) Ordinance
	Burdens and covenants
 New clause 58	 Part repealed
 New clause 59	 Power to make regulations
 Heading before New clause 60	 New Territories Land
New clause 60	(Exemption) Ordinance
	Interpretation
 Heading before New clause 61	 Sex Discrimination Ordinance
New clause 61	Further exceptions to this Ordinance

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

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

Clause 38(A) provides for certain provisions contained in deeds of mutual covenant in relation to payment of Government rent to be overridden by the Bill. Clauses 49 to 61 provide for consequential amendments to the Lands Tribunal Ordinance, the Rating Ordinance, the Rating (Effective Date of Interim Valuation) Regulation, the Crown Rent and Premium (Apportionment) Ordinance, the New

Territories Leases (Extension) Ordinance, the New Territories Land (Exemption) Ordinance and the Sex Discrimination Ordinance. These amendments have been made known to members of the Bills Committee who have not raised any objection.

Thank you, Mr Chairman.

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

Headings and clauses read the Second time.

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

Proposed additions

New clause 38A

That the Bill be amended, by adding—

"38A. Deed of mutual covenant overridden

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

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

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

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

(4) In this section -

"common parts" (公用部分), in relation to any land leased under an applicable lease or any building erected thereon or both, means the whole of the land or the building or both, as the case may be, except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner;

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

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

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

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

"owner" (業主) means -

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

Heading before new clause 49 and new clause 49

That the Bill be amended, by adding—

"Consequential Amendments

Lands Tribunal Ordinance

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

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

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

Heading before new clause 50 and new clause 50

That the Bill be amended, by adding—

Rating Ordinance

50. Interpretation

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

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

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

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

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

New clause 51, 52, 53 and 54

That the Bill be amended, by adding—

51. Section added

The following is added -

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

The Commissioner may make an appropriate amendment to the valuation list where he has altered the entry of a

corresponding tenement, which is not an identical tenement, in the Government Rent Roll as a result of a proposal, correction, objection or appeal under the Government Rent (Assessment and Collection) Ordinance (of 1997).".

52. Payment and recovery of rates

Section 22 is amended by adding -

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

53. Payment of rates under an interim valuation

Section 29 is amended by adding -

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

54. Rounding down of amounts due

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

Heading before new clause 55 and new clause 55

That the Bill be amended, by adding—

**Rating (Effective Date of Interim
Valuation) Regulation**

55. Effective date of interim valuation

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

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

Heading before new clause 56 and new clause 56

That the Bill be amended, by adding—

**Crown Rent and Premium (Apportionment)
Ordinance**

56. Application

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

(a) by adding before subsection (1) -

"(1A) (a) Subject to paragraph (b), this Ordinance does not apply to any interest in land held under an applicable lease within the meaning of the Government Rent (Assessment and Collection) Ordinance (of 1997) as from -

(i) in the case of an applicable lease extended by section 6 of the New Territories Leases (Extension) Ordinance (Cap. 150), 28 June 1997;

(ii) in the case of an interest held under an applicable lease which was exempted from liability to pay Government rent under the Government Rent (Assessment and Collection) Ordinance (of 1997), the date on

which the exemption ceases to apply;

(iii) in the case of an applicable lease under which there is an express obligation to pay an annual rent of 3% of the rateable value from time to time of the land leased, the date specified in the lease as the date from which the rent is payable.

(b) Nothing in paragraph (a) shall affect any right or liability already acquired or incurred in respect of any interest referred to in that paragraph under or by virtue of any provision of this Ordinance at any time before this Ordinance ceases to apply to such interest by virtue of that paragraph.";

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

Heading before new clause 57 and new clause 57

That the Bill be amended, by adding—

New Territories Leases (Extension) Ordinance

57. Burdens and covenants

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

"(c) a reservation of -

- (i) subject to subparagraph (ii), the Government rent payable under the Government Rent (Assessment and Collection) Ordinance (of 1997);
 - (ii) in the case of an exemption from liability to pay Government rent under the Government Rent (Assessment and Collection) Ordinance (of 1997), the annual rent payable immediately before the period of extension; and
- (d) a covenant by the lessee to pay the Government rent specified in paragraph (c)(i) or the annual rent specified in paragraph (c)(ii), as the case may be -
 - (i) in the case of such Government rent, in accordance with the Government Rent (Assessment and Collection) Ordinance (of 1997);
 - (ii) in the case of such annual rent, in the same manner and on the same days as applied immediately before the period of extension."

New clauses 58 and 59

That the Bill be amended, by adding—

58. Part repealed

Part III is repealed.

59. Power to make regulations

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

Heading before new clause 60 and new clause 60

That the Bill be amended, by adding—

**New Territories Land (Exemption)
Ordinance**

60. Interpretation

Section 2 of the New Territories Land (Exemption) Ordinance (Cap. 452) is amended -

- (a) in subsection (1), in the definition of "rural land", by adding "holding" after "small house";
- (b) in subsection (2) -

- (i) by adding "holding" after "small house";
- (ii) by repealing "New Territories Leases (Extension) Ordinance (Cap. 150)" and substituting "Government Rent (Assessment and Collection) Ordinance (of 1997)".

Heading before new clause 61 and new clause 61

That the Bill be amended, by adding—

Sex Discrimination Ordinance

61. Further exceptions to

this Ordinance

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

SCHEDULE

[s. 38]

COVENANTS AND CONDITIONS OVERRIDDEN

PART I

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

-
- (i) a rateable value in a new list, when declared, and an interim valuation, when made, and a correction, alteration or variation of a rateable value or an interim valuation, when made, shall take effect from the effective dates for the same under the Rating Ordinance (Cap. 116);
 - (ii) if the effective date of an interim valuation is earlier than the date of the making of the interim valuation, or if the rateable value has been corrected, altered or varied and the effective date of such correction, alteration or variation is earlier than the date of the making of the correction, alteration or variation, and as a result the rent for the lot is increased, the rent due for the period since the effective date of the interim valuation or the correction, alteration or variation shall, in so far as it has not been already paid, be added by the Director to the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, and if as a result of the making of the interim valuation, correction, alteration or variation the rent for the lot is reduced, any amount found to be overpaid by the Lessee may be deducted by the Director from the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, or shall be otherwise credited to the account of or refunded to the Lessee;
 - (iii) a tenement shall be deemed to be comprised partly within the lot if the building in which it is contained stands partly within the lot; and where a tenement is so deemed to be comprised partly

within the lot, there shall be included for the purpose of determining the rateable value of the lot only the same proportion of the rateable value in the list declared or the interim valuation made under the Rating Ordinance (Cap. 116) or, as the case may be, the rateable value fixed under sub-subparagraphs (iv), (v) and (vi), as, in the opinion of the Director whose decision thereon shall be final, the area of the lot bears to the area of all the lots on which the building stands;

- (iv) in the event that no rateable value has been ascertained under the Rating Ordinance (Cap. 116) in respect of a tenement, whether by reason of the exemption of such tenement from assessment to rates or otherwise, the Director may cause to be fixed such rateable value as if the tenement were assessable to rates under that Ordinance, and the rateable value so fixed shall be the rateable value of the tenement;
- (v) in the event that as a result of the demolition of a tenement or of a tenement being unoccupied by reason of an order of the Government its rateable value is deleted under the Rating Ordinance (Cap. 116), the rateable value of the lot shall, if the Director in his absolute discretion thinks fit and until an interim valuation of a tenement or tenements wholly replacing the demolished or unoccupied tenement is made under the Rating Ordinance (Cap. 116), include the rateable value of such tenement as last ascertained by the Commissioner; and
- (vi) where an interim valuation is made of a tenement or tenements which replace part of a former tenement in respect of which the rateable value

as last ascertained by the Commissioner was included in the rateable value of the lot in accordance with sub-subparagraph (v) the rateable value of the part of the former tenement not replaced by the interim valuation shall be such portion of the rateable value of the former tenement, as last ascertained by the Commissioner, as the Director shall in his absolute discretion consider appropriate to that part.

- (d) There shall be added to the yearly rent of the lot fixed in accordance with subparagraph (a) such sum as may be necessary to make the total number of dollars a multiple of 4.
2. (a) In lieu of the collection of the yearly rent by the Director under paragraph 1(a), there may in addition to the rates to be collected quarterly by the Commissioner or the Collector of Rates, as the case may be, under the Rating Ordinance (Cap. 116) in respect of any tenement comprised wholly or partly within the lot, be demanded and collected by the Commissioner or the Collector of Rates, as the case may be, from the Lessee an amount equal to one fourth of 3% of the rateable value of any such tenement together with such sum as may be necessary to make the total number of dollars in any such demand an integer. For the purpose of this subparagraph the provisions of paragraph 1(c)(i) and (ii) shall apply mutatis mutandis.
- (b) For the purpose of subparagraph (a), in the event that only part of a tenement is comprised within the lot the amount that may be demanded in respect of that part shall bear the same proportion to 3% of the rateable value of the tenement as, in the opinion of the Director whose decision shall be final, the area of such part bears to the area of the whole of such tenement.

- (c) Upon a demand being made by the Commissioner or the Collector of Rates, as the case may be, under subparagraph (a), the Lessee shall pay the amount so demanded within the time specified in such demand.
 - (d) Payment under subparagraph (c) of an additional demand under subparagraph (a) shall operate as an absolute discharge for the Lessee from his liability to pay the rent in respect of the quarter for which such demand was made.
- 3. The reference in paragraph 1(b) to the rateable value of a tenement as set out from time to time in the list declared or to an interim valuation made under the Rating Ordinance (Cap. 116) shall include in a case where such rateable value or interim valuation is corrected, altered or varied under that Ordinance, a reference to such rateable value or interim valuation as so corrected, altered or varied.

PART II

- 1.
 - (a) Subject to subparagraph (e), from 1 July 1997 until the expiry of the term hereby granted the rent for the lot shall be calculated and paid with reference to the period commencing on 1 April and ending on 31 March in each year, and the Lessee shall pay and there shall be collected by the Director as rent for the lot for each such period an amount equal to 3% of the rateable value from time to time of the lot, the said rent to be paid by four equal quarterly instalments in advance on 1 April, 1 July, 1 October and 1 January in each year, and the first quarterly payment together with all accrued arrears of rent becoming due and to be paid on 1 July 1997.
 - (b) For the purposes of this General Condition the rateable value of the lot shall be the rateable value as set out from time to

time in the list declared or the interim valuation made by the Commissioner under the Rating Ordinance (Cap. 116) or any legislation amending or replacing the same, of the tenement, or, if there is more than one tenement, the aggregate of the rateable values and/or interim valuations as so set out or made of all the tenements comprised wholly or partly within the lot.

- (c) For the purposes of subparagraph (b) -
 - (i) a rateable value in a new list, when declared, and an interim valuation, when made, and a correction, alteration or variation of a rateable value or an interim valuation, when made, shall take effect from the effective dates for the same under the Rating Ordinance (Cap. 116);
 - (ii) if the effective date of an interim valuation is earlier than the date of the making of the interim valuation, or if the rateable value has been corrected, altered or varied and the effective date of such correction, alteration or variation is earlier than the date of the making of the correction, alteration or variation, and as a result the rent for the lot is increased, the rent due for the period since the effective date of the interim valuation or the correction, alteration or variation shall, in so far as it has not been already paid, be added by the Director to the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, and if as a result of the making of the interim valuation, correction, alteration or variation the rent for the lot is reduced, any amount found to be overpaid by the Lessee may be deducted by the Director from the next payment of rent due following the date of the making of the interim valuation, correction,

alteration or variation, or shall be otherwise credited to the account of or refunded to the Lessee;

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

until an interim valuation of a tenement or tenements wholly replacing the demolished or unoccupied tenement is made under the Rating Ordinance (Cap. 116), include the rateable value of such tenement as last ascertained by the Commissioner; and

- (vi) where an interim valuation is made of a tenement or tenements which replace part of a former tenement in respect of which the rateable value as last ascertained by the Commissioner was included in the rateable value of the lot in accordance with sub-subparagraph (v) the rateable value of the part of the former tenement not replaced by the interim valuation shall be such portion of the rateable value of the former tenement, as last ascertained by the Commissioner, as the Director shall in his absolute discretion consider appropriate to that part.
- (d) There shall be added to the yearly rent of the lot fixed in accordance with subparagraph (a) such sum as may be necessary to make the total number of dollars a multiple of 4.
- (e) For so long as the lot is beneficially owned by the Lessee or in an unbroken line of succession in title to the lot by a person who is descended through the male, but not the female, line from him the yearly rent for the lot shall be the sum of \$20, if demanded, provided that if an undivided share or interest in the lot together with the right to the exclusive use and occupation of all or a part of a building on the lot is beneficially owned by a person other than the Lessee or in an unbroken line of succession in title to such undivided share or interest a person who is descended through the male line from him the rent for the lot shall be calculated and paid in the manner described and shall be the amount specified in

subparagraph (a) in which event for the purpose of this proviso -

- (i) the rateable value of the lot shall be the rateable value of the said building or part thereof; and
 - (ii) the yearly rent or a due proportion thereof for the lot under subparagraph (a) shall become due and shall be paid on the first quarterly day after the date on which the said undivided share or interest was first beneficially owned by a person other than the Lessee or in an unbroken line of succession in title to the said undivided share or interest a person who is descended through the male line from him.
- 2. (a) In lieu of the collection of the yearly rent by the Director under paragraph 1(a), there may in addition to the rates to be collected quarterly by the Commissioner or the Collector of Rates, as the case may be, under the Rating Ordinance (Cap. 116) in respect of any tenement comprised wholly or partly within the lot, be demanded and collected by the Commissioner or the Collector of Rates, as the case may be, from the Lessee an amount equal to one fourth of 3% of the rateable value of any such tenement together with such sum as may be necessary to make the total number of dollars in any such demand an integer. For the purpose of this subparagraph the provisions of paragraph 1(c)(i) and (ii) shall apply mutatis mutandis.
- (b) For the purpose of subparagraph (a), in the event that only part of a tenement is comprised within the lot the amount that may be demanded in respect of that part shall bear the same proportion to 3% of the rateable value of the tenement as, in the opinion of the Director whose decision shall be final, the area of such part bears to the area of the whole of such tenement.

- (c) Upon a demand being made by the Commissioner or the Collector of Rates, as the case may be, under subparagraph (a), the Lessee shall pay the amount so demanded within the time specified in such demand.
- (d) Payment under subparagraph (c) of an additional demand under subparagraph (a) shall operate as an absolute discharge for the Lessee from his liability to pay the rent in respect of the quarter for which such demand was made.

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

Question on the addition of the new clauses 38A, Heading before new clause 49, new clause 49, Heading before new clause 50, new clauses 50, 51 to 54, Heading before new clause 55, new clause 55, Heading before new clause 56, new clause 56, Heading before new clause 57 and new clauses 57, 58, 59, Heading before new clause 60, new clause 60, Heading before new clause 61 and new clause 61 proposed, put and agreed to.

PATENTS BILL

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

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

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

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

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended —

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

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

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

behalf of which such country has acceded to the Paris Convention;

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

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

That clause 2(1) be amended —

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

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

Clause 5

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

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

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

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

Clause 8

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

Clause 12

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

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

Clause 15

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

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

That clause 15(2) be amended —

- (a) by adding "be signed by the applicant and" after "such request shall".
- (b) in paragraph (a), by deleting "verified copy" and substituting "photocopy".
- (c) in paragraph (b), by deleting "the name of the inventor" and substituting -

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

(d) by adding -

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

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

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

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

(g) in paragraph (e) -

(i) by deleting "corresponding";

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

(h) by adding -

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

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

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

Clause 16

That clause 16 be amended —

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

That clause 16 be amended —

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

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

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

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

Clause 19

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

Clause 22

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

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

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

That clause 22(1) be amended —

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

Clause 23

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

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

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

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

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

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

Clause 24

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

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

That clause 24(2)(a) be amended, by deleting "publication of the specification" and substituting "date of grant".

Clause 29

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

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

Clause 37

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

Clause 43

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

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

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

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

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

Clause 46

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

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

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

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

Clause 51

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

That clause 51(2) be amended —

(a) in paragraph (a) -

- (i) by deleting "requiring" and substituting "providing for";
- (ii) in subparagraph (ii), by adding "published" before "applications".

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

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

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

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

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

Clause 52

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

"(a) either -

- (i) application has not been made for registration of the earlier transaction, instrument or event; or
- (ii) in the case of any application for a standard patent which has not been published or any application for a short-term patent, notice of the earlier transaction, instrument or event has not been given to the Registrar in accordance with rules (if any) made for the purposes of section 51(2)(c); and

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

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

Clause 56

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

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

Clause 61

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

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

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

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

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

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

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

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

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

Clause 62

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

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

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

Clause 73

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

"(a) in relation to any product which is the subject-matter of the patent -

- (i) making, putting on the market, using or importing the product; or
- (ii) stocking the product, whether for the purpose of putting it on the market (in Hong Kong or elsewhere) or otherwise;

(b) in relation to any process which is the subject-matter of the patent -

- (i) using the process; or
- (ii) offering the process for use in Hong Kong when the third party knows, or it is obvious to a reasonable

person in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent;

- (c) where the invention is a process, then in relation to any product obtained directly by means of that process -
 - (i) putting on the market, using or importing the product; or
 - (ii) stocking the product, whether for the purpose of putting it on the market (in Hong Kong or elsewhere) or otherwise."

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

Clause 74

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

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

Clause 75

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

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

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

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

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

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

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

That clause 75(c) be amended, in the Chinese text, by deleting "'registered medical practitioner'" and substituting "'註冊醫生'".

Clause 81

That clause 81 be amended, by adding —

"(5) Without limiting the effect of subsection (4), where an order has been made by the court under section 46(1) allowing an amendment of

the specification of a patent, no damages shall be awarded in any proceedings for an infringement of the patent committed after the date on which the order is made and before a copy of the order is filed with the Registrar for the purposes of section 46(5).".

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

Clause 82

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

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

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

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

Clause 84

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

Clause 91

That clause 91(1) be amended —

- (a) in paragraph (e), by adding "which is invalid" after "of the patent".
- (b) by deleting paragraphs (f), (g) and (h) and substituting -
 - "(f) that the patent is one of 2 standard patents for the same invention, the applications for which were filed by the same person and have the same deemed date of filing;
 - (g) that the patent is one of 2 short-term patents for the same invention, the applications for which were filed by the same person and have the same date of filing;
 - (h) that -
 - (i) the patent is one of 2 patents for the same invention, one such patent being a standard patent and the other being a short-term patent, the applications for which were filed by the same person and have the same deemed date of filing or date of filing; and
 - (ii) the 2 patents are not under the proprietorship of the same person;"

That clause 91(1)(d) be amended —

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

That clause 91 be amended, by adding —

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

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

Clause 94

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

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

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

Clause 104

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

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

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

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

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

Clause 106

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

"(2) If -

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

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

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

That clause 106(3) be amended —

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

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

Clause 109

That clause 109 be amended —

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

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

Clause 110

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

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

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

That clause 110(3) be amended —

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

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

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

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

Clause 113

That clause 113(1) be amended —

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

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

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

- (a) shall state the name and address of the applicant;
- (b) shall identify the person or persons whom the applicant believes to be the inventor or inventors and shall specify the last known address of that person or persons;

- (c) where the applicant is not the sole inventor or the applicants are not the joint inventors, shall contain a statement indicating the derivation of his or their entitlement to exercise the right to the short-term patent; and
- (d) shall specify an address in Hong Kong for service of documents."

That clause 113(4)(b) be amended —

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

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

- "(ii) 按照第 111 條所作出的就任何較早的專利申請具有優先權的聲稱和該條所指的支持優先權的文件".

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

Clause 115

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

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

Clause 117

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

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

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

Clause 119

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

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

Clause 125

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

That clause 125 be amended, by adding —

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

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

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

That clause 125(4) be amended —

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

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

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

Clause 128

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

Clause 130

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

Clause 132

That clause 132(1) be amended —

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

(b) by adding -

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

Clause 140

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

"140. Falsification of register, etc.

A person who -

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

commits an offence and is liable -

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

Clause 144

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

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

Clause 156

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

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

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

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

Clause 157

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

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

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

That clause 157(3) be amended —

- (a) in paragraph (g) -
 - (i) by deleting "entries appearing at the commencement date in the register kept under the repealed Ordinance" and substituting "details of patents registered under the repealed Ordinance before the commencement date";
 - (ii) by deleting "such entries" and substituting "such details";

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

(b) by adding -

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

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

Clause 158

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

That clause 158(1) be amended —

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

""existing registered patent" (現有註冊專利) means a 1949 Act or 1977 Act patent which -

- (a) was registered under the repealed Ordinance before the commencement date; and

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

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

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

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

Question on the amendments put and agreed to.

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

New clause 124A

Short-term patent application
based on international application

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

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

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

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

Clause read the Second time.

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

Proposed addition

New clause 124A

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

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

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

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

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

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

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

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

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

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

Schedules 1 and 2

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

Mr Chairman, I beg to move.

*Proposed amendments***Schedule 1**

That Schedule 1 be amended —

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

- (b) by deleting -

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

and substituting -

"Paris Convention countries"

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

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

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

- (d) by deleting -

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

and substituting -

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

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

- (e) under the heading **"WTO member countries, territories and areas
(not including Paris Convention countries)" -**

- (i) by deleting -

"Colombia
Nicaragua
Tanzania
United Arab Emirates";

- (ii) by adding -

"Angola
Papua New Guinea
Solomon Islands".

That Schedule 1 be amended, under the heading "Paris Convention countries" —

- (a) by deleting -

"中華人民共和國
馬其頓
梵蒂岡
摩爾達維亞";

(b) by adding -

"中國
馬其頓，前南斯拉夫共和國
摩爾多瓦共和國
羅馬教廷".

Schedule 2

That Schedule 2 be amended, by deleting everything after "如下 —" and substituting —

""7G. 過渡性條文

(1) 任何關於以下方面的問題 -

- (a) 在生效日期前由政府或獲總督授權的人根據第 7B 條（按第 7B 條在緊接生效日期前的內容）作出的作為，是否構成官方服務而徵用一項專利發明；或
- (b) 就任何上述徵用而須作出的任何付款（不論是付給有權就該項發明註冊專利的人或專利持有人或專用特許持有人），

須按照第 7B 至 7D 條（按第 7B 至 7D 條在緊接生效日期前的內容）予以裁定。

(2) 凡一項作為是在生效日期之前開始作出並在該日期當日或之後持續作出，而如該項作為根據在緊接該日期前有效的法律是會構成官方服務而徵用一項專利發明的，則該項作為的持續，即構成本條例所指的官方徵用，而非構成對權利的侵犯。

(3) 在本條中，“生效日期” (commencement date) 指《1996 年知識產權（世界貿易組織修訂）條例》（1996 年第 11 號）第 11 條開始實施的日期。”。

Question on the amendments put and agreed to.

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

Council then resumed.

Third Reading of Bills

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) 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 TRADE AND INDUSTRY reported that the

PATENTS BILL

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

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

Bill read the Third time and passed.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Two motions without legal effect. I had already accepted the House Committee's proposed time limits on the speeches to be made in connection with the motion debate and Members were duly informed on 26 May. Each Member moving the motion may have 15 minutes to speak, including replying to queries, in addition to five minutes to speak on proposed amendments. Those Members moving amendments and the others will each have seven minutes. Under Standing Order 27A, I may order anyone who speaks beyond the time limit to stop.

SUPPRESSING PROPERTY PRICES

Miss CHAN YUEN-HAN to move the following motion:

"That this Council urges the Government to take further effective measures to suppress property prices, lest speculative activities cause property prices to soar beyond the affordability of the public; moreover, in order that the public will not be affected by various property speculation tactics, the Government should increase the transparency of the information on property, so as to help potential buyers to make informed decisions; furthermore, the Government should expeditiously implement the following recommendations:

- (a) publishing annually the volume of land supply earmarked for the construction of housing in the next five years;
- (b) publishing annually the information relating to the supply of housing, so as to apprise the public of the types, locations and number of units under construction; and
- (c) ensuring the availability of a one-year land reserve to cater for the sudden increase in the demand for housing."

MISS CHAN YUEN-HAN (in Cantonese): Mr President, I move that the motion standing in my name on the Order Paper be approved.

Mr President, the old issue of housing is again brought up in the Legislative Council for debate. I think this is something we cannot help. Indeed, we can see that much of discussions we had in the Legislative Council in the past was closely related to the issue of housing. While we may keep debating, the government policy remains unchanged. The housing problem of the Hong Kong people is still the biggest problem of the entire community and this is indeed infuriating. Mr President, I move this motion today for two reasons. On the one hand, I want to bring up the debate on the issue concerning the Government's refusal to accept the proposals of the Consumer Council. On the other hand, it has to do with my earlier visit to Shanghai to study the housing situation there. In particular, the concept of the housing policy of the Mainland government is people-oriented in that the government holds itself responsible for the provision of housing for the people. For example, as far as purchase of housing is concerned, under the government policy, there is no question of non-affordability, let alone the crazy speculative activity in Hong Kong.

What anti-speculation measures can Hong Kong learn from the Shanghai visit? Mr President, I will leave it to my colleague, the Honourable CHENG Yiu-tong, to brief you later. As for myself, I will focus on discussing the problem of supply of land for housing.

Mr President, a lot of people are saying that no matter what changes the policy undergoes and how ideal it is, in the end the long-term housing problem has to be solved and increasing the supply of land for housing seems to be the only way out. However, I consider that while increase of land supply is essential, good land planning is all the more important. What does this mean? We can see for ourselves that all along there is no co-ordinated land policy mechanism among the government departments, each of which is simply operating on its own.

Let me quote some examples for illustration. The Territory Development Strategy Study of the Planning, Environment and Lands Branch covers the period

up to 2006 while the production plan of the Housing Department is only up to 2003. The study conducted by the Housing Branch on the Long Term Housing Strategy is up to 2006 but the population development projection of the Census and Statistics Department extends to 2016, while the transport development assessment of the Transport Branch is only up to 2011.

It can be seen from the above how chaotic the planning for Hong Kong's future land, population, housing, traffic and transportation is. There is at present not a government department to co-ordinate the supply, planning and distribution of land. Neither is there any department which can inform the public of the exact figures in connection with the planning of a specific year. I consider that in order to improve the pace of study of various departments, it is essential that there is a department which will release regularly information on land supply.

Mr President, I move that the Government be asked to release annually the information on the supply of land for housing production in the following five years, so that the general public and housing developers may know the supply of land for housing. This would enable the developers to assess whether the selling prices of land are reasonable and determine the market prices, while potential buyers would be prevented from buying houses in swarms to "follow the herd". It would also reduce considerably the speculative activity and enhance the transparency of housing supply. In fact this proposal aims at forcing the various government departments to step up co-operation and collate the different long-term plans as soon as possible so as to give the public a specific long-term development plan.

The question now is — what is the most appropriate way to release the information on supply of land for housing? Mr President, I consider that there are merits in laying down a rolling programme. In fact, as early as 1983, a similar measure was adopted by the Housing Authority. Every year the Housing Authority announced publicly the contents of the public housing comprehensive redevelopment programme for the following five years, including the number of units to be demolished, the areas concerned and the years of demolition. Such a measure not only enabled residents of the old areas to be

advised earlier of the date of removal, but also enhanced considerably the transparency of the production plan of the Housing Authority. Mr President, why do we not learn from these good things? I consider that the Government can enhance the transparency in the supply of land for housing through this measure. This will benefit both the public and the industrial and commercial sectors. As to how the issue of the supply of housing units should be handled, I will leave it to my colleague the Honourable CHAN Wing-chan to present the details.

Nevertheless, I consider that releasing information on land supply alone would not guarantee an adequate supply of land. Therefore, I move at the same time that the Government should ensure the availability of a one-year land reserve to cater for the sudden increase in housing demand. The main reason for this proposal is that in 1991, the amount of land the Government supplied to the Housing Authority was considerably underestimated and the repeated policy errors resulted in the particularly serious shortage of public housing supply in the past couple of years, which in turn has pushed up the prices of private properties. Mr President, had there been a land reserve, the supply of land would not have been affected and the prices of properties would not have soared because of the shortage of land for housing. My proposal is by no means something new. It was tried by the Government in 1994 and should now be used again to save for the rainy days.

Mr President, after securing transparency and stability in the supply of land, it will be necessary to lay down reasonable measures against speculation. I propose that the property value-added tax should be introduced.

Mr President, the Hong Kong Federation of Trade Unions (FTU) has all along advocated the introduction of the tax, that is, the asset value-added tax. As today's motion is related to housing, I will focus on elaborating the property value-added tax.

We consider that a property added-value tax would add to the cost of speculation, thereby directly discouraging the activity. In the past the Government resorted to taxation to discourage the activity but it headed for the

wrong way. Raising the stamp duty is an appropriate example. In reality, for each housing transaction, the Government gets a large sum in the form of stamp duty. It collects stamp duty from the transactions, be they made by speculators or genuine home-buyers. In so doing, no assistance is given to the genuine home-buyers at all. On the contrary, it adds to their cost of owning a home. The gains go only to the government treasury. As everyone is aware, for a wage-earner who is thinking of buying a flat, ten or twenty thousand dollars would mean a lot and their dream of owning a home might burst simply because of the stamp duty which is but an insignificant amount to the Government.

Hence, I consider that there is a need to change the taxation a bit. First of all, the stamp duty should be reduced so as to relieve genuine home-buyers of the tax burden. Furthermore, a property value-added tax should be introduced. I consider that under the principle of "one family should own one home", no property value-added tax should be levied on the additional value arising from flat swapping. For example, if an owner buys a flat for \$2 million and sells it for \$3 million several years later, he should not be required to pay the property value-added tax as long as he buys back a flat for his own use.

On the other hand, if someone owns a flat for investment or speculation in addition to one used mainly for residence, the profit he gets should be subject to the payment of the property value-added tax. I believe that in this way, speculators would be discouraged from speculation because the tax burden adds to the cost of the activity.

Mr President, to sum up, the objectives of my proposal are to provide members of the public with adequate information on land and housing so that they can make a sensible decision when buying their homes, and to bring the exorbitant prices of properties down to the healthy level, or the level affordable to the people, through a series of measures. I hope that under the premises of suppressing property prices and ensuring an ideal living environment for the community, Members will support my motion.

Mr President, these are my remarks. Thank you.

Question on the motion proposed.