

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 25 February 1998**

**The Council met at half-past Two o'clock**

## **MEMBERS PRESENT:**

THE PRESIDENT

THE HONOURABLE MRS RITA FAN, J.P.

THE HONOURABLE WONG SIU-YEE

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE HO SAI-CHU, J.P.

THE HONOURABLE EDWARD HO SING-TIN, J.P.

DR THE HONOURABLE RAYMOND HO CHUNG-TAI, J.P.

THE HONOURABLE NG LEUNG-SING

PROF THE HONOURABLE NG CHING-FAI

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

DR THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE LEE KAI-MING

THE HONOURABLE ALLEN LEE, J.P.

THE HONOURABLE MRS ELSIE TU, G.B.M.

THE HONOURABLE MRS SELINA CHOW, J.P.

THE HONOURABLE MRS PEGGY LAM, J.P.

THE HONOURABLE HENRY WU

THE HONOURABLE NGAI SHIU-KIT, J.P.

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

THE HONOURABLE RONALD ARCULLI, J.P.

THE HONOURABLE YUEN MO

THE HONOURABLE MA FUNG-KWOK

THE HONOURABLE CHEUNG HON-CHUNG

DR THE HONOURABLE MRS TSO WONG MAN-YIN

THE HONOURABLE LEUNG CHUN-YING, J.P.

DR THE HONOURABLE LEONG CHE-HUNG, J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, J.P.

THE HONOURABLE MOK YING-FAN

THE HONOURABLE HUI YIN-FAT, J.P.

THE HONOURABLE CHAN CHOI-HI

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE TSANG YOK-SING

THE HONOURABLE CHENG KAI-NAM

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE KENNEDY WONG YING-HO

THE HONOURABLE HOWARD YOUNG, J.P.

DR THE HONOURABLE CHARLES YEUNG CHUN-KAM

THE HONOURABLE YEUNG YIU-CHUNG

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LAU KONG-WAH

THE HONOURABLE LAU WONG-FAT, J.P.

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

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

THE HONOURABLE PAUL CHENG MING-FUN, J.P.

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING

THE HONOURABLE KAN FOOK-YEE

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE LO SUK-CHING

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE TAM YIU-CHUNG, J.P.

THE HONOURABLE CHOY SO-YUK

**MEMBER ABSENT:**

THE HONOURABLE CHOY KAN-PUI, J.P.

**PUBLIC OFFICERS ATTENDING:**

THE HONOURABLE MRS ANSON CHAN, J.P.  
CHIEF SECRETARY FOR ADMINISTRATION

MR KWONG KI-CHI, J.P.  
THE FINANCIAL SECRETARY

THE HONOURABLE ELSIE LEUNG OI-SIE, J.P.  
SECRETARY FOR JUSTICE

MR NICHOLAS NG WING-FUI, J.P.  
SECRETARY FOR TRANSPORT

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

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

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

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

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

MR DAVID LAN HONG-TSUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

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

MR LEUNG CHIN-MAN, J.P.  
SECRETARY FOR HOUSING

### **CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MR LAW KAM-SANG, J.P., DEPUTY SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT 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 Rule 21(2) of the Rules of Procedure:

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Public Revenue Protection (Dutiable Commodities) Order 1998 .....	93/98
Mutual Legal Assistance in Criminal Matters Regulation .....	94/98
Tramway Ordinance (Alteration of Fares) (Amendment) Notice 1998 .....	95/98
Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment) Regulation 1998 .....	96/98
Mental Health Guardianship Board Rules .....	97/98
Mental Health (Specification of Special Treatment) Notice 1998 .....	98/98
Mental Health (Guardianship) (Amendment) Regulation 1998 .....	99/98
Mental Health Review Tribunal (Amendment) Rules 1998 .....	100/98
Merchant Shipping (Seafarers) (Certification and Watchkeeping) (Amendment) Regulation 1998 .....	101/98
Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 1998 .....	102/98
Merchant Shipping (Seafarers) (Navigational Watch Ratings) (Amendment) Regulation 1998 .....	103/98

Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment) Regulation 1998.....	104/98
Merchant Shipping (Seafarers) (Certification of ..... Officers) (Amendment) Regulation 1998.....	105/98
Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft) (Amendment) Rules 1998.....	106/98
Merchant Shipping (Seafarers) (Tankers — .....Officers and Ratings) (Amendment) Regulation 1998.....	107/98
Merchant Shipping (Seafarers) (Safety Training) Regulation	108/98
Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships — Training) Regulation .....	109/98
Merchant Shipping (Safety) (GMDSS Radio ....Installations) (Amendment) Regulation 1998.....	110/98
Merchant Shipping (Safety) (High Speed Craft) Regulation	111/98
Pilotage (Dues) (Amendment) Order 1998 .....	112/98
Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 1998.....	113/98
Road Traffic (Safety Equipment) (Amendment) Regulation 1998 .....	114/98
Airport Authority Ordinance (Map of Restricted Area) Order .....	115/98
Hong Kong Airport (Control of Obstructions) (Repeal) Order 1998.....	116/98
Rectification of Errors Order 1998.....	117/98
Attachment of Income Order Rules .....	118/98

Rules of the Supreme Court (Amendment) Rules 1998 .....	119/98
Banking Ordinance (Declaration under section 2(14)(d)) (No. 2) Notice 1997 (Amendment) Notice 1998 .....	120/98
Human Organ Transplant Ordinance (Cap. 465) (Commencement) Notice 1998 .....	121/98
Human Organ Transplant Regulation (L.N. 551 of ..... 1997) (Commencement) Notice 1998 .....	122/98
Mutual Legal Assistance in Criminal Matters Ordinance (87 of 1997) (Commencement) Notice 1998 .....	123/98
Smoking (Public Health) (Amendment) Ordinance 1997 (93 of 1997) (Commencement) Notice 1998 .....	124/98

### Sessional Papers

- No. 76 — Audited Statement of Accounts together with the  
Director of Audit's Report and Trustee's Report on the  
Administration of the Education Scholarships Fund  
for the year ended 31 August 1997
- No. 77 — Schedule of revisions to the 1997-98 Estimates  
approved by the Provisional Urban Council during the  
third quarter of the 1997-98 financial year
- No. 78 — Revised list of works of the Provisional Urban Council  
for the 1997-98 financial year  
(during the third quarter ended 31 December 1997)
- No. 79 — Revised Estimates of Expenditure of the  
Provisional Regional Council  
for the 1997-98 financial year



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- No. 80 — Revised list of works of the Provisional Regional Council for the 1997-98 financial year  
(during the third quarter ended 31 December 1997)
- No. 81 — The Lord Wilson Heritage Trust  
Annual Report 1996 - 1997
- No. 82 — Hong Kong Council for Academic Accreditation  
Annual Report 1996 - 97
- No. 83 — The Hong Kong Academy for Performing Arts  
Annual Report 1996 - 1997
- No. 84 — The Hong Kong Academy for Performing Arts —  
Financial Statements and Auditor's Report  
for the year ended 30 June 1997
- No. 85 — Audited Statement of Accounts of the Language Fund  
together with the Director of Audit's Report  
for the year ended 31 August 1997
- No. 86 — Li Po Chun Charitable Trust Fund  
Annual Report for the period  
1 September 1996 to 31 August 1997
- No. 87 — Hong Kong Arts Development Council Annual Report  
1 April 1996 to 31 March 1997

## Reports

Report of the Bills Committee on the Housing (Amendment) Bill 1998

Report of the Bills Committee on the Provident Fund Schemes Legislation (Amendment) Bill 1997

Report of the Bills Committee on the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997

Report of the Bills Committee on the Hong Kong Bill of Rights (Amendment) Bill 1998

## ADDRESSES

**PRESIDENT** (in Cantonese): Addresses. Mr CHAN Kam-lam will address the Council on the report of the Bills Committee on the Housing (Amendment) Bill 1998. Mr CHAN Kam-lam.

### **Report of the Bills Committee on the Housing (Amendment) Bill 1998**

**MR CHAN KAM-LAM** (in Cantonese): Madam President, as Chairman of the Bills Committee on the Housing (Amendment) Bill 1998, I would like to report on the main deliberations of the Bills Committee.

The Bill was submitted to the Provisional Legislative Council on 14 January 1998. Its purpose is to make certain technical amendments in view of the difficulties in operation that will arise with the implementation of the Housing (Amendment) Bill 1997. The amendments include:

- (1) excluding the charges of occupation permits for cottage areas and interim housing from the scope of the amending ordinance;
- (2) providing that the requirement that rent adjustment can only be made every three years does not apply to better-off tenants who need to pay additional rent or the market rent, or to persons who receive assistance under the Rent Assistance Scheme; and
- (3) giving a clear definition of the median rent to income ratio, and allowing the Hong Kong Housing Authority (HA) to continue to calculating the median rent to income ratio for rental housing with sampling methods.

The Bills Committee held one meeting, in which it finished discussing and deliberating on the Bill with the Administration.

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*Deliberations of the Bills Committee*

The Bills Committee supports the technical amendments proposed in the Bill.

The Bills Committee is also concerned about the general application of the stipulation on rent adjustment every three years.

Members were generally of the view that the Administration should ensure that basic rent should be adjusted only once every three years. They asked the Administration to clarify whether the rent of better-off tenants will be adjusted every two years or every three years. The Administration clarified that in the case of better-off tenants or tenants whose rent is cut under the Rent Assistance Scheme due to financial difficulties, rent adjustment will be handled flexibly. Members took the unanimous view that the frequency of adjustment of the basic rent of these tenants should be the same as other tenants, that is, it will only be adjusted once every three years. The Administration agreed to leave it to the HA to make a policy decision on the rent adjustment of these tenants, in order to avoid any contravention of the spirit of the amending ordinance.

As for tenants who move into units which occasionally become vacant, Members agreed that it is necessary to ensure that the stipulation of rent adjustment every three years will also apply to these tenants. The Administration informed the Bills Committee that a computer system is being designed to identify these tenants so that their rent will not be increased in less than three years.

Some Members also expressed concern about the formulation of subsection (1A) of the amending Ordinance. They pointed out that the term "any land in an estate" and the whole formulation of the subsection are not clear enough. They suggested that the Administration should re-draft the sub-section. The Administration agreed that the suggestion made by the two Members was an alternative solution. However, it explained that the original formulation was intended to preserve the original wording as far as possible and to provide for exceptions in order to solve difficulties in operation, so that the intention of the Administration will not be misunderstood. Finally, Members accepted the Administration's explanation.

Madam President, the Bills Committee supports the resumption of the Second Reading of the Bill today. Thank you.

**PRESIDENT** (in Cantonese): Mr Ronald ARCULLI will address the Council on the report of the Bills Committee on the Provident Fund Schemes Legislation (Amendment) Bill 1997. Mr Ronald ARCULLI.

**Report of the Bills Committee on the Provident Fund Schemes Legislation (Amendment) Bill 1997**

**MR RONALD ARCULLI:** Madam President, as Chairman of the Bills Committee on Provident Fund Schemes Legislation (Amendment) Bill 1997, I would like to speak on the report of the Bills Committee which has been tabled to Members. The Bills Committee has held 31 meetings with the Administration and received submissions from 15 organizations.

The present Bill is an omnibus bill seeking to amend the Mandatory Provident Fund (MPF) Schemes Ordinance and 11 related Ordinances. The Administration has also made available the draft MPF Schemes (General) Regulation, the MPF Schemes (Exemption) Regulation and relevant Rules for Members' comments. Details of the Bills Committee's deliberations have been set out in the report and I would just like to highlight several issues on which considerable concerns have been raised.

One of the major changes proposed under the Bill is the reconstitution of the Mandatory Provident Fund Schemes Authority (MPFA) as a corporation to be headed by an Executive Director. Although there are new provisions stipulating the functions and powers of the MPFA, most Committee members are deeply concerned about the lack of checks and balances on the powers to be vested with the Executive Director. Most deputations share similar concerns. One Member however has expressed support for the arrangements proposed in the Bill.

Having reviewed the management structure of other statutory bodies including the Securities and Futures Commission, Employees Retraining Board, Estate Agents Authority and Airport Authority, the majority of the Committee members conclude that the MPFA should be reconstituted to consist of a body of executive and non-executive directors with a chairperson and a deputy chairperson. For clarity, the chief executive of the MPFA should be retitled as "Managing Director". Most Committee members also agree in principle that non-executive directors should comprise representatives of employers, employees and relevant persons with knowledge and experience in pension matters while executive directors are full-time senior staff members of the future MPFA.

On detailed arrangements such as the proportion of executive and non-executive directors and the number of representatives from various sectors, Committee members hold different views. A majority of them also suggest that to enhance impartiality, a non-executive director should be appointed as the chairperson of the MPFA. Members are, however, divided as to whether the Managing Director should be the deputy chairperson. The Administration and individual members will move the necessary Committee stage amendments in furtherance of their respective proposals.

As regards concerns about possible difficulties faced by the low-income group in joining MPF schemes, the Bill has proposed a no-rejection requirement on approved trustees that they cannot reject any eligible persons apply in writing to join their schemes. At the same time, the Administration has proposed under the Bill to remove relevant provisions in the principal Ordinance for setting up a Residual Provident Fund (RPF) Scheme as a last resort for those who are unable to enrol in a MPF scheme.

Members do not dispute that when the no-rejection requirement is in force, the possibility of eligible persons being unable to join a MPF scheme is very low. Nevertheless, they share the view that existing provisions on the RPF Scheme as a last resort should not be repealed. After discussion, the Administration has agreed to retain the option of setting up a RPF Scheme if the no-rejection requirement does not work effectively.

On enforcement measures, the Administration has accepted the Bills Committee's suggestions of raising the maximum contribution surcharge on the amount of defaulted MPF contributions to 20% per annum, stepping up the penalty for operating as an unapproved trustee, as well as structuring proposed penalties in two tiers according to first or subsequent offences. With these improvements, it is hoped that a real deterrent effect can be achieved. The Administration has also agreed to simplify the voluntary winding up procedures for employer sponsored schemes in consultation with the accounting profession.

The Bills Committee has also examined all consequential amendments to related Ordinances. Some Committee members have objected to the proposed offsetting of severance and long service payments payable under the Employment Ordinance against the employee's accrued MPF benefits. A Member will move her own Committee stage amendments to abolish the offsetting provisions. On tax arrangements under the Inland Revenue Ordinance, the Bills Committee and some deputations consider that employees' contributions to a MPF scheme should be deductible in calculating salaries tax. Members subsequently note from the 1998-99 Budget that employees' contributions to a MPF or a duly exempted scheme will not be subject to salaries tax.

The three sets of draft MPF Regulations and Rules prescribe implementation details which include approval of trustees, scheme registration, investment management, eligibility requirements and functions of services providers, as well as interfacing arrangements for existing occupational retirement schemes. The Bills Committee has scrutinized all the draft provisions in detail and identified some 100 items for follow-up action. The Administration has revised its legislative proposals in the light of members' comments and further scrutiny of the subsidiary legislation will be taken up by a Subcommittee to be formed subject to the passage of the Bill.

Madam President, the above are the main deliberations of the Bills Committee. I would like to thank all the deputations for providing valuable views on the Bill and related subsidiary legislation and the Provisional Legislative Council Secretariat for assisting the Committee throughout its deliberative process.

Finally, I would also like to thank the MPF Office and my colleagues for their hard work and indeed their tolerance of my occasional lack of patience. It was not out of disrespect but out of concern that we should produce a law to implement MPF schemes for the good and long term benefit of employees and employers and the community alike.

**PRESIDENT** (in Cantonese): Dr TANG Siu-tong will address the Council on the report of the Bills Committee on the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997. Dr TANG Siu-tong.

**Report of the Bills Committee on the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997**

**DR TANG SIU-TONG** (in Cantonese): Madam President, as Chairman of the Bills Committee on the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997, I would like to report on the main deliberations of the Bills Committee.

The Bill was submitted to the Provisional Legislative Council on 15 October 1997. At a meeting of the House Committee on 17 October, Members agreed to set up a Bills Committee to scrutinize the Bill.

The Bills Committee has held three meetings and received four submissions. Deputies of the Hong Kong Occupational Deafness Association have attended the Bills Committee meetings to state its views to the Bills Committee.

*The Improvement Package under the Bill*

The Bills Committee is concerned that the improvement package under the Bill only covers part of the suggestions proposed by the Working Group on the Occupational Deafness (Compensation) Ordinance. The Administration explained that if all the proposed improvements were implemented, there would be significant financial implications on the Occupational Deafness Compensation Board (the Board). Therefore, the Administration decided to give priority to the implementation of proposals seeking to expand the coverage and streamline the operation of the compensation scheme.

Some Members were of the view that the Administration should provide a timetable for the implementation of the other measures. The Administration responded that two years after the implementation of the various measures under the Bill, it will review the compensation scheme and consider those proposals again.

#### *Financing of the Compensation Scheme*

The Bill provides for an 0.8% increase of the levy on the premium of employees' compensation insurance, that is, increasing it from 1.5% to 2.3%, in order to enable the Board to pay for the compensation and implement the different measures for improvement.

Some Members considered that it is unfair to impose an across-the board levy on employers. The Administration pointed out that since noisy occupations may exist across industries, it would be simpler and more cost-effective to impose an across-the-board levy on employers.

#### *Legislation on Protection of Hearing Loss*

The Bills Committee has asked the Administration to provide information on the hearing conservation programme. Under the proposed Factories and Undertakings (Medical Examinations) Regulation to be introduced during the 1998-99 legislative session, workers in hazardous occupations, including workers exposed to excessive noise, will be required to undergo specified medical examination before employment and periodically during employment in such occupations. Together with the Factories and Industrial Undertakings (Noise at Work) Regulation, this would provide the basis for the implementation of an effective hearing conservation programme. The programme will include conducting noise surveys; taking measures to reduce worker's noise exposure through noise control or administrative controls; providing suitable hearing protectors to workers; training and educating workers to increase their awareness of the importance of hearing conservation. After the implementation of the above programme, the Administration expects that the number of employees suffering from occupational deafness will be reduced. Since the number of eligible claimants is expected to be reduced, Members urge the Administration to estimate again the financial implications on the compensation scheme according to practical experience.



*The Minimum Service Requirement of 10 years in "very noisy" occupations*

The Working Group proposes to reduce the minimum service requirement for claimants from four "very noisy" occupations from ten to five years. Members asked the Government to introduce an amendment to include the proposal in the Bill. After consideration, the Administration told Members that this proposal should be accorded lower priority than those seeking to expand the coverage of the compensation scheme. The Administration also pointed out that the additional compensation liability arising from the proposal would deplete the funds of the Board at the end of the fourth year after the implementation of the proposed improvements under the Bill, even with the income from the increase in the rate of the levy by 0.8 percentage point. Thus, the Administration considers that this is not the time to adopt the proposal.

Since the Administration did not provide statistics to support its forecast on the financial implications on the Board after the implementation of the proposal, and as Members expect that the number of claimants will be reduced in the future, the majority of Members of the Bills Committee present at the third meeting supported introducing an amendment to the Bill to reduce the minimum service requirement for claimants from the four "very noisy" occupations from ten to five years. In accordance with the decision of the Bills Committee, I gave notice to move such a Committee stage amendment. However, after careful consideration, the Administration decided to move the amendment itself. With the consent of the Bills Committee, I have withdrawn the notice to move that amendment.

*The Percentage of Permanent Incapacity for Calculation of Compensation*

Under the Bill, the degree of permanent incapacity of persons suffering from total deafness due to prolonged employment in noisy occupations for the calculation of compensation is 60%, while according to the Employees' Compensation Ordinance, the degree of permanent incapacity of persons suffering from total deafness caused by work accidents is 100%. Members questioned why there is such a distinct discrepancy between the two. In its response, the Administration said that occupational deafness usually develops over the years and its impact is not as acute as that of total deafness caused by work accidents, nor will it be as traumatic. Compared with persons suffering from total blindness or severe pneumoconiosis, a person suffering from noise-induced deafness is more likely to be able to continue working and may not suffer from total incapacity.

The Bills Committee also asked the Administration to consider introducing an amendment to raise the maximum degree of permanent incapacity by reference to hearing loss from the current 60% to 100%. After studying this proposal, the Administration informed Members that if the proposal is implemented, the average compensation amount per claim will be increased by about 60% and there will be an annual increase of \$35 million in the compensation amount paid under the compensation scheme. As a result, if the proposal is implemented, even with an increase of 0.8 percentage point in the levy rate, the compensation fund will be depleted at the end of the first year. In view of the arguments put forward by the Administration, Members accepted its decision not to adopt the proposal.

Madam President, the Bills Committee supports the resumption of the Second Reading of the Bill today. I take this opportunity to thank Members of the Bills Committee and those who have submitted their views to the Bills Committee. We hope that Members will support the Committee stage amendments to be moved by the Administration later.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr Ambrose LAU will address the Council on the report of the Bills Committee on the Hong Kong Bill of Rights (Amendment) Bill 1998. Mr Ambrose LAU.

### **Report of the Bills Committee on the Hong Kong Bill of Rights (Amendment) Bill 1998**

**MR AMBROSE LAU** (in Cantonese): Madam President, I submit the report in the capacity of the chairman of the Bills Committee on the Hong Kong Bill of Rights (Amendment) Bill 1998. As the report has given a detailed account of the deliberations of the Bills Committee, I will highlight the major points of the Committee's deliberations only.

The Bill seeks to repeal the Hong Kong Bill of Rights (Amendment) Ordinance 1997 (Amendment Ordinance). The operation of the Amendment Ordinance is being suspended up to the 28th of this month to allow time for the Administration to review the implications of the Amendment Ordinance.

The Administration is of the view that section 3(3) and (4) introduced by the Amendment Ordinance, when read with the original section 7 of the Hong Kong Bill of Rights Ordinance (BORO), will give rise to legal uncertainty and confusion. Section 7 of the BORO states very clearly that the BORO binds only the Government and public authorities. The new section 3(3) introduced by the Amendment Ordinance however declares that the BORO applies to all legislation irrespective of whether the legislation affects legal relations between the Government, public authorities and private persons, or whether it affects only relations between private persons and hence there is an apparent inconsistency between section 3(3) and section 7. The Administration considers that the existing legislative framework, including Article 39 of the Basic Law and other privacy protection and anti-discrimination laws, has already provided sufficient safeguards on fundamental human rights and inter-citizen relations, the Amendment Ordinance is therefore unnecessary and should be repealed.

Some members of the Bills Committee hold views different from that of the Government. They have expressed doubts as to whether the Amendment Ordinance would really give rise to a legal interpretation problem and consider that efforts should be made on the part of the Administration to improve the drafting to clear the legal uncertainty and preserve the original legislative intent of the Amendment Ordinance. Some other members are of the opinion that should there be an interpretation problem in the provisions, the matter could be left to the court to give a ruling.

Some members shared the views of the Administration that the original legislative intent of the BORO is to restrict its application to the Government and public authorities while the inter-citizen relations should be appropriately safeguarded through other specific legislation. Those who are in favour of repealing the Amendment Ordinance consider that it is possible for the Amendment Ordinance to give rise to legal uncertainty which could result in individuals bringing frivolous court actions under the Amendment Ordinance.

The Bills Committee has given ample consideration to the views of the Government and other bodies, and has also taken into account the views of the Legal Advisor of the Provisional Legislative Council as regards the Amendment Ordinance. The Bills Committee have not reached a consensus on whether the BORO should be applicable to inter-citizen relations. But since the Bills Committee has scrutinized the various issues involving the Amendment Ordinance

and its suspension period is about to expire, most members are inclined to support the resumption of the Second Reading debate of the Bill as soon as possible.

Madam President, I so submit. Thank you.

## ORAL ANSWERS TO QUESTIONS

**PRESIDENT** (in Cantonese): Questions. The average time for each question seeking an oral reply is 15 minutes. First question. Mr TAM Yiu-chung.

### Compensation for Pneumoconiosis

1. **MR TAM YIU-CHUNG** (in Cantonese): *Will the Government inform this Council whether or not it has established a mechanism to fulfil its pledge to adjust the amount of compensation payable to persons suffering from pneumoconiosis on a regular basis; if so, what the details are; if not, why not?*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, under the Pneumoconiosis (Compensation Ordinance) (Cap. 360) (the Ordinance), persons who were diagnosed on or after 1 January 1981 as suffering from pneumoconiosis or their family members, as appropriate, are eligible to receive seven items of compensation payments:

- (1) compensation for incapacity;
- (2) compensation for death resulting from pneumoconiosis;
- (3) payment of expenses for medical appliances;
- (4) compensation for care and attention;
- (5) payment of medical expenses for treatment in connection with pneumoconiosis;

- (6) compensation for pain, suffering and loss of amenities; and
- (7) funeral expenses.

Among these items, it has been clearly stipulated in the Ordinance that the amounts of compensation for incapacity and the lump sum compensation for death are to be computed on the basis of the overall average daily wage earned by persons engaged in government building and construction works compiled by the Census and Statistics Department as at 1 January of each year. In other words, these two items will automatically be adjusted annually.

As regards the payment of expenses for medical appliances, the Pneumoconiosis Compensation Fund Board has to bear the actual expenses in accordance with the relevant provisions of the Ordinance. Since the actual expenses incurred will be fully reimbursed, regular revision is not necessary.

For the remaining four items, their monetary amounts are stipulated under the First and Second Schedules of the Ordinance. It has been the Administration's established practice to review the compensation amounts of these items every two years, taking into account primarily the cumulative effects of inflation.

We are now reviewing the amounts of these four compensation items and will put our proposal to the first Hong Kong Special Administrative Region Legislative Council for consideration during the first half of the 1998-99 legislative session.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, the last part of the answer mentioned that four items of compensation payments will be reviewed taking into account the cumulative effects of inflation. However, as far as I know, the relevant review has already been completed. According to the main answer, it is now pending the first Legislative Council's approval, which might mean a period of six months or more in waiting. Would this be unfair to workers who are receiving assistance, since the last review was conducted on 1 January 1996?*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, Mr TAM and Honourable Members all know that the case of the Provisional Legislative Council is rather special. Due to the shortage of time and the restrictions basically, the Provisional Legislative Council has to deal with legislation and subsidiary legislation which are apparently indispensable and which should be accorded higher priority. Thus, even though there are some obviously very important legislation within the areas for which I am responsible, such as legislation on industrial safety, they cannot be tabled to the Provisional Legislative Council due to the special circumstances. But I can assure Mr TAM that when the first Legislative Council will meet to deal with the legislation, we will lose no time in submitting this subsidiary legislation to it for its consideration.

**PRESIDENT** (in Cantonese): Madam President, Mr LEE Kai-ming.

**MR LEE KAI-MING** (in Cantonese): *Madam President, the main answer mentioned how the pledge is to be fulfilled. When the legislation was passed, the pledge was made that there will be a review every two years taking into account the effects of inflation. However, the review will now be delayed for more than six months. According to the main answer, funeral expenses are included in the compensation. I would like to ask the Government how can compensation be provided to dead persons? As we all know, there is no cure for pneumoconiosis. How can their losses be compensated if the review is to be delayed for six months?*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as I already explained, due to the special circumstances of the Provisional Legislative Council, this compensation proposal cannot be submitted to it. We will take the first opportunity to submit the proposal to the first Legislative Council. In answer to Mr LEE's question, we will consider whether we can legally or technically specify an element of retrospective effect when submitting the proposal.

**PRESIDENT** (in Cantonese): Mr LEE Kai-ming.

**MR LEE KAI-MING** (in Cantonese): *Madam President, please allow me to clarify some issues on behalf of the Provisional Legislative Council. Some organizations went to the Complaints Division of the Provisional Legislative Council to complain that the Provisional Legislative Council had refused to conduct the review taking into account the effects of inflation and to deliberate on the matter since it considered that such was not being "indispensable". I would like to clarify that it is not us who have refused to deliberate on the matter, but the Government which has failed to submit the bill to the Provisional Legislative Council for our consideration. I just wanted to clarify this on behalf of the Provisional Legislative Council.*

**PRESIDENT** (in Cantonese): Mr LEE Kai-ming, I think you can question the Secretary for Education and Manpower whether it was due to some reasons that he has failed to submit the proposal to this Council, as a result of which we could not deliberate on it.

**MR LEE KAI-MING** (in Cantonese): *Madam President, I will raise my question again. Later on, we will scrutinize the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997. This is because the former Legislative Council Member LEUNG Yiu-chung proposed a Members' Bill, which has put pressure on the Administration, causing it to think that the Bill was indispensable and they thus have to submit the Bill to the Provisional Legislative Council. I admit that deaf people suffer, but they do not suffer more than people with pneumoconiosis. Why is it that the Bill about deaf people is indispensable, while the compensation of persons suffering from pneumoconiosis is not?*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I can answer this supplementary question in two parts. First, regarding the Occupational Deafness Ordinance, we did propose to amend this Ordinance and it clearly fulfils the criterion of being "indispensable". Our

rationale is that under the legislation introduced by the former Legislative Council Member LEUNG Yiu-chung and subsequently passed, our funds will soon be depleted. Of course, the Provisional Legislative Council will have to make a final decision as to the passage or otherwise of the amending ordinance and the new ordinance submitted by the Hong Kong Special Administrative Region (SAR) Government.

Second, I have already provided a clear answer to Mr LEE's question in my replies to the main question and the supplementaries, and that is, due to some reasons, we did not submit the review proposal to the Provisional Legislative Council. This is a very clear fact.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I do not accept the Secretary's explanation. Just now, the Honourable LEE Kai-ming has already stated clearly that the legislation introduced by the former Legislative Council Member LEUNG Yiu-chung which was passed and other legislation are considered "indispensable" by the Government. As for the case of persons suffering from pneumoconiosis, we all know very well how their conditions are. In fact, the Government has pledged to do something in this respect, but it does not consider such to be "indispensable". With regard to the patients, I think the Government should expeditiously fulfil its pledge or conduct the review. We still have more than one month's time. I hope the Government could table the proposal to the Provisional Legislative Council for our deliberation, so that the public will not think that we are not deliberating on it because it is not deemed "indispensable". Thank you, Madam President.*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, I have little to add. Basically, I have stated in my main answer that, first, we did not put the proposal to the Provisional Legislative Council; second, we will submit the proposal in the 1998-99 legislative session at the first instance; third, in response to Members' concern, we will consider whether the proposal will have a retrospective effect.



**PRESIDENT** (in Cantonese): Dr LEONG Che-hung.

**DR LEONG CHE-HUNG** (in Cantonese): *Madam President, quite a number of Members said just now that pneumoconiosis is incurable. The condition of patients will only gradually deteriorate and they will die any time. Under such circumstances, if one has to wait for the six months for the compensation or one has to see if it will have a retrospective effect, how can it benefit the patients? For those who are already dead, what good is the retrospective effect? In view of this, does the Government consider legislation on pneumoconiosis "indispensable"? Thank you.*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, in my main reply, I have already made it clear that the four items of compensation which will be reviewed by taking into account the effects of inflation or other factors does not include compensation for death. I also said that in putting the proposal to the first Legislative Council, we will consider proposing that the relevant adjustments should have retrospective effect. What I mean is, if we decide, after due consideration, that it is feasible and the legislation is to be passed by the Legislative Council, the compensation payable to the people receiving the benefit will be adjusted every two years.

**PRESIDENT** (in Cantonese): Second question. Miss CHAN Yuen-han.

### **Assistance to CSSA Recipients**

2. **MISS CHAN YUEN-HAN** (in Cantonese): *An unemployed person receiving the Comprehensive Social Security Assistance (CSSA) killed himself recently because he did not have the means to provide for his wife and daughters. In this connection, will the Government inform this Council:*

- (a) *whether it will review its policy on CSSA in the wake of the above incident;*

- (b) *whether it will review the current focuses of home visits paid by Social Welfare Department staff and strengthen the training in their home visits skills, especially with regard to understanding the mental or psychological state of CSSA recipients;*
- (c) *of the current number of unemployed people receiving CSSA; and whether the authorities:*
  - (i) *have encouraged them to join employees retraining programmes; if so, of the percentage of such people who successfully obtained employment after training;*
  - (ii) *have provided other assistance to them in looking for jobs; if so, of the number of job interviews given to them, and the reasons for their failure to get employed; if not, what the reasons are; and*
- (d) *whether the authorities will study the establishment of an unemployment protection system in order to help the unemployed; if so, when such a study will take place; if not, what the reasons are?*

**PRESIDENT** (in Cantonese): Secretary for Health and Welfare.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the CSSA Scheme provides assistance for those in need (including the unemployed) to meet their daily basis expenses. The Scheme also provides special grants for recipients to meet the education expenses of their children, their expenses on books and travelling expenses and so on. Furthermore, recipients can enjoy free medical services at public clinics and hospitals. CSSA payments are regularly reviewed and adjusted to ensure that they can meet the needs of the recipients. On an average, an eligible family of four now receives CSSA payment of about \$10,000 each month.

My reply in response to the question raised by the Honourable Miss CHAN Yuen-han is as follows:

- (a) It is sad and regrettable for one to commit suicide. However, various complex factors, such as financial, health, mental, emotional or family problems, may have contributed to such an action. To respect the feelings of those concerned, we do not intend to disclose here the details of the case in question.

In accordance with the policy address of the Chief Executive last October, the Director of Social Welfare is presently conducting a comprehensive review of the CSSA scheme. The review will cover the scope and management of this Scheme, in order to ensure that elderly, weak and handicapped people will receive the assistance they need under the Scheme. For those with the capacity to work, we have to enhance the relevant measures to encourage and assist them in finding employment and re-enter the labour market, in order to improve their livelihood.

- (b) "Home visits" are integral to the procedures in processing CSSA applications. The main purpose of such visits is to verify the information provided by the applicants. Upon case review, home visits are conducted in order to find out whether there are any changes in the recipients' circumstances and family situation, so as to determine whether they are still eligible for CSSA. If the home visiting staff find that CSSA recipients have other welfare needs other than financial assistance, they will, with the recipients' consent, refer the recipients to Family Service Centres of the Social Welfare Department (SWD) or other welfare organizations for follow-up.

As an on-going programme of SWD, training on basic skills in handling people with emotional disturbance are provided to Social Security Field Unit staff. Our staff are reminded to be alert to the emotional state of CSSA recipients so as to detect whether applicants need any special assistance, in order to ensure an early intervention of professionals.

(c) According to the records maintained by SWD, there were about 17 000 "unemployed" CSSA cases as at the end of January this year which accounted for 9% of the total number of cases.

(i) When an "unemployed" CSSA recipient registers with the Labour Department for employment, the Department will advise him to join the Employees Retraining Course according to his circumstance. The Employees Retraining Board (ERB) offers a wide range of courses to help displaced workers acquire skills which facilitate them to find a job or alternative employment. CSSA recipients are accorded priority for enrolment in such courses to improve their vocational skills.

According to ERB's statistics on retrainees which were kept since May 1997, as at the end of January 1998, 708 retrainees who had completed retraining were CSSA recipients. Of these, 378 had completed full-time training courses, and 140 of them had subsequently been placed in jobs.

(ii) Unemployed CSSA recipients are given priority in the employment services of the Labour Department. They can either choose to use the self-help mode of employment services or join the Job Matching Programme which provides personalised interviews and counselling as well as placement. For disabled "unemployed" CSSA recipients who wish to seek open employment, the Selective Placement Division of the Labour Department provides specialized placement services.

We are currently conducting a pilot scheme which aims at stepping up assistance to the unemployed CSSA recipients. Through this pilot scheme, we hope to identify the unemployed CSSA recipients' aptitude, skills, training/retraining needs and, with the support of counselling, job placement and retraining services, assist them in rejoining the workforce and eventually getting off the welfare net.

In 1997, there were 25 000 unemployed CSSA recipients who registered with the Labour Department. 2 800 interviews had been arranged for them and 329 were placed in jobs representing a success rate of 1.3%. We do not keep data on the reasons underlying failure to secure employment.

- (d) The Government has no plans to examine the establishment of an unemployment protection system. Those unemployed persons who have financial difficulty, like others in financial need, can be assisted to a certain extent with the CSSA Scheme. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, from the main answer of the Secretary for Health and Welfare, we can see that the Government does not have a set of methods to help the unemployed in their financial and psychological plights. Although the Secretary said the Government will conduct a review, I wonder whether this could start in the middle of the year. The success rate of the Local Employment Service (LES) of the Labour Department in helping the unemployed to find jobs is 1.3%. When the Commissioner for Labour says that there are thousands of job vacancies, people looking for jobs will go for an interview. But after failing several interviews, they will feel themselves useless and will be subject to great mental stress. When we look at how the SWD deals with this problem, we find that it is not aware of this problem at all. Instead, it shirks its responsibility by saying that there are many reasons for the misery of every individual. I do not deny that there are many reasons. But the main reason for the misery of an employed person is that he has failed to find employment after numerous interviews. Thus he feels useless and his reliance on CSSA made him feel shameful to face his family. He is thus driven to the course of suicide. Given the present economic situation, what solutions does the Government have? What can be done about the low success rate of retraining? How should one deal with mental stress? I hope the Secretary can answer my questions positively. Thank you, Madam President.*

**PRESIDENT** (in Cantonese): Secretary for Health and Welfare.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, the Government has to take care of people with psychological or mental problems, whether they are CSSA recipients or not. We do not only take care of the mental health of CSSA recipients. As for retraining, among the figures that I provided, there is one that is more optimistic, that is, the number of persons that succeeded in obtaining employment after attending full-time retraining courses is encouraging. According to statistics, of the 378 persons who completed full-time courses, 140 were subsequently placed in jobs. This is an encouraging figure. As for the channels of obtaining employment, the average unemployed persons, whether they are CSSA recipients or not, can register with the Labour Department or look for jobs through newspaper advertisements or the recommendation of friends. The LES is but one of the channels that can help them.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han, do you wish to ask a follow-up question?

**MISS CHAN YUEN-HAN** (in Cantonese): *Yes. The Secretary did not answer my question. The success rate of the LES of the Labour Department in helping the unemployed obtain jobs is 1.3%. I hope the Government will look squarely at this issue and the problems of the unemployed. Whether they are CSSA recipients or not, the Government has to face them. How should they be psychologically prepared? The Government should answer this, but it did not.*

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, as this question is about the LES of the Labour Department, I am very willing to provide additional information. The main answer mentioned that the success rate of the LES of the Labour Department in helping CSSA recipients to obtain jobs is 1.3%. This is obviously very low compared with the success rate of the average persons who have come to us for jobs (22%). The

main answer mentioned that the Labour Department and the SWD are conducting a pilot scheme, in order to find out the main reasons for the low success rate of CSSA recipients in obtaining employment. We hope that in the next one or two months, the Labour Department and the SWD can analyze in detail the main reasons for the low success rate, for instance, whether the age, education level and skills of CSSA recipients are different from the average persons, or whether there are other reasons such as family reasons or their own wishes. Since we have not done a sufficiently thorough analysis, I do not wish to draw any conclusions. I hope that in one or two months, we will have done a sufficiently thorough analysis. By then, I shall be willing to submit the relevant information to Members and have an in-depth discussion with them.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): *Madam President, I have only one request. I request that the Secretary submit the relevant information at the next meeting of the Panel on Manpower for consideration by its members, instead of in two months' time. The last meeting of the Panel on Manpower is at the end of March. Thank you, Madam President.*

**PRESIDENT** (in Cantonese): Miss CHAN, I understand that you have this request. But according to the rules for Questions, you should raise this with the Secretary for Education and Manpower in the form of a question. However, I believe that everyone knows what you mean. Mr HUI Yin-fat.

**MR HUI YIN-FAT** (in Cantonese): *Madam President, at present, there are many families with members unemployed or CSSA cases. Take the most obvious example of the single parent households, the reason given for not looking for employment is that they have to take care of their family. Since the Government has failed to provide the services they need, they are very often forced to become unemployed, rather than unwilling to find a job. Will the Government inform this Council whether it can provide assistance to unemployed CSSA recipients other than job placement, such as increasing the services for child care, so that they have underlying worries for their family when they take up employment again.*

**PRESIDENT** (in Cantonese): Secretary for Health and Welfare.

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Madam President, we understand very well that many single parents have to take care of small children. We have also talked to them to see whether we can arrange for their children to go to nurseries or other places, or whether they can ask their relatives to look after them. We encourage them to find a place where their children can be looked after before they should look for employment. In the next financial year, we will allocate additional funds to increase the number of places of nurseries by around 3 000. We also need to provide more counselling to these people so that they will look for employment after finding a place to care for their children properly.

In terms of job placement, at present there are no mandatory requirements for them to register for job placement. From our experience, many single parents (especially women) register for job placement voluntarily.

**PRESIDENT** (in Cantonese): Since this question has taken up more than 15 minutes, we will move on to the third oral question. Mrs Peggy LAM.

### **Industrial Grade Plastic Bags**

3. **MISS PEGGY LAM** (in Cantonese): *In the Government's operation to slaughter chickens, the chicken carcasses were put into industrial grade plastic bags and subsequently transported to landfills for dumping. In this connection, will the Government inform this Council:*

- (a) *of the total number of industrial grade plastic bags used in the operation; and*
- (b) *whether it has studied the length of time it takes for the buried industrial grade plastic bags to decompose and the impact such an arrangement will have on the environment; if so, what the findings are; if not, why not?*



**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

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

- (a) An estimated total of 276 500 plastic bags were used in the chicken slaughter operation.
- (b) The bags used were the same polyethylene/polypropylene bags commonly used for the collection of our municipal waste. It will take up to over 100 years for these bags to degrade completely, but their use will not cause any significant pollution problems at the landfills as the landfills have already catered for this in their design and technology.

**PRESIDENT** (in Cantonese): Mrs Peggy LAM.

**MRS PEGGY LAM** (in Cantonese): *Madam President, in his reply, the Secretary for Planning, Environment and Lands (SPEL) said that it will take over 100 years for these bags to degrade completely. We have always tried to promote environmental pollution and this subject has been debated before. I would like to ask the Government if it will consider making regulations to restrict the use of industrial grade plastic bags to those that can be dissolved in soil in future. If not, why not? Will it have an impact on environment protection?*

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, first, we should not just target against industrial grade plastic bags. Actually, all plastic raw materials have to take that long to degrade, so it would not be fair to target against on industrial grade plastic bags only. Even the plastic bags for daily use or a plastic cup would take a long time to degrade in the landfills. In terms of technological innovation, a total substitute for plastic or plastic raw materials has yet to be invented. On the other hand, I

believe Members also know what the share taken up by dumped plastic bags in the area or volume of the landfills is. The total number of plastic bags dumped in the landfills every day accounts for less than 0.1% of the total volume of the landfills. Thus, they will not have a great effect on the volume or operation of the landfills. From the perspective of environmental protection, of course we hope to reduce the use of plastic bags or any plastic raw materials. In this, we need the co-operation of the public, as well as the co-ordination in education and some technological innovations.

**PRESIDENT** (in Cantonese): Mr Henry WU.

**MR HENRY WU** (in Cantonese): *Madam President, the plastic bags used in the chicken slaughter operation looked quite huge on television. You can almost put a man in a bag. As far as we know, over 1.4 million chickens were slaughtered in the operation. On an average, one bag can only accommodate five chickens. However, some chicken carcasses were not put into plastic bags, which means that the number of chicken carcasses put into each plastic bag was even smaller. Has there been an overuse of plastic bags which would make the environment even worse?*

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, according to information supplied to us by the Agriculture and Fisheries Department, approximately 1.8 million chicken carcasses were dumped in the landfills. Regarding the second part of the question, I hope that Members will understand that chickens have beaks and claws. At first, staff tried to put the chicken carcasses into one bag. However, the bag would be torn open by chicken beaks and claws. Therefore, later, they had to put the chicken carcasses into two or even three plastic bags. Also, as we need to pump carbon dioxide into the plastic bags, the plastic bags must be air-proof. Therefore, we had to put six to ten chickens into two or three plastic bags and then pump in carbon dioxide. It was not as simple as putting five chickens into one plastic bag.

**PRESIDENT** (in Cantonese): Mr Henry WU.

**MR HENRY WU** (in Cantonese): Madam President, I would like to ask a follow-up question. At first, the Government has tried to put the chicken carcasses into one plastic bag, but ended up by using three plastic bags. In theory, initially only about 80 000 plastic bags needed to be used, but the number of plastic bags actually used was thrice as much. Has the Government make a wrong calculation?

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, it is easy to say in retrospect that many things could have been avoided. In fact, when Government staff put the chickens into the bags, some chickens were not dead yet. As a result, the plastic bags were torn and carbon dioxide could not be pumped in. Therefore, we had no choice but to use one or two more plastic bags.

**PRESIDENT** (in Cantonese): Fourth question. Mr HUI Yin-fat.

### **Urban Redevelopment Projects of LDC**

4. **MR HUI YIN-FAT** (in Cantonese): *Regarding the 26 urban redevelopment projects announced by the Land Development Corporation (LDC) in early January this year,*

(a) *does the Government know:*

(i) *the number of property owners and tenants affected and details of the compensation;*

- (ii) *how the 2 000 housing units provided by the Hong Kong Housing Society will be allocated to all affected residents, and whether such units are sufficient to meet the rehousing need;*
  - (iii) *whether residents affected will be allowed to request for rehousing in their original districts; if not, why not;*
  - (iv) *the specific measures in place to assist affected elderly persons living on their own and households of two elderly persons who are not eligible to apply for housing units under the Housing for Senior Citizens Scheme administered by the Housing Authority, or those who are eligible but have not submitted their applications yet;*
  - (v) *whether the LDC will pledge to provide satisfactory rehousing to all affected residents; if not, why not; and*
- (b) *whether it will extend the Neighbourhood Level Community Development Project (NLCDP) to cover the 26 affected locations; if not, why not?*

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, as Mr HUI's question ask for a lot of information, please allow me more time to answer all the questions in detail. There are in fact six questions.

- (a) (i) The 26 redevelopment projects announced by the LDC on 2 January this year involve about 5 200 property ownerships and affect about 10 000 households. Part (a)(i) of the question concerns details about the acquisition of properties and compensation to tenants, which are given in Annexes A and B.

- (ii) The LDC expects the acquisition of properties for 19 out of the 26 projects to start around the end of this year or early next year. The remaining 7 projects will require the approval of the Town Planning Board and the Executive Council, and acquisition of properties may only start in 2000. As it normally takes several years to acquire properties and resume land under the Crown Lands Resumption Ordinance, the rehousing of tenants is expected to take place in or after 2000. By that time, the Housing Society (HS) will have completed about 1 600 rehousing units in the West Kowloon Reclamation Area to meet the demand of the first 19 projects. Some 1 400 units will be completed in Ma On Shan and Tseung Kwan O later on to meet the demand of the remaining 7 projects.

If there are tenants who need rehousing prior to the completion of the new rehousing units, the HS will make use of units in rental housing estates which are currently available for this purpose. The LDC will allocate the units in a fair and reasonable manner, and is seeking comments from the Independent Commission Against Corruption on the allocation procedures.

- (iii) The Government and the LDC understand that it is the wish of many residents living in old buildings in the redevelopment areas to continue living close to their old communities, work places or schools. Since the HS became the rehousing agent of the LDC projects, it has offered more choices to the residents affected by redevelopment in respect of both the locations and types of the rehousing units. At the same time, we are well aware that rehousing in the same district is impracticable in many cases because one of the prime objectives for urban redevelopment is to reduce the density of development and population in crowded areas. In the course of redevelopment, the LDC has all along been able to provide rehousing in urban areas, and at the same time, reserve units in the same district for priority allocation to households who are in genuine difficulties. This is the best arrangement that we can make in practice.

- (iv) The LDC has always attached great importance to taking care of the needs of elderly tenants. Of the 1 600 or so units to be built in the West Kowloon Reclamation Area by the HS, 30% are single-person units and 25% two-person units which can cater for eligible elderly persons living on their own or households of two elderly persons. The HS has also made available flats for senior citizens in some of its estates, and units which occasionally become vacant may also be used to house elderly tenants.

Furthermore, the LDC now has two professional social work teams working specifically in redevelopment areas. They offer the residents immediate assistance and counselling services through their out-reaching programmes, including the provision of services to elderly persons who are eligible to apply for housing under the Housing for Senior Citizens Scheme administered by the Housing Authority (HA). LDC will also refer cases of special needs to the Social Welfare Department and Housing Department for assistance.

- (v) If the owners affected by redevelopment do not deliver up vacant possession in the sale of their properties to the LDC, domestic tenants who meet all of the following requirements will be eligible for rehousing by the HS:
- (1) they must live in the affected buildings before the date on which the freezing survey is conducted;
  - (2) tenants living in the redevelopment areas or the families of these tenants must not own any residential property or have other accommodation in Hong Kong.
  - (3) they must pass the HS's household income test; and
  - (4) they must be lawful residents of Hong Kong.

The LDC will adhere firmly to its pledge that no eligible tenants will be rendered homeless as a result of its redevelopment projects.

- (b) NLCDPs were introduced in the 1970s to deprived communities where the provision of welfare services and facilities were considered inadequate or non-existent.

The first three criteria and one or more of the remaining criteria in the following list must be fulfilled for an area to be selected as a project area:

- (a) a population between 3 000 and 15 000;
- (b) the area would not be cleared within three years;
- (c) low income areas;
- (d) geographically isolated communities being remote from the town centre and not accessible to welfare services;
- (e) new settlement with inadequate welfare services;
- (f) heterogeneous communities with groups of conflicting interests, different ethnic groups or social classes; and
- (g) area with long-standing environmental or social problems.

Such areas include Temporary Housing Areas (THAs), squatter areas, boat squatters, Marks I-VI Public Housing Estates (PHEs) affected by the Housing Authority's Five-year Comprehensive Redevelopment Programme (CRP).

As the Government has already established the above policy to determine which areas would be provided with NLCDP service, we do not intend to consider the provision of NLCDP service merely on the basis that an area would be affected by the LDC's redevelopment projects.

*Compensation Principle*

The principles adopted by LDC for property acquisition based upon fairness and reasonableness are as follows:

1. Terms of purchasing private properties are based on the higher of two independent valuations in line with market value by professional valuers to ensure offers are fair and reasonable.
2. Owners are encouraged to employ their own independent surveyors and the Corporation is prepared to reimburse reasonable professional fees after conclusion of the purchase.
3. The LDC in principle follows the government policy on Home Purchase Allowance (HPA) which was passed by the Finance Committee of the Legislative Council on 25 April 1997. According to the Corporation policy, the LDC will pay to the owner-occupiers of domestic premises the market value of their properties plus an ex-gratia allowance (that is, HPA) so as to enable these owner-occupiers to purchase a 10-year old flat of similar size in the vicinity.
4. HPA is the cost of a replacement flat (assuming a 10-year old building in the same locality and having a similar area as that of the acquired flat) less the amount of the value assuming that the acquired property is vacant.
5. Assume the market value of a domestic unit on vacant possession (VP) basis is \$1 million and the cost of a replacement flat of 10 years old in the vicinity is \$2.4 million. Full HPA for owner-occupier is \$1.4 million.

Example 1: An owner of the above domestic unit who rents out the whole premises.

This owner will get the market existing tenancy (ET) value of this unit, which is \$800,000, and also 50% of the HPA, which is \$700,000. This means, the owner will get a total of \$1.5 million as his acquisition offer from LDC.



Example 2: An owner of the above domestic unit who occupies half of the premises and rents out the other half.

This owner will get the market ET value of this unit which is \$900,000, plus 50% of the HPA for the rented part which is \$350,000, and full HPA for the area occupied by the owner which is \$700,000. In total, this owner will get \$1.95 million.

Example 3: An owner of the above domestic unit who occupies the whole premises.

This owner will get the market VP value of this unit which is \$1 million, plus full HPA which is \$1.4 million. In total, this owner will get \$2.4 million.

6. Owner-occupiers of domestic flats can receive an additional \$100,000 to meet incidental costs. Owners who sell with existing tenancy can receive additional \$75,000 to meet incidental costs.
7. Properties in single ownership are valued on existing use or redevelopment value basis and an offer made on whichever is higher plus 10%.
8. A vacant site is valued on redevelopment basis plus 10% as offer.
9. Ex-gratia allowance for business owners of tenanted ground floor shops is based on the market value plus 20%. Ex-gratia allowance for business owner-occupiers of ground floor shops is the market value plus 35%. Business losses of over 35% will be compensated on substantiation by owners and acceptance by the Corporation.
10. Owners of other non-domestic premises will be offered market value of their premises plus 10%. Owner-occupiers may substantiate any amount beyond the 10% as properly payable for business loss or disturbance. Where applicable, owner occupiers can choose a higher offer to include an additional allowance on top of the market value to enable them to purchase reasonable secondary units of similar saleable floor area in the vicinity.
11. Calculation of the market value of a property is based on the saleable floor area of the property.

*Use of domestic properties**Basis of calculation for Home Purchase Allowance (HPA) and property market value*

- |   |  |
|---|--|
| 1. A single owner-occupied flat   | Full HPA plus vacant possession (VP) value   |
| 2. One owner-occupied flat and one flat occupied by the owner's immediate family                | Full HPA plus VP value for both flats  |
| 3. One owner-occupied flat and one wholly tenanted flat   | Full HPA plus VP value for owner-occupied flat and 50% HPA plus existing tenancy (ET) value for tenanted flat                    |
| 4. A wholly tenanted flat   | 50% HPA plus ET value  |
| 5. More than one wholly tenanted flat   | 50% HPA plus ET value for one flat, ET value with no HPA for the other   |
| 6. A vacant flat  | Full HPA plus VP value   |
| 7. A flat partially occupied by the owner and partially tenanted                                | Full HPA for the area occupied by the owner or his immediate family and 50% HPA for the tenanted area plus ET value for the flat |
| 8. A flat partially tenanted and partially vacant   | Full HPA for the vacant portion and 50% HPA for the tenanted area plus ET value for the flat                                     |
| 9. One flat partially occupied by the owner and partially tenanted and one wholly tenanted flat | As in item 7 above for the first flat, and 50% HPA plus ET value for the second  |

*Use of domestic properties**Basis of calculation for Home Purchase Allowance (HPA) and property market value*

- |   |  |
|---|--|
| 10. One flat wholly occupied by joint owners or a company where each individual owner/shareholder owns another one or more tenanted flats | Full HPA plus VP value for the first flat to each joint owner/shareholder pro rata, HPA plus ET value for the second flat to each joint owner/shareholder pro rata and ET value only with no HPA for the remaining flats |
|---|--|

- Note: (i) Calculation of LDC's HPA is based on a 10-year-old flat of market VP value.
- (ii) If owners of item 7 can prove to the satisfaction of the Corporation that they are well past retirement age, have no other source of income, neither do they own any other property and they rely on the rent to support themselves, LDC will consider increasing the amount of HPA.

Annex B

*Cash Compensation to Tenants*

## I. Domestic Tenants

All genuine residents who are affected by LDC redevelopment projects and whose owners sell the property to LDC on existing tenancy will be offered cash compensation. Tenants eligible for rehousing may opt to receive cash compensation in lieu of rehousing.

## (A) Principles of Cash Compensation

- (1) Basic Offer: Cash compensation is offered by LDC based on 5 x current rateable value, or in accordance with statutory compensation, whichever is higher.
- (2) Incentives: Tenants will be given an additional amount of 70%, 50% or 30% on top of basic offer if settlement is achieved within 1 month, 2 months or 3 months respectively from the offer date of compensation.

The following table shows statutory requirement on cash compensation as stipulated under the Landlord and Tenant (Consolidation) Ordinance:

Rateable Value (RV)	Statutory Compensation
\$0-\$30,000	7 times RV
the following \$30,001 - \$60,000	5 times RV
the following \$60,001 - \$90,000	3 times RV
the following \$90,001 and above	1 times RV

(B) Details of Cash Compensation

Compensation for individual households including principal tenants and sub-tenants is calculated on areas exclusively used or controlled by them plus pro-rata share of common areas.

- (1) Families with three members or more  
Cash compensation is the higher of the basic offer of \$100,000.
- (2) Two-person households  
Cash compensation is the higher of the basis offer or \$80,000.
- (3) Single-person households
  - a) bunk - higher of the basic offer or \$54,000.
  - b) bed space - higher of the basic offer or \$60,000.
  - c) cubicle - higher of the basic offer or \$70,000.
- (4) Non-resident principal tenants  
Principal tenants who are neither residing in the affected units nor holding possession of any portion of the affected units will be offered cash compensation of \$10,000.

- (5) Incentives: The above individual households and non-resident principal tenants will be given an additional amount of 70%, 50% or 30% on top of basic offer if settlement is achieved within 1 month, 2 months or 3 months respectively from the offer date of compensation.
- (6) The excess of rental received by the principal tenants from their sub-tenants over the rent paid by them to their landlord will also be compensated. Additionally, a corresponding rental reduction adjustment will be given to principal tenants for sub-tenanted portions surrendered to LDC.
- (7) Tenants accepting cash compensation will be refunded the last three months' rental paid.

(C) Conditions of Compensation

- (1) Tenants who opt for cash compensation will automatically forfeit any right for rehousing.
- (2) Principal tenants will receive all cash compensation for vacant rooms or rooms vacated by sub-tenants.
- (3) Tenants not accepting the areas for calculating compensation may appeal to the LDC Appeals Panel for adjudication.
- (4) All illegal structures built on or after the announcement of redevelopment will not be included for the purpose of calculating compensation.

(D) Payment

- (1) Tenants after signing the compensation agreement will receive half of the cash compensation, and the balance will be given to the tenants within 14 days after they have vacated the premises.

- (2) Cash compensation will be paid direct to the tenants by cheque.

## II. Ex-gratia Removal Allowance for Business Tenants

According to the existing legislation, business tenants whose tenancies are terminated by their landlords are not entitled to any compensation or other payments. However, the LDC has a policy of paying an ex-gratia removal allowance to business tenants whose owners sell with existing tenancy, which is terminated by the Corporation to facilitate the implementation of its redevelopment project.

The ex-gratia removal allowance is generally higher than that which may be payable by Government to business tenants upon resumption. Details are shown as below:

For business tenants who delivers vacant possession:

- (A) within 2 months after service of Notice To Quit (NTQ) can get 5 times of standard government rates
- (B) within 4 months after service of NTQ can get 4 times of standard government rates
- (C) within 6 months after service of NTQ can get 3 times of standard government rates

## III. Appeals

Affected residents not satisfied with compensation or rehousing package offered by LDC can appeal to the LDC Appeals Panels. The Panel will hear and decide on your appeal.

### Terms of Reference

The terms of reference for the Appeals Panel are:

- (1) the eligibility of domestic occupiers for rehousing by the Corporation;

- (2) the assessment of cash compensation payable to occupier in accordance with the Corporation's compensation package;
- (3) any other matters arising out of the clearance or rehousing of occupiers affected by the Corporation's schemes or proposals.

#### IV. Other Related Matters

- (1) During the process of acquisition, if no compensation agreement or rehousing offer is signed or accepted by the tenants, LDC must apply to a court of law to re-enter the premises in accordance with the Landlord and Tenant (Consolidation) Ordinance.
- (2) After the signing of the compensation agreement by the LDC and the tenants, either party cannot change the content of the agreement without the consent of the other party.

**PRESIDENT** (in Cantonese): Mr HUI Yin-fat.

**MR HUI YIN-FAT** (in Cantonese): I thank the Secretary for providing a detailed answer. In part (a) (i) of his answer, the Secretary said that the number of households affected by the 26 redevelopment projects is approximately 10 000. In part (a) (ii), he said that the number of units to be completed in the West Kowloon Reclamation Area, Tseung Kwan O and Ma On Shan will be 1 600 plus 1 400, that is, a total of 3 000 units. How can these 3 000 units meet the demands of 10 000 households? The Government also mentioned the Neighbourhood Level Community Development Projects (NLCDPs). In the past ten years, public housing residents affected by the HA's Comprehensive Redevelopment Programme (CRP) could benefit from the NLCDP service. Why is it that residents now affected by redevelopment cannot be benefited by this service?

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, my answer to the first supplementary question is, among the 10 000 households, some are property owners, for whom rehousing arrangements will not be made. As can be seen from Annexes A and B submitted to Members, these owners will receive cash compensation. Together with the home purchase allowance, this will hopefully enable them to purchase another flat. Therefore, there is no need for the Administration to provide rehousing for owners. According to past experience of the Land Development Corporation (LDC), some tenants would prefer cash compensation to rehousing arrangements. Thus, according to the present estimation of the LDC, 3 000 rehousing units are basically sufficient. Of course, this is only the present estimation. We have to wait for the reaction of tenants after the implementation of the plans before we know the actual circumstances in detail. However, even if there are not enough units, the HS can provide the households concerned with units in other estates which occasionally become vacant.

As for the second supplementary question, I cannot provide a detailed explanation here. However, I want to say that the communities now affected by projects of the LDC have different types of community services in their neighbourhood. Thus, their case is different from those of some other districts, where community services will have to be suspended or the community centre will have to be moved if the whole estate has to be cleared. Therefore, there is no need for the Administration to provide NLCDP service for these 26 districts. In my main answer, I mentioned that the LDC has set up two professional social work teams to assist affected residents in the redevelopment areas, especially elderly persons. Thus, direct services or other community services have already existed.

**PRESIDENT** (in Cantonese): Mr CHENG Kai-nam.

**MR CHENG KAI-NAM** (in Cantonese): *Madam President, according to the present policy of the LDC, it will pay the market value on vacant possession basis plus an ex-gratia allowance in acquiring units so as to enable their owners to purchase a flat about 10 years old of similar size. However, in the new sites of*



*the LDC, owners recently expressed dissatisfaction since in past acquisitions, the age criteria for replacement flats were set at five years. Will the Secretary inform this Council whether the Government agrees that for the new sites of the LDC, five-year old flats should also be used as the criterion for acquisition, in order to achieve the principle of fair treatment and fulfil the owners' aspirations?*

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, the compensation principles for acquisition have been established by the LDC on the basis of the home purchase allowance (HPA) approved by the Finance Committee of the former Legislative Council on 25 April 1997. I believe the use of five-year old flats as a compensation criterion mentioned by Mr CHENG is just an isolated case. What he means is the two redevelopment projects being carried out by the LDC in Kennedy Town and Tsuen Wan. These two projects have their own special background. For one thing, they have been delayed for a long time. Originally, the projects were to be carried out by the HS. Later, due to the increase in population and other reasons, the HS was unable to undertake these two development projects financially. They were taken up by the LDC a few years later. Therefore, the LDC considers these two projects as isolated cases and provides more generous HPA to owners to enable them to purchase flats of about five years old, while the actual policy is to provide HPA to owners to enable them to purchase ten-year old units. Therefore, for the subsequent 26 redevelopment projects, the LDC has no intention of changing this principle.

**PRESIDENT** (in Cantonese): Mr CHENG Kai-nam, do you wish to elucidate or follow up your question?

**MR CHENG KAI-NAM** (in Cantonese): Madam President, I would like to follow up my question. I believe that ten years is not a fixed term. Rather, they are a minimum term. Does the Secretary mean, in his reply, that for the new households affected by redevelopment, one has already decided on using ten-year old flats as the criterion for the compensation for flat acquisition?

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, a few days ago, the Chairman of the LDC already explained very clearly to the media that the LDC has no intention of changing this ten-year criterion for compensation flats.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG.

**MR FREDERICK FUNG** (in Cantonese): *Madam President, the Secretary answered our questions by referring to the resolution of the Finance Committee of the former Legislative Council. However, as I remember it, that was a minimum requirement. According to legislations relating to rents, the compensation to tenants is three, five or seven times of the rateable value. If I remember it correctly, the compensation principle of the LDC is: if tenants can vacate the flats within one month, an additional amount of 70% will be paid on top of the compensation of three, five or seven times. Thus, the latter is a statutory minimum. I also believe that the term of ten years that the Finance Committee of the former Legislative Council talked about is also a minimum term, rather than a term fixed by law. Viewing from this perspective, if more compensation has to be paid due to the nine-year delay of the redevelopment project in Tsuen Wan, will this encourage the present 26 projects to be delayed for nine years also, so that more compensation can be obtained? This policy will create injustice and confusion.*

**PRESIDENT** (in Cantonese): Secretary for Planning, Environment and Lands.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Madam President, first, I do not know why Mr FUNG takes this view. I hope Members can refer to the minutes of the Finance Committee of the former Legislative Council to find out whether this is the minimum requirement. I have read this document and the term of ten years is clearly written on it. Second, of course I hope that the 26 projects will be carried out according to schedule. I

would like to ask Mr FUNG in turn whether he is implying that residents can delay the projects for nine years. I mentioned that the LDC will begin acquisition and redevelopment in a few months' time. No one is thinking of waiting for nine years.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, do you wish to elucidate?

**MR FREDERICK FUNG** (in Cantonese): *I wish to elucidate. In the Secretary's initial reply to the Honourable CHENG Kai-nam's question, he said that because of the nine-year delay in the case of Tsuen Wan, instead of HPA for ten-year old flats, compensation has been paid on the basis of HPA for five-year old flats. Since HPA for five-year old flats is higher than HPA for ten-year old flats, I got the impression that the more the project is delayed, the more compensation one will get, while the faster the redevelopment, the less compensation one will obtain. That was why I asked my supplementary question.*

**PRESIDENT** (in Cantonese): Mr FUNG was clarifying his position. Therefore, there is no need for the Secretary to give an answer. Fifth question.

### **Corruption in Commercial Organizations**

5. **MISS CHOY SO-YUK** (in Cantonese): *Regarding the recent cases in which senior staff of commercial organizations in the territory were involved in corruption and abuse of power of their positions, will the Government inform this Council:*

- (a) *of the respective numbers of cases in the past year in which the staff of large, medium and small enterprises were found to have engaged in corrupt practices and abused the power of their positions;*
- (b) *of the details and the effectiveness of the efforts made by the Independent Commission Against Corruption (ICAC) to strengthen the prevention and detection of corrupt activities in commercial organizations in the past year; and*

- (c) *whether the authorities have looked into the relationship between the cases in question and the recent financial crisis in Asia; if so, what the findings are and what follow-up actions will be taken; if not, whether it will conduct such studies?*

**PRESIDENT** (in Cantonese): Chief Secretary for Administration.

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President,

- (a) of the corruption reports received by the ICAC in 1997, a total of 1 571 concerned the private sector, a decrease of 80 cases (-4.85%) compared with the 1 651 cases in 1996. In the same year, the Department of Justice instituted 179 prosecutions against corrupt practices in the private sector, an insignificant difference compared with the 180 cases in 1996. The enterprises involved in the corruption reports have not been classified by the ICAC into large, medium or small enterprises.
- (b) Since its establishment in 1974, the ICAC has all along adopted a "three-pronged approach", that is, detection, prevention and education, in fighting corruption.

On the detection front, apart from following up on corruption reports, a proactive approach has been adopted to uncover corruption offences. To combat corruption in the private sector, a more effective liaison network has been established with the Securities and Futures Commission (SFC), the banking industry and other important sectors in order to gather more intelligence and information. The ICAC has also made full use of information technology and accounting support in analyzing and handling the intelligence and information gathered. Moreover, efforts have been made to strengthen the ties with the Mainland and overseas law enforcement agencies in combating cross-boundary and international corruption offences in the private sector.

On the corruption prevention front, the Advisory Services Group of the ICAC provides, on request, free and confidential Internal Audit Services to individuals and the private sector to prevent corruption and fraud. Last year, the ICAC set up a Corruption Prevention Hotline to make it more convenient for private enterprises and individuals to enquire about corruption prevention. In 1997, a total of 212 enquiries were received from the private sector. Initial replies were given in respect of all the enquiries within 48 hours.

On the education front, as surveys revealed that not only the professional ethical standards of the business community and young people in Hong Kong were not high but also there were signs of decline, the ICAC is committed to enhancing education on corruption prevention for the business community. Over the past two years, staff from more than 160 large or listed companies were educated on corruption prevention and encouraged to draw up specific codes of conduct for better system controls in their companies. In addition, with the support of major chambers of commerce and professional associations in Hong Kong, the ICAC has organized large-scale seminars on business ethics and set up the Hong Kong Ethics Development Centre in 1995 to instil professional ethics in the business community and the younger generation, and to promote corruption prevention in the territory. In the coming year, the ICAC will focus on preventive education for the financial sector by the closely liaising with professional associations and bodies in the sector, strengthening communication with the Stock Exchange of Hong Kong and the SFC, organizing seminars, printing promotional booklets and producing teaching materials for wide publicity. Education on corruption prevention will be extended to small and medium-sized businesses in the near future.

- (c) In the wake of the recent financial turmoil in South East Asia, the ICAC will keep a close watch on the market and see if corruption activities are on the rise. However, in the light of the number of reports received and intelligence gathered by the ICAC since October last year, the problems of corruption and abuse of power in Hong Kong have not worsened as a result of the financial turmoil.

**PRESIDENT** (in Cantonese): Miss CHOY So-yuk.

**MISS CHOY SO-YUK** (in Cantonese): *Madam President, I am grateful for the Government's reply. May I ask whether there will be any particular changes in or improvements to the focus, strategy and method of the work of the ICAC in the coming three to five years?*

**PRESIDENT** (in Cantonese): Chief Secretary for Administration, although this question strays somewhat from the subject, will you please answer it if you are prepared to do so?

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): Madam President, as far as I know, there will not be any major changes in the ICAC in terms of policy, education and investigation. They will mainly follow the lines which I mentioned in the main reply.

**PRESIDENT** (in Cantonese): Last oral question. Mr Howard YOUNG.

### **Opening of Roads to Tourist Coaches**

6. **MR HOWARD YOUNG** (in Cantonese): *Will the Government inform this Council whether it will consider opening the roads leading to the Po Lin Monastery and the Big Buddha on Lantau Island to tourist coaches operated by travel agents; if not, why not?*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, the principal roads on Lantau are the east-west South Lantau Road, the restrictive north-south Tung Chung Road and the access roads to the Po Lin Monastery and Tai O from South Lantau Road. Access to Lantau used to be by sea only. With the development of the airport, Tung Chung Road is now connected with the urban area via the Lantau Link.

Government policy is to preserve South Lantau as a conservation and recreational area. There is therefore restriction on the amount of vehicular traffic on Lantau. Road permits are issued only to residents of South Lantau or Tung Chung old villages and vehicles engaged in goods transportation, construction and utility works on the island. In addition, use of Tung Chung Road and Ngong Ping Road is subject to restriction and prohibition for safety or traffic flow reasons. Visitors to Lantau beyond Tung Chung New Town, including tourists, have to use public transport.

With the availability of the Lantau Link, there have been suggestions from the local community and the public to relax the restrictions on Tung Chung Road. There are however serious problems. Tung Chung Road was originally an access road for construction vehicles. It has only one lane, and the two-way traffic is catered for by 37 passing bays along the road. Owing to the terrain, the road has sharp bends and steep gradients in many parts as steep as 1 in 6, that is, as in Old Peak Road, and is not suitable for heavy traffic. The alignment also severely restricts the type and number of vehicles that can use it. The road is not suitable for large tourist coaches, particularly if they are driven by drivers who are not familiar with the local road conditions.

Local improvement works have been and will continue to be undertaken to enhance the standard of Tung Chung Road to make it safer. However, because of the difficult physical terrain and constraints imposed by the Country Park boundaries, we will not be able to upgrade the road to such an extent as to substantially increase its capacity.

In the longer term, we have to build another north-south Lantau Road. There are plans to build a new road branching off from the North Lantau Highway in Tai Ho Wan in North Lantau and leading to Mui Wo in South Lantau. Subject to engineering feasibility, we hope to see the road completed by 2004. With the improvement of the road system, we would be able to consider relaxing restrictions to vehicles, including tourist coaches, using the roads on Lantau to gain access to Po Lin Monastery and the Big Buddha.

We are conscious that an increasing number of tourist groups are going to visit Lantau via the Lantau Link. We have been taking measures to facilitate such visits. Ample parking spaces have been provided at Tung Chung New Town to facilitate interchange for Lantau buses by tourists travelling from the urban area to Tung Chung. There have also been arrangements for chartered buses on Lantau to be made available to tourist groups. Transport Department will be happy to further discuss with transport and tourist operators to examine what additional measures can be taken to facilitate visits by tourist groups to the Big Buddha.

**PRESIDENT** (in Cantonese): Mr Howard YOUNG.

**MR HOWARD YOUNG** (in Cantonese): *Madam President, in his main reply, the Secretary mentioned the concern that Tung Chung Road might not be suitable for large tourist coaches, which I accept. However, the vehicles of some travel agencies are not necessarily large coaches. They might be mini buses with some ten or twenty seats. Will the Secretary consider issuing them a special permit to use Tung Chung Road under certain restrictions?*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, in my main reply, I have already pointed out very clearly that the crux of the problem is that two-way traffic is not suitable on Tung Chung Road. It is only 3.5 m wide, while the standard width for the average two-lane traffic road is 7.3 m. Thus, there should only be one-lane traffic on Tung Chung Road. At present, two-way traffic is made possible only by the over 30 passing bays, allowing vehicles to make way for one another. There is also not much of a pedestrian pavement on the two sides of the road. It is not that the Government does not want to improve Tung Chung Road, but as I said just now, the road was originally meant for construction vehicles only. Due also to the terrain, we cannot upgrade this road to enable it to be up to standard. In the short term, since there is no way to improve it, we have to restrict the number of vehicles using that road. Although Tung Chung Road is not up to standard, to meet the traffic demand of local residents, it is almost used



at the maximum level. Under these circumstances, we cannot add to its burden further and allow outside vehicles to use it. Apart from the problem that drivers unfamiliar with that district are not fit to use that road, in terms of volume, we have to give priority to local residents to use that road to meet the local demand. However, we are happy to provide assistance to tourist groups or members of the travel industry and give tourist groups more direct access to visit Lantau under certain restrictions. As for what concrete assistance can be provided, the operators can discuss further with the Transport Department.

**PRESIDENT** (in Cantonese): Mr TAM Yiu-chung.

**MR TAM YIU-CHUNG** (in Cantonese): *Madam President, it so happened that this morning, six Members of this Council were invited by the Islands District Board to inspect the traffic conditions of Lantau Island. Local residents criticized that it is not enough to just undertake scattered improvement works for the north-south traffic of Lantau Island. The Government will look into the traffic flow between Tai Ho Wan and South Lantau. Has development been delayed because the Government does not attach enough importance to the development of the north and south of Lantau Island? Will the Government hasten to catch up in order to solve the traffic problems of that area?*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, under the policy of permitted land use and land development on Lantau Island, we still feel there is a need to continue to enhance and develop the road network on Lantau Island. While the east and west of Lantau are already well provided, the north-south network is obviously inadequate. Therefore, we propose to build a new north-south road from Tai Ho Wan to Mui Wo. We are actively conducting a preliminary feasibility study of the project. We already have a degree of certainty about its feasibility and how long it would take. Our target is to complete it by 2004. Therefore, road improvements are necessary. As to how Lantau Island will develop in the long term, there will only be concrete development projects after the completion of the South-West New Territories Development Strategy

Review. If there are other developments on Lantau Island in the future, they will naturally be matched by good infrastructure facilities.

**PRESIDENT** (in Cantonese): Mr HO Sai-chu.

**MR HO SAI-CHU** (in Cantonese): *Madam President, first, Mr TAM has already asked part of my question. But I still wish to ask another supplementary question. I am very pleased to hear that the project on Lantau Island and Tai Ho Wan will probably be feasible. But what if it turns out to be infeasible, does it mean that it is only then will other studies be conducted? Under these circumstances, should there not be one or two plans more to ensure better transport arrangements?*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, Madam President, I reiterate that the long term development and infrastructure demand of Lantau Island will only be clear when the South-West New Territories Development Strategy Review is completed. However, judging from the present development and demand on Lantau Island, we consider that there is a need to build a new north-south route. Apart from the north-south route between Tai Ho Wan and Mui Wo, we hope to begin another study soon on the feasibility of building several roads linking Tung Chung and West Lantau. If this road project is feasible, motorists can travel from the urban area to West Lantau via the Lantau Link, the Lantau highway and Tung Chung New Town. From there, there might be roads to Ngong Ping. We estimate that this study will take about eight months to complete. If the project is feasible and we decide to implement it, this road will be completed in around 2006. However, the Lantau north-south route linking Tai Ho Wan and Mui Wo has the priority now.

**PRESIDENT** (in Cantonese): Mr Kennedy WONG.

**MR KENNEDY WONG** (in Cantonese): *Madam President, in the last paragraph of his main answer, the Secretary for Transport mentioned the bus services on Lantau Island. Both the main question and answer acknowledged that the Po Lin Monastery and the Big Buddha are important tourist sites in Hong Kong. In the main answer, it was mentioned that there are ample parking spaces at Tung Chung New Town to facilitate parking by visiting tourists so that they can change to buses. However, Madam President, as far as I know, the number of runs of buses is very limited and might not be able to meet the demand of tourists during peak seasons and holiday, so that they can reach these two scenic spots in the fastest way. Has the Government considered reviewing the bus service on Lantau or enhancing these special tourist lines so that one can reach the Po Lin Monastery and the Big Buddha directly from Tung Chung?*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, we understand that with the development of Tung Chung New Town and the opening of the Lantau Link, there will definitely be more people travelling to Tung Chung, where they will change to other transport means to go to other tourist spots on Lantau Island. Therefore, we have already reviewed the bus service on Lantau Island. We have opened a new bus route No. 23 from Tung Chung to the Po Lin Monastery. This bus route operates at an interval of 12 minutes on weekdays and at an interval of 5 minutes on weekends. During the tourist peak season, there will also be additional runs. Thus, in terms of bus service, we already have a basic supply. If the need should arise in the future, we will direct the New Lantau Bus Company to enhance their service to meet the demand. Apart from bus service, another transport means is taxi. At present, there are 50 taxis providing service on Lantau Island. The number of taxis has increased from 40 before May, 1997 to 50. However, we will still look at the actual situation. If there is a need, we will certainly consider enhancing other transport facilities.

**PRESIDENT** (in Cantonese): Mrs Miriam LAU.

**MRS MIRIAM LAU** (in Cantonese): *Madam President, the study on the new road connecting North and South Lantau has commenced and the road will only be completed by 2004 at the very earliest. The Government has only now begun the study on this new road. Does this mean it has only now realized that the traffic to South Lantau will be greatly increased after the completion of the new airport and the Lantau Link? If it has not only now realized that it would be a great burden, why did it not commence the relevant study during the development of the new airport? If the Government had done this then, I believe we will have this new road by now.*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): Things have to be done according to priorities. The prior consideration is of course the development of the new airport and Tung Chung New Town. Priority is accorded to providing access to Tung Chung New Town and the new airport as well as the transport connection with the urban area. In fact, under the present development policy of Lantau and considering the state of development beyond Tung Chung Town in Lantau, Tung Chung Road can just meet the transport needs of Lantau residents. In the long run, after the completion of the Lantau Link, the number of people travelling from the urban area to Lantau is bound to increase. Therefore, it is not too late to start to catch up now.

**PRESIDENT** (in Cantonese): This question has in fact taken up more than 15 minutes. However, since two preceding questions have not used up their 15 minutes, I will allow Members to ask two more supplementary questions.

**MR CHAN CHOI-HI** (in Cantonese): *Madam President, the focus of Mr Howard Young's question is actually on how to go up the hill and reach Po Lin Monastery and the Big Buddha on Lantau Island. Apart from improving the road network, there are many ways to go up the hill. Apart from travelling by car, one can walk.*

*Will the Government consider encouraging private developers to participate in the development or will it consider using a peak tram? The peak tram facility could bring tourists to the hilltop on Lantau and can also help develop properties on the slopes. Has the Government considered developing a peak tram service?*

**PRESIDENT** (in Cantonese): Secretary for Transport.

**SECRETARY FOR TRANSPORT** (in Cantonese): The idea of a peak tram service is quite original. However, whether it is feasible is another question. Actually, there have been suggestions to give access to Ngong Ping through a cable car system. But this is the first time I have heard about a suggestion of a peak tram service. In the interim recommendations of the strategy review on Southwest New Territories, there is a suggestion to build a cable car system to connect Tung Chung and Ngong Ping to provide more transport alternatives. The Territory Development Department is now conducting a feasibility study which will hopefully be completed by the end of next year. We will know whether we could provide travellers with one more transport alternative only after the completion of the study.

**PRESIDENT** (in Cantonese): Mr MOK Ying-fan.

**MR MOK YING-FAN** (in Cantonese): *Madam President, the Secretary has already answered the question I would like to ask. I wanted to ask whether the Administration will consider using transport modes such as cable car or peak tram, rather than building roads for buses, since we know that the exhaust fumes of tourist coaches will pollute the environment. I feel that using either cable car or peak tram will be feasible methods. Since the Secretary has already given a reply, I think he need not answer further.*

## WRITTEN ANSWERS TO QUESTIONS

### Hygiene and Cleanliness in Hong Kong

7. **MR LEE KAI-MING** (in Chinese): *At the Question and Answer Session of this Council on 15 January this year, the Chief Executive stated that the standard of hygiene and cleanliness in Hong Kong had deteriorated in recent years. In this connection, will the Government inform this Council of:*

- (a) *the number of cases of littering resulting in prosecution last year, how this figure compares with that in each of the three years before last; and*
- (b) *the measures currently adopted for improved the hygiene and cleanliness conditions in Hong Kong?*

**SECRETARY FOR BROADCASTING CULTURE AND SPORT** (in Chinese):

Madam President, based on the information provided by the Urban Services Department (USD) and the Regional Services Department (RSD), my answers to the Honourable LEE Kai-ming's question are as follows:

- (a) Over the year both Departments had taken prosecution action against a total of 41 413 persons for littering. The prosecution figures stood at 36 238, 35 495 and 39 142 in 1994, 1995 and 1996 respectively and were on steady increase during the past two years. The Departments concerned will step up prosecution action against offenders in future with a view to making the public more conscious of the importance of keeping their surroundings clean.
- (b) The Provisional Urban Council (PUC) and the Provisional Regional Council (PRC) are very much concerned about environmental hygiene in Hong Kong. Since the "Joint UC/RC Keep Hong Kong Clean Steering Committee" was formed in 1996, the Councils have actively launched the Clean Hong Kong Campaign to educate the public the importance of maintaining environmental hygiene and cleanliness through publicity and District Involvement Project.

To strive for continued improvement in local hygiene and cleanliness, the Councils conduct regular reviews on the themes and strategy of the Clean Hong Kong Campaign in order to cope with the needs of the community. The Clean Hong Kong Campaign for 1998-99 will still go for public participation, reminding the public to reduce wastes and focusing on the younger generation by letting them know that as citizens of Hong Kong, they do have the obligation in keeping Hong Kong clean.

To further improve the cleanliness in public places, RSD is planning to strengthen its monitoring on private cleansing contractor by taking penalizing actions under the contract provisions. In addition, a monthly appraisal system will be introduced to form one of the criteria for considering future bids for PRC's contracts submitted by individual contractor.

Moreover, USD and RSD have raised the standard of market cleanliness, requesting additional manpower and specialized equipments from market cleansing contractors so as to keep public toilets (P.Ts), as well as other public places, in the markets in a fairly clean condition.

The environmental hygiene of P.Ts is an area of concern for the two Councils which regularly review the standard of P.T. services to ensure that the hygienic condition of P.Ts can be of better standard. "An Ad Hoc Committee to Review the Provision of Public Toilet Facilities in the Regional Council Area" was set up in May 1996 to examine ways for improving the provision and management of P.T. and aqua-privy toilet facilities in the RC area.

### **Code on Access to Information**

8. **MR CHOY KAN-PUI** (in Chinese): *According to the "Code on Access to Information", the public can seek information from government departments. It is reported that, as at the end of last year, a total of 3 358 of such requests were received by various government departments. In this connection, will the Government inform this Council, among these requests:*

- (a) *of the number of those cases which were provided with information by government departments, and the major categories of information involved; and*
- (b) *of the details of those cases in which information was not provided, including:*
  - (i) *the major categories of information involved;*

- (ii) *the reasons for not providing the information; and*
- (iii) *the government departments concerned and their respective numbers of cases?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President,

- (a) From 1 March 1995 (when the Code on Access to Information was introduced) up to 31 December 1997, government departments received a total of 3 358 requests for information under the Code. Of these, 2 906 were met, either in full (2 837) or in part (69). We do not keep separate statistics on the types of information sought. However, the documents commonly requested include decisions on government policies, details of services provided by individual departments, minutes of meetings, consultancy reports, case records, statistics, development plans and other operational data.
- (b) Of the 3 358 requests received, 89 were rejected.
  - (i) As mentioned in (a) above, no separate statistics are kept on the types of information sought. Some examples of the rejected cases are internal discussion papers, personal information, case records, commercial information and plans of development, and so on.
  - (ii) The Code requires departments to provide information unless there are specific reasons for not doing so. These reasons are set out in the Code. A copy of Part 2 of the Code is attached for reference. The breakdown of the reasons for refusal, by reference to the relevant paragraph in the Code, is as follows:



<i>Relevant paragraph in the Code</i>	<i>Reasons for refusal</i>	<i>Frequency</i>
2.3	Defence and security	2
2.4	External Affairs	1
2.5	Nationality, immigration and consular matters	2
2.6	Law enforcement, legal proceedings and public safety	11
2.9	Management and operation of the public service	15
2.10	Internal discussion and advice	12
2.11	Public employment and public appointments	2
2.12	Improper gain or advantage	2
2.13	Research, statistics and analysis	8
2.14	Third party information	16
2.15	Privacy of the individual	18
2.16	Business affairs	5
2.17	Premature requests	12
2.18	Legal restrictions	1
Total		107

The "frequency" total (107) exceeds the number of rejected applications (89) because, in some instances, there were more than one reason for rejection.

(iii) The agencies involved in the 89 refusal cases are:

<i>Department</i>	<i>No. of cases</i>
Agriculture and Fisheries Department	1
All registries and administrative offices of courts and tribunals for which the Judiciary Administrator has responsibility	7
Architectural Services Department	3
Audit Commission	1

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<i>Department</i>	<i>No. of cases</i>
Broadcasting, Culture and Sport Bureau	2
Buildings Department	3
Census and Statistics Department	1
Civil Engineering Department	1
Civil Service Bureau	3
Companies Registry	1
Correctional Services Department	2
Economic Services Department	2
Environmental Protection Department	4
Financial Services Bureau	1
Highways Department	2
Home Affairs Bureau	1
Home Affairs Department	9
Hong Kong Police Force	1
Housing Department	6
Immigration Department	1
Independent Commission Against Corruption	1
Labour Department	1
Land Registry	10
Lands Department	3
Legal Aid Department	2
Planning Department	6
Rating and Valuation Department	2
Regional Services Department	1
Security Bureau	4
Social Welfare Department	6
Water Supplies Department	1
Total	89

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**Code on Access to Information****PART 2*****INFORMATION WHICH MAY BE REFUSED***

- 2.1 A department may refuse to disclose information, or may refuse to confirm or deny the existence of information, in the categories and for the reasons set out below, which will normally be referred to if a request is refused.
- 2.2 References in this Part to "harm" and "prejudice" include both actual harm and prejudice and the risk or reasonable expectation of harm and prejudice. In such cases the department will consider whether the public interest in disclosure of the information outweighs any harm or prejudice that could result.

***DEFENCE AND SECURITY***

- 2.3 (a) Information whose disclosure would harm or prejudice Hong Kong's defence.
- (b) Information whose disclosure would harm or prejudice Hong Kong's security.

***EXTERNAL AFFAIRS***

- 2.4 (a) Information whose disclosure would harm or prejudice the conduct of external affairs, or relations with other governments or with international organizations.
- (b) Information received in confidence from and conveyed in confidence to other governments, courts in other jurisdictions, and international organizations.

*NATIONALITY, IMMIGRATION AND CONSULAR MATTERS*

- 2.5 (a) Information relating to immigration or nationality cases.
- (b) Information whose disclosure would harm or prejudice the administration of nationality, registration of persons or immigration matters, or the performance of consular functions as an agent for other governments.

*LAW ENFORCEMENT, LEGAL PROCEEDINGS AND PUBLIC SAFETY*

- 2.6 (a) Information whose disclosure would harm or prejudice the administration of justice, including the conduct of any trial and the enforcement or administration of the law.
- (b) Information whose disclosure would harm or prejudice the conduct or impartial adjudication of legal proceedings or any proceedings conducted or likely to be conducted by a tribunal or inquiry, whether or not such inquiry is public or the disclosure of the information has been or may be considered in any such proceedings.
- (c) Information which relates to proceedings which have been completed, terminated or stayed, or which relates to investigations which resulted in or may have resulted in proceedings, whether any such proceedings are criminal or civil.
- (d) Information which would be privileged from production in legal proceedings on the ground of legal professional privilege.
- (e) Information whose disclosure would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison.
- (f) Information whose disclosure would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.

- (g) Information whose disclosure might endanger the life or physical safety of any person (whether or not such person is in Hong Kong), or identify the source of information or assistance given in confidence for security purposes, or for the enforcement or administration of the law.

#### ***DAMAGE TO THE ENVIRONMENT***

- 2.7 Information whose disclosure would increase the likelihood of damage to the environment or to rare or endangered species and their habitats.

#### ***MANAGEMENT OF THE ECONOMY***

- 2.8 Information whose disclosure would harm or prejudice the conduct of monetary policy, the maintenance of stability in financial markets, or the ability of the Government to manage the economy.

#### ***MANAGEMENT AND OPERATION OF THE PUBLIC SERVICE***

- 2.9 (a) Information whose disclosure would harm or prejudice negotiations, commercial or contractual activities or the awarding of discretionary grants and ex-gratia payments by a department.
- (b) Information whose disclosure would harm or prejudice the competitive or financial position or the property interests of the Government.
- (c) Information whose disclosure would harm or prejudice the proper and efficient conduct of the operations of a department.
- (d) Information which could only be made available by unreasonable diversion of a department's resources.

#### ***INTERNAL DISCUSSION AND ADVICE***

- 2.10 (a) Papers prepared for, and records of meetings and deliberations of the Executive Council.

- (b) Information whose disclosure would inhibit the frankness and candour of discussion within the Government, and advice given to the Government. Such information may include -
  - (i) records of discussion at any internal government meeting, or at any meeting of a government advisory body;
  - (ii) opinions, advice, recommendations, consultations and deliberations by government officials or advisers to the Government.

#### ***PUBLIC EMPLOYMENT AND PUBLIC APPOINTMENTS***

- 2.11 Information which would harm or prejudice the management of the public service.

#### ***IMPROPER GAIN OR ADVANTAGE***

- 2.12 Information whose disclosure could lead to improper gain or advantage.

#### ***RESEARCH, STATISTICS AND ANALYSIS***

- 2.13 (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the department or any other person of priority of publication or commercial value.
- (b) Information held only for preparing statistics or carrying out research, and which relates to individuals, companies or products which will not be identified in reports of that research, or in published statistics.

#### ***THIRD PARTY INFORMATION***

- 2.14 (a) Information held for, or provided by, a third party under an explicit or implicit understanding that it would not be further disclosed. However such information may be disclosed with the third party's consent, or if the public interest in disclosure outweighs any harm or prejudice that would result.

- (b) Information provided in confidence by a third party if disclosure to the subject of the information would harm his or any other individual's physical or mental health, or should only be made to him by an appropriate third party.

### ***PRIVACY OF THE INDIVIDUAL***

2.15 Information about any person (including a deceased person) other than to the subject of the information, or other appropriate person, unless -

- (a) such disclosure is consistent with the purposes for which the information was collected, or
- (b) the subject of the information, or other appropriate person, has given consent to its disclosure, or
- (c) disclosure is authorised by law, or
- (d) the public interest in disclosure outweighs any harm or prejudice that would result.

### ***BUSINESS AFFAIRS***

2.16 Information including commercial, financial, scientific or technical confidences, trade secrets or intellectual property whose disclosure would harm the competitive or financial position of any person.

### ***PREMATURE REQUESTS***

2.17 Information which will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.

### ***LEGAL RESTRICTIONS***

2.18 Information whose disclosure would constitute -

- (a) a contravention of any law which applies in Hong Kong, or
- (b) a breach of any obligation arising under common law or under any international agreement which applies to Hong Kong.

**Health Information System**

9. **MR HUI YIN-FAT** (in Chinese): *The Report of the Working Party on Primary Health Care (the Report) published by the Government in 1990 recommended the development of a health information system to improve the collection, analysis and utilization of information about health. In this connection, will the Government inform this Council whether:*

- (a) *the Department of Health has developed the health information system and made improvements as recommended by the Report; if not, why not; and*
- (b) *this information system dovetails with researches in primary health care?*

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

- (a) The Department of Health has actively pursued the development of computerized health information systems, and has achieved good progress in some of its major service areas:
  - (1) the operation of the Student Health Service has been computerized since 1995, and the clinical findings have been entered into the computer for record;
  - (2) computerization of the Maternal and Child Health service is underway and is scheduled for completion in 2000;
  - (3) the dispensary service of the Department's General Out-patient Clinics has been computerized since 1995. A database on medications taken by chronic patients has been established;
  - (4) the Department has commissioned a consultancy study to examine how to fully implement computerization in the General Out-patient Clinics in order to improve the quality of service.



- (b) The Department of Health's developing health information systems can assist in a wide range of departmental functions, including patient care, service planning and primary health care research. For example, the data collected by the Maternal and Child Health Service and the Student Health Service can support the research on the health status of local children and the trends of common diseases faced by them. The health data collected by the General Out-patient Service can support the surveillance programme on communicable diseases and the assessment on the effectiveness of different treatment regimens.

### **Protective Clothing for Workers at Chicken Stalls**

10. **DR TANG SIU-TONG** (in Chinese): *It is reported that some workers did not wear the protective clothing specified by the authorities when working at chicken stalls, and they claimed that wearing the specified gloves would hinder the chicken slaughtering work. In this connection, will the Government inform this Council:*

- (a) *of the measures in place to urge these workers to put on the specified clothing; and*
- (b) *whether it will consider improving the design of the gloves?*

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

- (a) According to the Urban Services Department and Regional Services Department, poultry operators will be required shortly to wear protective clothing under a set of new conditions attached to the tenancy agreements. Health inspectors will take necessary enforcement actions against offenders.

- (b) With regard to the claims that wearing the specified gloves would hinder the slaughtering work, Urban Services Department and Regional Services Department have considered further. Workers will not be required to wear gloves in order to facilitate the work of slaughtering chickens.

### **Construction of Low-level Radioactive Waste Storage Facility**

11. **DR TSO WONG MAN-YIN** (in Chinese): *With regard to the authorities' plan to construct a low-level radioactive waste storage facility at Siu A Chau, will the Government inform this Council:*

- (a) *of the respective costs involved in the design, construction and operation of the facility;*
- (b) *of the progress of the relevant tendering works; and*
- (c) *whether it has discussed with the relevant Mainland authorities the disposal of the territory's low-level radioactive waste in the Mainland; if so, what the outcome is; if not, why not?*

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

- (a) The estimated costs for the design and construction of the facility at December 1997 price levels were about \$12 million and \$71 million respectively. The annual operation costs were about \$3 million.
- (b) We are currently re-examining the scope of the project due to a significant reduction of the waste forecasts after a major waste producer ceased operating in Hong Kong. We plan to re-tender the project with the revised scope later this year.
- (c) We have not discussed the disposal of our low-level radioactive waste with Mainland authorities. It is our view that hazardous wastes should be treated and disposed of where they are produced.

**Fair Competition in Telecommunications Market**

12. **DR LAW CHEUNG-KWOK** (in Chinese): *In the wake of the Government's decision on the early termination of the exclusive licence held by Hong Kong Telecom International Limited, many providers of "call-back services" in the telecommunications industry worry that they may be deprived of opportunities to develop their business. In this connection, will the Government inform this Council of the measures in place to remove the operators' anxieties and convince them that, with the termination of the exclusive licence, the external telecommunications market will be fully opened and will provide a level playing field for all of them?*

**SECRETARY FOR ECONOMIC SERVICES** (in Chinese): Madam President, the Government's policy regarding competitive external telecommunications services is set out in paragraph 10 of the Policy Statement "Liberalization of Hong Kong's External Telecommunications" issued on 20 January 1998. This reads:

"In accordance with the Government's established policy of not limiting the number of services-only operators, a new non-exclusive external services licence will be drafted. This new licence will be similar in form to the International Simple Resale of Facsimile and Data licence. Applications for the new licence will not be invited until after the Government completes its FTNS review in mid 1998 and, in any event, new licences would not be effective until after 1 January 1999. Final decisions on who may apply, the number of licences, the scope of licences and relevant terms and conditions have not been taken yet."

Final arrangements for the external telecommunications services market will be determined following public consultations through the FTNS review mentioned above and the current review of the delivery fee arrangements. The views of the call-back operators will be important inputs to these reviews. We are committed to full competition in the external telecommunication services market, in a sustainable manner, over a level playing field.

Given the concerns of the call-back operators, we are prepared to bring forward the FTNS review to commence from 1 April 1998. This will enable us to complete the review early enough to issue non-exclusive licences before 1 January 1999.

### **Effectiveness of the Personal Data (Privacy) Ordinance**

13. **MR KENNEDY WONG** (in Chinese): *In view of the recent series of incidents involving the unauthorized use of the personal data of clients, will the Government inform this Council:*

- (a) *whether it has reviewed the effectiveness of the Personal Data (Privacy) Ordinance (PDPO); if so, what the outcome is;*
- (b) *whether it will take measures to deter the unlawful use of the personal data of members of the public; if so, what the details are; and*
- (c) *whether it is aware if the Office of the Privacy Commissioner for Personal Data has any plans to step up the publicity on the principles for protecting personal data; if the Office has such plans, what the details are?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): Madam President,

- (a) Since the implementation of the PDPO (Cap. 486), which took effect on 20 December 1996, the community as a whole has become more conscious of the importance of protecting individuals' right to privacy in respect of personal data. This is evident from media coverage and the 11 413 enquiries and 254 complaints received by the Privacy Commissioner for Personal Data ("PC") during the period from 20 December 1996 to 31 January 1998. Feedback received by Home Affairs Bureau and the PC's Office ("PCO") confirms that generally data users have been taking active steps to comply with the PDPO.

A public opinion survey commissioned by the PCO was completed in March 1997. It showed that:

- (i) 56% of the individuals surveyed indicated awareness of the PDPO; and
- (ii) 72% of the organizations surveyed indicated that they had received booklets and pamphlets from the PCO; 32% had attended a seminar or talk in which the PCO participated; 83% said they had begun to prepare for compliance with the PDPO; and around 60% said the PDPO would have long-term benefit for data users.

Nothing in the survey results indicates a need to undertake a review of the effectiveness of the Ordinance at this early stage and we have not done so. The survey will be repeated annually, with the next one already underway. Comparison of the results of the surveys will give more information on the effectiveness of the PDPO in protecting personal data privacy.

- (b) Generally speaking, the misappropriation of personal data of individuals, depending on the nature and circumstances of such misappropriation, will be likely to involve the contravention of one or more of the data protection principles, in particular data protection principles 1, 3 and 4 in Schedule 1 to the PDPO. The contravention of a data protection principle is not in itself a criminal offence. However, the PC may issue an enforcement notice in order to prevent the repetition or continuation of such a contravention. Under section 64(7) of the PDPO, failure to comply with an enforcement notice is an offence punishable by a fine of \$50,000 and imprisonment for two years; in the case of a continuing offence, a daily penalty of \$1,000 may be imposed. Moreover, under section 66(1) and (2) of the PDPO, a data subject who has suffered damage, including injury to feelings, as a result a contravention of the PDPO including the contravention of a data protection principle, shall be entitled to compensation from the person committing the contravention. To enforce such entitlement to compensation, the individual concerned may pursue a civil claim through the courts.

One possible factor in the misappropriation of personal factor is shortcoming in security measures. In the course of its checks to ensure compliance with the PDPO, the PCO has examined the details of the security measures adopted by certain companies where there were suspected breaches of security in relation to clients' information. In none of these cases did the PCO identify any security shortcoming. The PCO will continue with such compliance checks as far as its resources permit.

Depending on the circumstances in which the personal data in question are misappropriated, the misappropriation may involve criminal offences unrelated to the PDPO. For example, if the personal data are misappropriated through bribery, the persons committing the bribery are liable to fine of \$500,000 and imprisonment for seven years under section 12(1)(a)(iii) of the Prevention of Bribery Ordinance (Cap. 201).

The measures described in paragraphs 4 to 6 above should provide effective deterrent against the misappropriation of personal data. The Law Reform Commission has been conducting a general review of the law relating to privacy. In the light of the Commission's reports expected to be issued this year, the Government will consider whether any additional measures to protect privacy are required.

- (c) Since its establishment on 1 August 1996, the PC's Office has devoted considerable effort to publicizing and promoting public awareness of the requirements of the PDPO in general and the data protection principles in particular. These efforts have included printed guides to data users and data subjects, announcements on television and radio, posters, press briefings and seminars. Such efforts are continuing. There is currently a television and radio campaign and roadshows are being held at various shopping malls to promote awareness among the general public. The PCO continues to provide seminars and to prepare and distribute guidance materials on compliance with the PDPO. It also intends to issue guidelines on the security of personal data later this year and will continue to ensure that appropriate publicity is given to cases where breaches of the PDPO are found to have occurred following investigations by the PCO, including cases such as those referred to in this question.

**Relationship between West Rail's Capital Structure and Its Fare Levels**

14. **DR LAW CHEUNG-KWOK** (in Chinese): *Will the Government inform this Council of the detailed rationale regarding its view that there is only an indirect relation between the "capital structure" and the fare levels of the West Rail?*

**SECRETARY FOR THE TREASURY** (in Chinese): Madam President, the capital structure reflects the means through which Kowloon-Canton Railway Corporation (KCRC) will fund the investment required in the West Rail. It consists of a mix of equity, loans and other funding sources.

KCRC will develop its fare policy for the West Rail independently of its existing business, having regard to prudent commercial principles, and taking into account operating costs, passenger affordability and competition with other transport modes. In short, fare levels for the West Rail are set primarily at the operating level by KCRC, without particular regard to the capital structure for the West Rail.

There is, however, an indirect relationship between the proposed capital structure for the West Rail and the eventual fare levels. This arises from the need for the KCRC, as a commercially-oriented railway organization, to produce sufficient operating surpluses to service its capital requirements and avoid subsidies. The financing plan for the West Rail has been formulated with a view to allowing the KCRC to service its capital in the most cost-effective manner, having regard to:

- (i) the higher-risk, and therefore more expensive, nature of equity compared to debt for a project of this type;
- (ii) the need for a sufficiently strong equity base to enable KCRC to raise funds in financial market; and
- (iii) the amount of debt which KCRC could raise at a corporate level at a reasonable cost.

The debt and equity mix now proposed permits the KCRC to retain a reasonable level of earnings for re-investment purposes.

**Assistance to Elderly during Recent Cold Spell**

15. **MR TAM YIU-CHUNG** (in Chinese): *Will the Government inform this Council of the measures taken during the recent cold spell to assist the elderly in keeping warm so that they would not freeze to death?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Madam President, during cold spells, all government departments concerned, including the Hong Kong Observatory (HKO), Home Affairs Department (HAD), Social Welfare Department (SWD) and Department of Health, will make joint efforts to assist the elderly in keeping warm.

Before the arrival of winter, the Government will, by various means, remind elderly people of the importance of keeping warm and the ways of seeking help in case of emergency. The Government will also urge the public to care for their older family members and to see whether elderly people in their neighbourhood, particularly those living alone, need any support and assistance. APIs produced by SWD are broadcast on television or radio to remind elderly people to take good care themselves and to call the SWD hotline in case they need help. Besides, SWD encourages and subsidizes eligible elderly people who are in need to install an emergency alarm system.

The Department of Health will organize talks at its elderly health centres or at community centres in various districts to teach elderly people how to keep warm and take care of themselves. Besides, through a 24-hour hotline, the Central Health Education Unit of the Department will provide elderly people and their family members with information on ways to keep warm. Relevant leaflets produced by the Unit will be distributed at various general outpatient clinics and elderly health centres.

When the HKO forecasts that there will be a cold spell, all departments concerned will attend a press conference convened by the HKO, during which they will call upon elderly people to protect themselves against the cold. When the temperature is forecast to drop to 12<sup>0</sup>C or below, HAD will open the 14 temporary cold shelters to provide temporary relief from the cold for people in need, particularly street sleepers. HAD will provide transport services to take street sleepers to temporary cold shelters as and when necessary.



Apart from distributing blankets to street sleepers, SWD will urge them, particularly elderly ones, to move into the temporary cold shelters operated by HAD. In addition, the 24-hour hotline set up by SWD will also be manned by professional social workers to provide suitable assistance to those who seek help. During this winter, 4 blanket-distribution exercises have been conducted, and over 170 people who have sought help through the hotline have all been rendered suitable assistance.

Efforts have been made by SWD to co-ordinate the resources available in the community to help elderly people keep out the cold. In December last year, SWD issued a notice to all operators of homes for the aged, requesting them to take appropriate measures to ensure the health of elderly people under their care. To assist elderly people in keeping warm, SWD also mobilized all multi-service centres and social centres for the elderly to organize relevant talks and activities for elderly people, their carers and volunteers. Between last Christmas and the Lunar New Year, SWD, together with non-governmental agencies, conducted a territory-wide exercise under the "Social Networking for the Elderly" project, during which gift packs and greetings were sent to over 5 000 elderly people living alone. Arrangements were also made for volunteers under this project to make phone calls and goodwill visits to over 13 000 elderly people living alone. During the severely cold weather in January and February this year, SWD organized over 100 activities in conjunction with non-governmental agencies to assist elderly people in keeping warm.

The Government will continue to take such and other measures, and will actively promote the concept of caring for the elderly. To uphold the spirit of "respecting and caring for the elderly" and "community involvement", family members, relatives, friends and neighbours should work together to ensure the safety of elderly people in cold weather.

## **BILLS**

### **First Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: First Reading.

**ADAPTATION OF LAWS (INTERPRETATIVE PROVISIONS) BILL****ADAPTATION OF LAWS (NATIONALITY RELATED MATTERS) BILL**

**CLERK** (in Cantonese): Adaptation of laws (Interpretative Provisions) Bill  
Adaptation of Laws (Nationality Related Matters) Bill.

*Bills read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.*

**Second Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Second Reading. Secretary for Justice.

**ADAPTATION OF LAWS (INTERPRETATIVE PROVISIONS) BILL**

**SECRETARY FOR JUSTICE** (in Cantonese): Madam President, I move that the Adaptation of Laws (Interpretative Provisions) Bill be read the Second time. The main purpose of the Bill is to adapt the provisions relating to the construction, application and interpretation of laws to ensure conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

The Interpretation and General Clauses Ordinance (Cap.1) is one of the laws previously in force in Hong Kong which has been adopted as a law of the Hong Kong Special Administrative Region (SAR). It contains a number of provisions which require adaptation. The early adaptation of those provisions relating to the construction, application and interpretation of Hong Kong laws, in particular by defining terms and expressions used in those laws, will remove any uncertainties that may arise in interpreting our laws in the light of the Hong Kong Reunification Ordinance. It will also assist in the rest of the adaptation of laws exercise, as the matters so adapted will not then need to be provided for in individual Ordinances.

I will now describe the main provisions of the Bill and the reasons for them. The Bill provides that the amendments made by the Bill should have retrospective effect to cover the interim period between 1 July 1997 and the Bill's enactment. This retrospectivity will ensure that there is consistency of interpretation of all laws on and after 1 July. However, this retrospectivity will not apply to criminality. This restriction is in line with the requirements in the International Covenant on Civil and Political Rights as applied to Hong Kong.

The Bill repeals provisions which are either obsolete or contain colonial connotations and replaces them, where necessary, with new terms. The new terms include "Chief Executive", "Chief Executive in Council" and "Court of First Instance". However, certain of these provisions are temporarily retained in a new Schedule to the Ordinance as they will need to be referred to in appropriate cases until all Hong Kong laws have been completely adapted.

The Bill provides that all references in Hong Kong laws to government property shall be construed in accordance with Article 7 of the Basic Law, which provides that the land and natural resources within the SAR shall be "State property". Under this proposed amendment, all references to "Government land", such as those provided in the Adaptation of Laws (Crown Land) Bill, will be construed in accordance with that Article.

The Bill also contains provisions supplemental to Article 17 and 160 of the Basic Law. Article 17 provides that the Standing Committee of the National People's Congress may, if two conditions are satisfied, return any law enacted by the legislature of the SAR. The first condition is that it must consult the Committee for the Basic Law of the SAR. The second condition is that it considers the law is not in conformity with provisions in the Basic Law regarding affairs within the responsibility of the Central Authorities, or regarding the relationship between the Central Authorities and the Region. Any law so returned is immediately invalidated. The Bill provides, firstly, that the Chief Executive shall as soon as possible notify any such invalidation by notice in the Gazette and, secondly, that the invalidation shall have the same legal effect as a repeal.

Article 160 of the Basic Law provides for the non-adoption of laws previously in force that the Standing Committee of the National People's Congress has declared to be in contravention of the Basic Law. It also provides that, if any laws are later discovered to be in contravention of the Basic Law, they shall be amended or cease to have force. The Bill provides that any law that has not been adopted, or has ceased to have force, under that Article shall be treated as if it had been repealed.

The Bill also makes adaptations in respect of the binding effect of Ordinances. Legislation that is expressed to be binding on "the Crown" is to be construed as binding on "the State". The Ordinance has the presumption that, in the absence of express words or necessary implication, Ordinances do not bind "the Crown". The presumption is to be adapted by replacing "the Crown" by "the State". The latter term is narrowly defined so that it corresponds to the meaning of "the Crown". The effect is to reflect the reunification, but otherwise to maintain the legal position as it was immediately before, and after, the reunification.

The Bill defines the boundaries of the SAR by reference to the Order of the State Council No. 221 dated 1 July 1997.

Madam President, the majority of the amendments that the Bill seeks to make are straight-forward and technical. They aim to remove any uncertainties in interpreting our laws, and are therefore essential for the smooth operation of the SAR. I commend this Bill to Members for early passage into law.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (Interpretative Provisions) Bill be read the Second time.

According to Rule 54(4) of the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee. Secretary for Security.

**ADAPTATION OF LAWS (NATIONALITY RELATED MATTERS) BILL**

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, I move that the Adaptation of Laws (Nationality Related Matters) Bill be read the Second time.

The object of this Bill is twofold.

First, the Bill adapts references to "British nationals", "British Dependent Territories citizen", "Commonwealth citizen" and "Commonwealth country" in the laws of Hong Kong. As the Hong Kong Reunification Ordinance does not specifically provide for the substitution of such references in particular contexts, it is necessary to adapt these references so that our legislation is consistent with the Basic Law and Hong Kong's status as a Special Administrative Region of the PRC. Without these adaptations the relevant provisions, drafted under the old constitutional arrangements, will not be able to give effect to the true legislative intent.

The proposed adaptations are listed in Schedule 1 to the Bill. In most cases, the reference is either repealed or replaced by the terms "permanent resident of the Hong Kong Special Administrative Region", "Chinese citizen" or "individuals". Schedule 1 covers the majority of such references in our legislation, except for a few cases where the Ordinances are subject to comprehensive review or repeal, or where the Ordinances relate to the operation of individual organizations.

Secondly, the Bill aims to amend the Immigration Ordinance with regard to the "right to land" status accorded to former Hong Kong Permanent Residents.

Subject to transitional provisions under the Immigration (Amendment) (No. 2) Ordinance passed by this Council and assented by the Chief Executive on 1 July 1997, a former Hong Kong permanent resident, upon losing the right of abode in Hong Kong, is conferred the "right to land". A person with such a right may enter, stay and work in Hong Kong freely.

While the definition of "right to land" is already provided for under the Immigration (Amendment) (No. 2) Ordinance, for the avoidance of doubt, technical refinement is necessary to more explicitly express which provisions relate to persons with such a right. The proposed amendments are listed in Schedules to the Bill.

It is proposed that this Bill be deemed to have come into operation on 1 July 1997, to tie in with the effective date of the interpretation principles stipulated in the Hong Kong Reunification Ordinance, which came into operation on that date. There are, however, two exceptions. The first is in areas involving criminal liability which will come into operation when the Bill is passed into law. This is in line with Article 15 of the International Covenant on Civil and Political Rights. The second exception is in terms in Schedule 1 to the Bill relating to the issue of permanent identity cards to applicants for British National (Overseas) Passport. These items will come into operation at a later date upon notice in the Gazette in order to facilitate the issue of permanent identity cards to BN(O) passport applicants whose applications were submitted before the prescribed deadlines and the processing of which are still unfinished. Once these final few cases are processed, the relevant items will be accordingly adapted.

Madam President, this Bill is essential for ensuring clarity in our legislation with regard to references to "British national", "Commonwealth citizen" and so on. It also ensures that former Hong Kong Permanent Residents' "right to land" is unequivocally provided for in the Immigration Ordinance. The Bill is therefore important for the smooth operation of the Hong Kong Special Administrative Region. I commend it to this Council for early passage into law.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (Nationality Related Matters) Bill be read the Second time.

In accordance with Rule 54(4) of the Rules of Procedure, the debate is now adjourned and the bill referred to the House Committee.

**Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): We will now resume the Second Reading debate on five bills. The first of these is the Housing (Amendment) Bill 1998.

**HOUSING (AMENDMENT) BILL 1998****Resumption of debate on Second Reading which was moved on 14 January 1998**

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Secretary for Housing, do you wish to reply?

(The Secretary for Housing indicated that he did not wish to reply)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Housing (Amendment) Bill 1998 be read the Second time. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Housing (Amendment) BILL 1998.

**PRESIDENT** (in Cantonese): Provident Fund Schemes Legislation (Amendment) Bill 1997.

**PROVIDENT FUND SCHEMES LEGISLATION (AMENDMENT) BILL 1997**

**Resumption of debate on Second Reading which was moved on 26 November 1997**

**PRESIDENT** (in Cantonese): Does any Member wish to speak? Mr Ronald ARCULLI.

**MR RONALD ARCULLI:** Madam President, the Liberal Party supports the introduction of Mandatory Provident Fund (MPF) schemes for the long-term benefits of the community. With the resumption of the Second Reading today of the Provident Fund Schemes Legislation (Amendment) Bill 1997, it would seem that the long and often controversial journey to our destination of retirement protection may indeed be reached. However, there is still a cloud hanging over us and that is, the amendment to be moved by the Honourable Miss CHAN Yuen-han to delete the off-setting provisions under which severance and long service payments will be deducted from the employer's portion of the relevant employee's MPF benefits. I will not dwell on this, save to say that the Liberal Party does not support that amendment. We will perhaps speak a little further when the amendment is ultimately moved.

But back to the Bill before the Council today. There are a few important issues, some of which are controversial. The first involves the composition of the Mandatory Provident Fund Schemes Authority (MPFA). Under the Bill, the Administration's proposal was that the executive director was to be the MPFA, that is, one person would be all powerful. After much discussions, the Administration has finally given way but put up a formula that was not acceptable to the majority of the Bills Committee. As a result, there will be Committee stage amendments from myself, Miss CHAN Yuen-han and Dr the Honourable LAW Cheung-kwok.



As for the Liberal Party, we believe that the MPFA should be a body that will comprise equal representation from employer and employee sectors, representatives from within the pension fund industry and related professional sectors and senior executives of the MPFA itself. We also believe that employer and employee representatives should have a significant voice in the MPFA to the extent that their combined number should not be less than half of the total number of non-executive directors. One last requirement is that the non-executive directors must form a majority of the directors. Madam President, I will speak on the details during the Committee stage. But it will be no surprise to my colleagues that my proposed amendment is, in my view, the best formula to ensure a cross-section of non-executive directors, a relatively compact MPFA with complete flexibility to enlarge its numbers, whilst maintaining a majority of non-executive directors as well as ensuring that representatives of employers and employees alike will have a significant voice within the MPFA.

The second issue involves the chairperson and deputy chairperson of the MPFA. The Administration claims that it wants flexibility, namely both the chairperson and deputy chairperson can be executive directors but both cannot be non-executive directors. The Administration may grudgingly accept that the chairperson could be non-executive, while in that case the deputy chairperson must be an executive. This is what I would describe or call one-way flexibility — the Administration's way. The main considerations in my view are two-fold: first, checks and balances and second, the proper balance to be achieved. Those who have served on boards or committees will understand the importance of these two matters, and indeed, the concern of the community, the relevant market players and those interested in that particular board or committee.

The third issue concerns investment management and the constraints, if any, are to be applied by law. This would include investing in equities, fixed income paper including bonds and cash. Another constraint would be investing in Hong Kong or outside Hong Kong, as well as whether investment should be in Hong Kong dollar or non-Hong Kong dollars. Let me say at once that the Liberal Party does not want our workforce's retirement benefits to be used for highly risky or speculative investments; what we want is an above inflation investment return. To attain such a return, the investment manager must not have his hands unduly tied. The pension fund industry has been around for many years and has been reasonably successful. We believe that their track record ought to give confidence to new entrants into retirement protection schemes.

The concerns of some of my colleagues, perhaps exacerbated by recent events in the Asian financial turmoil, have cast some doubt on the pension fund industry's ability to cope with such turmoil and volatility. Markets, like economies, have cycles, although I would not describe the current turmoil as part of a cycle. I would leave those of my colleagues who favour constraints with this thought. If each Asian country has imposed a restriction on their retirement fund schemes that at least one half of their funds have to be invested in their own market, where would these retirement funds be today? Madam President, the name of the game is to spread the risks for reasonable return. The more restrictions we insert, the less fund managers can spread the risks.

That having been said, it does not mean that we favour no restrictions at all. We do not advocate against what I would call "reasonable restrictions" that will give the public, particularly our workforce, the sort of comforts that we need.

This desire for safe investment, Madam President, has brought about a product called the "capital preservation product". In this product, the formulation is that if the investment return does not exceed the savings account return, those involved in running that particular scheme or product will not collect any fees.

The discussion on this particular product, Madam President, has been whether employees who participate in this product will, over a long term, have a return above inflation, which is in fact what we obviously try to achieve. I think if we leave money in banks or money market instruments and simply rely on interest rates, I have not known any market or economy in the world where on a sustained 10 to 20 year basis that the interest rates have exceeded inflation. If there is such an economy, it has to be an extremely mature one, and even then, it is doubtful whether such return can be consistently maintained in the years to come.

Madam President, the industry appears to have grudgingly accepted the formulation. From their points of view, I suspect that they will try and produce other products that will give a return in excess of the capital preservation product. But I simply want to put a marker on this, to say that I hope when we come to look at the regulations, the community will give us a sphere as to whether we should impose some constraints which are necessary to ensure that unnecessary risks are not taken with the hard-earned savings of our workforce.

Madam President, with these remarks, my colleagues and I in the Liberal Party support the Second Reading of the Bill before us.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam President, the Hong Kong Federation of Trade Unions (FTU) has fought for retirement protection for more than 20 years, during which time we went through many different stages. In as early as the 70s', the FTU already expressed its views on the question of retirement of "wage-earners". It proposed the idea of a central provident fund and urged the Government to implement a retirement protection system. However, the community and the Government rejected it and pointed out that if the central provident fund or the retirement system were administered by the Government, investment would be done in a conservative way and the return would be limited. The Government also rejected these proposals with the excuse that too big a sum would be accumulated and stressed that employees should take care of the retirement problem themselves.

For more than 20 years, "wage-earners" had to face the fact of having no retirement protection. During this long period of time, the Government procrastinated again and again. Then in the early 90s', the incessant demand of the community was such that in 1991 the Government finally came up with the Mandatory Provident Fund (MPF) scheme and then the old age pension scheme. But these proposals were not implemented due to the Government's objections on technical grounds. The situation today is not what we and the "wage-earners" wish to see. Today, we are still discussing the retirement scheme rather than implementing it. This is regrettable. Therefore, the FTU and the Democratic Alliance for Betterment of Hong Kong (DAB) support the implementation of the MPF scheme as the first step. Of course, the MPF scheme cannot meet the needs of all levels of the community due to the following three reasons:

- (1) the MPF does not take care of those who are not in employment at all, for instance, the elderly and housewives are not protected;
- (2) it does not help people who are about to retire. Since their time to contribute to the scheme is short, the amounts saved will not be sufficient to maintain their living in their retirement;

- (3) it provides inadequate protection to low-income people. The amounts they save over decades will not be enough for them to live a dignified life after their retirement.

The above problems cannot be solved totally by the MPF alone. Therefore, I and my colleagues from the FTU and DAB had repeatedly proposed in the Council the FTU's retirement protection comprehensive scheme or the DAB's Double Retirement Protection Scheme (DRPS). Their contents are similar. We demand a "social security system" on top of the private MPF system. The idea is for the Government, employers and employees to make contributions and for the money to be collected by everyone, contributor or otherwise. This is very similar to the "old age pension" scheme proposed by the Administration. The advantage of this scheme is that housewives and the elderly who have not made contributions will receive retirement protection. They will receive a sum equivalent to 25% to 35% of the median wage, which will help them maintain a certain living standard after retirement and live a dignified life in old age.

Madam President, only such a retirement protection comprehensive scheme is the ideal retirement scheme. The FTU and the DAB support the comprehensive scheme or the DRPS. They support both the MPF and the old age pension scheme.

During discussions in the past two years or so, the Director of the MPF Office and her colleagues racked their brains to argue with us Members or make concessions. I believe that our stubbornness was a great headache to the Director (including the Secretary, too). I would now like to thank them for their perseverance. However, since we were unable to agree on some parts, I will still propose two amendments.

Madam President, I believe the MPF scheme will be approved in this meeting and the relevant subsidiary legislation will be passed. If this is the case, we will also move amendments to the subsidiary legislation so that the MPF scheme will provide the best protection to the employed.

Thank you, Madam President. These are my remarks.

**PRESIDENT** (in Cantonese): Mr WONG Siu-yee.

**MR WONG SIU-YEE** (in Cantonese): Madam President, today is the most important day to Hong Kong since the establishment of the Hong Kong Special Administrative Region (SAR) Government, because the Provisional Legislative Council is going to pass the Mandatory Provident Fund (MPF) schemes after three readings. By implementing the MPF schemes, the good intention of providing the elderly with "a sense of security" as proposed by Mr TUNG Chee-hwa will hopefully be materialized. During the 31 meetings in which the Bill was scrutinized, my ideas and position were clear and consistent. While supporting the early establishment of the MPF system, I have always insisted on ensuring that employees will at least preserve their capital and that they will have a stable return. In the long term, we have to see whether we can ensure that the huge provident fund assets worth billions of dollars will not be used to attack the Hong Kong's currency.

The MPF schemes involve the matter of retirement protection for the workforce of over two million people in Hong Kong. Since it is mandatory, it is a compulsory savings scheme that employers and employees have to participate for almost a lifetime. Therefore, I have always disagreed that the Government should only play the role of a monitor rather than a participant in the MPF schemes. This is where my position differs from that of the Government.

My argument is derived from the principle of "Hong Kong people governing Hong Kong and a high degree of autonomy". In my opinion, if the Government participates in the MPF schemes, it will greatly increase the public sense of belonging to the SAR and their confidence in the SAR Government, as well as considerably enhancing the authority of the SAR Government. They will feel that the SAR Government is one that is answerable to the public and prepared to "guarantee" the vital interests of the public. It is also a government that is sincere about achieving the target of providing the elderly with "a sense of security" through a mandatory savings scheme which provides the public with security. This way, it will completely shed the cold and ugly image of the past colonial Government which was indifferent to the people's vital interests, had no sense of belonging to Hong Kong and no sense of responsibility to the public.

Also, through the Government's participation, one can prevent that the snowballing provident fund assets will ultimately be monopolized by a few foreign-capital consortia, or that the huge provident fund assets will flow into the hands of our competitors. In case of the former, there might be a huge potential threat to Hong Kong's financial system in that the hard-earned money of Hong Kong people might be used by speculators to attack the Hong Kong dollar, while in case of the latter, extra strength might be given to our competitors who might even become a menace, seriously affecting the competitiveness of Hong Kong.

Thus, based on the idea that the Government should assume the responsibility for preserving the capital and preventing monopoly by foreign investors, I have strongly suggested to amend the Bill on provident fund and proposed that the Government should adopt a mixed provident fund system under which, the Government will "guarantee" capital preservation or will establish a statutory public trust company so that employers and employees can choose whether to have a private company or the Government to manage the provident fund. Taking a lesson from the financial turmoil, and by implementing a mixed provident fund scheme, we can avoid putting all our eggs in the sole basket of high-risk private foreign consortia, thus providing extra protection to the public.

However, the Government has opposed to my suggestion and insisted that the Government should not get "involved". Instead, it should only play a monitoring role. The Government cited overseas examples. However, as far as I know, there are very few examples where the foreign government does not get "involved", while making it compulsory for the public to participate in a mandatory provident fund scheme. The Government is worried that once a public MPF investment management company is established, all employees will use the service of this company, in which case it will become in effect a central provident fund. The self-contradiction in this assumption and fear is very obvious. The Government has always stressed that the advantage of private management is that it will yield a high return, while public management will tend to be conservative and will only yield a low return. If the Government's argument and view can hold water, why should it be afraid that all employers and employees will turn to the Government? Why should our Government reject the faith and trust of the people? Why does our Government force the people to participate, while refusing them the choice to put their trust in their Government? Keeping Hong Kong people at arm's length was the governing strategy and policy of the colonial government. We certainly do not wish to see such strategy and policy continue to be practised by the SAR Government which belongs to Hong Kong people.

Unfortunately, after proposing to implement a mixed provident fund scheme, I have encountered pressure from all sides. One insurmountable obstacle is that my proposal involves the setting up of a public trust company, which has a charging effect on government revenue. Whenever this question is involved, an amendment to a bill proposed by a Member must be approved by the Government. Since the Government refuses to undertake responsibility and assume the role of a participant to set up a wholly owned public provident fund investment management company, the chance of getting my amendment tabled in this Council is equivalent to zero.

Madam President, despite this, if the majority of Members of this Council had supported the idea that the Government should participate and be responsible for the vital interests of the public, the Government might have been forced by their collective pressure to review the matter and accept my amendment. Unfortunately, whether inside or outside the Council or in terms of public opinion, the support is weak. While many people might share my views, the Government has warned that the legislation might be shelved for a few more years if it were not passed. In view of this reality that tantamounts to a threat, some Members think that even a "sour orange" is better than nothing.

Madam President, under these circumstances, since the provident fund schemes cannot be further delayed and since the SAR Government insists that the legislation drafted by the former Government is right, I have come under great pressure from the Government and from the advice and criticism of some friends. Some advised me not to "go too far" and "spoil the Government's game", while others criticized that I was trying to "seek limelight". Some well-wishers also advised me not to "look for trouble and get into a mess" and that it is wisest to "go with the stream". All these remind me of what happened to the 16th century Italian scientist GALILEO. He had come under great pressure because he did not agree with PTOLEMAEUS' geocentric theory, but instead agreed with COPERNICUS' heliocentric theory. Even many of his friends and relatives begged him to repent. Under these circumstances, GALILEO had no alternative but to "change his stance". However, deep in his heart, he still believed himself to be right, and science later has also proved him to be right.

Madam President, I dare not compare myself to GALILEO, since I know am completely ignorant of astronomy. I can only spur myself on and take example from his courage in adhering to the truth in his heart. Now, I sincerely hope that I am wrong and my concern is uncalled for, for if history shows that any of my fears were true, it will mean that the hard-earned retirement money of Hong Kong people will be gone completely because the Government refuses to "guarantee" capital preservation or that their hard-earned money will be used by speculators to destabilize Hong Kong's finance. By then, a man's honour will be nothing compared to the gravity of the problem.

Madam President, I sincerely hope that I am wrong and the Government is right. In order to share the fate and fortunes of this Council, I can only resign to reality and agree to the passage of the Bill. To conclude, let me repeat clearly that I hope history will prove that my fears are unfounded.

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

**PRESIDENT** (in Cantonese): Mr Eric LI.

**MR ERIC LI** (in Cantonese): Madam President, the time for the passage of this Bill is very rushed and many amendments have been made. Owing to the shortage of time, it is very difficult for many professional organizations, such as the Hong Kong Society of Accountants (HKSA), to respond specifically and comprehensively on behalf of the professions on a not purely theoretical or conceptual level, that is, on the level of actual implementation. Recently, the HKSA had frequent meetings, several times a week, and daily correspondences with the Administration to keenly discuss questions relating to the Bill. Although we have not been able to consult the professions widely, we have done our part in the technical matters that a practicing accountant could encounter. I will not talk so much about other parts today, but will concentrate on the parts that concern accountants.

Given such a short time, we appreciate and are grateful for the full co-operation of Government officials and the Chairman and members of the Bills Committee, as well as Members of the Provisional Legislative Council. I also believe the final deliberations are not lacking in professionalism.



Since the process of deliberation was very complicated, I cannot go into it today. However, I will briefly state the overall position of the accountancy sector on this Bill.

There are three areas which practicing accountants are most concerned about: first, the requirements regarding accounts (that is, accounting and auditing); second, tax arrangements; third, winding up rules or rules for the restructuring of funds. In terms of accounting and tax arrangements, we basically support the Bill as amended. We have had many correspondences mainly for the purpose of clarifying some new wordings used in drafting the Bill. Through these clarifications, we have understood the real legislative intent and the professional responsibility of the accountancy sector. Finally, we have received satisfactory answers from the Government. The Government has even made some amendments. As for the correspondences between us and the Government, I will not put them into the official proceedings of the Provisional Legislative Council today. However, we believe that these official documents are invaluable for the explanation of the operation of the law and the legislative intent behind it. It is because we obtained such responses that we support the Bill. We also hope that the Government can follow up on a few technical matters.

There are two main categories of winding up: the first category is winding up by the Court. The new subsections 34A(6) and (7) in the Bill provide that the winding up rules can be made under the Supreme Court Ordinance. Unfortunately, the specific content of the rules is not very clear even though they are to be passed today. It would of course be better to know all the rules and their main content before the principal legislation is passed. We are more concerned about the following points:

First, what reasons should be given when an application for involuntary winding up is made?

Second, what powers can be exercised by the Court? What effects will it have on the persons affected by the winding up? What powers can be exercised by the liquidator? How should the assets affected by the winding up be dealt with? In particular, when and how should they be transferred or sold? Are there any restrictions with regard to the buyers? All these questions concern the operation. Originally, we wanted to obtain a very clear content before passing the entire Bill. However, the profession understands that if the Government wants the principal

legislation passed before the end of February, it would be impossible to find answers to these complex questions in such a short time. The Government has made a clear pledge to the accountancy sector to continue to co-operate and exchange views with us. We have accepted it in view of our good working relationship with the Administration right now. We are confident that the Administration will continue to discuss with us and that it will make active and serious responses in order to work out a satisfactory solution.

The profession also had the opportunity to discuss with the Administration in detail how to monitor and conduct voluntary winding up. Initially, we felt that in drafting the law, especially section 16, some wordings might have been unconsciously used which contains new policy concepts not carefully considered. For instance, wording which applies to the winding up of limited liability companies in companies laws has been borrowed. Whether in essence or in operation, such wording has very different implications for limited liability companies doing business and fund companies managing provident funds. Thus the profession still has misgivings about whether such wording which has been hastily borrowed from relevant companies laws is applicable to provident fund schemes.

In our view, from what we have seen from the content so far, the voluntary winding up procedures can only apply to simple or not so controversial winding up based on an employer's application, or to small funds wound up for the purpose of incorporation into large or larger funds. However, if these rules are to deal with the problems arising from more complicated cases, such as financial difficulties or even bankruptcy of the employer in the fund, it would become very complicated. It is also unclear how the rules should be applied, such as what role the liquidator of the provident fund plays and what his functions and powers are, which side should be responsible for the payment of liquidation fees and whether it is possible to ask the employer to make a kind of performance guarantee beforehand in order to make provision for the liquidation fees. With regard to these questions, the Administration has heeded our request, and has explained and clarified to us. However, we believe there is still room for discussion in technical details and we will continue to exchange views closely with the Administration. So far, we do not know the results yet. But I am confident that we will reach a final consensus. It is due to this confidence that the profession will accept the present Bill on provident funds. We understand that the winding up of provident fund schemes is a new concept and a new domain. Under the present legislation, we might still

have to "try out as we go" in the future. After the law has come into operation for some time and we are no longer pressed for time as we do now, the Administration and the profession should be prepared to make adaptive amendments to make this ordinance more sophisticated and comprehensive.

That is all I have to say on behalf of the profession. On the whole, I will make a few simple comments. With regard to the concept of the Mandatory Provident Fund (MPF), I spoke five to six times in this Council. My position is very clear and I also support the present form of combination. Some might find the form of combination form of MPF not very satisfactory. However, after almost 20 years of argument, I think everyone should be more sober and look at the Government's present attitude, Hong Kong's economic environment, the threat posed to us by our neighbouring countries in terms of competition, and the present constitutional development. As we can clearly see, if the MPF schemes are not passed today, what guarantee is there and how probable is it that we can pass some other more satisfactory retirement protection scheme in the next 10 years? If it is not passed today, we might have to wait another eight or 10 years and still get nothing at the end of the day.

I think everything must have a good foundation. It was well said by the Honourable Miss CHAN Yuen-han that the foundation must be well laid and that building high rises takes a certain process. If we want to improve the retirement protection schemes, we must first have a foundation to build on. Today, the more controversial issue is the composition of the board of directors. Members have made different proposals and are of the view that the operation of provident funds might have different stages of maturity at different times, so that another mode might be more suitable for the prevailing circumstances at such different times. It is also possible that a certain group will favour the interests of some and provide them with more protection. After consideration, since there is no absolutely ideal solution, we are inclined towards maintaining flexibility. The final decision should be made when the Government has gathered practical experience after the law comes into operation.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr NGAN Kam-chuen.

**MR NGAN KAM-CHUEN** (in Cantonese): Madam President, the community in Hong Kong has been discussing the issue of retirement protection, from concepts to plans, over and over for almost 30 years. In July 1995, the former Legislative Council affirmed the mode of the privately-run mandatory provident fund, whereas today, the Provident Fund Schemes Legislation (Amendment) Bill 1997 is going to work out the concrete details for the privately-run provident fund system.

This time last year, the Democratic Alliance for Betterment of Hong Kong (DAB) and the Hong Kong Federation of Trade Unions proposed six points for improving the Mandatory Provident Fund (MPF) schemes. They are, firstly, set up a fund authority for industry schemes and residual provident fund schemes in which the Government will participate; secondly, make the registered occupational retirement scheme equal to the future MPF scheme: even though an employee is dismissed with reasons, he can still draw the employer's contribution; thirdly, cancel the professional indemnity insurance's \$500 million ceiling of coverage; fourthly, delete the off-setting arrangements between the MPF and long service payment as well as severance payment; fifthly, expand the residual provident fund schemes so that people of low income can choose freely to join the schemes and that the Government is sure to be able to effectively supervise these schemes to ensure that the scheme members are able to receive the minimum return and "rejection" by the funds can be prevented; sixthly, change the ratio between local and overseas investments from 3 : 7 to 5 : 5. We hope that, in this way, the MPF schemes will effectively protect the low-income employees and the fund investments will not threaten the financial system of Hong Kong.

Among these six points, apart from the restriction on investment ratio which will be stipulated in the subsidiary legislation, the other five points are going to be dealt with in this Bill today. During the past year, the DAB has been actively discussing these six points with the Government. The Government has doubtlessly accepted most of our views and has included them in the Bill; however, regarding the deletion of the off-setting arrangements between the MPF and the long service payment or severance payment, as well as the guarantee that low-income people will be protected by reasonable returns, the Government has not given us a satisfactory answer.

The goal of the MPF is to help the workforce save money for their retirement, whereas the severance payment or long service payment is a compensation or pay for work offered by the employer to the employee, they have nothing to do with retirement protection. At present, on one hand, the Government enthusiastically implements the retirement protection system, but on the other hand, it lets employers "cut one piece off here and slice away one chunk there" from their portion of contribution, so how can there be adequate retirement protection? In the light of the current methods of calculating severance payment or long service payment, if off-setting is allowed, the employers will be able to deduct severance payment or long service payment from their portion of contribution to the MPF, and as a result, under most circumstances, the employees cannot get the 5% contribution to the fund from the employers. In this way, the MPF becomes a retirement fund where the Government forces the employees to save for themselves, the meaning of employer's contribution is completely lost.

As for how to ensure that the low-income employees can receive reasonable returns, although the Bill has introduced provisions about "no rejection", the Government refuses to provide investment return guarantee. It only requires that all master trust schemes should give employees the choice of capital preservation product. Since the rate of return of the capital preservation product is pegged only to the interest rate of savings account, it cannot guarantee that the employee's accrued benefits will not be eroded by inflation. In order to truly protect the retirement benefits of the employees, we hope that when the Government amends the subsidiary legislation later, it will not be led by the nose by the fund industry and can work out products which guarantee higher returns.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Dr LAW Cheung-kwok.

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam President, the serious impacts of the recent financial turmoil in the Asian-Pacific region on the financial institutions around the world and the collapse of the CA Pacific Securities Ltd. in Hong Kong have both shown that the compensation fund in the securities industry is highly insufficient. The Government now tries to launch the privately-run mandatory provident fund system, about which the citizens have a number of

worries. For example, if serious fraud or malpractice happens in the provident fund industry, the compensation fund set up in accordance with the present Bill may be highly insufficient and, as a result, the employees will lose their lifetime savings.

In view of this, the Hong Kong Association for Democracy and People's Livelihood (ADPL) thinks that the Government should face squarely the problem and add new measures to strengthen public confidence in the provident fund system. In order to achieve the goal, the ADPL tried to add a new provision to section 17(6) of the Bill to stipulate that, should the compensation fund be insufficient, the Financial Secretary would have to apply for extra funding from the Legislative Council. The Government did not agree to this plan which resembled a "guarantee" compensation scheme, it also thought that such amendment would draw on the Government's contribution. Eventually, in view of the above reasons, the President of the Provisional Legislative Council has ultimately disapproved the amendment. The ADPL is of the view that, in fact, the amendment may not necessarily draw on the Government's contribution. I would like to explain the main reasons once again.

Firstly, if the Government exercises adequate supervision, the compensation fund will never be insufficient. Secondly, in case of legitimate claims and the compensation fund is really insufficient, the Government will be under enormous political pressure and the Financial Secretary will have to apply for extra funding from the Legislative Council with or without such provision. Thirdly, if the compensation fund is not enough to pay the victims and the Financial Secretary does not wish to increase the Government's official financial expenditure, the Government can apply for loans. The original section 17(6) already allows the Government to apply for loans rather than making direct subsidy. Fourthly, even though the Financial Secretary applies for extra funding or loan, the application has to be approved by the Legislative Council. If it is really inappropriate, I believe the Legislative Council "will definitely not" necessarily support the Government.

The Government stresses that this amendment is not indispensable. Some government officials told me that, if such serious situations do occur, the Government will apply for extra funding from the Legislative Council of its own accord. Since the Government agrees that it will apply for funding in times of need, why is it reluctant to accept the amendment so that the citizens will have a greater confidence in the whole Mandatory Provident Fund Schemes?

When I tried to move this aborted amendment, I have actually won the support of many Honourable colleagues of this Council. I would like to thank them once again here. Although there is no official amendment, I still ask the Government to clearly pledge in its reply that, if the compensation fund is insufficient, the Financial Secretary will definitely apply for funding from the Legislative Council. If the Government is unwilling to make such a pledge, the ADPL does not exclude the possibility that it will vote against the whole Bill today.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, since the former Legislative Council hastily passed the principal ordinance of the Mandatory Provident Fund (MPF) with no substantial content in 1995, we have held over 50 meetings discussing and examining ways to improve and flesh out the MPF Ordinance in both the former Legislative Council last year and in the Provisional Legislative Council today. In the past one year and more, the Democratic Alliance for Betterment of Hong Kong (DAB) and the Hong Kong Federation of Trade Unions (FTU) have put forward more than 10 proposals regarding matters of principle in the Ordinance, whereas the Government, in the documents presented to Members during this period, made several amendments and accepted part of our proposals. These are incorporated in the Bill today and the subsidiary legislation under scrutiny. They include provisions to prohibit the funds from rejecting the participation of certain employers and employees, to ensure that each scheme must provide the employees with the choice of a capital preservation product, and to guarantee that after the official implementation of the MPF schemes, the employees presently registered in the occupational retirement schemes will get the employer's portion of contribution even if they are reasonably dismissed. All of the above are welcome by us.

However, we think that there are still shortcomings in the MPF schemes and the most important of them is as follows. Since the present MPF schemes are completely private-market-led, although the Government agrees to prohibit the

funds from rejecting clients and to retain the idea of setting up a Residual Provident Fund Scheme (RPFS) in times of need, we think that such a RPFS exists only in name and cannot protect the low-income employees whom we hope to take care of most. Therefore, we believe the ideal plan would be for the Government to expand the RPFS which will be managed directly by the Government in the form of a publicly-run scheme and that the employees are free to choose. But the Government has all along been worried that this will turn the scheme into a *de facto* central provident fund scheme and refused to make relevant amendments. We think it is very unreasonable for the MPF schemes which the Government forces three million employees to join to fail to provide the public with the choice of another option run by the Government. We therefore hope that the Government will, after the implementation of the schemes, further study the operation of the market seriously and proactively introduce a combined system with both privately-run and publicly-run schemes.

Madam President, there is another point that we are still dissatisfied with. Early last year, after the Government turned down our proposal of expanding the RPFS, it clearly agreed to our proposal of providing a guaranteed minimum return product in every master trust scheme. But now in the proposed subsidiary legislation, the Government only requires the funds to provide a capital preservation product which mainly means that the trustees cannot collect administration fees if the savings account return cannot be reached. There is utterly no guarantee for the contributors: while there is no secured minimum return, the capital may not be preserved either. We therefore can absolutely not accept it. The DAB will move amendments whilst examining the subsidiary legislation.

Madam President, ever since the financial turmoil in the Asian-Pacific region last year and early this year, most of the rates of return of the existing retirement funds in Hong Kong have fallen significantly. Under such circumstances, the public are getting more and more worried about the investment risks of the future MPF. For the high-income people, the MPF is only icing on the cake and they can well do without it. But for the sandwich class and the low-income people, the 5% monthly contribution is already quite a heavy burden and they may really pin all their hopes of a decent retirement on the return of the MPF. If the MPF suffers great loss due to financial turmoil, the ordinary people's retirement may be left completely unprotected.



In view of this, the DAB thinks that when the Government requires master trust schemes to provide capital preservation product, at the same time, it must ensure that such products will bring substantive minimum returns. This should be the minimum requirement. As for the concrete method, the Government can make reference to the practice in Chile, where once the scheme cannot attain the minimum rate of return, the operating company has to make it up with its own assets so that the employees will not suffer any loss because of inappropriate fund investments.

Secondly, since the existing principal ordinance states that the MPF system is employer-led, the employees thus lose their rights to choose their own scheme. However, in the meantime, the employees are allowed to maintain the accrued benefits in their original accounts without necessarily transferring and combining the accounts, so it is estimated that a large number of small dormant accounts will appear. In order to avoid the erosion of such accounts by inflation and administration fee, the Government decides that the relevant scheme members are exempted from the administration fee of combining accounts done within a certain period of time, but the fee concerned will be shared by other scheme members.

In the course of examining the principal ordinance, the former Legislative Council discussed whether it should be stipulated that all employees had to transfer their accounts when they changed jobs, the hasty discussion resulted in the present law that allows the employees to choose freely. The Government has even admitted that, with the implementation of the schemes, there is no way to estimate the number of similar slightly active or dormant accounts.

So, as the MPF schemes now stand, on one hand, it is stipulated that the schemes are employer-led so that the employees with more than one employer at the same time have to join several schemes, leading to a waste of administration fee; on the other hand, the employees are allowed to choose whether their accounts are combined or not when they change jobs. The DAB thinks that these arrangements make the schemes even more chaotic.

Therefore, from a long-term point of view, the problem can only be thoroughly solved if the MPF schemes are changed to a employee-led "red booklet" system. Take Australia as an example, when first implemented, their MPF schemes were also employer-led. But from 1998 onwards, they are gradually changed to employee-led, allowing the employees to choose freely which fund they

like to join. We really do not understand why the Government, after spending over \$20 million of consultation fee on the study of MPF systems in other countries, does not take a lesson from foreign experiences at all and, on the contrary, follows other people's old disastrous road.

In the meantime, the Government stresses repeatedly that the employee-led schemes will lead to excessive administration fee and the frequent change of schemes by the employees, but it has all along failed to show us the method for calculating administration fee in the present schemes, neither has it made a comparison between the administration fees of employer-led and employee-led systems. So its allegation is hardly convincing. Moreover, even though the administration fee of the employee-led system is higher, we think that the employees, as the protagonists in the MPF schemes, are at least able to make their own choices. We believe that the market will adjust at that time to prevent losing their scheme members.

In fact, the Government has always emphasized the success of the MPF schemes in Chile, to which the present MPF system planned by the Hong Kong Government also makes reference. However, the Hong Kong Government refuses to accept certain areas in the Chilean schemes which protect the employees, including the employee-led system, the guaranteed rate of return and guaranteed minimum pension. This turns the whole MPF schemes into a savings scheme which only facilitates the management of funds.

Madam President, we know that no matter how the DAB and the FTU vote today, it is almost certain that the Bill will be passed. But we can also tell the Government definitely that we will continue to fight for a completely sound MPF system in the process of examining the subsidiary legislation.

**PRESIDENT** (in Cantonese): Mr NG Leung-sing.

**MR NG LEUNG-SING** (in Cantonese): Madam President, in the light of the present discussion of the Mandatory Provident Fund (MPF), I would like to talk about several of my viewpoints.

Firstly, ever since the proposal of a social security system in Hong Kong was put forward, arguments have been thriving for a number of years. Among these arguments, many are constructive and essential. I believe that, without such arguments and inquiries in the past, there would not be the consensus of implementing the MPF today. At present, the major principles of implementing the social security scheme have already been established, the points left to be discussed are, I personally believe, only detailed or technical ones. The parties concerned should strengthen their communication and understanding so as to perfect the scheme as soon as possible and to expedite its implementation. Since it is about the retirement protection of the mass of salariat, its early implementation will make them keep their minds on their work and will facilitate the long-term stability and prosperity of society.

Secondly, Honourable colleagues of this Council have been discussing the protection offered by the MPF lately. I think that since the MPF is a fund to safeguard the retirement of the salariat, any loss is intolerable in the operation and therefore stringent risk management must be enforced. In principle, high-risk investments should not be made in pursuit of a high rate of return. When deciding the investment portfolio, the managing institutions can focus on the special features of Hong Kong's present economy and the overall market so as to open up more investment possibilities. In order not to threaten the livelihood of part of the retired people, the MPF should look for those capital preservation investments which are robust and can provide returns above inflation. To think more liberally, the Government can contact certain healthy local banks and asks them to set an interest rate higher than the average medium-or short-term interest rates for deposit accounts, or an interest rate close to the preferential rate, then puts part of the MPF in these commercial banks in the form of long-term deposits. In recent years, local banks are generally in greater need of long-term deposits and the public are glad to see that the banks have such deposits to meet the operations in various industries, or even the property buyers' demands for loans. As for the funds, since these banks have a good supervisory system, if their co-operation can be obtained, such deposits are basically a risk-free investment with a relatively high rate of return.

Thirdly, I believe that everything improves and moves toward perfection in the course of development. While we should try to make the design of the present MPF schemes under discussion as good as possible before they are launched, we should also allow them to change in accordance with the actual situation after operation, reviews and adjustments should be made at appropriate times. Only by doing so can we avoid losing sight of the whole because of minor details, will we

not be stopped by some minute discrepancies or discrepancies which will not seriously affect the main body for the moment, and will the smooth implementation of the whole schemes not be delayed. Therefore, I still support the Second Reading of the Bill.

Madam President, I so submit.

**PRESIDENT** (in Cantonese): Secretary for Financial Services, do you wish to reply?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the speeches of the Honourable Members have reflected the importance of retirement protection. Though most of their main ideas concern the subsidiary legislation, I am not going to respond to those relating to subsidiary legislation because we are not in the stage of discussing the subsidiary legislation.

As I pointed out when I tabled the Provident Fund Schemes Legislation (Amendment) Bill 1997 tabled in the Provisional Legislative Council on 26 November for the First Reading, setting up a formal retirement protection system in the Hong Kong Special Administrative Region (SAR) was not to be delayed. We had to pool the wisdom and efforts of everyone and work out a highly efficient and cost-effective Mandatory Provident Fund (MPF) system soon. The hard-working SAR workforce should enjoy concrete retirement protection; debates and incessant delays would only hurt them.

The Government has endeavoured to draft the necessary legislation in the last two years to implement the MPF system as soon as possible. Like Members of the Provisional Legislative Council and other concern groups, we are most duty-conscious and serious about the work of MPF.

Since last December, the Bills Committee has held 31 meetings to examine the legislation drafted, and met representatives of related groups several times to listen to various opinions and to consider their ideas carefully. I wish to take this opportunity today to sincerely thank the Subcommittee and the Bills Committee of the Provisional Legislative Council. Members of the Bills Committee are very busy people and we are grateful that they did their best to assist in this important and onerous job, in particular, the Honourable Ronald ARCULLI, the Chairman

of the Bills Committee, and the Honourables WONG Siu-yee, LEE Kai-ming, Miss CHAN Yuen-han and LAW Cheung-kwok, regularly attended Bills Committee meetings and carefully examined all drafted legislation. Though three of them will propose amendments to the Bill which the Government will oppose, their serious working attitude is worth our approval and appreciation. I wish to thank colleagues in the Legal Service Division and the Council Business Division of the Provisional Legislative Council Secretariat who exerted themselves for a period of time and often had to finish a large amount of work within a short time. Moreover, I wish to specially thank Madam President for being bothered several times with the legislative procedures of MPF, and I wish to express my sincere thanks to Madam President here.

Some of the Members who spoke on the issue today are still having reservations about MPF, and this is understandable. The MPF system requires the employees and employers to make mandatory contribution, and whether this MPF system is good or not is naturally of great concern to the legislators and the general public. Firstly, we have to discuss the costs and charges. Do the scheme members have to bear high costs in the MPF system? Is it reasonable? We use the privatized MPF system exactly because we wish to lower the costs through market competition, and provide diverse choices for scheme members. On the basis that economic efficiency should be met, the Bill and the amendments debated today have incorporated a series of measures to increase market competition and reduce the cost, these include:

- (1) it is not allowed to set any quota restrictions on the number of approved trustees, appointments depend on whether the trustees can meet to the strict approval requirements. We hope that the market can accommodate more scheme managers joining the MPF operating business. Healthy competition within the trade will help reduce the scheme charges to a reasonable level;
- (2) Moreover, the Mandatory Provident Fund Authority (MPFA) will operate in a simple way and as far as possible eliminate unnecessary work to increase efficiency and reduce administrative costs;
- (3) The Government clearly understands MPF's effects on the low-income group, so special measures have been set down to protect their interests. The MPF Ordinance stipulates that the approved trustees shall not reject any applicants to join in their registered plan. On one

hand this provision removes the low-income group's worries about finding a plan, and on the other hand, it can protect their MPF rights and interests; and

- (4) We also suggest industry scheme for trade with high staff mobility such as the building and catering in order to reduce the cost of transferring the accumulated rights and interests.

Next I shall discuss the return on investment. We have on one hand set down tight investment restrictions and guidelines which meet international standards to prevent the MPF from investing in high-risk projects, on the other, to achieve desirable returns on investment, we have introduced proper legislative measures including:

- (1) to give investment managers a certain degree of freedom to gain stable and desirable returns for MPF scheme members with their professional knowledge and experience; and
- (2) the Bills stipulates that the investment managers must disclose the investment policies and the risks involved so that members can make choices that meet their investment needs.

It is also mentioned in the World Bank study report that through free market competition, the privatized MPF system is better than other systems in its general investment returns which can also reach a reasonable level. The findings of the Organization for Economic Co-operation and Development (OECD)'s long-term study on privatized pension funds show that the MPF model can provide more favourable and reasonable returns on investment.

Lastly, I have to discuss the soundness and asset security of the MPF system. The Bill has a series of provisions in this aspect, which include:

- (1) a scheme must take the form of a trust;
- (2) the scheme's trustees must be approved by the MPFA and must see to their trusteeship and administrative responsibilities;

- (3) the MPFA will have tight control over the trustees, including regular on-site inspections, auditing, and requiring trustees to set up internal monitoring measures;
- (4) the Bill also provides that when the auditors and their service providers find any breach of rules, they must instantly report to the MPFA which will make special assessment and inspection of the scheme according to individual cases, and take proper crisis management measures to make correction or remedy;
- (5) if MPF scheme members have suffered losses because the scheme manager has breached the rules, the Bill ensures that they can claim compensation from claiming from the scheme manager, and scheme managers must take out on professional indemnity insurance to ensure they are capable of paying compensation; and
- (6) The MPFA will set up a compensation fund as a last resort for the protection of scheme members.

I deeply understand from the speeches of the Honourable Members today that the recent Asian financial turmoil has brought misgivings to Members about the soundness of MPF. In fact, we have evaluated the effects of the financial turmoil on the retirement funds, and have submitted documents to the MPF Bills Committee. We have summarized the experience in Hong Kong and other countries, proved that the privatized retirement funds are sound and can stand the test both in management structure and in return on investment.

Regarding the management structure, as the retirement fund is set up in the form of a trust, when the fund management company has financial difficulties, or even goes into liquidation, the assets of the retirement trust fund will still not be affected.

Regarding the return on investment, as retirement funds generally adopt prudent strategies by spreading risks and do not take a speculative approach, the effects of the present financial turmoil is relatively mild this time. In 1997, the average return rate of the Hong Kong retirement fund is -6% to -7%. Relatively speaking, the Hang Seng Index has fallen by 20%, while the Southeast Asian stocks investment, counting the loss in currency value, produced a negative return of up to 70%. According to the findings of the OECD study on retirement funds in more

than 10 countries, retirement funds after inflation have a real-term return of 7% per annum from 1984 to 1996, despite the several worldwide stock market and bond market meltdowns. In Hong Kong, the retirement funds for the same period have an annual average return of 15%, that is a real return of 7% per annum on average after inflation. The return on investment of the private retirement funds has generally reached a reasonable level. But this is not a coincidence, because investment managers have the duty to spread out the risks, and retirement funds are for long-term investments. Short-term fluctuations in the market will not cause medium- and long-term effects.

Moreover, the MPF can have a stabilizing effect on Hong Kong's capital market and economy:

- (1) retirement funds are for long-term investments, it can stabilize the stock market, for example, in the US and British stock markets, many shares are held by retirement funds on a long-term basis, so fluctuations in their markets are far less than other places;
- (2) on the other hand, the MPF needs some investment tools, particularly bonds, which can bring stable income. The MPF will thus help development in the local bond market. Bonds issuance can play an intermediary function in transforming savings of the SAR into long-term capital for our industrial and commercial sectors to help the long-term economic development of the SAR; and
- (3) generally speaking, when compared with the stocks, long-term fixed-interest bonds are more stable. As Hong Kong all along does not issue enough long-term bonds, there are relatively great fluctuations in market performance. After the MPF scheme is in place, it will speed up the development of the SAR bonds market both in depth and in breadth to increase local capital market stability. As the MPF invests in local assets with relatively stable return on investment, it will finally benefit the MPF scheme members. Therefore, the launching of MPF and the development of the local capital market and economy complement each other.



Madam President, the establishment of MPF system meets the needs of the SAR citizens; the stability of MPF may provide retirement protection to majority of citizens in Hong Kong. After the Bills Committee made detailed and careful deliberations, we have further improved on the suggestions for the tight control and supervision to the MPF system. The Government will move several amendments in the Committee stage later, if the amended Bill were passed today, we shall complete the subsidiary legislative procedures soon, and inform all related people including, the employers and employees, the service providers, the concern groups and the general public of the details as early as possible. This will allow everyone to understand their own rights, obligations and roles. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Provident Fund Scheme Legislation (Amendment) Bill 1997 be read the Second time. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Provident Fund Scheme Legislation (Amendment) Bill 1997.

**PRESIDENT** (in Cantonese): Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997.

**OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT)  
(NO. 2) BILL 1997****Resumption of debate on Second Reading which was moved on 15 October 1997**

**PRESIDENT** (in Cantonese): Does any Member wish to speak? Mr CHAN Wing-chan.

**MR CHAN WING-CHAN** (in Cantonese): Madam President, I am a member of the Bills Committee of the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997. The Government's amendments to this Bill has certainly made many improvements. One of the improvements is that the years of employment entitled to compensation in four of the noisy occupations experiencing over 100dB are relaxed from 10 years to five years. The Hong Kong Federation of Trade Unions (FTU) supports this relaxation because the 10-year requirement did pose a lot of problems to the workers when they claimed compensation.

Past provisions stipulated that an employee had to obtain the record of his past employments in noisy occupations or places for the last 10 years, for example, he had to get the names of the companies, the names of the employers and the proofs of two fellow workers. The claiming procedure was very complicated. It was difficult for a claimant to obtain the record of his work for the last 10 years, especially for those workers at construction sites because most of them are casual workers without fixed working places, fixed employers or fixed companies. It was certainly extremely hard for them to obtain their working record for the past 10 years, and thus they were simply unable to claim compensations for their deafness. Among the four noisy occupations of which the years of entitlement are relaxed this time, two are about construction site work. The relaxation will definitely be helpful to the hearing-impaired construction site workers in their claim for deafness.

Besides, the amendments this time have enlarged the scope of protection in the compensation scheme, to which the FTU would like to extend its full support. Firstly, on top of the original 17 designated noisy occupations which are entitled to compensation, eight more are added, as a result, the employees working in gun-firing, glass-bottling and metal-can bottling places can all lodge claims. It is estimated that about 9 000 people suffering from occupational deafness are qualified and will thus be benefited.

Secondly, the Authority has retained the working group's proposal and lowered the minimum standard of degree of hearing loss in the definition of "noise-induced deafness" from 50dB to 40dB, so that more hearing-impaired people can be included in the scope of protection. We of course welcome this decision.

Other more minor amendments, such as exempting the claimants from expenses for hearing tests and medical examinations, would also be helpful to the employees.

Moreover, we also agree to raise the rate of total levy payable by employers in accordance with the employees' compensation insurance levy to 2.3%, which means a rise of 0.8%, because this would be conducive to increasing the capital of the Board in order to cope with the increase in expenditure consequential to the enlarged scope of protection.

In brief, the FTU and the Democratic Alliance for Betterment of Hong Kong both support this bill.

Madam President, these are my remarks.

**PRESIDENT** (in Cantonese): Dr LEONG Che-hung.

**DR LEONG CHE-HUNG** (in Cantonese): Madam President, I speak in support of the resumption of debate on Second reading of the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997. Of course, in my mind, this amendment is not perfect, but any amendment would bring about certain improvements when compared with the original ordinance.

Madam President, since the setting up of the Bills Committee of the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997, the Committee has met with the Authority many times, hoping to improve the inadequacies in the Bill. I am very dissatisfied with the Government's repeated negation of the reasonable proposals put forward by Members.

It is undeniable that the Government did make a concession in the latter stage and promised to move amendment on its own to shorten the years of employment required for claim in four of the noisy occupations from 10 years to five years, however, it has still objected to other proposals put forward by many Members.

Madam President, with the development of medical technology today, most of the hearing losses as experienced by employees can be diagnosed accurately whether they are caused by work or other factors such as senility or diseases. It is actually absolutely unreasonable for the Government to require the employees to accumulate 10 years of service in noisy occupations before they can apply for compensations.

Moreover, I also do not agree that the Government should set the highest percentage of deafness-induced permanent incapacity at 60%. I think that it should emulate the compensation methods stipulated in the Employees' Compensation Ordinance (Chapter 282) and should set the incapacity of the employees suffering from total hearing loss at 100%.

Madam President, the Government negated the Members' proposals using financial reasons as a pretext. However, within the two years and seven months between 1 July 1995 on which the Occupational Deafness Compensation Board (the Board) started its operation and 31 January 1998, the Board has only received 1 454 applications due to the stringent requirements for qualification imposed by the Government on the victim of occupational deafness. Among them, only 653 applications were approved, whereas 434 applications were refused probably because the terms were too harsh. Over 70 applications were withdrawn by the claimants themselves probably because they felt that the terms were too harsh. Of course, some applications are still under consideration. For the 600 odd claimants who successfully obtain their compensations, on an average, each of them merely gets about \$140 000. At present, the Board has a surplus of \$110 million. These figures fall far short of the Government's estimation at that time, for it estimated that "each year the number of qualified claimants would amount to about 1 000, whereas each one of them may obtain a compensation of \$200 000". However, the Government has still used insufficient funds as a reason to make things difficult for the claimants, and I find this hardly convincing.

Madam President, we all know that prevention is better than cure, and I think that prevention is better than compensation. The medical sector has all along been promoting legislation on the part of the Government, so that it is stipulated that employers have to provide medical examinations for all employees before and during their employment. Of course, at this stage, I am glad that the Government is willing to take its first step and to promise to present the relevant legislation to the Legislative Council in the year 1998-99. The legislation will stipulate that employees of dangerous occupations, including workers in noisy occupations, will have to undergo regular medical examinations both before and during their employments. I urge the Government to table this Bill as soon as possible and to expedite its enforcement without delay after it is passed. In the meantime, education for occupational safety should be because only through the joint efforts of the Government, the employers and the employees can occupational safety be genuinely guaranteed.

Lastly, Madam President, I would like to reiterate that I support the Second Reading of this Bill, and I also hope that the Government can review as soon as possible the areas that should be reviewed in this Ordinance about compensation, as well as accept other reasonable proposals of the Members. Thank you, Madam President.

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower, do you wish to reply?

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam President, firstly, I wish to thank all the Honourable Members for supporting the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997, and I am also grateful to the Bills Committee, chaired by Dr the Honourable TANG Siu-tong, for accepting the suggestions listed in the Bill on measures to improve the Occupational Deafness Compensation Scheme after its detailed deliberations.

The objective of the Bill is to implement a range of improvement proposals after the Government has completed its full review on the Occupational Deafness Compensation Scheme (ODCS). The improvement proposals, which chiefly enlarge the scope of protection under the ODCS, would enable many more people suffering from deafness caused by their employment to be eligible for compensation. Moreover, we have also made a full range of proposals to improve the terms of compensation and the operating procedures of this Scheme.

The Bills Committee supports this Bill on the whole, but proposes that the requirement of four "extremely noisy jobs" be relaxed from the existing 10 years to five years.

After serious consideration, we have decided to accept the Bills Committee's suggestions. In addition, we propose to make a transitional arrangement so that applications for compensation are acceptable from those who have worked in the four "extremely noisy jobs" for five years or more, and those who have been consistently employed in any specified extremely noisy jobs on contract basis since 1 July 1989 but have quitted their jobs for over 12 months before this Bill took effect. I shall submit the relevant amendment in the Committee stage and I shall explain it in detail then.

The relaxation on the requirement of the number of years for the four "extremely noisy jobs" will enable eligible claimants to receive their compensation earlier. We estimate that after the rate of employees compensation insurance levy is increased by 0.8%, the Occupational Deafness Compensation Board (ODCB) can meet the compensation amount brought about by this amendment in the initial stage. Nevertheless, we shall keep track of the Board's financial status and propose amendments to legislation when necessary to further increase on the rate of employees compensation insurance levy rate.

Besides, I shall move an amendment to sections 1, 21 and 22 of the Bill. These are technical amendments which are to specify that an increase of 0.8% will be imposed on the employees compensation insurance levy charged by the ODCB as from 1 April 1998 to enable the Board to have sufficient funds to implement the various improvement measures that this Bill has suggested.

In respond to Dr the Honourable LEONG Che-hung's query on how the Government would plan to protect the employees' sense of hearing, we are prepared to submit a proposed Factories and Industrial Undertakings (Medical Examination) Regulations in the 1998-99 Legislative Council session. Under this Regulation, workers working under extremely noisy environment must receive special physical examination, which includes otoscope examination and hearing tests. This Regulation, in conjunction with the Factories and Industrial Undertaking (Noises at Work) Regulations which has been passed, will enable the Government to launch the scheme for protection of the sense of hearing, which is one of the focus identified by the Government in the next few years. We shall also form special

task force to target against trades that emit great noises and to call upon the persons-in-charge of industries creating noises to minimize the noises, and wherever necessary, we shall take legal actions, too. The comprehensive plan made by the Government to protect employees' sense of hearing includes education, promotion, protection thorough legislation and compensation for the deaf.

In order to emphasize the importance in protecting the sense of hearing, we have proposed in the Bill to invest in the Occupational Deafness Compensation Board an authority to launch or subsidize education and promotion activities on the prevention of occupational deafness.

As a conclusion, after the passage of the Bill, many more of the people suffering from deafness as a result of working in noise polluted trades will receive protection, which means around 8 900 employees engaged in the eight newly added noisy trades will be safeguarded, while about 390 claimants will be benefited from the transitional arrangement proposed in the Bill. After implementation of the relevant improvement items, the additional compensation payable by the ODCB will increase by \$7 million to \$17 million a year, resulting in an increase of about 28%, and the total amount of compensation payable annual will amount to \$50 million to \$60 million. The Government will conduct a review two years after the Bill is implemented to study whether further improvements would be necessary for the ODCS.

I hereby call upon Honourable Members to vote for this Bill and the related amendments.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997 be read the Second time. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997.

**PRESIDENT** (in Cantonese): Criminal Procedure (Amendment) Bill 1998.

### **CRIMINAL PROCEDURE (AMENDMENT) BILL 1998**

**Resumption of debate on Second Reading which was moved on 21 January 1998**

**PRESIDENT** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Criminal Procedure (Amendment) Bill 1998 be read the Second time. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.



**CLERK** (in Cantonese): Criminal Procedure (Amendment) Bill 1998.

**PRESIDENT** (in Cantonese): Hong Kong Bill of Rights (Amendment) Bill 1998.

### **HONG KONG BILL OF RIGHTS (AMENDMENT) BILL 1998**

**Resumption of debate on Second Reading which was moved on 21 January 1998.**

**PRESIDENT** (in Cantonese): Does any Member wish to speak? Mrs Selina CHOW.

**MRS SELINA CHOW** (in Cantonese): Madam President, hereby I hope to explain the stance of the Liberal Party towards this amendment. On 27 June last year, when the Honourable LAU Chin-shek moved his amendment in the former Legislative Council, we have already fully expressed our opinions that we were totally against that amendment. The objection was based on two reasons: firstly, we accepted the Government's view that his amendment contravened the existing section 7 and would render the Ordinance ambiguous, since there could not be a provision stipulating that disputes between private individuals were not protected by the Ordinance, while at the same time, another provision construed as applicable to private disputes. This was our consideration from the legal point of view.

Meanwhile, the Liberal Party agreed in principle that the Hong Kong Bill of Rights Ordinance is applicable to legal disputes between private individuals. At that time, we insisted that the legislative spirit should be completely for the sake of protecting the people, therefore the Ordinance should be applicable to all issues between the Government and the people. We still insist on this stance and support the Government's amendment.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG.

**MR FREDERICK FUNG** (in Cantonese): Madam President, the Hong Kong Association for Democracy and People's Livelihood objects to the Hong Kong Bill of Rights (Amendment) Bill 1998 tabled by the Government, and later we will vote against it. In simple terms, discussions on this issue have not started only today, vigorous debates have already taken place in the former Legislative Council. Our stance, value concept and views concerning the content of the Bill have all been elaborated in the past, so I do not want to spend too much time here to repeat them. They have all been put down on record. I would just like to put forward three points of views to explain why this Bill is unacceptable.

Firstly, human rights is a very sensitive topic both in Hong Kong and in the international community. If this Bill were passed today, it is tantamount to repealing the amended Ordinance that has already been passed. The international community will get an impression that the Hong Kong Special Administrative Region (SAR) Government does not want human rights and it is suppressing and cracking down on human rights. Once Hong Kong's international image is damaged, it will be of no avail even if public officers are sent all over the world to glorify the city. Bad reputation "cannot be cleansed even with water". This is very important. The passage of this Bill will blemish the image of the society of Hong Kong which respects freedom, human rights and the rule of law.

Secondly, I still think that the Bill then proposed did actually have a clear and specific legislative intent; and after its passage, it had also been signed and given an assent by then Governor. In fact, the Hong Kong Bill of Rights Ordinance, as amended, could be said to have been officially commenced for a period of time before it was being frozen by the SAR Government, and it was a proper law. During its implementation, albeit brief, no chaotic situation had resulted from it at least for the time being. If it has been opined that there were any loopholes in the law in the amendments passed in 1997, or there were any technical problems, it is always possible to propose technical amendments rather than a complete overturn.

Just now I have adduced one reason relating to image and another, to principle. Thirdly, I would bring up a reason relating to timing, that is, why do we have to debate on it in the Provisional Legislative Council? Is it true that if

the Provisional Legislative Council does not debate on this Bill today, problems will arise in Hong Kong? Or that if the Bill were shelved, then chaotic situations would occur? In fact, the amended Ordinance has already been frozen, why must it has to be overruled in the Provisional Legislative Council? Why do we not leave it for discussion by the first Legislative Council? Now that the amended Ordinance has been frozen, it still has to be further shoved to the ground and be treaded on until depletion. This gives me or the community an impression that the Government thinks that the present Provisional Legislative Council is easy to bully, or it is just a rubber stamp. The Government believes that on many issues, usually political ones, it can surely win more than half of the votes, so it rushes to table the Bill now. I find it unacceptable that the Government has put forward such a sensitive and important topic which is of international concern at this moment, and demanded the Provisional Legislative Council to take action. In terms of timing, the decision should not be made by the present Provisional Legislative Council by way of voting, the topic should be further discussed in the first Legislative Council.

In view of the above three reasons relating to principle, international implication and timing, I think this Bill should not be debated and specially passed today. If it were really passed, the Government should be made responsible for the damage on the international image of the SAR Government as I mentioned earlier. I hope that Honourable colleagues will consider the three reasons I advanced just now. We do not have to hastily accept the Government's proposal today. Even if we overturn the Government's proposal, I believe it will invariably put it forward again in the first Legislative Council. Since the 1997 Ordinance, as amended, is now frozen, it does not make much difference whether this Government's Bill is passed today or not. Therefore, I hope that the Honourable members sitting here — there are still over 10 attending — can accept that we do not have to overrule the amendment passed in 1997 because the Ordinance has already been frozen. We do not have to help the Government to plunge the knife once more or fire one more shot, thereby turning ourselves into accomplices.

Thank you, Madam President.

**PRESIDENT:** Mrs Elsie TU.

**MRS ELSIE TU:** Madam President, when the Bill of Rights was introduced in 1990, the Government intended to include disputes between private individuals as well as between the Government and the people. The Bills Committee carried out a thorough consultation in 1991 which included submissions by business companies, the Bar Association, the Law Society and other organizations. As a result of those consultations, the Bill excluded disputes between private parties.

Although Article 39 of the Basic Law already included the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international conventions as applied to Hong Kong, the Chinese National People's Congress did not repeal the whole Bill of Rights put forward by the colonial government, but decided to repeal only sections 3 and 4 which gave precedence to the Bill of Rights over the Basic Law.

I have mentioned this historical point because those who, without consultation, passed the private Bill of Rights (Amendment) Bill 1997 knew that sections 3 and 4 would be deleted immediately after the change of sovereignty. The 1997 amendment may have been another attempt to give superiority to the Bill of Rights over the Basic Law. Such intentions can be seen in the speeches of some of the supporters of the 1997 Amendment Bill, passed only three days before the change of sovereignty. Some Members of this Provisional Legislative Council hesitate to repeal the 1997 Amendment Bill on the grounds that it was lawfully passed by the last Legislative Council, but that is not strictly correct, because on any controversial bill, we should consult the public. In the 1997 case, there was no public consultation.

In the case of today's Bill of Rights (Amendment) Bill 1998, there has been consultation. The only opposition to the present Bill has come from the "author" of the 1997 Amendment Bill, and from the Bar Association Chairman, who has taken a different stance from that of the Bar Association when the original Bill of Rights was passed in 1991. The Law Society has maintained its original 1991 stance and considers that the 1997 amendment is too vague and wide open to interpretation: to introduce private disputes into the Bill of Rights, they say, would open the floodgates to all and sundry and fill the courts with frivolous cases. They, that is, the Law Society, prefer to leave the Bill frozen for further consultation and legislation to implement definitive rights, rather than leaving it open to wide interpretation.

The fact is that, in accordance with Article 39 of the Basic Law, a great deal of legislation has already been introduced to implement human rights, and further legislation will be introduced when the need is identified.

A great deal has been made of the case of *Tam and Wu* (1991), which involved private individuals. The possibility of an error of judgment in that case does not merit opening a can of worms. By that I mean that to leave the 1997 amendment in the Bill of Rights would not only contradict section 7 of the Bill itself, but it would put Hong Kong on the way to becoming a litigious community like the United States, where the courts are used by every chronic litigant. The situation in the United States has become so serious that church pastors are being advised to avoid giving advice to their church members in case their advice proves to be ineffective and their members take legal action against the pastors for giving wrong advice. Do we want to reach that situation in our courts? The 1997 amendment, if implemented, would bring out the worst in human nature, encouraging people to bring frivolous charges against their neighbours and expecting lawyers and judges to decide who is right or wrong in trivial personal matters.

When we have grave doubts about a piece of legislation, we should leave it alone until we can clarify the intention as well as the consequences if it is implemented.

The 1997 amendment is in that category. I hope we will repeal it today. Some colleagues, like the Honourable Frederick FUNG, are afraid that because of the coming election, their political opponents will use their decision today to turn the voters against them.

**MR FREDERICK FUNG:** Point of elucidation.

**PRESIDENT** (in Cantonese): Sorry, you cannot elucidate now. You may only interrupt Member's speech if you have a point of order. If you seek an elucidation, I would ask Mrs Elsie TU whether she lets you do so. Should she disagree, she would continue with her speech and you have to wait till she finishes before you elucidate.

**MR FREDERICK FUNG** (in Cantonese): All right, I will seek elucidation after Mrs Elsie TU finishes her speech.

**MRS ELSIE TU**: Madam Chairman, I should clarify that it was not in my original speech. I am sorry that I have put it in. From my knowledge of some opponents, I am sure that whatever we do in the Provisional Legislative Council will be distorted and used against us. We can only hope that the public will ignore such distortions and realize who is working for the community and who is working for political party power. One can deceive some of the people some of the times, as we saw when some people's fears about loss of human rights and the rule of law proved unwarranted after June 1997. Those prophets of doom are now trying to justify themselves by making further false prophesies. But one cannot deceive all the people all the time, and we must trust the public to see through the lies and deceit that have disturbed our community for nearly a decade. The international community is just beginning to realize that all those gloomy threats did not come to pass.

After repealing the 1997 amendment, I hope we will continue to seek to legislate for further rights by substantive laws and not by open-ended amendments that will lead Hong Kong down the rocky road of uncertainty, of frivolous private disputes and vendettas that may make sensational news in the press but do nothing to build up a harmonious society.

I urge my colleagues to repeal this 1997 amendment by supporting the 1998 Amendment Bill. Madam President, I support the Bill before us today.

**PRESIDENT** (in Cantonese): Mr Frederick FUNG, do you need an elucidation?

**MR FREDERICK FUNG** (in Cantonese): Yes, because of one statement in Mrs Elsie TU's speech just now which said, "Some colleagues, like the Honourable Frederick FUNG, are afraid that because of the coming election, their political opponents will use their decision today to turn the voters against them." I would like to elucidate two points, for she is wrong in speculating on my motive. Firstly, before the Honourable LAU Chin-shek tabled his Members' bill at that time, the Honourable Bruce LIU had actually openly indicated that the Hong Kong Association for Democracy and People's Livelihood had the intention of tabling a similar bill. We have not done so later because the drafting procedure was very complicated and Mr LAU Chin-shek got one step ahead of us. Secondly, in the

Legislative Council of the former session, we have already put in positive votes and our present stand is not different from our past one. Therefore, I feel that Mrs Elsie TU has made a negative speculation on my motive and I am very unhappy about it.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him.

**MR IP KWOK-HIM** (in Cantonese): Madam President, on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB), here I would like to speak briefly to elaborate our views and stance regarding this Bill. The Hong Kong Bill of Rights (Amendment) Bill 1997 was discussed in the sitting of the former Legislative Council on 27 June last year. Although the Bill was eventually passed by Members, the six Members from the DAB had voted against the Honourable LAU Chin-shek's Bill at that time.

Madam President, this Bill mainly renders the provisions of the Hong Kong Bill of Rights Ordinance (BORO) applicable to all the laws, which would not only influence the legal relationship between the Government, public organizations and the people, but also the legal relationship between private individuals. The DAB has great reservation about this.

The harmonious life between people and the smooth running of the society depend on the individuals' correct understanding of their own rights and duties. People are born equal in the society, their rights should also be equally respected. The purpose of enacting the BORO is to protect the basic rights of individuals from being infringed upon by the Government or public organizations, it does not serve to provide a new weapon for litigations between individuals. However, while the BORO, as amended by Mr LAU Chin-shek, has failed to fortify the protection of human rights of individuals, it has further introduced the human rights issue into disputes between private individuals and imposed more legal restrictions on the individuals, thereby straying from the original intent of enacting the BORO.

From the perspective of a general principle, any law enacted by the Hong Kong Special Administrative Region (SAR) Government should not have an overriding effect over the Basic Law, naturally, the enactment of the BORO is no exception. The Basic Law, as the constitution according to which the SAR

Government operates, has specific provisions protecting the human rights of the people in Hong Kong. It is clearly stipulated in Article 39 of the Basic Law that, "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong SAR." Therefore, insofar as the protection on human rights of the people is concerned, if more provisions of generality similar to this Article are enacted, causing the Bill of Rights to be applicable to legal disputes between private individuals, the actual effect achieved will be tantamount to enacting a law with an overriding nature. So the DAB thinks that there is no need for this Bill to be enacted.

Pursuant to the Basic Law, the three covenants should be implemented through the laws of the SAR. Therefore, after the BORO was passed in 1991, in the past over six years, the Government has enacted and amended more than 40 ordinances targeting at human rights, for example, the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. Executive bodies such as the Equal Opportunities Commission and the Office of the Privacy Commissioner for Personal Data are also set up to implement the protection on and provisions concerning human rights stipulated in the international covenants. In the meantime, the Government has also responded to the people's ever-increasing demands for human rights and has provided protection against the infringement of one another's basic rights among the people, as well as protection for the human rights of the people.

We have to stress that the deletion of two provisions which inappropriately impose the human rights issue on individuals absolutely will not "weaken" the Bill of Rights or reduce the protection of individuals' rights. The deletion is made for the sake of avoiding confusion and rendering the Bill of Rights more effective in giving full play for the functions it should have.

Madam President, on behalf of the DAB, I speak in support of the Government's Bill. Thank you, Madam President.



**PRESIDENT** (in Cantonese): Mr Andrew WONG.

**MR ANDREW WONG** (in Cantonese): Madam President, in the Council meeting on 21 January this year, it was passed that the resolution for suspension should be extended until 28th of this month, that is, February. At that time, I have made a fairly long speech, and here I do not want to make a fresh explanation again. I would, however, like to point out that in the Bill proposed by the Honourable LAU Chin-shek, which was later passed and became the Hong Kong Bill of Rights (Amendment) Ordinance 1997, the newly added sections 3(3) and 3(4) did not have the original intention of including all disputes between private individuals in the Hong Kong Bill of Rights Ordinance (BORO). It has only aimed to solve a so-called "inconsistent" situation or problem, or a "contradiction", that is, a so-called "anomaly situation" which originated from the of *Tam v Wu* in 1991. Although it has been specified in section 7 of BORO that the Bill of Rights will only be applicable to cases of Government versus an individual, or an individual versus the Government, and not applicable to lawsuits between individuals, yet the narrow reliance of the judgment on section 7 has resulted in an inconsistency or a contradiction.

First, the Government versus an individual. If the result of the case has caused a certain ordinance to be repealed, and then in a subsequent case of one individual against another, the litigation involved a section in an ordinance which has been repealed as a result of the former case, the existence of section 7 in BORO, with such a narrow implication, would create a situation whereby in the laws of Hong Kong, there are some which the court could not apply whereas the individuals could make applicable. Hence, this would cause a very big contradiction, or an inconsistency.

Second, under the circumstances in which the ordinance is applicable both to Government against an individual and an individual against the Government, why do we not make allowance, in cases in which individuals are suing one another, for the interpretation of this so-called "repealing former laws" entity to be treated as a grant of statutory powers only to legislation and the enactment of legislation?

Regarding the amendment Bill proposed by the Honourable LAU Chin-shek in the previous Legislative Council session, I think some of the wordings were not as good as they should be. Many lawyers shared my view and thought that there might be a need for corrections. This may be a very good chance for us to make the corrections. I must point out, however, that his intention was very explicit,

and he himself has also stated it very clearly that he did not want to extend the scope. The answer which the Secretary for Constitutional Affairs made to me as the President in regard to an inquiry on a charging effect on government revenue can testify this point. During the debate, I had quoted two sentences, but regrettably a very important word has apparently been wrongly recorded in the Official Record of Proceedings. That was the mistake of the recorder, not mine. At that time, Mr John DEAN pointed out in his reply that, "Whilst the Bill might give rise to new demands on the legal aid services, it is difficult to estimate the actual cost implications which are unlikely to be significant." He made the statement "which are unlikely to be significant" in no uncertain terms. He has indicated that these additional expenses incurred would not be significant. In other words, the incorporation of sections 3(3) and 3(4) of Mr LAU Chin-shek's amendment Bill into the BORO might bring about the effect that certain laws which had been repealed as a result of some action of the Government against individual citizens could have been made use of by certain individuals, and then when another individual wanted to press for damages, he might apply for legal aid. This is how extensive the scope of section 7 could be. I made a special emphasis on this point just to make it clear to everybody. What I had said was "unlikely to be significant", but later, as time was running short, I did not translate the statement into Chinese. The view can be said to be almost identical with mine. At that time, the Government did agree that at least when laws are repealed as a result of Government versus individuals cases, if the amendments proposed by Mr LAU Chin-shek then were added into BORO, then they could be applicable to lawsuits between individual citizens as well. This is one of the possibilities.

The second possibility. If an individual citizen exercises certain rights under a certain ordinance to attack another citizen, the court may also resort to the BORO. As far as the whole issue is concerned, I have considered clarifying the ordinance by way of proposing an amendment so that the original intent could be preserved. Of course, the best thing is to propose an amendment, but I can well understand and appreciate the anxiety, in particular, that of the Hong Kong Law Society, that the failure to make the ordinance clear would render lawyers unable to provide the best advice to citizens who come to them for assistance. I also think that if the laws are clear enough, lawyers are obliged to provide good opinions to the citizens. Why then do we not join hands in convincing the Government to discuss the proposal of amendments in order to modify sections 3(3) and 3(4) and make them more presentable?

Here, I must record my thanks to the barrister Mr Anthony CHUA for his efforts in drafting an amendment for me. But regrettably, I cannot propose the amendment. I want to oppose the repeal of the law in a positive manner for two main reasons. First, in drafting the amendment, Mr CHUA proposed an amendment to section 7 which, in his terms, meant the transfer of the original sections 3(3) and 3(4) to section 7 after the amendment, recasting them as the new sections 7(3) and 7(4). I am worried that the President would rule such a move as one which has exceeded the scope of the Bill, for the explanatory notes at the back of the Bill has clearly stated that the objective was to repeal section 3. Under such circumstances, if section 3 were slightly amended, it might have been acceptable by the Council, but moving the section to section 7 could be problematic. In fact, I did not have sufficient time to think of a proper amendment either.

Secondly, what is more important is that according to the opinion of the Bar Association, amendments are not compulsory even if the original intent of Mr LAU Chin-shek were to be preserved. It is possible even if the entire section were not amended or repealed, or even had the suspension immediately uplifted, because at that time, no appeal had been lodged from the *Tam v Wu* case. Under such circumstances, if an appeal had been lodged, the original findings may have been quashed by the Court of Appeal or the Privy Council. If the amendment Bill of Mr LAU Chin-shek were passed, the court might not have interpreted section 7 in the same way as it had done so in dealing with the *Tam v Wu* case, and instead, it would probably incline towards the original intent which I have just mentioned. I must point out that when the BORO was still a White Bill in 1990 — I had read all the speeches made by the Members who spoke then — Members had not been aware of the emergence of such a contradiction when they were debating the Bill on the BORO in 1991. At that time, nobody had worried about the possibility of such a contradiction, for it had been clearly stated in the provisions that all previous legislation inconsistent with existing law should have to be repealed. However, two processes were involved in a repeal, and it could be that consideration in general had not been thorough enough then and so it was not thought to be problematic. Yet, I do not think what the Honourable Mrs Selina CHOW and the Honourable Mrs Elsie TU said just now were expressive of the opinions then. If those were what they had understood, what they were not entirely representative of the legislative intent, or the intention of the legislature then.

Mr Philip DYKES (a senior barrister now in private practice), the expert on the Bill of Rights in the Government then, and Mr Johannes CHAN of the Law School of the University of Hong Kong, jointly wrote a letter to the then Honourable Miss Margaret NG on 13 May 1997. I am going to read out an extract from it which says, "We support the spirit behind the amendment (in other words, Mr LAU Chin-shek's amendment) which is to extend the Bill of Rights to any legislation (which is important) irrespective of the identities of the parties. We believe that it is in accord with the original intent of the legislature. And *Tam Hing-yee v Wu Tai-wai* has unduly restricted the scope of the application of the Bill of Rights Ordinance and was wrongly decided."

Certainly, such are their opinions. In simpler terms, they are in support of a spirit, which is to enable the Bill of Rights to be applicable to all laws in Hong Kong, no matter whether the parties in the litigation involve Government against individuals, individuals against Government, or individuals against individuals. This is the powers conferred by the law. They believe that this is in accord with the original intent of the legislature in 1991, and that the *Tam v Wu* case has unduly restricted the scope of application of the BORO, hence they opined that the court had made a wrong decision then.

Madam President, I take it that repealing the law is a very serious matter, more especially that the objective of this amendment Bill is to clarify the original intent and to solve contradictions. Madam President, it is even more serious to first freeze the law and then repeal it subsequently. Will such actions on the part of the Government give people an impression that it is guilty of defrauding: first defrauding people by saying that it would make careful deliberations on the entire case, and then defraud people once again by saying there is a necessity to repeal the law? For the contradictions and uncertainties which the Government has alleged, the proper way of handling them is to make amendments, and not repealing them.

Madam President, I so submit in opposition to the Second reading.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW, do you wish to elucidate what you said earlier?

**MRS SELINA CHOW** (in Cantonese): Yes, because I was the convener of the Bills Committee in 1991. I just want to say that the Honourable Andrew WONG seemed to allege that Members were not very clear about whether the Ordinance should be applicable to disputes between private individuals at that time. However, as far as I can remember, the then Members had made a very explicit decision after lots of in-depth discussions and considerations. The decision was that the Ordinance should not be applicable to disputes between private individuals.

**PRESIDENT** (in Cantonese): Secretary for Home Affairs, do you intend to speak?

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, I would like, first of all, to thank members of the Bills Committee for their detailed consideration of the Hong Kong Bill of Rights (Amendment) Bill 1998 (the Bill). I also wish to express my sincere gratitude to the Bar Association, the Law Society, and several other individual members of the community for their many submissions on the Bill.

The purpose of the Bill is to repeal the two new subsections 3(3) and 3(4) of the Hong Kong Bill of Rights Ordinance (the BORO) as added by the currently suspended Hong Kong Bill of Rights (Amendment) Ordinance 1997, (the Amendment Ordinance), which was hastily passed on 27 June 1997 by the former Legislative Council without scrutiny by a Bills Committee. Ever since 18 July 1997 when the Legislative Provisions (Suspension of Operation) Ordinance 1997 took effect, the BORO must be read as if the two new subsections under the Amendment Ordinance had not been enacted. The current Bill, if passed, will indefinitely extend the way that the BORO should be read like this.

As I said when introducing the Bill to this Council in January, the Bill is necessary to remove the uncertainty and confusion brought about by the new subsection 3(3) of the currently suspended Amendment Ordinance. This new subsection, when read with section 7 of the BORO — which provides that the Ordinance binds the Government and public authorities — could give rise to more

than one interpretation, and could inadvertently have imposed obligations on private citizens, contrary to the original intent of the legislature when it enacted the BORO in 1991.

Many members of the Bills Committee at their three sittings share our concern that the Amendment Ordinance is unclear and has introduced confusion into the law. They support our proposal to repeal the Amendment Ordinance altogether so as to tackle the problem at source. The Law Society also share our assessment of the Amendment Ordinance's impact, though they consider that we should continue to freeze the Amendment Ordinance for further consultation.

Other members of the Bills Committee expressed the view — one shared by the Bar Association — that there was no repugnance between sections 3(3) and 7. At the same time, they have suggested that if it is maintained that the law is unclear, the correct way forward is to clarify it (by way of amendment) rather than to repeal subsections 3(3) and 3(4) altogether. Our response is that this was, indeed, one of the options that we explored before we introduced the Bill into this Council. However, after careful consideration, we concluded that this option did not offer the best way forward because the Amendment Ordinance was unnecessary in the first instance. We reached this view having regard to the original intent of the legislature when the BORO was passed in 1991 and to the prevailing human rights safeguards that already exist in respect of inter-citizen relations.

The decision to limit the application of the BORO to the Government and public authorities was the result of a very thorough debate when the Ordinance was introduced into the Legislative Council in 1991. That decision was reflected in section 7 following a Committee stage amendment moved by Members themselves. We accepted the view at the time, as we do now, that there was nothing in the International Covenant on Civil and Political Rights (ICCPR) to require States Parties to impose obligations upon, and enable claims to be made against individuals, through the vehicle of a Bill of Rights. This is a matter for individual jurisdictions and we are glad that the Law Society agrees with this view.

To address the protection of individuals' rights, we have, since the enactment of the BORO in 1991, introduced specific legislation in areas where that was clearly appropriate, namely the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the

Personal Data (Privacy) Ordinance. We consider that specific legislation offers the best approach because it contains detailed provisions specifically designed to address the different circumstances and complex or nebulous issues that inter-citizens' actions may entail.

Furthermore, since 1991, we have been amending legislation that is inconsistent with the BORO (and hence the ICCPR) even where such legislation concerns inter-citizen relations only. The most recent example is the Marriage and Children (Miscellaneous Amendments) Ordinance which amended the gender-biased provisions in two matrimonial ordinances thereby rendering them consistent with the ICCPR. At the same time, we have ensured that every new legislative proposal is subject to the test of consistency with the ICCPR as applied to Hong Kong before it is submitted to this Council for consideration.

More importantly, the protection of human rights in Hong Kong is enshrined in our constitutional document, the Basic Law. Chapter III of the Basic Law and in particular, Article 39 provides that the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law and that such restrictions shall not contravene, *inter alia*, the provisions of the ICCPR as applied to Hong Kong through the laws of the Hong Kong Special Administrative Region. In other words, the minimum standard of human rights enjoyed by Hong Kong residents is already guaranteed by the Basic Law to be the ICCPR standard.

Some members of the Bills Committee have argued that the Amendment Ordinance was necessary to address the legal anomaly created by the Court of Appeal ruling in *Tam v Wu*. However, as explained earlier, the Government's efforts since 1991 in amending legislation found to be inconsistent with the ICCPR as applied to Hong Kong have meant that the ruling in *Tam v Wu* is now of little or no practical significance.

We need to resume Second Reading Debate on the Bill now because the suspension period of the Amendment Ordinance will expire after 28 February 1998 and the Bill is essential and necessary for the purpose of the terms of reference of this Council as set out in the 1996 Decision of the Preparatory Committee.

With these remarks, I support the motion and hope that Honourable Members will vote for the Bill.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Hong Kong Bill of Rights (Amendment) Bill 1998 be read the Second time. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(Members responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it.

Mr Andrew WONG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Andrew WONG claims a division. The division bell will be rung for three minutes.

**PRESIDENT** (in Cantonese): Would Members please cast your votes?

**PRESIDENT** (in Cantonese): If there are no queries, the results will now be displayed.



Mr WONG Siu-yee, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Mr Eric LI, Dr David LI, Mr LEE Kai-ming, Mr Allen LEE, Mrs Elsie TU, Mrs Selina CHOW, Mrs Peggy LAM, Mr Henry WU, Mr NGAI Shiu-kit, Mr Henry TANG, Mr YUEN Mo, Mr MA Fung-kwok, Mr CHEUNG Hon-chung, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, Dr LEONG Che-hung, Mrs Sophie LEUNG, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr TSANG Yok-sing, Mr CHENG Kai-nam, Dr Philip WONG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr LAU Kong-wah, Mrs Miriam LAU, Mr Ambrose LAU, Mr Paul CHENG, Mr CHENG Yiu-tong, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr NGAN Kam-chuen, Mr LO Suk-ching and Mr TAM Yiu-chung voted for the motion.

Mr MOK Ying-fan, Mr Frederick FUNG, Mr Andrew WONG, Mr Bruce LIU and Dr LAW Cheung-kwok voted against the motion.

THE PRESIDENT announced that there were 45 Members in favour of the motion and five against it. She therefore declared that the motion was carried.

**CLERK** (in Cantonese): Hong Kong Bill of Rights (Amendment) Bill 1998.

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Bills: Committee Stage. Council is now in Committee.

**HOUSING (AMENDMENT) BILL 1998**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Bill.

**CLERK** (in Cantonese): Clauses 1 and 2.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(Members responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PROVIDENT FUND SCHEMES LEGISLATION (AMENDMENT) BILL 1997**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clause stand part of the Bill.

**CLERK** (in Cantonese): Clause 1.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any schedules should be considered after the clauses of a bill have been disposed of, may I seek your consent to move under Rule 89 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that schedules 1 to 12 may be considered respectively together with the relevant clauses, as they are inter-dependent.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Financial Services, you have my consent.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider schedules 1 to 12 respectively together with the relevant clauses, as they are inter-dependent.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is : That Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedules 1 to 12 respectively together with the relevant clauses.

I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

Council went into Committee.

**CHAIRMAN** (in Cantonese): Council is now in Committee. I now propose the question to you and that is: That the following clauses and Schedules stand part of the Bill.

**CLERK** (in Cantonese): Clauses 3, 7 to 10 and 13 and Schedules 2, 6 to 9 and 12.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 2 and Schedule 1.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendment to section 6 in item 17 in Schedule 1, as set out in the paper circularized to Members.

The proposed amendment mainly aims to reorganize the Mandatory Provident Fund (MPF) Authority as a body corporate, instead of being established as a sole corporation in the Bill. As the MPF system is mandatory which keeps the hard-earned money of over 2 million employees, the community will expect the Government to tightly and properly control this system.

The future MPF Authority undeniably plays an important role in controlling, therefore, we think that the future Authority must be qualified in three important aspects. Firstly, an effective operation. It will be highly efficient in both daily routines or emergency cases; secondly, a proper balance mechanism; and thirdly, a transparent body to allow participation by the general public.

In the amendment, we have on one hand suggested the Authority to establish as a sole corporation for effective operation; but on the other hand, we must strengthen the balance mechanism and require the Board to obey the instructions of the Chief executive, and report to the Financial Secretary on important matters. In addition, we have also added clauses about setting consultative mechanism to allow the public, such as people from the trade, the employers and representatives from the employees to participate. It aims at enhancing the Authority's transparency and accountability. Therefore, I think that the suggestions in the original amendment meet the requirements of the MPF Authority.

Though the Honourable Members have different ideas in what model the Authority is going to establish, they generally agree to our main principles during the discussion of the Bill. First, the MPF Authority has a major responsibility to control this system; second, the Authority must be qualified in effective operation, proper balance mechanism and highly transparency. However, several Members in the Bills Committee think that the Government should further enhance the balance and transparency of the Authority, and urge the Government to change the Authority to a body corporate which Board of Directors will perform the functions of the MPF Authority.

We fully understand the concern of the Members and we pay high regard to their suggestions. After several debates, we agree to the amendment to the Bill and to change to establish the MPF Authority as a body corporate. However, I wish to emphasize here that the Government, though agree with the reorganization, still thinks that efficiency, accountability and transparency are equally important to the future MPF Authority, and they are indispensable. Therefore, I wish to ask the Members here to consider the balance among these three criteria about the amendment to the Authority and avoid paying particular attention to any one of them because it may greatly hinder the future Authority to perform its function of controlling.

I firmly believe that the amendment to the reorganization of the Authority can both fully reflect the opinion of the various members of the Bills Committee, and attend to the long-term interests of over 2 million participants of the Scheme. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): The Secretary for Financial Services, Mr Ronald ARCULLI, Miss CHAN Yuen-han and Dr LAW Cheung-kwok have separately given notice to add new section 6AA to item 17 in Schedule 1.

I propose that all the proposed amendments be debated together in a joint debate as they are related.

**CHAIRMAN** (in Cantonese): Committee shall now proceed to a joint debate. I will first call upon the Secretary for Financial Services to move his amendment, as he is the Public Officer in charge of the Bill. Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): I move that new section 6AA be added to item 17 in Schedule 1, as set out in the paper circularized to Members. The amendment is concerned with the membership of the Mandatory Provident Fund (MPF) Authority.

As I have said just now, the MPF Authority will play a very crucial part in monitoring the MPF system. Therefore, we must ensure that appropriate and capable persons will be appointed to take up the duties of directors of the Authority in order that that the interests of some two million "wage earners" could be taken care of. For this reason, the Bills Committee and members of the community alike have taken the composition of the Authority very seriously, and this is understandable.

After repeated discussions by the Bills Committee, we can summarize the requests of Members into five points as follows:

First, the Board of Directors should be streamlined, and it should not be oversized, in order to have its efficiency enhanced, to effectively handle its daily monitoring duties and to meet contingencies;

Second, there must be a certain number of full-time executive directors in the Authority so that the top level staff serving in the Authority could fully take part in the monitoring work of the MPF system;

Third, there must be non-executive directors in the Authority to give their opinions in the capacity as independent third parties. The number of non-executive directors must exceed that of the executive directors in order to enhance the accountability and transparency of the Authority;

Fourth, as far as non-executive directors are concerned, there must be an equal number from the employers and employees because they are the most important participants of the MPF system, so there is a need to ensure that their views are sufficiently reflected; and

Fifth, apart from employers and employees, the Chief Executive should be accorded sufficient flexibility to appoint any appropriate person as non-executive director.

However, Members have held different views and failed to reach consensus on the details of the membership of the Authority such as the number of members, the ratio of executive and non-executive directors, the quota for employers and employees and so on. After considering the variety of views, the Government, in proposing the present amendment, has to adopt two principles, namely: First, to bring up, as far as possible, a balanced proposal on the details disputed by the Members in order to take regard of views from all sides; second, to provide as much flexibility as possible in the drafting in order to cope with the needs of an unforeseeable future.

In the amendment proposed by the Government, we would like to make the following suggestions regarding membership of the Authority:



Firstly, the total number of directors. The Government's amendment provides that the Authority should comprise no less than 10 directors to ensure that there will not be an excessive number of members in the Authority. This is totally in line with the wishes of Members for the structure of the Board of Directors to be streamlined while retaining a sufficient measure of flexibility. More members could be appointed in case any future need arises.

Secondly, as for the number of non-executive and executive directors. The Government's amendment proposes that the Authority be composed of executive and non-executive directors, with the number of non-executive directors forming the majority. This proposal should have met the requests of Members, for on the one hand, this would ensure that there will be quite a number of full-time directors managing the work of the Authority; and on the other hand, the excess in number of non-executive directors over that of executive directors will bring about a balancing effect. A proposal as such would not only strike a balance between the efficiency and accountability of the Authority, but it would also make the actual appointment much easier.

Thirdly, as for the representation for employers and employees. The Government's amendment proposes there will be no more than two, but an equal number of, representatives from the employer and employee sides. The setting of a ceiling on the number of representatives from employers and employees will cause the establishment of the Board of Directors to be streamlined, and would avoid causing any adverse effect on its efficiency which an oversized one would bring about. Hence, our proposal has taken care of the requests from Members in that a reasonable number of director posts has been assigned to representatives of employers and employees, thereby enhancing the accountability and transparency of the Authority, while at the same time preventing the membership of the Authority from an over-expansion.

Fourthly, Apart from the representation of employers and employees, no detailed requirements will be made regarding professionals or people from a trade for other non-executive directors of the Authority. This is also complying with the general view of Members while preserving flexibility for the Chief Executive to appoint the most appropriate persons.

As there was a discrepancy in the views of members of the Bills Committee over details on the composition of the Board of Directors, three Members, namely,

the Honourable Ronald ARCULLI, the Honourable Miss CHAN Yuen-han and Dr the Honourable LAW Cheung-kwok have separately proposed their amendments. We reckon that there are impropriety in certain areas in these amendments:

First, the total number of directors. Members of the Bills Committee generally agreed to the proposal of the Government that the minimum number should be not less than 10 persons, but the amendment of Mr LAW Cheung-kwok has proposed to raise the minimum to 12 persons, as a result of which the size of the MPF Authority of Directors will increase, hence going against the will of the Bills Committee to confine the size of the Board of Directors to a small one.

Second, concerning the number of executive and non-executive directors, the Government is of the view that a simple specification on a majority requirement for non-executive directors will have already complied with the demands of Members and achieved the balancing role of non-executive directors. However, the amendment proposed by Miss CHAN Yuen-han rigidly set the ratio between non-executive directors and executive at 2 to 1; while the amendment of Mr LAW Cheung-kwok has also proposed to rigidly fix the percentage of executive directors within 40%. Under these two amendments, whenever the Authority intends to increase the number of directors for any one party, it will have to additionally appoint another director for the other party according to the proportion set in the Ordinance, regardless of the need. For example, if in future, the Authority identifies the need to employ an additional executive director, according to the amendment proposed by Miss CHAN Yuen-han, we shall have to appoint two additional non-executive directors. Hence, it can be seen that a rigid ratio will not only cause appointments to be more complicated, but will also be extremely inflexible.

Third, as regards the number of representatives of the employers and the employees, the Government has proposed that the Chief Executive could appoint not more than two representatives. This in fact is a reasonable number and is conforming with the request of Members. The amendments proposed by Miss CHAN Yuen-han and Mr LAW Cheung-kwok provide for not less than two directors for each side of representatives of the employers and employees, and no upper limit has been set. This will cause the number of directors in the Authority to expand and may hence affect the operational efficiency of the Authority. Mr ARCULLI has also proposed an amendment which apart from specifying that there shall be no less than two representatives, rigidly provides in the Ordinance that the total number of employer and employee representatives should not be less than half the total number of non-executive directors. This will not only give rise to the

problem of expansion of the Authority, but it will also aggravate the difficulties in appointment.

Here, I would like to ask Members to take into account the following points while considering the various amendments concerning the membership of the Authority:

Firstly, an excessively rigid and over-complex membership ratio would cause difficulties in appointment and employment, and would also cause appointments to be lacking in flexibility, thereby resulting in an inability to cater for long-term needs;

Secondly, an excessive number of representatives of the employers and employees will cause the Authority to be over-expanded, or it will result in the inability to accommodate other appropriate persons in the Authority.

Madam Chairman, I believe that the Government's amendment has not only avoided the various problems mentioned above, but it is also flexible and can take care of the varying demands of Members from all sides; furthermore, it will be able to achieve an equilibrium among the efficiency, accountability and transparency of the Authority. In fact, it is a proposal that can most attend to the long-term operational needs of the Authority and the interests of the participants of the MPF Scheme. For these reasons, I request Members, for the sake of the needs of the Authority and of the participants of the Scheme, to support the Government's amendment when you vote.

Thank you, Madam Chairman.

*Proposed amendment*

### **Clause 2 and Schedule 1 (See Annex I)**

**CHAIRMAN** (in Cantonese): I now call upon Mr Ronald ARCULLI to speak on the amendment moved by the Secretary for Financial Services, his own proposed amendment as well as the proposed amendments by Miss CHAN Yuen-han and Dr LAW Cheung-kwok. After Mr ARCULLI has spoken, I will call upon Miss CHAN Yuen-han and Dr LAW Cheung-kwok to speak in that order. However, no amendment may be moved by Mr ARCULLI, Miss CHAN or Dr LAW at this stage. Mr Ronald ARCULLI.

**MR RONALD ARCULLI:** Madam Chairman, the Secretary for Financial Services professes flexibility in the formula provided by the Administration and he criticizes each of the three amendments that my two other colleagues, the Honourable Miss Chan Yuen-han and Dr the Honourable LAW Cheung-kwok, and I have put up. He criticizes our formulae as being inflexible. May I take this opportunity of reminding the Secretary that this is a Provident Fund to be introduced by law to be mandatory, and in that respect it seems to me at any rate that the voices of employer and employees alike should be a significant voice within the Authority.

The formulation by the Administration is not more than two but at least one employee from each of these two sectors. But there is no upper limit on the size of the Board or the Authority because it says "no fewer than 10". So, in practice and in theory, at any rate the law will permit the Administration or the Chief Executive to have a Board of 12 or 14, and perhaps with one representative from each of the employer and employee sectors. Is that the Government's view of an open, transparent, fair and reasonable composition of an Authority? Of course it is, if you wish to control the Board without responsibility, and I would not be surprised if that is not at the back of the mind of the Government.

The reason why my colleagues and myself have imposed certain constraints without enlarging the size of the Board to be unwieldy is simply because we believe in checks and balances. We believe in accountability and we also believe that the voices of employer and employees alike should not be unduly and unfairly diluted, if they should happen to speak out in the Authority. Because they are protecting the interests of the entire workforce and indeed, the community. Thus, for that reason, I would not hesitate to say to Members, "Please do not support the Administration's formula because if you do, the voices of employers and employees could be drowned out."

As for my own formulation, I have kept the figure at not fewer than 10 for the Authority. I have also said that in terms of employer and employee representatives, there should be at least two. It does not compel the Chief Executive to appoint more than two. It is a minimum of two and there is no maximum. The maximum is to be decided by the Chief Executive or the Administration. From that point of view, to say that "there will be an over-representativeness on the part of employers and employees" is frankly to try to mislead this Council. So, I think from that point of view, each of the formula of myself, Miss CHAN Yuen-han and Mr LAW Cheung-kwok is identical. All of us say at least two representatives from each of those sectors.

I have put a constraint on this to try and preserve a small Authority, an Authority where the employers and employees have a significant voice, and that is by saying that from amongst the non-executive directors, the employer and employee sector in the total number should not be less than half. Thus, if you have a total of seven non-executive directors, employer and employees would have four. The ratio would be four to three on the non-executive side. If you have more than that, say eight, it cannot work because of equal numbers. You have to have six and four perhaps, something like that. But the whole purpose is that amongst the non-executive sector, the employers and employees provide a significant voice. But, this also allows the Administration to decide on the size of the Authority, and you can go up to 13 quite easily without running into trouble with my formula.

I think the difficulty with Miss CHAN Yuen-han's formula is that she wants the ratio of non-executive to executive directors to be two to one. So, if you have a Board of 10 you can have six non-executives and four executives. But in fact, it does not work because you need to have seven and three, or something like that. But if you have 11, it cannot be seven and four. It has to be eight and three. And if you have 12, yes, you can have eight and four. Then you get two to one ratio. So, I think, from that point of view, that is the difficulty of her formula.

Dr LAW Cheung-kwok's "not more than 40% should be executive directors" have a similar disadvantage. He suggests that the Board is to have no fewer than 12 directors, and that might be considered too big. If you increase it, the numbers again may get a little difficult in terms of management, but I think his formula is slightly more flexible than Miss CHAN Yuen-han's.

Thus, I think when you come to considering all the factors, it seems to me that my proposal would allow the Board to have as few as 10 members, that is, the minimum, which is what the Administration wants. Or you can have 11, and that will still preserve what I call "the significant voice of employers and employees" within that Board.

For all these reasons, Madam Chairman, I hope that Members will not support the Administration's formulation. I hope that Members will support mine. I will perhaps speak again — if mine is defeated — on the one I choose of the remaining two. But I do not want to undermine myself. I just want to undermine the Administration at this juncture.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, just as the Honourable Ronald ARCULLI, the Chairman of the Bills Committee, said a moment ago, in the course of examining this Bill, our motive was to hope that this Authority which is going to take charge of the retirement protection involving all the salariat in Hong Kong will be a transparent one, that it will be able to take on the role of supervision and to provide checks and balances. Of course, we are also concerned about the efficiency of the Authority. We think that the size of it should not be too large, but neither should it be too small. In fact, during the examination, we had great arguments with the Government. At first the Government stressed that just a single person could manage. Later, it made a concession, a very big concession as alleged by the Secretary earlier, that is, it was willing to set up an Authority. With regard to the composition of the Authority, the Government has also taken into consideration our views, which include a fixed number of employer and employee representatives because the retirement system involves two aspects, one is the future retirement protection system of the salariat, the other one is the establishment of a system to protect the employees by the employers. Therefore, the Government promised us that there would be both employer and employee representatives in the Authority. We, the labour sector, welcome this bit and we think that the Government has made a very good concession.

After the Government's concession, we felt that the Government wanted to do something. I hope Honourable colleagues will not believe what the Secretary said just now. As Mr Ronald ARCULLI said, we have said everything. We were really standing on both sides, while we did not want the membership Authority to be out-sized, we did not want it to lose its checks and balances, supervision and transparency either. It is right because of this reason that Mr Ronald ARCULLI, Dr LAW Cheung-kwok and I have moved our different amendments.

Some colleagues may ask: why are there three different amendments? Actually, strictly speaking, we may find a point of balance through discussions if we can have one or two months more, since throughout the final discussion, the Government was reluctant to put forward its plan. Madam Chairman, the situation this time is kind of weird, for this time, we made our proposal first before the Government did so, unlike some other occasions when the Government has its own proposal first then we subsequently expressed our views. It is exactly because of this that the present situation emerges.

In fact, the three of us have the same objective, it is just that we have different views. Our greatest discrepancy is about whether the posts of the chairperson and the deputy chairperson should be held by an executive director or non-executive director. Both the Hong Kong Federation of Trade Unions (FTU) and the Democratic Alliance for Betterment of Hong Kong (DAB) stress that the chairperson and the deputy chairperson should be non-executive directors. Please remember to count: according to our formula, there are no less than two employee representatives and no less than two employer representatives, with the addition of a chairperson and a deputy chairperson who are non-executive directors, there are already six members. Moreover, there still have to be representatives from the trades, government officials and others, so I estimate that it would be very difficult to have just 10 directors. Eventually we may have an Authority of 12 members.

We have already agreed that there will be four employer and employee representatives, while there will also be other people, for in our concept, the posts of chairperson and deputy chairperson should be taken up by non-executive directors. After the law is passed and the Authority set up, the Government may be able to find loopholes therein and weaken the supervision of the non-executive directors. Therefore, in order to allay our worries, my ideas began to stray from that of Mr Ronald ARCULLI and I started considering the stipulation of a rigid rule. Like me, Dr LAW Cheung-kiok started to think of a rigid rule, too. This is exactly the answer to what the Government said just now. According to my amendment, if there shall be one more executive director, then two more non-executive directors have to be added. This would make the Government feel difficult. If we all agree that this Authority has to have checks and balances, transparency, accountability and efficiency, then without the existence of rigid rules, the part of non-executive directors would be weakened. This is what we are worried about.

Besides, I hope that Honourable colleagues will note that the Authority is not set up by appointment rather than by election. This is a very important factor, the reason why the FTU and the DAB have emphasized that there must be rigid rules. The most important point is that the Authority is appointed, although when the Government may put forward a lot of selection criteria in its appointments of non-executive directors, the Government still thinks that our proposals are unacceptable, for even if they are to be appointed by the Government, the number cannot be too big. I really feel sorry about this. I hope colleagues can understand that I

propose the stipulation of rigid rules because I do not want the Government to weaken on the supervision of the non-executive directors.

Moreover, from an objective angle, if we add together two employer representatives, two employee representatives, chairperson and deputy chairperson who are all non-executive directors, together with members from the trades, government officials and some other people, there will be at least seven to eight persons. Therefore, we propose a ratio of two to one. Furthermore, the whole Authority is appointed rather than elected, so there must be a certain degree of supervision, otherwise it may be reduced to a dependent entity of the Government. This is the rationale behind our whole amendment.

Mr ARCULLI, I am sorry, although your amendment precedes mine, I will not support your amendment. I hope that Members will support me. As to how I will vote, it all depends on the results later on.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Dr LAW Cheung-kwok.

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam Chairman, I do not know whether it is good or bad to have my amendment put at the last. It is possible that many Members support my amendment, but it is also possible that my amendment will not even have a chance for voting.

The operation of the Mandatory Provident Fund system has to be effective in protecting the interests of the employees in Hong Kong, so the composition of the Authority is extremely important. The Government has made many repeated amendments to the composition of the Authority. In the beginning, a mode similar to that of the Monetary Authority was conceived, that is, the chief executive can arrogate all powers to himself. The Hong Kong Association for Democracy and People's Livelihood (ADPL) does not subscribe to this mode at all. Later, it gradually began to take after the mode of the Securities and Futures Commission, which means the chairman and the chief executive are the same person, and the executives on high pay are also executive directors, accounting for about half of the directors of the Authority. The ADPL does not subscribe to this mode either. Therefore, other than the amendment I move today, the amendments of the other two Members are basically working in this direction.



In fact, we very much hope that the Authority can operate in a relatively independent manner and will not be completely controlled by the Government. The opinions of the appointed non-executive directors, no matter whether they are employers, employees or other people, must be substantially respected. If we look carefully at the composition proposed by the Government, which consists of 10 members of which no less than four are non-executive directors, we will find that the ratio may become four to six. Later, the Government said that the non-executive directors will be the majority, that means six to four. If the chairperson is elected from among the non-executive directors, and supposedly the chairperson will very likely comply with the Government's views, then it becomes five to five. Under the circumstances of equal numbers of vote, the chairperson has the power of veto, as a result, the chairperson and the executive directors can decide all the matters of the Authority and do not need to consider or respect the views of employers, employees and other people. Therefore, I think that the Authority has to be expanded and the restrictive conditions we propose have to be added. I find it essential to increase the number of directors of the Authority to 12.

The Government stresses that, to achieve the goal of streamlining the structure, 10 is the minimum because the Authority may have to meet contingencies in the future. I think that the composition of the Authority is to deal with the normal daily operation, so it is unreasonable to only take the so-called "contingency" element into account. If the Government feels that there is such a big difference between 10 and 12 directors, thinking that 12 will not be efficient and cannot meet contingencies, then I would believe that the government officials must have thought this Provisional Legislative Council of 60 Members a very large but improper organization without any efficiency! I fail to see that there should be any contingency that the Provisional Legislative Council is unable to meet!

I hope Honourable colleagues will particularly take one point into consideration: if we hope that the Authority will operate in a relatively independent manner, the Government must, in accordance with the system, respect the views of the employer representatives, employee representatives and other people in the Authority. I hope Members will give it a thought and support my amendment. I am not saying that you should not support the other amendments, except that of the Government because it does not warrant support. If my amendment does have a chance for voting, I hope Members will support that one of which the number of Authority directors is 12.

Besides, the difference between my amendment and the other two Members' amendments is the "40%" rule. In fact, the Honourable Ronald ARCULLI has said very clearly earlier that he cannot disclose the secret now as to how they will vote if his amendment is not passed. Actually I am quite confused these few days. Reporters are always after me, asking how much chance of passing my amendment will have. In fact, I myself have not figured it out. The major factors are the votes of Mr Ronald ARCULLI and his party and, of course, whether or not other independent Members will support me. Mr Ronald ARCULLI said just now that he did not want to officially make known his position at present. I hereby appeal to Mr Ronald ARCULLI and other colleagues for support because the "40%" rule I propose is obviously more flexible than the Honourable Miss CHAN Yuen-han's amendment. When Members from the ADPL vote, we will vote against the amendments of the Government and Mr Ronald ARCULLI. As for Miss CHAN Yuen-han's amendment, we will support. Of course, although we still support her amendment, we hope that it cannot be passed. (*Laughter*) I hope Members will consider supporting my amendment. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Mr WONG Siu-yee.

**MR WONG SIU YEE** (in Cantonese): Madam Chairman, first of all, I would like to tender my apology to you and through you to colleagues in the Secretariat. I had moved amendments within a very short period of time, for which I obtained your approval, and then, I withdrew the amendments in a very short time and again obtained your approval, causing you and colleagues in the Secretariat to waste a lot of efforts. May I hereby tender my apology.

Madam Chairman, I have moved the two amendments as aforesaid with the objective of enabling the amendments to ultimately achieve the desired goal of "providing livelihood to the elderly", hoping that every person in Hong Kong who have toiled and perspired when he was young could live in complacency in old age. If that be the case, you would have asked me why I should now decide to withdraw the amendments which have always been the ideas that I held fast onto so much?

In fact, up till this moment, I still think that what I have always held fast onto is correct, and have started out with safeguarding the interests of all the people in

Hong Kong in mind. The decision to withdraw the amendments is absolutely the most difficult one I have ever made since becoming a Member of the Provisional Legislative Council.

Madam Chairman, I believe that I owe the public an explanation for withdrawing my two amendments. Now I hope you can allow me to use a little time to state my reasons.

First of all, I failed to get my amendment for appointment of representatives from the trade to be the first amendment to be voted upon immediately after that proposed by the Government, while my amendment regarding the chairman and deputy chairman of the Authority has been arranged to be the last one of the queue of amendments; meanwhile, there were separate amendments proposed by the various big political parties, thus, a procedural arrangement as such would be most unfavourable to the passage of my amendments. Under such a reality, I could clearly appreciate that the chances for my amendments to be passed would be extremely slim. Secondly, there is a definite difference between the rationale of the amendments put up by other Members and that behind mine, while the amendment proposed by the Government, though not completely the same as mine, is closer than the amendments of other Members to that of mine. In the meantime, I wish to urge the Government to take note of some points which I wish to bring up in my speech as follows. I wish to explain in the following why I had proposed the amendments and what my rationale has been.

Madam Chairman, all along, I have agreed that the Mandatory Provident Fund (MPF) Authority should take after a mode similar to that of the Monetary Authority, as according to the original idea, which means the Chief Executive shall appoint a public officer to the post of chief executive who will also be the chairman of the of the managing Board. The requirements that this person should fulfill include adequate knowledge and experience in dealing with schemes for retirement benefits, investments, management of finances or public administration, and he should not be involved in any interests relating to the participating employers and employees.

I think that the original mode designed by the Government for the MPF Authority would fully demonstrate its pledge of supervising the MPF, but regrettably, the Government has succumbed to pressure from some political parties and so abandoned the original mode, and it has even abandoned the sworn pledge it made when the Bill was deliberated in the Bills Committee. I clearly remember

the briefing made to us by the Government on the reasons for re-organizing the Authority as a corporation sole, which had been indicative of the Government's intention to take up a supervisory role, and adopting the mode of a corporation sole for the MPF Authority has actually been illustrative of its determination. However, such a determination on the part of the Government did not last more than one month for it changed its mind again. It has conceded to the establishment of an Authority, which has a Board of Directors with public officers and non-public officers each comprising half of the membership. Non-public officers include employers, employees and professionals. Yet, very soon, the Government overthrew its own proposal, brought up another amendment and agreed to have non-executive directors forming the majority.

The Government has changed its stance over and over again; it has allowed its decisions to be overtaken day after day, and this is indeed worthy of consideration.

Since the Authority is the decision making body in the whole MPF Scheme - please note that the Authority is the proper forum for the expression of views, it is absolutely an organ of authority - so when Dr the Honourable LAW Cheung-kwok said just now that he was worried that views expressed by employers and employees would not be respected, or that they might not be able to express themselves, it was actually a misunderstanding, for as it is a decision making body, any member of the Authority would in fact be vested with real powers and be responsible for the supervision of the operation of the entire Scheme. In section 6AA of the first amendment I originally moved, I did not wish to see, in the Authority, people who have obvious conflict of interests being involved as managers or investors of the MPF Scheme or retirement schemes, I reckon that this is inappropriate. My amendment was obviously directed at the point that I did not wish to see people who have taken an active part in the MPF to become members of the Authority for the simple reason that it is inevitable for them to be involved in a conflict of interests.

First of all, a trade representative who is involved in the management or investments of the MPF or other retirement schemes would have double identity. He is the representative of the trade, and is also a representative relating to one of the management and investment companies, and he may even be a director, shareholder or senior administrative officer of the relevant company. Naturally, he can only represent the company and fight for the interests involving his company; the Authority, however, is a semi-government organization responsible for

supervising the different trustees and whether the relevant management and investment companies are operating according to the law. However, if there are trade representatives in the Authority, a conflict of interests will exist in the first place, for the management or investment company in which the trade representative is involved may have been included within the scope of supervision by the Authority which is managing and conducting investments for the relevant MPF. Under such circumstances, the trade representative should avoid the role causing a conflict of interests, and that is to say, he should not be a member of the Authority. There is another situation, for though the company having this trade representative may not have come within the scope of the supervision of the Authority, the competition existing among the management and investment of various retirement schemes may have contributed to the battling of the best investment targets and management modes, and he may have mastered information as to the decisions made regarding the investment and management of the MPF, with which he may provide to the management or investment company for retirement funds to which he belongs, resulting either in greater benefits obtained by the said company, or in definite losses to be sustained by the assets of the MPF in its investments. Under such circumstances, the trade representative should not be a member of the Authority. Hence, all tradesmen concerned with the investment or management of retirement funds should not be appointed as members of the Authority because of the conflict of interests.

Madam Chairman, I am of the opinion that the relationship between the Government, employer/employee and the trade involved in the management and investment of the MPF or retirement schemes should be clearly defined. In this tripartite relationship, the Government assumes the responsibility of a direct supervisor on the management or investment of the MPF contributions made by the employers and employees. It is also necessary for employers and employees, for the sake of their immediately related interests, to have representatives assisting the Government and undertaking an indirect supervisory role. The management or investment trade for the MPF or retirement schemes, however, are the subjects for direct supervision of the Government and the indirect supervision of the representatives of the employers and employees. Logically, to appoint as members of the Authority all such direct supervisors, indirect supervisors and subjects for supervision would create great confusion. This would cause the Authority to become a nondescript, and if the representatives of the direct and indirect supervisors and of those being supervised are to be put together under the same Authority, how could they work in co-ordination?

Madam Chairman, I have not overlooked the important role to be played by people in trade in the MPF, neither have I objected to the need for the MPF Authority to consult professional opinion. In fact, there are many mechanisms through which views from people in the trade can be obtained. For example, it has been specified that Bills Committees should be set up to study bills, or when Authority deems it necessary to solicit expert advice, professionals may be invited to attend meetings. Yet, as a decision making semi-government body vested with supervisory powers and the power to choose its trustees, the Authority should not appoint representatives from the trade, otherwise, not only will there exist a conflict of interests, but the Authority will also be reduced to a self-contradictory nondescript, and will be quite unable to perform its duties and role as it should have been. I hope the Government would take my views regarding this aspect into serious consideration, so that when appointing members for the Authority, the Government would try to avoid including persons who have a conflict of interests.

Finally, I wish to stress in particular that any proposal attempting to weaken the supervisory role of the Government would be unwise. So, in the absence of a perfect alternative, I appeal to Honourable colleagues to support the proposal of the Government.

These are my remarks. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Mr Ronald ARCULLI, do you wish to speak again?

**MR RONALD ARCULLI**: Madam Chairman, I think there is only really one point that I wish to make on Dr the Honourable LAW Cheung-kwok's speech regarding the chairman having the casting vote.

To the best of my recollection, the Bill provides that before the chairman exercises the casting vote, he has to consult the Financial Secretary. And of course, both the original Ordinance and the Amendment Bill have taken into account the interests of the workforce in the overall context of terms. What we are discussing here in terms of the size of the Authority is singularly unfortunate, that we have not been able to arrive at a consensus. Because in terms of flexibility, I still think mine presents the best balance and safeguards for the employers and employees.

I do not agree with the Honourable Wong Siu-yee regarding the absence of persons from relevant industries on the Authority. In Hong Kong, we have many boards, authorities and committees. Indeed, even in this Council in terms of conflict of interests, if we were to take that argument of conflict of interests to its logical conclusion, then very few of us would be able to run for public office unless, of course, we have a Council comprising entirely of civil servants. I do not know whether other Members here would want to have that. I certainly would not, and I am quite sure Mr WONG Siu-yee would not either. But be that as it may, I respect him for his determination and his fight. It is very rare that I hear in this Council such a long and eloquent speech about why we should not do certain things.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han, do you wish to speak again?

(Miss CHAN Yuen-han indicated that she did not wish to speak again)

**CHAIRMAN** (in Cantonese): Dr LAW Cheung-kwok, do you wish to speak again?

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam Chairman, about one of the points mentioned by Mr WONG just now. He said that the Authority comprises 10 members and it is a body vested with real powers, so every member in the Authority, including the non-executive directors, has real power. As such, why would their views not be respected? Why must there be 12 members in order to have their views respected? I would like to briefly explain this point.

If there are only 10 members in the Authority, among which four are salaried directors, and if the chairperson is an "obedient" chairperson, then they would have already accounted for half of the members. Moreover, as the Honourable Ronald ARCULLI has added earlier, the Financial Secretary would have the final say if the votes are equal. Under such circumstances, should the Government really want to act arbitrarily and refuse to listen to other people's opinion, how can we ensure that the views of the remaining four or five representatives of employers, employees and other sectors will be respected? I have not yet even mentioned their powers, I am just talking about their views.

**CHAIRMAN** (in Cantonese): Mr WONG Siu-yee, do you wish to elucidate?

**MR WONG SIU-YEE** (in Cantonese): I would like to elucidate briefly. I have never mentioned the size of the Authority. Dr the Honourable LAW Cheung-  
kwok has misunderstood what I meant.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to reply?

(Secretary for Financial Services indicated that he did not intend to reply)

**CHAIRMAN** (in Cantonese): Before I put the amendment moved by the Secretary for Financial Services to vote, I would advise Members that if the Secretary for Financial Services' amendment is agreed, that will by implication mean that the respective proposed amendments by Mr Ronald ARCULLI, Miss CHAN Yuen-han and Dr LAW Cheung-kwok are not approved. If the Secretary for Financial Services' amendment is not approved, I will call upon Mr ARCULLI to move his amendment and put it to vote. If Mr ARCULLI's amendment is not approved, I will call upon Miss CHAN to move her amendment. Whether or not Dr LAW will be able to move his amendment will depend on the Committee's decision on Miss CHAN's amendment.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That new section 6AA be added to item 17 in schedule 1, as moved by the Secretary for Financial Services, be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(Members responded)



**CHAIRMAN** (in Cantonese): I think the "noes" have it.

**MR WONG SIU-YEE** (in Cantonese): I claim a division.

**CHAIRMAN** (in Cantonese): Mr WONG Siu-yee claims a division. The bell will be rung for three minutes.

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

**CHAIRMAN** (in Cantonese): If there are no queries, the results will now be displayed.

Mr WONG Siu-yee, Mr David CHU, Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Mr Eric LI, Dr David LI, Mr LEE Kai-ming, Mrs Elsie TU, Mrs Peggy LAM, Mr Henry WU, Mr NGAI Shiu-kit, Mr Henry TANG, Mr YUEN Mo, Mr MA Fung-kwok, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, Dr LEONG Che-hung, Dr Philip WONG, Mr Kennedy WONG, Mr Ambrose LAU, Mr Paul CHENG, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted for the amendment.

Mr James TIEN, Mr HO Sai-chu, Mr Edward HO, Mr Allen LEE, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr CHEUNG Hon-chung, Mrs Sophie LEUNG, Mr MOK Ying-fan, Mr CHAN Choi-hi, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr Frederick FUNG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr Bruce LIU, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr CHENG Yiu-tong, Mr NGAN Kam-chuen and Dr LAW Cheung-kwok voted against the amendment.

THE CHAIRMAN announced that there were 28 Members in favour of the amendment and 24 against it. She therefore declared that the amendment was carried.

**CHAIRMAN** (in Cantonese): Dr LEONG Che-hung.

**DR LEONG CHE-HUNG** (in Cantonese): Madam President, I have not moved this motion for a long time so I am a bit stiff. I am really sorry. (*Laughter*)

In accordance with Rule 49(3) of the Rules of Procedure, I move that in case Members claim divisions on any remaining motions or amendments to the Provident Fund Schemes Legislation (Amendment) Bill 1997 in this meeting, the whole Committee do proceed to each of such divisions immediately after the division bell has been rung for one minute. Thank you, Madam President.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That in case Members claim divisions on any remaining motions or amendments to the Provident Fund Schemes Legislation (Amendment) Bill 1997 in this meeting, the whole Committee do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it. In this meeting, if Members claims divisions on this Bill, the division bell will only be rung for one minute.

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Financial Services has been agreed, it is not possible for Mr ARCULLI, Miss CHAN and Dr LAW to move their respective amendments, as they are inconsistent with the decision already taken by the Committee. Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Chairman, I move that new section 6AB be added to item 17 in schedule 1, as set out in the paper circularized to Members.

This new added clause empowers the Chief Executive to appoint the Managing Director of the Authority. As the clause has no controversy, I urge Members to support this motion. Thank you, President.

*Proposed amendment*

**Clause 2 and Schedule 1 (See Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is : That the amendment moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): The Secretary for Financial Services, Miss CHAN Yuen-han and Dr LAW Cheung-kwok have separately given notice to add new section 6AC to item 17 in Schedule 1.

I propose that all the proposed amendments be debated together in a joint debate as they are related.

**CHAIRMAN** (in Cantonese) : Committee shall now proceed to a joint debate. I will first call upon the Secretary for Financial Services to move his amendment. Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Chairman, I move that new section 6AC be added to item 17 in schedule 1, as set out in the paper circularized to Members. This section relates to the appointment of the chairperson and deputy chairperson of the Authority.

When I was moving that section 6AA be added to item 17 in schedule 1, I have mentioned the community's expectations to appoint competent people as directors of the Authority. The post of the chairperson of the Authority is even more crucial, as he has the important duty of taking up a leading role in the Authority. He must be a suitable person who works carefully and conscientiously. The chairperson and deputy chairperson of the Board must be work in full co-ordination in striking a balance among the requirements for efficiency, accountability and transparency for the Authority.

During the discussion on the Chairmanship of the Authority in the Bills Committee, the main argument lies on whether this important position should be taken up by an executive director or a non-executive director. In fact, there are advantages for appointing either an executive director or a non-executive director as the chairperson. If an executive director becomes the chairperson, he does not need to stick to the work items proposed by other executive directors, as the non-executive directors do, for he can take on a more active role in enhancing the effectiveness and efficiency of the Authority. If a non-executive director becomes the chairperson, he will be more passive, but will enhance accountability and transparency.

Therefore, in the new section 6AC we suggest that, (1) in respect of the chairperson, the Chief Executive may appoint one of the directors from the Authority as the chairperson. It is not necessary to rigidly provide that the chairperson should be a executive or non-executive director. The suggestion has two advantages, firstly, it can attend to the different opinions expressed by the Members; secondly, it accords flexibility to the Chief Executive in his appointment of the chairperson as he can make the right decision based on the actual situation and the candidature; and (2) in respect of the deputy chairperson, he must be an executive director if the chairperson is a non-executive director to enable the top level of the Authority to be in good co-ordination in order to avoid reducing the Authority to a passive one. Under such an arrangement, the functions of the Board can be carried out more effectively, and a balance could be struck among its efficiency, accountability and transparency.

Dr LAW Cheung-kwok and Miss CHAN Yuen-han have submitted amendments respectively to the relevant sections on the chairperson and deputy chairperson of the Authority. I wish to point out that the Government's amendment has three advantages over the other two proposals in this respect. Firstly, the Government's suggestion has basically met the demands of the Members as it enables the non-executive directors to play an important role in leading the Authority; secondly, co-ordination between the chairperson and deputy chairperson is practical and feasible, and it can benefit the operation of the Authority; thirdly, our suggestion is more flexible than the others as we can meet the long-term needs of the unforeseeable future.

Dr LAW Cheung-kwok has proposed to rigidly require that the position of chairperson has to be taken up by a non-executive director, and the deputy Chairmanship to be assumed by the chief executive director. In fact, the Government's amendment has fully met Dr LAW's requests, that is, a non-executive director will become the chairperson. The only difference is that our proposal is more versatile and flexible.

Miss CHAN Yuen-han has proposed to rigidly fix that both the posts of the chairperson and deputy chairperson should be taken up by non-executive directors. Here, I must point out that the suggestion has over-emphasized to the accountability of the Authority, and will certainly affect its operation efficiency. To have non-executive directors taking up the two posts of chairperson and deputy chairperson will undoubtedly cause the top level of the Authority to become too passive. It will not only affect its efficiency in daily operation, but it will also be slow to respond to contingencies which would practically result in a very undesirable effect on the operational effectiveness and efficiency of the Authority.

In fact, there is no need for Members to worry that having the executive director to act as the deputy chairperson will cause him to become too powerful, because there are other provisions in the amendment which have clearly stated that the chief executive of the Authority, that is, the head of the executive directors, must act in accordance with the guidelines of the Authority.

As the amendment submitted by the Government can meet the demands of the Members, and it is more flexible and balanced, we sincerely ask Honourable Members to support the Government's amendment in relation to the provisions on the chairperson and deputy chairperson of the Authority.

Thank you, Madam Chairman.

*Proposed amendment*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): I now call upon Miss CHAN Yuen-han to speak on the Secretary for Financial Services' amendment as well as her proposed amendment and Dr LAW Cheung-kwok's proposed amendment. After Miss CHAN Yuen-han has spoken, I will call upon Dr LAW Cheung-kwok to speak. However, no amendment may be moved by Miss CHAN Yuen-han or Dr LAW Cheung-kwok at this stage. Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, just now the Secretary asked why we proposed that the posts of chairperson and deputy chairperson be taken up by non-executive directors. In fact, this is a very common phenomenon in other organizations of the Government. The Administration thinks that since this is an Authority related to retirement protection, the chairperson and deputy chairperson should be an executive director and a non-executive director respectively. However, I am of the view that both of these two posts should be taken up by non-executive directors, whereas Dr the Honourable LAW Cheung-kwok believes that the chairperson should be non-executive director, while the deputy chairperson should be executive director. I can see that Dr LAW is delivering a "counterblow" against the Government, but I am discussing the management issue from the rationale aspect.

The wording in the Government's amendment is very flexible. If Members support the Government, I guess that we will go back to the original idea of "one person running the whole Authority", which means the chairperson is both executive director and chief executive. This will be the ultimate outcome. If Members believe that the Authority needs supervision, checks and balances and transparency, you must not support this amendment of the Government. The goal of the Government's amendment is to restore the idea of a "one-man-band" when the amendment is approved and the post of chairperson is taken up by an executive director. Therefore, I hope that Members will not support this amendment.

While Dr LAW Cheung-kwok supplemented this point made the Government, I am talking about the rationale. My rationale is that if the chairperson is not an executive director, checks and balances and supervision will be in place. I think that this is a system for retirement protection involving a lot of employees, and by doing what I suggest would not result in inefficiency. Under such supervision, I believe it would even be more efficient. If we only talk about efficiency, a "one-man-band" would be more efficient, but whenever there are problems, the result may be very serious. If we make reference to neighbouring cities, we can see the problems brought about by a "one-man-band". This is why we object to the Government's amendment.

In fact, I am not the only one who holds such a view. Dr LAW Cheung-kwok and the Honourable Ronald ARCULLI share the same view. The Liberal Party, the Democratic Alliance for the Betterment of Hong Kong, the Hong Kong Federation of Trade Unions and the Hong Kong Association for Democracy and People's Livelihood all think that the post of the chairperson should be taken up by an non-executive director because checks and balances need to be in place. Why do I propose that even the post of deputy chairperson should be taken up by a non-executive director? Because if the deputy chairperson is an executive director, two strange situations will occur. Firstly, if the chief executive acts as the deputy chairperson (which is the idea of Dr LAW), he has to, on one hand, lead the daily operation of the Authority while on the other hand, supervise the operation of the whole Authority. His responsibilities may be very confused. Secondly, if the post of the deputy chairperson is not to be taken up by the chief executive but by one of the executive directors, he has to be a full-time employee. The strange situation that may emerge would be: who is the boss? Among the full-time executive directors, one is the chief executive and the other, the deputy chairperson, so who would take the lead then? I think by then efficiency will be even worse.

On the basis of the rationale as regards management as well as checks and balances, I think it is only reasonable that both the posts of chairperson and deputy chairperson should be taken up by non-executive directors, and it is only in this way that the goals as are also recognized by the Government, of supervision, efficiency and transparency could be achieved.

Madam Chairman, these are my remarks.

**CHAIRMAN** (in Cantonese): Dr LAW Cheung-kwok.

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam Chairman, my amendment is identical with the amendment once proposed by the Honourable Ronald ARCULLI, so Mr ARCULLI has withdrawn his. I have to report to Members a certain background for the amendment here.

Not long ago, the Government still stressed that the chief executive could also act as the chairperson. My amendment has actually been developed from this particular formula. I agree that the chief executive has to provide adequate leadership to the whole Board of Directors, and has to co-operate adequately with other directors, however, it is not suitable for him to hold the post of chairperson concurrently. With this idea in mind, I propose that the chief executive should act concurrently as the deputy chairperson instead.

After deciding on the deputy chairperson, we have to consider the most appropriate person to take up the post of chairperson. We agree that the chairperson would take up an important leading role for the whole Authority, moreover, he has to supervise executive departments, so checks and balances have to be in place. Under such circumstances, since the deputy chairperson is an executive director, I propose that the chairperson should be a non-executive director.

I would like to ask Members to support this amendment moved by me and also supported by Mr ARCULLI. Thank you.



**CHAIRMAN** (in Cantonese): Mr WONG Siu-ye.

**MR WONG SIU-YEE** (in Cantonese): Madam Chairman, in order to preserve the consistency of rationale, I will not support the amendments of the Honourable CHAN Yuen-han and Dr the Honourable LAW Cheung-kwok later. At this moment, I would like to begin with why I first proposed an amendment and eventually had it withdrawn.

In my original amendment to clause 6AC — as regards who should take up the posts of chairperson and deputy chairperson of the Mandatory Provident Fund (MPF) Authority, just as I have stated in the beginning, the chief executive should concurrently be the chairperson of the Authority because only by doing so can substantiate the Government's role as direct supervisor; at the same time, the post of chairperson should be taken up by a non-executive director so as to increase the significance and status of the employer and employee representatives in the Board of Directors on the one hand, and give full play to their role of supervising the direct supervisor, that is, the Government, on the other. This formula will be more conducive to protecting the interests of the contributors.

I do not agree that the posts of Chief Executive and the chairperson of the Board of Directors should be taken up separately by two persons because this will turn the Government's direct supervision into indirect supervision, and the full-time chief executive will even be reduced to an executive secretary. All decisions will then be made by the non-full-time chairperson and deputy chairperson of the Board, as well as the non-executive directors, who are not serving full time. The full-time chief executive and other executive directors will assume the role of "utility men" in the Authority who lack real power. If such a situation occur, the the MPF Authority will be even more inferior than the Securities and Futures Commission. It will be reduced to a statutory incorporation led by civilians in which the leading role and direct supervision of the Government will be lost.

I think that the chief executive should be the chairperson of the Board. While he and other executive directors should not be involved in interests concerning employers and employees, the same principle should also be applied to any non-executive director. He must not be involved in the management or investment of the MPF scheme or retirement plans. Should there be any

involvements, the conflict of interests will be very obvious. If a non-executive director who knows any plans and policies of the MPF Authority like the palm of his hand were involved in the management or investment of the MPF scheme or retirement plans, it would be a great benefit to his company or the company he belongs to. A situation some what like "embezzlement" would emerge and the level playing field would be destroyed. Therefore, if a non-executive director, on appointment, get involved in the management or investment of the MPF scheme or retirement plans, he should cease to be a director.

Madam Chairman, I have to further stress that, if the posts of chief executive and chairperson of the Board were to be taken up by two different persons, which of the two would have greater powers? Should the chief executive be reduced to an executive secretary, what is most worrying is that the Government may no longer bear the responsibility of direct supervision. If a non-full-time chairperson or vice chairperson of the Board is to dominate the decision-making and plans of the MPF Authority, once he is involved in the management or investment of MPF schemes or retirement plans, or he has a thousand and one links of interests with the foreign investment financial groups which are competing to be trustees, "embezzlement" is very likely to emerge. If he has implicit links of interests with other international funds, he may even be "opening the door to robbers" and would place the MPF schemes in great jeopardy. Therefore, with respect to accountability, I think that the Government should let the full-time executive directors of the MPF Authority bear the major responsibilities, rather than shifting such responsibilities onto the non-full-time executive directors.

Madam Chairman, I think an appropriate balance should be struck between the transparency, the efficiency and the effect of the Authority. If only transparency is emphasized, efficiency and effect will be affected; but if only the latter is emphasized, the former will be affected. In particular, when transparency is emphasized, it can absolutely not be used by the Government as an excuse to shirk its responsibility of direct supervision. Because only the Government has such extensive information, qualified personnel and experiences in the investment and management of huge assets, for example, the management of our fiscal surplus will be pegged with that of the Exchange Fund starting 1 April this year. What worries the public most is that the Government may shirk its responsibility of supervising the MPF assets and management. For example, the Government may, under the guise of enhancing transparency, shift the responsibility of supervision completely onto the employer and employee representatives in the Authority,

terming it under the high sounding phrase of "respecting public opinions", but it is actually implying that the non-executive directors have to do the job and bear the responsibility. This is tantamount to indirectly shifting the responsibilities onto the public, which is not the thing a responsible government should do.

In brief, I think that the role the Government should play in the MPF Authority is a direct supervisor instead of an indirect supervisor, and certainly not a "utility man" or an executive secretary doing miscellaneous duties. Therefore, I hope that when the Chief Executive appoints the chairperson of the Authority, he would appoint a public officer.

By the same token, if my rationale failed to obtain an acceptance, I can only support the Government, that is to say, that the chairperson and deputy chairperson would be flexibly appointed by the Chief Executive. This is my only option. Therefore, I appeal to Honourable colleagues once again for their support of the Government's original proposal.

Madam Chairman, these are my remarks.

**CHAIRMAN** (in Cantonese): Mr Ronald ARCULLI.

**MR RONALD ARCULLI:** Thank you, Madam Chairman. In terms of the amendment proposed by the Administration, it is really quite curious. It is not enough just that they do not want to trust anybody, but they do not even trust the Chief Executive. And I will tell you why, because in sub-section (1) of the amendment, it says:

"The Chief Executive is to appoint one of the directors as the chairperson of the Authority and another of those directors as the deputy chairperson of the Authority."

They could have done well enough to leave it at that. This is the flexibility that the Secretary for Financial Services is seeking to persuade Members to do. There is no pre-qualification as to whether the chairperson or the deputy chairperson has to be executive or non-executive.

But if, for instance, the Administration loses control of the Chief Executive and he appoints a non-executive director as chairperson, the Administration says in sub-section (2):

"If the person appointed as chairperson is a non-executive director, the person appointed as deputy chairperson must be an executive director."

I ask why? It is entirely up to the Chief Executive who he wants to appoint. If he wants two executive directors to be chairperson and deputy chairperson, fine. If he wants both to be non-executive, fine. If he wants either one to be executive and the other to be the reverse, fine. Do not talk to us about flexibility when you are cooking the books. Answer them, Mr Hui.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han, do you wish to speak again?

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I would like to speak again. I wish to say to the colleagues of this Council that although the amendments of the Honourable Ronald ARCULLI, Dr the Honourable LAW Cheung-kwok and mine are all a little but different, we share the same rationale which is that the chairperson must not be an executive director as we are all very clear that the executive directors are full-time staff members while the non-executive directors have no official duties and so they can the monitoring role very well and bring public voices more accurately into the Mandatory Provident Fund Schemes Authority (the Authority). Since the executive director is a full-time staff member, he will naturally treat his own work in the Authority in the same way as he would with his own business, therefore, to protect himself, he will not tell others about his affairs. Hence, I feel that it is unreasonable for an executive director to chair the Authority.

I feel that the present approach of the Government is, nothing more than what Mr Ronald ARCULLI has said, just to find a managing director to take charge. Let us look at the Bill very carefully; obviously, the Government is inclined to have the managing director to act as the chairperson as well. And it is exactly because of this that several of us have put forward these amendments; otherwise, we would not have done so. As compared to its original proposal, the Government has already made a great concession in the present one. But after making the concession, it wants to go back to the beginning and still wants to have someone to take charge. I would like to tell Members that if you accept the viewpoints of the Honourable WONG Siu-ye, I can do nothing about that. Nevertheless, I wish to

tell Mr WONG Siu-yee that in Hong Kong, after so many years of development, the situation of having one person to take in charge would no longer happen. Any organizations involving public interests, including the Government, will have to be monitored by a group of people from all walks of life.

I understand that Mr WONG Siu-yee is worried that if there is no government officials in the Authority, the Government can shirk its responsibility. If he had such worries, he should not put his efforts here but should urge the Government to "guarantee the end results", and support our original proposal of including the Residual Provident Fund Scheme in the Central Provident Fund Scheme rather than "getting the Government involved" here. In fact, the development trend of the whole community is not like that any more.

Earlier, there were 28 colleagues voting in favour of the Government's amendment — I deem that they are opposing the proposals from all three of us. I am very worried that when colleagues vote on this amendment later, the same pattern of voting will occur in favour of the Government's amendment. I want to tell Members that if you support the Government, it will mean that you are in favour of situation of having "one person in charge" as proposed by the Government originally. But is it reasonable to have just one Authority to manage the whole retirement protection scheme of Hong Kong? Is it catering for the need of the whole community? I hope that Members will not be confused by the Government. Once again, I call upon Members, especially the friends of the "breakfast camp", to please support us. Thank you.

**CHAIRMAN** (in Cantonese): Dr LAW Cheung-kwok, do you wish to speak again?

(Dr LAW Cheung-kwok indicated that he did not wish to speak again)

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to reply?

(The Secretary for Financial Services indicated that he did not wish to reply)

**CHAIRMAN** (in Cantonese): Before I put the amendment moved by the Secretary for Financial Services to vote, I would advise Members that if the Secretary for Financial Services' amendment is agreed, that will by implication mean that the respective amendments proposed by Miss CHAN Yuen-han and Dr LAW Cheung-kwok are not approved. If the Secretary for Financial Services' amendment is not approved, I will call upon Miss CHAN to move her amendment and put it to vote. Whether or not Dr LAW will be able to move his amendment will depend on the Committee's decision on Miss CHAN's amendment.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the new section 6AC be added to item 17 in schedule 1, as moved by the Secretary for Financial Services, be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(Members responded)

Mr WONG Siu-yee rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr WONG Siu-yee claims a division. The division bell will be rung for one minute.

**CHAIRMAN** (in Cantonese): Members please cast your votes.

**CHAIRMAN** (in Cantonese): If there are no queries, the results will now be displayed.

Mr WONG Siu-yee, Mr David CHU, Mr Henry WU, Mr NGAI Shiu-kit, Mr Henry TANG, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, Dr Philip WONG, Mr LAU Wong-fat, Mr Ambrose LAU, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted in favour of the amendment.

Mr James TIEN, Mr HO Sai-chu, Mr Edward HO, Mr LEE Kai-ming, Mr Allen LEE, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr YUEN Mo, Mr CHEUNG Hon-chung, Mrs Sophie LEUNG, Mr MOK Ying-fan, Mr CHAN Choi-hi, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr Frederick FUNG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr Bruce LIU, Mr LAU Kong-wah, Mrs Miriam LAU, Mr CHENG Yiu-tong, Mr NGAN Kam-chuen and Dr LAW Cheung-kwok voted against the amendment.

Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Mr Eric LI, Dr David LI, Mrs Elsie TU, Mrs Peggy LAM, Mr MA Fung-kwok and Dr LEONG Che-hung abstained from voting.

THE CHAIRMAN announced that there were 16 Members in favour of the amendment, 25 against and nine abstaining. She therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to speak?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, thank you for allowing me to make a brief speech at this stage, and I also thank the Members for listening to me. I deeply regret that the addition of new section 6AC to item 17 in Schedule 1 as moved by the Government has been negatived. (*Laughter*).

Before the Honourable Members cast their votes on the amendment proposed by the two Members, the Honourable Miss CHAN Yuen-han and Dr the Honourable LAW Cheung-kwok, I wish to remind Members about two important pieces of facts: firstly, provisions relating to the reorganization of the Mandatory Provident Fund (MPF) Authority to a body corporate have been passed, that is to say, the MPF Authority will be established as a body corporate; secondly, we have decided on related provisions about the Board members, so the board of directors in the Authority will be composed of executive and non-executive directors. Honourable Members must make a choice between the amendments of Miss CHAN Yuen-han and of Dr LAW Cheung in order to decide on the appointment and eligibility of the chairman and deputy Chairman of the authority. If the two Members' amendments are both negatived, there will be no legal basis for the future Authority to appoint its chairman and deputy chairman. Members can imagine what will be the consequences if this is allowed to happen.

Before Members make such an important decision, I do not mind repeating that in appointing the chairman and deputy chairman, we must ensure that the Authority could balance out in the three aspects of efficiency, accountability and transparency, and allow the Authority to operate effectively. Therefore, I ask all the Members to make a wise decision on the appointment of the chairman and deputy chairman of the Authority. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): As the amendment moved by the Secretary for Financial Services has been negatived, I now call upon Miss CHAN to move her amendment. Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, the amendment I move has been set out in the paper circularized to Members, I hope Members will support it. Thank you.

*Proposed amendment*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)



**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss CHAN Yuen-han be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(Members responded)

Miss CHAN Yuen-han rose to claim a division.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han claims for a division. The division bell will be rung for one minute.

**CHAIRMAN** (in Cantonese): Members please cast your votes.

**CHAIRMAN** (in Cantonese): If there are no queries, the results will now be displayed.

Mr CHEUNG Hon-chung, Mr CHAN Choi-hi, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr LAU Kong-wah, Mr CHENG Yiu-tong and Mr NGAN Kam-chuen voted for the amendment.

Mr WONG Siu-yee, Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Mr LEE Kai-ming, Mr Allen LEE, Mrs Selina CHOW, Mr Henry WU, Mr NGAI Shiu-kit, Mr Henry TANG, Mr Ronald ARCULLI, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, Mrs Sophie LEUNG, Mr MOK Ying-fan, Mr Frederick FUNG, Dr Philip WONG, Mr Howard YOUNG, Mr Bruce LIU, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr Paul CHENG, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr LO Suk-ching, Dr

LAW Cheung-kwok, Mr TAM Yiu-chung and Miss CHOY So-yuk voted against the amendment.

Dr Raymond HO, Mr NG Leung-sing, Prof NG Ching-fai, Mr Eric LI, Mrs Elsie TU, Mrs Peggy LAM, Mr YUEN Mo, Mr MA Fung-kwok and Dr LEONG Che-hung abstained.

THE CHAIRMAN announced that there were 10 Members in favour of the amendment, 31 against and nine abstaining. She therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): As the amendment moved by Miss CHAN Yuen-han has been negatived, I now call upon Dr LAW to move his amendment. Dr LAW Cheung-kwok.

**DR LAW CHEUNG-KWOK** (in Cantonese): I move that new section 6AC be added to item 17 in Schedule 1, as set out in the paper circularized to Members.

I wish to add a few points. I have a piece of "prompt sheet" given to Members by Government officers. I cannot find my own amendment on it. So, the Government has seemingly treated me as non-existent. This is tantamount to giving support to me. Now, it seems I am going to win. I must thank Members for their support for Mr Ronald ARCULLI's amendment as well as that of mine. Thank you.

*Proposed amendments*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr LAW Cheung-kwok be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move that new section 6AD be added to item 17 in Schedule 1, as set out in the paper circularized to Members.

The addition of the new section 6AD to item 17 will enable the Authority to set up a sub-committee to assist in the work of the Authority. The provisions also state that the Authority may appoint people other than the directors of the Authority as the sub-committee members. This on one hand would allow the Authority to be more flexible in identifying suitable persons to join the sub-committee, and on the other hand, it would increase the opportunity for the general public to participate in the work of the Authority, thereby enhancing its transparency.

This new section is not controversial in any way, I would like to ask Honourable Members to agree to this section. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese) : Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to proposed sections 6A, 6B, 6D, 6F, 6L, 6N, 6O, 6P and 6Q in item 17 in Schedule 1, as set out in the paper circularized to Members.

The amendments to sections 6A and 6B in item 17 in Schedule 1 are purely technical amendments on the text, which are proposed to tie in with the re-organization of the Authority as a body corporate.

For the amendments to sections 6D, 6F and 6L in item 17 in Schedule 1, we have listened to the Bills Committee's suggestions, in that we must have more distinctive demands towards the Authority in its performance of the several functions such as the giving of guidelines, submission of the annual fiscal plans and the preparation of the yearly accounts, in order that the effectiveness and accountability of the Authority could be enhanced.

The amendments to sections 6N to 6Q in item 17 in Schedule 1, are related to the advisory structure of the Authority, namely, the Mandatory Provident Fund (MPF) Advisory Committee and the Industry Plan Committee. In response to the Bills Committee Members' suggestions, the relevant amendments have mainly demanded more distinctively that employers and employee representatives must be

included in the two sub-committees as members. This is to ensure that the relevant advisory structure can obtain their comments on the operation of the MPF system.

These amendments are not controversial, and I hope that our Honourable Members would support and agree to them. Thank you, Madam President.

*Proposed amendment*

**Clause 2 and Schedule 1 (See Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to item 39 in Schedule 1, as set out in the paper circularized to Members.

Item 39 in Schedule 1 is an amendment to the Residual Scheme, stating that if the conditions of "not to be refused" fail to operate effectively, the Mandatory Provident Fund (MPF) Authority may set up a Residual Scheme. We have proposed to delete the establishment of the Residual Scheme in our original submission of the Bill, because once the provision of "not to be refused" has been added to the Bill, the Residual Scheme will have failed to function as the last means to join in the MPF Scheme. The provision of "not to be refused" can protect members of the Scheme comprehensively: on the one hand, it completely deters trustees from employing delaying tactics, making things difficult and imposing unreasonable fees to refuse members' applications indirectly; and on the other hand, if the trustees breach the "not to be refused" provision, they will be seriously punished. However, during their discussion in the Bills Committee, Members still thought that the Residual Scheme should be retained, for just in case the provision of "not to be refused" fails to operate well, the Residual Scheme could be enforced as early as possible to meet the needs of the employers and employees who join in the MPF Scheme.

With a clear and effective provision on "not to be refused", coupled with supervision from the MPF Authority, we firmly believe that the provisions of "not to be refused" can be properly enforced. However, we have paid high regards to Members' concern, so we propose an amendment to retain the Residual Scheme in response to Members' demands. In case there are still people who fail to join the MPF Scheme despite the provision of "not to be refused", the MPF Authority will then be able to set up the Residual Scheme.

We have reached a consensus on the above amendment in the Bills Committee, so I ask the Members to support it. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak? Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, we are in support of this amendment of the Government's. As the Secretary has said earlier, when the Government was scrutinizing the amendment of the principal legislation in this regard in the Provisional Legislative Council, it has once decided to cancel the Residual Provident Fund Scheme (RPFS). We and other colleagues who had followed up on the retirement plan and colleagues of other select committees were all unsupportive of this idea because, as the Secretary has said, despite the view of the Federation of Trade Unions and the Democratic Alliance for Betterment of Hong Kong in the former Legislative Council was that the Government should cancel the no-rejection requirement in the composite Mandatory Provident Fund (MPF) schemes, we still feel that when the retirement scheme is to be expanded in future, there would be people who cannot join this composite MPF Scheme due to technical problems. For example, hawkers are not eligible to join at present and when the scheme is to be extended in future, I believe that more of such problems will emerge.

As legislators, we cannot just set our eyes on things happening today, we also have to consider the future. Concerning the low-income group, although the Government has provided for a capital preservation product in the composite MPF schemes, during the two years when we were scrutinizing this plan, this was always the subject of heated arguments at the meetings of the relevant committee or the Bills Committee. We hope that the Government would directly set up a fund for the low-income group to join. The Government had been reluctant to do so, but when we talked about the RPFS, the Government has once agreed to do it. It is only because of the cancellation of the no-rejection requirement of the composite MPF schemes that the Government has transferred the capital preservation product to the composite MPF schemes.

This is a scheme that would involve generation after generation and there may be changes in the future. I think it is very important that the Government has accepted the suggestion of the Bills Committee to set up the RPFS. Adding the RPFS is more than a technical matter. Madam Chairman, the Preliminary Working Committee of which you have also been a member has also mentioned that Hong Kong should have a retirement plan that is composed of the plans of

various sectors, including a composition of private plans, plans of various trades and also plans made by the Government. I think that the MPF scheme may have changes in the future and the setting up of a RPFS will therefore be beneficial when these changes occur. Therefore, we support the amendment drawn up according to the suggestion of the Bills Committee. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to reply?

(The Secretary for Financial Services indicated that he did not wish to reply)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Financial Services be approved. Will those in favour please "aye"?

(Member responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Both the Secretary for Financial Services and Mr Ronald ARCULLI have separately given notice to move amendments to item 80 in Schedule 1.

I propose that the amendments be debated together in a joint debate.



**CHAIRMAN** (in Cantonese): The Committee shall now proceed to a joint debate. I will first call upon the Secretary for Financial Services to move his amendment. Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move that item 80 in Schedule 1 be amended, as set out in the paper circularized to Members.

Item 80 in Schedule 1 introduces a series of provisions to regulate the daily operations of the Authority. It includes provisions on the tenure of directors, the terms and conditions of service of directors, vacancies of directors, how to fill vacancies, arrangements for acting appointments of directors, and so on. In order to enhance the accountability of directors, they are requested to declare their monetary interests in relation to matters under the deliberation of the Authority. Furthermore, there are also provisions on procedures for the Authority's meetings and other related matters.

Members of the Bills Committee have different views about the provision on how to transact business by a circulation of papers. This provision is set out in clause 12 to item 80 in Schedule 1. We have partly adopted the views of the Members in our proposal. First, to allow the Authority to transact business by a circulation of papers, and if more than half of the directors endorse the motion on paper, then it will be passed. Second, the chairperson has to notify other directors if the motion has been passed by more than half of the directors. Third, any two directors can call for a meeting for the scrutiny of a motion within 3 days after it has been passed.

In putting forward this proposal, we have taken into consideration different views expressed by members of the Bill Committee, and our proposal has the following benefits. First, to allow the Authority to have flexibility in regard to passing motions; second, by requesting the chairperson to notify the directors, it will ensure that the directors will know that the motion has been carried; and third, to allow the directors to request for convening of meetings.

I hereby urge Members to support the Administration's amendment. Thank you, Madam Chairman.

*Proposed amendment***Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): I will call upon Mr Ronald ARCULLI to speak on the amendment moved by the Secretary for Financial Services as well as his own proposed amendment, but will not ask Mr ARCULLI to move his amendment unless the Secretary for Financial Services' amendment has been negatived. If the Secretary for Financial Services' amendment is agreed, that will by implication mean that Mr Ronald's proposed amendment is not approved. Mr Ronald ARCULLI.

**MR RONALD ARCULLI:** Madam Chairman, there is not really any great dispute of principle between the Government's version and my version in terms of the amendment. The only issue really is one of professional pride.

I would ask Members to look at pages 99 to 100 of the Chinese text and look at clause 12 of the Government's text on page 93 of the Chinese text. Page 99 to 100 is my text, my clause 12. Page 93 is the Government's text. I think I have a much shorter, much more clear and concise clause 12.

Effectively, what I am seeking to produce is that the Authority, the Mandatory Provident Fund Schemes Authority, can transact business by a circulation of papers. For this circulation of papers, if a simple majority endorses the resolution on the paper, it will pass, unless the chairperson or two members of the Board or the Authority requests that the item be considered at a meeting. If that were the case, even though there might be a simple majority, there will not be a resolution and a meeting will have to be convened.

That is the sole purpose of clause 12. It is very simple. We do not have to go through this rigmarole suggested in the Government's version of saying that if the resolution has been adopted, then the Board has to be notified and the people concerned have to reply within three days and all that.

Because when you deal with business by circulation of papers, there could be two ways. You can either circulate one paper to all members of the Authority. If there are 10 members, then circulate one paper to all 10, and they pass it down the line. Alternatively, you can send each of them one set of the document. Then they will sign "yes" or "no" on their part. So, if Director A talks to Director B and says, "let's have a meeting to discuss this item" and both of them request a meeting, that would be the end of the matter.

Hence, as I say, there is no disagreement at all in principle, but simply for clarity and for simplicity, I ask Members to vote for my amendment. Thank you.

**CHAIRMAN** (in Cantonese): Members may now debate the amendment moved by the Secretary for Financial Services as well as the proposed amendment by Mr Ronald ARCULLI. Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to reply?

(The Secretary for Financial Services indicated that he did not wish to reply)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment to item 80 in Schedule 1, moved by the Secretary for Financial Services, be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(Members responded)

Mr TAM Yiu-chung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr TAM Yiu-chung claims a division. The division bell will be rung for one minute.

**CHAIRMAN** (in Cantonese): Members, please cast your votes.

**CHAIRMAN** (in Cantonese): If there are no queries, the results will now be displayed.

Mr WONG Siu-yee, Mr David CHU, Dr Raymond HO, Mr NG Leung-sing, Mr Eric LI, Mrs Elsie TU, Mr Henry WU, Mr NGAI Shiu-kit, Mr Henry TANG, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, Dr Philip WONG, Mr Ambrose LAU, Mr Paul CHENG, Dr TANG Siu-tong, Mr Timothy FOK, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted in favour of the amendment.

Mr James TIEN, Mr HO Sai-chu, Mr Edward HO, Mr LEE Kai-ming, Mr Allen LEE, Mrs Selina CHOW, Mrs Peggy LAM, Mr Ronald ARCULLI, Mr CHEUNG Hon-chung, Dr LEONG Che-hung, Mrs Sophie LEUNG, Mr MOK Ying-fan, Mr CHAN Choi-hi, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr Frederick FUNG, Mr Howard YOUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr Bruce LIU, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr CHENG Yiu-tong, Mr NGAN Kam-chuen and Dr LAW Cheung-kwok voted against the amendment.

Mr YUEN Mo and Mr MA Fung-kwok abstained from voting.

THE CHAIRMAN announced that there were 19 Members in favour of the amendment, 27 against and two abstaining. She therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): As the amendment to item 80 in Schedule 1 moved by the Secretary for Financial Services has been negatived, I now call upon Mr Ronald ARCULLI to move his amendment. Mr Ronald ARCULLI.

**MR RONALD ARCULLI**: I move the amendment standing in my name. I just wish to, again, remind Members that I hope they vote "aye" to this one, because if they vote "no", we will again have an Authority without rules to conduct their meetings.

*Proposed amendment*

**Clause 2 and Schedule 1 (refer to Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Ronald ARCULLI be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to items 14, 25, 27, 35, 38, 41, 45, 62, 63, 64, 67, 68, 69, 72, 73, 77, 78, 82, 85, 87, 94 and 95 in Schedule 1, addition of items 15A, 62A and 73A to Schedule 1 and deletion of items 74 and 76 from schedule 1, as set out in the paper circularized to Members. These are all technical amendments. Thank you, Madam Chairman.

*Proposed amendments***Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 4 and Schedule 3, clause 5 and schedule 4, and clause 12 and Schedule 11.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han.

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I move the amendments to items 23 and 24 in Schedule 1, the deletion of item 4 from Schedule 3, the amendment to Schedule 4, and the deletion of clause 12 and Schedule 11, as set out in the paper circularized to Members.

Whether it is in the former Government or the present Government, a group of colleagues and I have participated actively in the scrutiny and meetings in respect of the Mandatory Provident Fund (MPF) Scheme passed in 1995. But it is a regret that although we have discussed with the Government for such a long time, the Government has never accepted our views regarding some issues, and neither could we agree to the Government's views. That is the reason why I move this amendment.

This amendment is about the "offsetting" arrangement of the long service payment and severance payment against the present retirement payment. This issue has always been of great concern to the labour sector and the original provision is in the Employment Ordinance. For a long period of time, we have been raising our concern and reflecting our views to the Government that this arrangement should be changed. The reason that we hold is that once a company goes bankrupt, if it has a provident fund scheme, the employer can pay the severance payment to his employees out of the provident fund and therefore has no need to pay it out from his own pocket. Also, there is no need for the Protection of Wages on Insolvency Fund (PWIF) to pay the severance payment, as it can be offset by the provident fund. Besides, if the Labour Tribunal rules that the employees are eligible for the long service payment and if the company has a provident fund system, the payment can again be offset by the provident fund. I just want to say that no matter it is the long service payment or severance payment, they are, as their names indicate, compensation payments of different nature that the employer should pay his employees. It is most unfair to offset it against the provident fund. Take the closing of the Yaohan Department Store as an example. Under the existing ordinance, the Government has no need to draw from the PWIF to pay the severance payment as the Yaohan has a provident fund system and ultimately there is no need to pay the severance payment out of the PWIF to the staff. But if these workers then go to work for the CHAN Wing-chan Company and it also goes out of business, then their provident fund has to be deducted again. And if they go to work for the CHAN Yuen-han Company next and it also goes bankrupt, then their provident fund in this company is deducted for it has to set-off the severance fund once again. Madam Chairman, how would the situation turn out to be ultimately? When these workers grow old, they will find out that their former employers' contributions to their provident fund have all been deducted. According to the original design of the Government, the retirement system to be should enable the workers to have some minimum financial support for their lives

after their retirement. But after several set offs as such, when it comes the time when the workers retire and should get back their retirement fund, they will only find that there is nothing left, what could they do by then?

In the past, the Government has not made it mandatory for companies to set up a provident fund system and so the labour sector has always raised an objection. But as some private companies have set up provident fund systems, we have passed our opinion in this respect to the lower levels. I believe that colleagues and Madam Chairman also know that when we passed our opinion to the lower levels, we have consolidated a strong voice. We are talking about not only the employees in the past but also the employees of Yaohan and of other companies who experienced the same problems, and they have been all very happy about it. Now that we are going to implement the Mandatory Provident Fund (MPF) Scheme, all wage-earners in Hong Kong are to join but the Government tells us that the Ordinance still provides for the offsetting of the provident fund. In that case, there will be the situation similar to what I have described before in which the MPF is used to offset the severance payment and long service payment, which goes against our intention of implementing the MPF Scheme. That is why we have moved this amendment.

The Government would ask how we are going to amend the Employment Ordinance. I wish to tell the Government that it had been very difficult for us to make amendments in this regard, hence when the Government started out to design the MPF Scheme, we wish to propose the relevant amendments. Someone would ask, "Why do you not amend the Occupational Retirement Schemes Ordinance, CHAN Yuen-han?" That is because of some technical problems that we are not able to amend it and we can only make other relevant amendments. If Members support me, I can make proposals to Mr TUNG Chee-hwa, the Chief Executive, to amend the Occupational Retirement Schemes Ordinance.

But then someone would ask, "CHAN Yuen-han, in that event, will a situation arise in which there is one set of amendments for the MPF and another for the retirement protection system?" I can ensure Members that they have no need to worry. During the scrutiny of the Bill, we have found that there are many discrepancies between the existing retirement systems and the MPF Scheme which is about to be implemented. Let me talk about two of them. The first is the contribution. For example, under the occupational retirement protection provided to us by the Federation of Trade Union (FTU), the FTU contributes 6 to 10% while



the present MPF only requires the employers to contribute 5%. The second is the withdrawal of the money. Under the occupational retirement schemes, some employees can get back their own contribution after five years of service in a company and get the employers' contribution also after 10 years of service, subject to the agreement between the employers and the employees, but with the MPF Scheme, it is different, for the employees have to wait till they retire or reach a certain age before they can withdraw the money. Apart from these, there are many other differences. Since there are so many differences, why do we not make amendments? That is because we have to respect the existence of these occupational retirement schemes.

Therefore, I ask Members not to worry. If they support me, there will not be the case of two different situations emerging from two systems as the Government says because that the fact is not so. I just want to ask my fellow colleagues to please consider this, our entire community needs retirement protection, but under the capitalist social system, very often business operators would have to close down their business because of financial difficulties; once this happens, they will have to sever their staff and pay them the severance payment to provide for their everyday expenses for a certain period after the sudden closing down of the company. If we take the retirement fund as the severance payment, it will create a big problem.

Some colleagues may sensitively regard this as a problem between labour and the businessmen, but this is actually a matter of justice and reasonableness. I hope that fellow colleagues will support my amendments and cast a fair, just and reasonable vote. Thank you.

### *Proposed amendments*

**Clause 4 and Schedule 3 (see Annex I)**

**Clause 5 and Schedule 4 (see Annex I)**

**Clause 12 and Schedule 11 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak? Mr James TIEN.

**MR JAMES TIEN** (in Cantonese): Madam Chairman and fellow colleagues, concerning the principal ordinance of the Mandatory Provident Fund (MPF), there had been many debates before it was passed by the former Legislative Council last year. As regards the relation between the employer and the employee, it was at the beginning limited to the employer paying wages to the employee; then someone had asked what happened if the employee left the job a few years later. Of course, if the employee left of his own accord, he could resign, but if it was the employer who had asked the employee to leave, he would have to compensate the employee for the years that he has worked there. In fact, many employers agreed to this and that was how the long service payment first came into being. After a worker has worked for a company for some thirty or forty years, when he retires, would we pay him say only for what he should earn in the years while he was working there and that was it? Of course not. He should also be given the long service payment and this is what employers also agree.

However, some companies may go bankrupt and end their business abruptly, and from there arose the concept of severance payment. After an employee has worked for over 10 years and is severed or sacked by the employer, it is reasonable that the employer should compensate him. Under the present occupational retirement schemes or the MPF Scheme, 5% is to be contributed by the employers and another 5% by the employees. The employers feel that the retirement protection payment that they provide for the workers should be a one-off payment and they should not be required to chip in a certain amount under one scheme and another amount under another.

In fact, under the present system, after paying the long service payment, the employer may not need to pay the severance payment and vice versa. There is a so-called "setting-off" effect in it, meaning that an employee cannot on the one hand receive the severance payment and receives the long service payment on the other. Of course, from the employee's point of view, being given a double benefit is a good thing, but from the employer's angle, is it reasonable for him to pay twice? What the employees wishes is that after working a long time with a company, they can receive a certain amount of money. After the establishment of the MPF Scheme, the employees will certainly get back the 5% they have contributed.

What we are now discussing is whether the long service payment and severance payment should offset the employer's 5% contribution, but the so-called setting-off depends on which amount is larger. For example, if the long service payment amount to \$100,000 while the employer's 5% contribution accrued at that time is only about \$20,000 or \$30,000, then the payable amount will be \$70,000, that is \$100,000 minus \$30,000, for the long service payment. It is not that the setting-off effect would cancel out everything.

In the society today, we say the implementation of the MPF Scheme is a must. But the problem is that not only small and medium enterprises have difficulty in making the 5% contribution, but the workers have also found it very hard to have 5% deducted from their wages as a contribution. However, since this method has been in place for a long time, no one proposes to cancel it. Actually, there are already many oppositions in the society today, but the Scheme is still being operated. Nevertheless, in the implementation, we have to be considerate to the owners of small and medium enterprises. If after contributing the 5%, they are still required to pay the long service payment or severance payment and setting-off is not allowed, then the payment of this double compensation — a double benefit to the employees but double compensation payable by the employers — would seem to be rather unreasonable and employers may not be able to afford it. In addition, when the principal ordinance was passed last year, the Government reiterated strongly that it did not support the idea of a double contribution, which meant to require an employer to pay the long service payment and the severance payment while at the same time contributing his share to the provident fund.

This time, the Honourable Miss CHAN Yuen-han again moves this amendment on behalf of the labour sector and so I analyze the whole matter all over again. I will oppose this amendment and hope that other Members will support the Government's original motion. Thank you.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, do you wish to speak?

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): it was prescribed in the provisions of the Mandatory Provident Fund Schemes Ordinance enacted in 1995, that the employer could use his accrued Mandatory Provident Fund (MPF)

benefits in respect of his contributions to offset severance and long service payments. This is not a brand new arrangement, but one which has always been in use under the Employment Ordinance. There is also a similar arrangement under the existing voluntary Occupational Retirement Schemes. The offset arrangement had been a controversial subject when discussions concerning the enactment of the Mandatory Provident Schemes Ordinance were held in 1995. Members of the former Legislative Council had a number of heated debates before they enacted the relevant provisions. The offset provisions were finally carried because the majority of Members were of the opinion that, before the employers and employees could reach any consensus on other options, the existing arrangement for the MPF should continue to be used. Everyone knows that the offset arrangement is very important to both employers and employees alike, because it is directly related to the interests of both parties. Therefore, in order to avoid unnecessary controversies, we must not take the matter lightly.

The Honourable Miss CHAN Yuen-han has moved to delete all provisions on severance and long service payments in her proposed amendment, and the Administration finds this totally unacceptable.

First of all, since the existing arrangement is very important in respect of both employers and employees' interests, any proposed changes should go through consultation via the existing channels, that is, the Labour Advisory Board (LAB), so that a consensus could be reached between employers and employees. It would be inappropriate for either one party to introduce changes which would affect the interests of both parties. This would undermine entirely the functions of the existing channels, as well as generating unnecessary social conflicts.

Secondly, since severance and long service payments are directly related to labour welfare, any changes in this regard should be part of an overall review on labour welfare, otherwise, it would not be in the interests of employers and employees. Moreover, only such an approach would be more appropriate. If we are to single out severance and long service payments for changes under the MPF system, we are making a generalizing move, and Members of this Council would not be able to consider the overall impact of these changes on Hong Kong.

Finally, the amendments of Miss CHAN Yuen-han will also result in unfairness and injustices. If Miss CHAN's amendments were endorsed, it will not

be possible to use contributions made by employer members to the MPF Scheme to offset severance and long service payments. However, Miss CHAN Yuen-han has also pointed out that for members of the existing Occupational Retirement Scheme, the part of employers' contributions could still be used to offset severance and long service payments, even if the Occupational Retirement Scheme were exempted in the future and could be used for the purpose of mandatory retirement protection. Treating the two schemes differently will result in unfairness to both employers and employees. Therefore, I call upon all Members to vote against this amendment.

Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han, do you wish to reply?

**MISS CHAN YUEN-HAN** (in Cantonese): Madam Chairman, I object to the Secretary for Financial Services' accusation that I am making a generalizing move and that my amendment is unfair.

First, this is not a generalization, but a fact. The issue of setting-off, a subject which has all along been in our discussion, is what the labour sector has kept bringing up with the Government. What is the technical approach to deal with it? For example, after the establishment of the retirement protection system, how is the system of the long service payment and retirement system going to be? In fact, the Government should have amended it long ago. And, apparently the long service payment is a totally different matter which should be treated separately and should not mix it up. A responsible government should be realistic and look squarely at the existing setting-off issue rather than just putting it aside by saying that it cannot be changed or else it is making a generalization. I feel that this is a very lazy way of saying things. (Sorry for saying that, for the Secretary himself is very diligent.)

Secondly, the Secretary said that is unfair and I disagree. I have said that if the Government thinks that my amendment only pinpoints at the Mandatory Provident Fund rather than the occupational retirement scheme, I believe that we can pool our efforts together to request the Government to amend the latter as well since this is not a big problem. I feel that the most important thing is, when we

say that Hong Kong should set up a retirement system, we have to consider whether the long service payment and severance payment should be offset? It is obvious that offsetting the severance payment is a very serious matter and a responsible government should make a comprehensive adjustment beforehand. Therefore, I feel that it is an unfair accusation on the part of the Government that if my amendment were supported, an unfair situation would arise. I think that if I were supported, the unreasonableness in the past could actually be rectified. Thank you, Madam Chairman.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Miss CHAN Yuen-han be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(Members responded)

Miss CHAN Yuen-han rose to claim a division.

**CHAIRMAN** (in Cantonese): Miss CHAN Yuen-han claims a division. The division will be rung for one minute.

**CHAIRMAN** (in Cantonese): Members, please cast your votes.

**CHAIRMAN** (in Cantonese): If there are no queries, the results will now be displayed.

Mr LEE Kai-ming, Mr CHEUNG Hon-chung, Dr LEONG Che-hung, Mr MOK Ying-fan, Mr CHAN Choi-hi, Miss CHAN Yuen-han, Mr CHAN Wing-chan, Mr CHAN Kam-lam, Mr Frederick FUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him,

Mr Bruce LIU, Mr LAU Kong-wah, Mr CHENG Yiu-tong, Mr NGAN Kam-chuen and Dr LAW Cheung-kwok voted in favour of the amendment.

Mr James TIEN, Mr David CHU, Mr HO Sai-chu, Mr Edward HO, Dr Raymond HO, Mr Eric LI, Mr Allen LEE, Mrs Elsie TU, Mrs Selina CHOW, Mrs Peggy LAM, Mr Henry WU, Mr NGAI Shiu-kit, Mr Henry TANG, Mr Ronald ARCULLI, Mr YUEN Mo, Mr MA Fung-kwok, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, Mrs Sophie LEUNG, Dr Philip WONG, Mr Howard YOUNG, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr Paul CHENG, Dr TANG Siu-tong, Mr Timothy FOK, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted against the amendment.

THE CHAIRMAN announced that there were 16 Members in favour of the amendment and 30 against it. She therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to item 24 in Schedule 1 as set out in the paper circularized to Members. This is a technical amendment. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 2 and Schedule 1 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services in respect of item 24 in Schedule 1 be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to items 1, 3 and 5 in Schedule 3, addition of items 2A, 3A and 3B to Schedule 3 as set out in the paper circularized to Members.

Schedule 3 of the Bill seeks to amend the Occupational Retirement Schemes Ordinance correspondingly. The main purpose of the amendment is to pave the way for the incorporation of the Occupational Retirement Schemes Registry into the Mandatory Provident Fund Authority so that resources could be deployed more effectively and the Occupational Retirement Schemes could be monitored more effectively.

Thank you, Madam Chairman.

*Proposed amendment*

**Clause 4 and Schedule 3 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)



**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services in respect of schedule 3 be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 2 and the amended Schedule 1, and clause 4 and the amended Schedule 3.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): as Miss CHAN Yuen-han's amendments to Schedule 4, clause 12 and schedule 11 have been negatived, I now put the question to you and that is: That clause 5 and Schedule 4, clause 12 and Schedule 11 be incorporated into this Bill.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 6 and the Schedule 5.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to items 1, 6, 7 and 12 in Schedule 5, as set out in the paper circularized to Members. These are all technical amendments. Thank you, Madam Chairman.

*Proposed amendment*

**Clause 6 and Schedule 5 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Members indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 6, and Schedule 5 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 11 and Schedule 10.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move the amendments to item 1 in Schedule 10 as set out in the paper circularized to Members. This is also a technical amendment.

*Proposed amendment*

**Clause 11 and Schedule 10 (see Annex I)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Financial Services be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 11 and the amended Schedule 10.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, since the Rules of Procedure stipulate that any proposed new schedule shall be considered after proposed new clause of a bill have been disposed of, may I seek your consent to move under Rule 89 of the Rules of Procedure that Rule 58(7) of the Rules of Procedure be suspended in order that the proposed new schedule 13 may be considered together with the proposed new clause 14, as they are inter-dependent.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services, as only the President may give consent for a motion to be moved, without notice, to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

**PRESIDENT** (in Cantonese): Secretary for Financial Services, you have my consent.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, I move that Rule 58(7) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider the proposed new Schedule 13 together with the proposed new clause 14, as they are inter-dependent. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

Council went into Committee.

**CLERK** (in Cantonese):

New Clause 14	Amendment of Personal Data (Privacy) Ordinance (Schedule 13)
New Schedule 13	Amendment of Personal Data (Privacy) Ordinance.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move that new clause 14 and new Schedule 13, as set out in the paper circularized to Members be read the second time. The new clause 14 and new Schedule 13 is a corresponding amendment in the Personal Data (Privacy) Ordinance, as they have included the MPF Scheme Board in their definition of financial controller. At the same time, the financial controller may be exempted under certain circumstances from complying with some provisions. The exemption should also apply to the management of the MPF Scheme. Thank you, Madam Chairman.

*Proposed amendment*

**New Clause 14 (see Annex I)**

**New Schedule 13 (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 14 and new schedule 13 be read the second time. Does any Member wish to speak?

(No Member indicated a wish to speak).

**CHAIRMAN** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): New clause 14 and new Schedule 13.

**CHAIRMAN** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam Chairman, I move that new clause 14 and new Schedule 13 be added to the Bill.

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 14 and new Schedule 13 be added to the Bill.

**CHAIRMAN** (in Cantonese): I now put the above question to you. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.



**OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT) (NO. 2) BILL 1997**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Bill.

**CLERK** (in Cantonese): Clauses 2 to 5 and 7 to 20.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 6.

**CHAIRMAN** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam Chairman, I move that clause 6 be amended as set out in the paper circularized to Members.

The amendment seeks to relax the service requirement from 10 to 5 years in respect of four "very noisy occupations". The so-called "very noisy occupations" are defined as those occupations with daily noise exposure level in excess of 100 dB(A) or peak sound pressure level in excess of 140dB.

The four very noisy occupations are:

- (1) the use of power driven grinding, chiselling, cutting or percussive tools on rocks, concrete or marble, or work wholly or mainly in the immediate vicinity of those tools whilst they are being so used;
- (2) the use of machines for percussive pile or metal plank driving on construction sites, or work wholly or mainly in the immediate vicinity of those machines whilst they are being so used;
- (3) work wholly or mainly in the immediate vicinity of abrasive blasting operations; and
- (4) work wholly or mainly in the immediate vicinity of firearms operations.

(1) to (3) are noisy occupations prescribed under the existing legislation, while (4) is one of the eight proposed noisy occupations to be added under the Bill.

Furthermore, as I have pointed out in my speech during the resumption of the Second Reading debate of the Bill, we have added a transitional provision under this Bill.

Madam Chairman, I beg to move and urge Members to vote in support of this amendment.

*Proposed amendment*

**Clause 6 (see Annex II)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 6 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 21.

**CHAIRMAN** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam Chairman, I move that clause 21 be amended as set out in the paper circularized to Members.

This is a technical amendment which seeks to amend the net resource allocation ratio of the Employees' Compensation Insurance Levies Management Board. There are currently three statutory bodies which share the levies received by the Board. This amendment is necessary as the share of the Occupational Safety and Health Council in the employees' compensation insurance levies has been increased since 1 January 1998, and the Bill has also proposed to increase the levies share of the Occupational Deafness Compensation Board.

*Proposed amendment*

**Clause 21 (see Annex II)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 21 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no".

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 22.

**CHAIRMAN** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam Chairman, I move that clause 22 be amended as set out in the paper circularized to Members.

This technical amendment seeks to lay down clearly that the share of the Occupational Deafness Compensation Board in employees compensation insurance levies to be raised by 0.8 percentage point with effect from 1 April 1998. That the effective date for raising the levy is set at 1 April 1998 is meant to allow sufficient time for companies which operate employees compensation insurance to make relevant technical arrangements in respect of the increase in levy rates.

I hereby propose the amendment and urge Members to vote in support of my proposal.

*Proposed amendment***Clause 22 (see Annex II)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 22 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 1.

**CHAIRMAN** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Madam Chairman, I move that clause 1 be amended as set out in the paper circularized to Members.

This technical amendment, together with my earlier amendments to clauses 21 and 22 of the Bill which have been approved, seek to specify that the provision on increasing the share of the Occupational Deafness Compensation Board in employees compensation levies shall come into effect on 1 April 1998. In accordance with the normal legislative procedures, other provisions of the Bill will come into effect one week after the Third Reading of the Bill on the date when it is gazetted.

*Proposed amendment*

**Clause 1 (see Annex II)**

**CHAIRMAN** (in Cantonese): Does any Member wish to speak ?

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Education and Manpower be approved. Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 1 as amended.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

### **CRIMINAL PROCEDURE (AMENDMENT) BILL 1998**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Bill.

**CLERK** (in Cantonese): Clauses 1 to 4.



**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Schedule.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

## **HONG KONG BILL OF RIGHTS (AMENDMENT) BILL 1998**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That the following clause stands part of the Bill.

**CLERK** (in Cantonese): Clause 1.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Clause 2.

**CHAIRMAN** (in Cantonese): Will those in favour please say "aye"?

(Members responded)

**CHAIRMAN** (in Cantonese): Those against please say "no"?

(No Member responded)

**CHAIRMAN** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CHAIRMAN** (in Cantonese): Council will now resume.

Council then resumed.

**Third Reading of Bills**

**PRESIDENT** (in Cantonese): Bills: Third Reading. Secretary for Housing.

**SECRETARY FOR HOUSING** (in Cantonese): Madam President, the

**HOUSING (AMENDMENT) BILL 1998**

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Housing (Amendment ) Bill 1998 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Housing (Amendment) Bill 1998.

**PRESIDENT** (in Cantonese): Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES** (in Cantonese): Madam President, the

**PROVIDENT FUND SCHEMES LEGISLATION (AMENDMENT) BILL 1997**

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Provident Fund Schemes Legislation (Amendment) Bill 1997 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Provident Fund Schemes Legislation (Amendment) Bill 1997.

**PRESIDENT** (in Cantonese): Secretary for Education and Manpower.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese):  
Madam President, the

**OCCUPATIONAL DEAFNESS (COMPENSATION) (AMENDMENT)  
(NO. 2) BILL 1997**

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Occupational Deafness (Compensation) (Amendment) (No. 2) Bill 1997.

**PRESIDENT** (in Cantonese): Secretary for Security.

**SECRETARY FOR SECURITY** (in Cantonese): Madam President, the

**CRIMINAL PROCEDURE (AMENDMENT) BILL 1998**

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Criminal Procedure (Amendment) Bill 1998 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Criminal Procedure (Amendment) Bill 1998.

**PRESIDENT** (in Cantonese): Secretary for Home Affairs.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, the

**HONG KONG BILL OF RIGHTS (AMENDMENT) BILL 1998**

has passed through Committee without amendment. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Hong Kong Bill of Rights (Amendment) Bill 1998 be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**CLERK** (in Cantonese): Hong Kong Bill of Rights (Amendment) Bill 1998.

## MOTIONS

**PRESIDENT** (in Cantonese): Motions. Motion under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance. Secretary for Transport.

## TAI LAM TUNNEL AND YUEN LONG APPROACH ROAD ORDINANCE

**SECRETARY FOR TRANSPORT** (in Cantonese): Madam President, I move that the "Tai Lam Tunnel and Yuen Long Approach Road Bylaw" be approved.

The Tai Lam Tunnel and Yuen Long Approach Road, also known as Route 3 (Country Park Section), is a dual three-lane tunnel/expressway connecting the urban areas with the Northwest New Territories. It comprises a 3.8 km Tai Lam Tunnel and a 6.3 km Yuen Long Approach Road, with connections to the Ting Kau Bridge and Tuen Mun Road in the south, and to the New Territories Circular Road at Au Tau and the Yuen Long Highway at Pok Oi Roundabout in the north.

Under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance, the Route 3 (CPS) Company Limited was granted a franchise for the construction, operation and maintenance of the Tai Lam Tunnel and Yuen Long Approach Road. The Company was also empowered to make bylaws to control and regulate the conduct of vehicles and persons in the Tunnel and Approach Road area.

The Bylaw mainly deals with the rules that drivers are required to observe and the penalty of non-compliance, and so on. Provisions in the Bylaw are generally identical to those in the bylaws of other private tunnels.

Apart from the above Bylaw, I am also empowered under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance to make regulations in relation to the obligations and responsibilities of the Route 3 (CPS) Company Limited in operating the Tai Lam Tunnel and Yuen Long Approach Road. The Tai Lam Tunnel and Yuen Long Approach Road Regulation was introduced to the Provisional Legislative Council on 18 February 1998.



The Tai Lam Tunnel and Yuen Long Approach Road is scheduled to be opened in mid-1998. The Bylaw has to be in place to provide for the Company's powers in the management and operation of the Tunnel and to lay down the rules to be observed by tunnel users.

Madam President, I beg to move.

**The Secretary for Transport moved the following motion:**

"That the Tai Lam Tunnel and Yuen Long Approach Road Bylaw made by the Route 3 (CPS) Company Limited on 19 January 1998, be approved."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Tai Lam Tunnel and Yuen Long Approach Road Bylaw made by the Route 3 (CPS) Company Limited on 19 January 1998, be approved. We now proceed to a debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Motion under the Pharmacy and Poisons Ordinance. Secretary for Health and Welfare.

## **PHARMACY AND POISONS ORDINANCE**

**SECRETARY FOR HEALTH AND WELFARE:** Madam President, I move that the Poisons List (Amendment) Regulation 1998 and the Pharmacy and Poisons (Amendment) Regulation 1998 as set out under my name on the Agenda be approved.

The sale and supply of pharmaceutical products in Hong Kong is regulated by the Pharmacy and Poisons Ordinance, which has established a registration and inspection system for the protection of public health. The Pharmacy and Poisons Board is the statutory authority for the registration and control of pharmaceutical products.

The two Amendment Regulations tabled now before Members have already been endorsed by the Pharmacy and Poisons Board. They seek to add to the Poisons List and the Schedules some newly registered medicines and to revise the classification of certain medicines so as to facilitate up-to-date controls. Forty-three newly registered medicines are proposed to be added to the Poisons List and the Schedules so that they must be sold by dispensaries or pharmacies under the supervision of registered pharmacists, the majority of which will have to be additionally supported by prescriptions. In addition, the control on 28 medicines is proposed to be enhanced so that their current sale by dispensaries or pharmacies under the supervision of registered pharmacists should be additionally backed by prescriptions. On the other hand, the record keeping requirement for 40 medicines is recommended to be relaxed because recent scientific evidence has shown that they are safe for self-medication. Nevertheless, the sale of these medicines will continue to be subject to the supervision of registered pharmacists.

The Pharmacy and Poisons Board has carefully studied the potency, toxicity and potential side-effects of the medicines concerned and has considered submissions from a number of organizations in the pharmacy profession before endorsing the amendments.

With these remarks, I beg to move the motion.

**The Secretary for Health and Welfare moved the following motion:**

"That the following Regulations, made by the Pharmacy and Poisons Board on 26 January 1998, be approved:

- (a) the Pharmacy and Poisons (Amendment) Regulation 1998; and
- (b) the Poisons List (Amendment) Regulation 1998."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Pharmacy and Poisons (Amendment) Regulation 1998 and the Poisons List (Amendment) Regulation 1998 made by the Pharmacy and Poisons Board on 26 January 1998, be approved. We now proceed to a debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions. The first motion under the Interpretation and General Clauses Ordinance. Mr Ronald ARCULLI.

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the motion standing in my name on the Agenda.

A Subcommittee was formed on 23 January 1998 to study the 18 items of subsidiary legislation gazetted on 16 January 1998 relating to fee increases. I was elected Chairman of the Subcommittee which has six members. The Subcommittee held one meeting with the Administration.

Members noted that the various fee increase proposals were intended to achieve different levels of cost recovery, with most of the fees being revised upwards by about 7% in accordance with the Government Consumption Expenditure Deflator movement from 1996-97 to 1997-98.

Members were generally of the view that the Government should not take the lead in increasing fees and charges at a time of downturn in the economy but should, instead, lead the way in freezing them to lighten the burden on the public. Members also considered that freezing of fees at their current levels for 1998-99 would not have a significant impact on government revenue. Members were of the unanimous view that 15 out of the 18 items of subsidiary legislation should not be supported, and I was asked to move to repeal the fee increase proposals concerned.

Madam President, with these remarks, I move that the Aerial Ropeways (Fees) (Amendment) Regulation 1998 be repealed as set out in the Agenda.

**Mr Ronald ARCULLI moved the following motion:**

"That the Aerial Ropeways (Fees) (Amendment) Regulation 1998, published as Legal Notice No. 17 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Aerial Ropeways (Fees) (Amendment) Regulation 1998, published as Legal Notice No. 17 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Second motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the second motion standing in my name on the Agenda.

The Amusement Rides (Safety) (Fees) (Amendment) Regulation 1998 was studied by the Subcommittee I mentioned earlier in my first motion. I think that the deliberations and arguments are identical to the ones which I have presented in my last speech. I urge Members to support my motion for similar reasons that I have outlined when I spoke on the last motion. Thank you, Madam President.

**Mr Ronald ARCULLI moved the following motion:**

"That the Amusement Rides (Safety) (Fees) (Amendment) Regulation 1998, published as Legal Notice No. 18 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Amusement Rides (Safety) (Fees) (Amendment) Regulation 1998, published as Legal Notice No. 18 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Third motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the third motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Electricity (Registration) (Amendment) Regulation 1998, published as Legal Notice No. 21 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Electricity (Registration) (Amendment) Regulation 1998, published as Legal Notice No. 21 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Fourth motion. Mr Ronald ARCULLI.

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the fourth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Electricity (Wiring) (Amendment) Regulation 1998, published as Legal Notice No. 22 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Electricity (Wiring) (Amendment) Regulation 1998, published as Legal Notice No. 22 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)



**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Fifth motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI**: Madam President, I move the fifth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Gas Safety (Gas Supply) (Amendment) Regulation 1998, published as Legal Notice No. 23 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Gas Safety (Gas Supply) (Amendment) Regulation 1998, published as Legal Notice No. 23 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Sixth motion. Mr Ronald ARCULLI.

### **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI**: Madam President, I move the sixth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Gas Safety (Registration of Gas Installers and Gas Contractors) (Amendment) Regulation 1998, published as Legal Notice No. 24 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Gas Safety (Registration of Gas Installers and Gas Contractors) (Amendment) Regulation 1998, published as Legal Notice No. 24 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Seventh motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI**: Madam President, I move the seventh motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Gas Safety (Registration of Gas Supply Companies) (Amendment) Regulation 1998, published as Legal Notice No. 25 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Gas Safety (Registration of Gas Supply Companies) (Amendment) Regulation 1998, published as Legal Notice No. 25 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Eighth motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the eighth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Ferry Services (Amendment) Regulation 1998, published as Legal Notice No. 26 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Ferry Services (Amendment) Regulation 1998, published as Legal Notice No. 26 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Ninth motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the ninth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Traffic (Parking) (Amendment) Regulation 1998, published as Legal Notice No. 27 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Parking) (Amendment) Regulation 1998, published as Legal Notice No. 27 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Tenth motion. Mr Ronald ARCULLI.

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the tenth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation 1998, published as Legal Notice No. 28 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation 1998, published as Legal Notice No. 28 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Eleventh motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the eleventh motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Tunnels (Government) (Amendment) Regulation 1998, published as Legal Notice No. 29 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Tunnels (Government) (Amendment) Regulation 1998, published as Legal Notice No. 29 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)



**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Twelfth motion. Mr Ronald ARCULLI.

### **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the twelfth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 1998, published as Legal Notice No. 30 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 1998, published as Legal Notice No. 30 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no"?

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Thirteenth motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI**: Madam President, I move the thirteenth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Regulation.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Traffic (Public Service Vehicles) (Amendment) (No. 2) Regulation 1998, published as Legal Notice No. 31 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Public Service Vehicles) (Amendment) (No. 2) Regulation 1998, published as Legal Notice No. 31 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no"?

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Fourteenth motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the fourteenth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Madam President, I beg to move to repeal the Order.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Traffic Ordinance (Amendment of Schedule 3) Order 1998, published as Legal Notice No. 33 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic Ordinance (Amendment of Schedule 3) Order 1998, published as Legal Notice No. 33 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no"?

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Fifteenth motion. Mr Ronald ARCULLI.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**MR RONALD ARCULLI:** Madam President, I move the fifteenth motion standing in my name on the Agenda.

I have set out the reasons for repealing the Aerial Ropeways (Fees) (Amendment) Regulation 1998 when I moved the first motion and I would not repeat them here.

Before I conclude, I would like to thank Members for their devoted attention. If I should keep calling your name, Madam President, in my sleep tonight and get into trouble with my wife, I hope my colleagues will explain the reasons for that. *(Laughter)*

With that, Madam President, I beg to move to repeal the Order.

**Mr Ronald ARCULLI moved the following motion:**

"That the Road Traffic Ordinance (Amendment of Schedule 8) Order 1998, published as Legal Notice No. 35 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Road Traffic Ordinance (Amendment of Schedule 8) Order 1998, published as Legal Notice No. 35 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be repealed.

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no"?

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): My congratulations to Members for passing the 15 motions. *(Laughter)*

**PRESIDENT** (in Cantonese): The last motion under the Interpretation and General Clauses Ordinance. Mr IP Kwok-him.

## **INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

**PRESIDENT** (in Cantonese): Mr IP Kwok-him.

**MR IP KWOK-HIM** (in Cantonese): Madam President, as Chairman of the Subcommittee on subsidiary legislation relating to the Legislative Council elections, I move the motion as set out in the paper circularized to Members.

The Subcommittee has finished scrutinizing the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation. The Regulation spells out the procedure for Geographical Constituency elections, Functional Constituency elections and Election Committee election for the 1998 Legislative Council. Schedule 1 of the Regulation spells out the electoral procedures for various subsectors and sub-subsectors under the Election Committee and the procedure for nominations for the religious subsector. On behalf of the Subcommittee, I shall move certain amendments to which the Administration and the Registration and Electoral Office raises no objection. I now outline the major amendments to be made.

### *Agents*

The Subcommittee has proposed two amendments about the appointment of agents. The first one relates to the duties of candidates who rank first in priority in the list for Geographical Constituencies. Under sections 23, 25, 42 and 66 of the Regulation, candidates ranking first in priority in the relevant list should under certain circumstances serve notices of appointment of election agents, election expense agents, polling agents or counting agents or notices to cancel such appointments. Some members have expressed reservations about the requirement, especially when the relevant lists have been signed by all the candidates, and wanted some flexibility to be built into the arrangement. The proposed amendment states that notices of such appointments or their cancellation need only be served by one of the candidates on the list.

The second amendment relates to the requirement that election agents, polling agents and counting agents must be registered electors in the geographical constituencies.

The Electoral Affairs Commission (EAC) has explained that the Administration has made the requirement to ensure only Hong Kong people who are sufficiently well-linked to the election are appointed agents. After some discussions, most members agreed to delete the requirement for the three categories of agents to be electors in the geographical constituencies. They suggested that the only requirement for appointed agents should be that they are holders of Hong Kong identity cards aged 18 or above.

#### *Voting arrangements for voters of six particular functional constituencies*

Some members have expressed reservations about different voting arrangements for the 28 functional constituencies. Members are worried that the turnout rate may be affected as voters of six particular functional constituencies need to vote at three specified polling stations which may be far away from the residence of the voters. Members think that the Administration should adopt voting arrangements similar to those for the other 22 functional constituencies so as to facilitate voting by voters of these particular functional constituencies, that is, they should be allowed to vote at polling stations for geographical constituencies nearest to their residence. After some deliberation, the EAC adopted this proposal by Members.

#### *Nominations for functional constituencies*

Amendments to section 11(9) are meant to state clearly nominations for candidates in the functional constituencies may be effected by signing on the nomination forms by the authorized representatives of corporate voters.

#### *What constitutes an offence at a polling station*

Members are concerned about what constitutes an offence at a polling station. The relevant regulation states that persons other than those specified in section 45(7) who, on the polling day, uses a mobile telephone, paging machine or any other device for electronic communication with voters or authorized representatives commits an offence. Members think this is overly strict. The proposed amendment states clearly that a person commits an offence only when he or she acts contrary to a direction of the Presiding Officer.

*Assignment of numbers to candidates*

Some members are concerned about Arabic numerals are used for both candidates on the list of candidates of geographical constituencies and individual candidates of functional constituencies and of the Election Committee. This may cause confusion to the voters. After discussion, members agreed to adopt a distinct method of numbering for candidates. Assignment of numbers or alphabets for each candidate or candidates in the candidates list is done according to a ballot result. Members also agreed that an alphabet should be assigned to each candidate in the geographical constituencies to indicate the priority ranking in a list. The letter "a" is used for the candidate ranking first in priority and so on.

*Questions to be asked from persons applying for a ballot paper*

Members asked the Administration for clarification on the implementation of sections 50 and 51 which seem contradictory to each other. The amendment proposed is meant to state clearly that only when in case of doubt will the Presiding Officer ask the questions set out in section 51(3). The Presiding Officer must not give a ballot paper to any person who fails to answer the questions asked.

*Schedule 1*

Corresponding amendments to Schedule 1 of the Regulation in respect of electoral procedures for Election Committee subsector and sub-subsector elections and procedure for nominations for the religious subsector must be made in the light of amendments made to electoral procedures in the 1998 Legislative Council geographical constituency, functional constituency and Election Committee elections.

Other than the amendments proposed, the Subcommittee will also propose other technical or consequential amendments. I hereby urge Members to support such amendments.

Madam President, I wish to continue my speech about the draft Regulation as a member of the Democratic Alliance for the Betterment of Hong Kong (DAB).



Madam President, the effective conduct of an election hinges on an elaborate set of electoral procedures. The electoral procedures tabled by the Government before the Provisional Legislative Council today is a complete version after some brainstorming by Members. It merits our support. The DAB has responded to the guidelines for election activities after they were first published, and we have requested that voters of the geographical constituencies who are also voters for functional constituencies should be allowed to vote at polling stations near their residence. The suggestion was adopted by the Government and we were glad it could follow good advice from Members by making the relevant amendments. The DAB considers that there is still a lot of room for improvement as far as electoral procedures are concerned. Particularly noteworthy is the suggestion to post photographs of candidates on ballot papers to help voters identify who the candidates are. The DAB had thought of making amendments for this. However, after discussion with the Government and you, Madam President, we learned that this proposal might have a chilling effect and therefore could not be put forward in the name of Members. So we withdrew the proposal. Since it is impossible to put the photographs of candidates on ballot papers, the Government has adopted Members' suggestion of allowing the photographs to be posted at conspicuous positions at polling stations and at voting compartments to facilitate voters in clearly identifying the candidates. We welcome this arrangement. We also hope the Government can make reference to ballot papers used in other countries and actively study the feasibility of printing the photographs of candidates on ballot papers for the next election. We do not want to hear again the pretext for no action by saying "there is technical difficulty in printing photographs of candidates on ballot papers".

With these remarks, I support the regulations on behalf of the DAB. Thank you, Madam President.

**Mr IP Kwok-him moved the following motion:**

"RESOLVED that the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation, published as Legal Notice No. 20 of 1998 and laid on the table of the Provisional Legislative Council on 21 January 1998, be amended -

- (a) in section 2(1) -

- (i) in the definition of "EC polling station" -
  - (A) by repaling "section 30(1)(c)" and substituting "section 30(1)(b)";
  - (B) by repealing "指定" and substituting "編配";
- (ii) in the definition of "election advertisement" by adding", list of candidates or nomination list" after "candidate" where it twice appears;
- (iii) by repealing the definition of "SFC polling station";
- (iv) in the definition of "verification of the ballot paper account"-
  - (A) by repealing "section 74(2)(b)" and substituting "section 74(3)(c) or (4)(d)";
  - (B) in the Chinese text by repealing "account)" and substituting "account)";
- (v) by adding -
  - ""EC counting zone" (選委會點票區) means the counting zone for the Election Committee election;
  - "GC counting zone" (地方選區點票區) means a counting zone for a geographical constituency;
  - "GC elector" (地方選區選民) means a person who is entitled to vote for a geographical constituency;
  - "identity card" (身分證) has the meaning assigned to it by section 1 A of the Registration of Persons Ordinance (Cap. 177);";

(b) in section 11 -

(i) by renumbering subsections (9), (10), (11), (12) and (13) as subsections (10), (11), (12), (13) and (14) respectively;

(ii) by adding -

"(9) In the case of an elector other than a nautral person, the subscription of the nomination form by that elector may be effected by that elector's authorized representative.";

(c) in section 18 -

(i) in subsection (1) -

(A) in paragraph (a) -

(I) by adding "or an omission," after "error,";

(II) by adding "或遺漏" before "可";

(III) by adding "or" at the end;

(B) by repealing paragraph (b);

(C) by renumbering pargaraph (c) as paragraph (b);

(ii) in subsection (3) by adding "under this section" after "rectified";

(d) by repealing section 21(5)(b) and substituting -

"(b) in the case of a Part 3 functional constituency, the letter of the alphabet assigned to that functional constituency followed by the number allocated to each candidate under section 49(8); and in the case of a special functional constituency the abbreviation for the name of that special functional constituency followed by the letter

of the alphabet allocated to each candidate under section 49(9).";

(e) in section 23 -

(i) by repealing subsections (5), (6) and (7) and substituting -

"(5) Only a holder of an identity card who has attained the age of 18 years may be appointed as an election agent.

(6) A candidate must give notice of appointment of his or her election agent to the Returning Officer. If the election agent is appointed on behalf of a multiple nominees list or a multiple candidates list, the notice required for the purposes of this subsection may be given by any candidate on the relevant list.";

(ii) by renumbering subsections (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18) and (19) as subsections (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17) and (18) respectively;

(iii) by repealing subsection (11) and substituting -

"(11) If the appointment of an election agent is revoked, notice of revocation must be given to the Returning Officer by the candidate as soon as possible after the revocation. In the case of a multiple nominees list or multiple candidates list, the notice required for the purposes of this subsection may be given by any candidate on the relevant list.";

(iv) in subsection (17) by repealing "(19)" and substituting "(18)";

(f) in section 24 -

(i) in subsection (6) by repealing "23(15)" and substituting "23(14)";

(ii) by adding -

"(9) A notice required to be sent to a candidate under subsection (1), (2) or (3) may be sent to the election agent instead of to the candidate.";

(g) in section 25 -

(i) in subsections (1), (2) and (3) by repealing "appoint one or more persons authorized" and substituting "authorize one or more persons";

(ii) in subsection (4) by repealing "on the candidates behalf" and substituting "on the candidate's behalf";

(iii) in subsection (5) by adding "獲" before "授權";

(iv) in subsection (9) by repealing "the duty to serve is on the candidate ranking first in priority on the relevant list" and substituting "a copy required to be served for the purposes of this subsection may be served by any candidate on the relevant list";

(v) in subsection (14) -

(A) by repealing "appointment" and substituting "authorization";

(B) by repealing "the notice must be given by the candidate ranking first in priority in" and substituting "the notice required for the purposes of this subsection may be given by any candidate on";

- (vi) in subsection (16) by repealing "appointment" and substituting "authorization";
- (h) by repealing section 30 and substituting -

**"30. Chief Electoral Officer to assign polling stations for constituencies and Election Committee election and to allocate polling stations to electors and authorized representatives**

- (1) The Chief Electoral Officer may assign -
  - (a) for each constituency, one or more polling stations for conducting the poll for that constituency; and
  - (b) for the Election Committee election, one or more polling stations for conducting the poll for that election.
- (2) Notwithstanding subsection (1), the Chief Electoral Officer may, in relation to a general election, make arrangements for -
  - (a) voting for one or more functional constituencies to take place at a GC polling station; and
  - (b) voting for one or more functional constituencies and one or more geographical constituencies to take place at an EC polling station.
- (3) The Chief Electoral Officer must allocate to each elector and authorized representative a polling station or polling stations to cast the vote or votes he or she is entitled to cast at an election.

(4) Under subsection (3), for the purposes of a general election, the Chief Electoral Officer -

- (a) must, subject to paragraph (d), allocate to a GC elector, a GC polling station close to his or her registered residential address to cast the vote for the geographical constituency;
- (b) may allocate to a GC elector who is entitled to vote for a functional constituency either as an elector or an authorized representative, his or her GC polling station to cast the vote for the geographical constituency and that for the functional constituency;
- (c) may allocate to a GC elector who is entitled to vote for a functional constituency as an elector and for another functional constituency as an authorized representative, his or her GC polling station to cast the vote for the geographical constituency and the votes for the 2 functional constituencies; and
- (d) may allocate to a GC elector who is a member of the Election Committee, an EC polling station to cast the vote for the Election Committee election, the vote for the geographical constituency and if he or she is entitled to vote for a functional constituency as an authorized representative, the vote for the functional constituency concerned.

(5) In this section, in relation to a person, his or her GC polling station is to be construed as the polling station that person is allocated under subsection (4)(a).";

(i) in section 40(7) by repealing "條" and substituting "款";

(j) in section 42 -

(i) by repealing subsections (7), (8) and (9) and substituting -

"(7) Only a holder of an identity card who has attained the age of 18 years may be appointed as a polling agent.

(8) A candidate must give notice of appointment of a polling agent to the Returning Officer at least 3 working days before polling day. In the case of a multiple candidates list, the notice required for the purposes of this subsection may be given by any candidate on the list.

(9) If notice is not given under subsection (8), it must be delivered on polling day to the Presiding Officer for the polling station for which the polling agent is appointed -

(a) by the candidate in person, or in the case of a multiple candidates list, by any candidate on the list in person; or

(b) by the election agent of the candidate or of the list, in person.";

(ii) by repealing subsection (12) and substituting -

"(12) If the appointment of a polling agent is revoked, the candidate must give notice of the revocation to the Returning Officer or Presiding Officer in accordance with subsection (14). In the case of a multiple candidates list, the notice required for the purposes of this subsection may be given by any candidate on the list.";



(k) in section 44 -

(i) in the Chinese text by repealing subsection (2)(b) and substituting -

"(b) 禁止某人置身於投票站內。";

(ii) in subsection (3) -

(A) by repealing "將" and substituting "禁止任何";

(B) by repealing everything after "人" and substituting "置身於該投票站內。";

(iii) in subsection (4) -

(A) by repealing "可將" and substituting "得禁止";

(B) by repealing everything from "摒除" to "停留" and substituting "置身於該投票站內";

(iv) in subsection (12) by adding "監察" before "投票代理人";

(v) by renumbering subsection (13) as subsection (14);

(vi) by adding -

"(13) If a person arrives at a polling station for the purpose of voting accompanied by a child, the Presiding Officer may permit the child to enter the polling station if that Officer considers that the child should not be left unattended while the person is inside the polling station.";

(l) in section 45 -

(i) by reaping subsection (1) and substituting -

"(1) Subject to subsection (6), if on polling day,  
within a polling station, a person -

(a) communicates with an elector or an  
authorized representative; or

(b) uses a mobile telephone, paging  
machine or any other device for  
electronic communication,

contrary to a direction of the Presiding Officer not to do  
so, that person commits an offence.";

(ii) by repealing subsection (6);

(iii) by renumbering subsections (7) and (8) as subsections (6) and  
(7) respectively;

(iv) in subsection (6) -

(A) by repealing "Subsections (1) and (6) do" and  
substituting "Subsection (1) does";

(B) by renumbering paragraphs (c), (d), (e), (f), (g) and (h) as  
paragraphs (d), (e), (f), (g), (h) and (i) respectively;

(C) by adding -

"(c) the Chief Electoral Officer;"

(m) in section 49 -

- (i) in subsection (1) by repealing "同一地方選區進行的投票所用的" and substituting "地方選區投票所用";
- (ii) in subsection (6) by adding "In each list, each candidate is to be allocated a letter of the alphabet to indicate the order of priority, beginning with the letter "a" for the candidate ranking first in priority; and the letter so allocated is to be printed on the ballot paper against the name of the candidate." after "candidates.";
- (iii) in subsection (7) by repealing "Part 3";
- (iv) by repealing subsection (8) and substituting -

"(8) Each Part 3 functional constituency is to be assigned a letter of the alphabet by the Chief Electoral Officer and each candidate for a Part 3 functional constituency is to be allocated a number preceded by the letter so assigned, according to the result of the draw. The letter and the number are to be printed on the ballot paper against the name of the candidate.";

- (v) in subsection (9) by adding "preceded by an appropriate abbreviation for the name of the special functional constituency" after "letter" where it secondly appears;
- (vi) in subsection (10) by adding "with 2 digits" after "number";
- (vii) by adding -

"(16) A notice required to be given to a candidate under subsection (12) may be given to the election agent instead of to the candidate.";

(n) in section 51(1) by adding", in case of doubt," after "ask";

(o) in section 53 -

(i) by repealing subsection (4) and substituting -

"(4) At a GC polling station which is also used for polling for one or more functional constituencies, the Presiding Officer -

(a) must issue a GC ballot paper to an elector who is entitled to vote only for that geographical constituency;

(b) must issue a GC ballot paper and the appropriate FC ballot paper to a GC elector who is entitled to vote for a functional constituency either as an elector or as an authorized representative; and

(c) must issue a GC ballot paper and the appropriate FC ballot papers to a GC elector who is entitled to vote as an elector for a functional constituency and as an authorized representative for another functional constituency.";

(ii) by renumbering subsections (5), (6) and (7) as subsections (6), (7) and (8) respectively;

(iii) by adding -

"(5) At an EC polling station which is also used for polling for one or more geographical constituencies and one or more functional constituencies, the Presiding Officer -

- (a) must issue an EC ballot paper and the appropriate GC ballot paper to a person who is entitled to vote at the Election Committee election and a geographical constituency; and
  - (b) must issue an EC ballot paper, the appropriate GC ballot paper and FC ballot paper to a person who is entitled to vote at the Election Committee election, for a geographical constituency and as an authorized representative for a functional constituency.";
- (p) in section 66 -
  - (i) by repealing subsections (4), (5), (6) and (7) and substituting -

"(4) Only a holder of an identity card who has attained the age of 18 years may be appointed as a counting agent.

(5) A candidate must give notice of appointment of a counting agent to the Returning Officer at least 3 working days before polling day. In the case of a multiple candidates list, the notice required for the purposes of this subsection may be given by any candidate on the list.

(6) If notice is not given under subsection (5), it must be delivered on polling day to the Returning Officer

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    - (a) by the candidate in person, or in the case of a multiple candidates list, by any candidate on the list in person; or

- (b) by the election agent of the candidate or of the list, in person.";
- (ii) by renumbering subsections (8), (9), (10), (11), (12) and (13) as subsections (7), (8), (9), (10), (11) and (12) respectively;
- (iii) by repealing subsection (9) and substituting -
  - (9) If the appointment of a counting agent is revoked, the candidate must give notice of the revocation to the Returning Officer. In the case of a multiple candidates list, the notice required for the purposes of this subsection may be given by any candidate on the list.";
- (iv) in subsection (11) by repealing "(7)" and substituting "(6)";
- (q) in section 71(1) by repealing "zone or" where it twice appears;
- (r) by repealing section 72(1) and substituting -
  - "(1) After delivery of the ballot boxes to the central counting station, the following arrangements are to be observed -
    - (a) the ballot boxes from each GC polling station, (that is the ballot boxes containing the GC ballot papers and those containing the FC ballot papers) are to be given into the charge of the Returning Officer for the relevant geographical constituency; and

- (b) the ballot boxes from each EC polling station (that is the ballot boxes containing the EC ballot papers, those containing the FC ballot papers and those containing the GC ballot papers) are to be given into the charge of the Returning Officer for the Election Committee election.";
- (s) by repealing section 74 and substituting -

**"74. Returning Officers to separate ballot papers at the counting zones and verify ballot paper account**

(1) At each GC counting zone, the Returning Officer in charge of the counting zone must retain the GC ballot papers and sort the FC ballot papers according to each functional constituency.

(2) At the EC counting zone, the Returning Officer in charge of the counting zone must retain the EC ballot papers and sort the FC ballot papers according to each functional constituency and sort the GC ballot papers according to each geographical constituency.

(3) A Returning Officer in charge of a GC counting zone must -

- (a) count and record the number of GC ballot papers;
- (b) count and record the number of FC ballot papers for each functional constituency; and

- (c) verify the ballot paper account for the GC ballot papers by comparing it with the number of ballot papers recorded under paragraph (a) and verify the ballot paper account for each functional constituency by comparing it with the number of ballot papers recorded for that functional constituency under paragraph (b) and in each case prepare a statement in writing as to the result of the verification.

(4) The Returning Officer in charge of the EC counting zone must -

- (a) count and record the number of EC ballot papers;
- (b) count and record the number of FC ballot papers for each functional constituency;
- (c) count and record the number of GC ballot papers for each geographical constituency; and
- (d) verify the ballot paper account for the EC ballot papers by comparing it with the number of ballot papers recorded under paragraph (a), verify the ballot paper account for each functional constituency by comparing it with the number of ballot papers recorded for that functional constituency under paragraph (b) and verify the ballot paper account for each geographical constituency by comparing it with the



number of ballot papers recorded for that geographical constituency under paragraph (c) and in each case prepare a statement in writing as to the result of the verification.

(5) If a Returning Officer considers it necessary or if required by a candidate who is present at the counting zone or an election agent or counting agent so present, that Officer must, in preparing the verification of the ballot paper account, compare the ballot paper account with the ballot papers recorded by that Officer and the spoilt ballot papers, the unused ballot papers and the counterfoils or un-issued ballot papers.

(6) At each GC counting zone, the Returning Officer in charge of the counting zone must make into separate bundles the sorted FC ballot papers together with the relevant verification of the ballot paper account, place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone.

(7) At the EC counting zone, the Returning Officer in charge of the counting zone must make into separate bundles the sorted FC ballot papers and the sorted GC ballot papers together with the relevant verification of the ballot paper account, place each bundle in a separate receptacle and seal it in the presence of those present at the counting zone.

(8) A Returning Officer referred to in subsection (6) or (7) must give the receptacles into the charge of an Assistant Returning Officer (General) in attendance at the relevant counting zone. An Assistant Returning Officer (General) into whose charge the receptacles containing the bundles of special functional constituency ballot papers are given must hand over the

receptacles to the Chief Returning Officer or to the Returning Officer of the relevant special functional constituency. An Assistant Returning Officer (General) into whose charge a receptacle containing the bundle of any other ballot papers is given must hand over the receptacle to the Returning Officer for the relevant constituency.

(9) In this section, in relation to a ballot paper contained in an envelope, retaining, separating, sorting, counting or recording ballot papers is to be construed as retaining, separating, sorting, counting or recording ballot papers contained in envelopes.

(10) A candidate or an election agent or a counting agent may copy what is recorded on the ballot paper account or the verification of the ballot paper account.";

- (t) in section 75(1) -
  - (i) by repealing "section 74(6)" and substituting "section 74(1)";
  - (ii) by repealing "section 74(9)" and substituting "section 74(8)";
- (u) by repealing section 76(1) and substituting -

"(1) At the counting zone for a special functional constituency, the ballot papers for that special functional constituency delivered from the various other counting zones under section 74(8) (or in the case of a by-election, from the various polling stations) must be dealt with by the Returning Officer as provided in this section.";

- (v) in section 77(1) by repealing "section 74(9)" and substituting "section 74(8)";

- (w) in section 78(1) by repealing "section 74(6)" and substituting "section 74(2)";
- (x) in section 80(1)(j) by repealing "因無明確選擇而被選舉主任裁定為" and substituting "被選舉主任裁定為因無明確選擇而";
- (y) in section 84(6)(c) by repealing "會" where it secondly appears and substituting "書";
- (z) in section 101(2) by repealing "選舉" where it first appears;
- (za) in section 102 -

- (i) by repealing subsection (8) and substituting -

"(8) Subsections (1) and (2) do not apply to an election advertisement proposed to be sent by facsimile transmission.";

- (ii) in subsection (13) by repealing "並未就某選舉廣告遵從本條的規定" and substituting "本條的規定並未就某選舉廣告獲得遵從";
    - (iii) in subsection (15) by repealing "有人並未就任何在展示中的選舉廣告而遵從本條的規定" and substituting "本條的規定並未有就任何在展示中的選舉廣告而獲得遵從";
- (zb) in Schedule 1 -
  - (i) in section 1(1) -
    - (A) in the definition of "界別分組選票結算核實書" by repealing "acount)" and substituting "account)";

(B) by adding -

""identity card" (身分證) has the meaning assigned to it by section 1A of the Registration of Persons Ordinance (Cap. 177);";

(ii) in section 4(3) -

(A) by repealing "最遲";

(B) by adding "之前" after "12 天";

(iii) in section 7 -

(A) by renumbering subsections (8), (9), (10), (11) and (12) as subsections (9), (10), (11), (12) and (13) respectively;

(B) by adding -

"(8) In the case of a voter other than a natural person, the subscription of the nomination form by that voter may be effected by that voter's authorized representative.";

(iv) in section 14 -

(A) in subsection (1) -

(I) in paragraph (a) -

(aa) by adding "or an omission," after "error,";

(bb) by adding "或遺漏" before "可";

(cc) by adding "or" at the end;

- (II) by repealing paragraph (b);
- (III) by renumbering paragraph (c) as paragraph (b);
- (B) in subsection (2) by adding "under this section" after "rectified";
- (v) by repealing section 19(2) and substituting -
  - "(2) Only a holder of an identity card who has attained the age of 18 years may be appointed as an election agent.";
- (vi) in section 20 by adding -
  - "(7) A notice required to be sent to a subsector candidate under subsection (1) may be sent to the election agent instead of to the subsector candidate.";
- (vii) in section 21 -
  - (A) in subsection (1) by repealing "appoint one or more persons authorized" and substituting "authorize one or more persons";
  - (B) in subsections (11) and (13) by repealing "appointment" and substituting "authorization";
- (vii) in section 36 -
  - (A) in subsection (2) by adding "供" after "如投票站";
  - (B) in subsection (4) -
    - (I) by adding "供" after "如投票站";
    - (II) by repealing "其" where it secondly appears;

(III) by adding "for the subsector" after "subsector candidates";

(ix) by repealing section 38(4) and substituting -

"(4) Only a holder of an identity card who has attained the age of 18 years may be appointed as a polling agent.";

(x) in section 40 -

(A) in the Chinese text by repealing subsection (2)(b) and substituting -

"(b) 禁止某人置身於投票站內。";

(B) in subsection (3) -

(I) by repealing "將" and substituting "禁止任何";

(II) by repealing everything after "人" and substituting "置身於該投票站內。";

(C) in subsection (4) -

(I) by repealing "可將" and substituting "得禁止";

(II) by repealing everything from "摒除" to "停留" and substituting "置身於該投票站內";

(III) in paragraph (b) by repealing "其";

(D) by renumbering subsection (13) as subsection (14);

(E) by adding -

"(13) If a person arrives at a polling station for the purpose of voting accompanied by a child, the Presiding Officer may permit the child to enter the polling station if that Officer considers that the child should not be left unattended while the person is inside the polling station.";

(xi) in section 41 -

(A) by repealing subsection (1) and substituting -

"(1) Subject to subsection (6), if on polling day, within a polling station, a person -

(a) communicates with a voter or an authorized representative;  
or

(b) uses a mobile telephone, paging machine or any other device for electronic communication,

contrary to a direction of the Presiding Officer not to do so, that person commits an offence.";

(B) by repealing subsection (6);

(C) by renumbering subsections (7) and (8) as subsections (6) and (7) respectively;

(D) in subsection (6) -

(I) by repealing "Subsections (1) and (6) do" and substituting "Subsection (1) does";

(II) by renumbering paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (e), (f), (g), (h) and (i) respectively;

(III) by adding -

"(c) the Chief Electoral Officer;"

(xii) in section 45 by adding -

"(9) A notice required to be given to a subsector candidate under subsection (5) may be given to the election agent instead of to the subsector candidate.";

(xiii) in section 47(1) by adding", in case of doubt," after "ask";

(xiv) in section 49(1) -

(A) by repealing "作某一界別分組進行投票用，" and substituting "某一界別分組";

(B) by repealing "否";

(C) by repealing "抑或" and substituting "或是兼";

(xv) in section 51(2) by repealing "as many candidates as" and substituting "a number of candidates not exceeding";

(xvi) in section 57(2) by repealing "以" where it first appears;

(xvii) by repealing section 59(3) and substituting -

"(3) Only a holder of an identity card who has attained the age of 18 years may be appointed as a counting agent.";

(xviii) in section 67(7) by reaping "或複製";



(xix) in section 68 -

(A) in the Chinese text in subsection (3) by repealing the comma;

(B) in subsection (5) -

(I) by repealing "該";

(II) by repealing "選區";

(xx) in section 70(1)(h) by repealing "因選舉主任決定其" and substituting "被選舉主任裁定為因";

(xxi) in section 87 -

(A) in subsection (2) -

(I) by repealing "在投票日";

(II) by repealing "在投票站及" and substituting "於投票日在投票站及在";

(B) in subsection (4) by repealing "投票站及";

(C) in subsection (5) -

(I) by adding "有關界別分組的" after "確定";

(II) by adding "名" after "該";

(D) in subsection (6) by repealing "該死亡" and substituting "關於該名候選人去世";

(xxii) in section 88(2) -

(A) in paragraphs (c), (d) and (h) by adding "subsector" before "candidates";

(B) in paragraph (e) by adding "subsector" after "notice to";

(xxiii) in section 91(2) by repealing "選舉" where it first appears;

(xxiv) in section 92 -

(A) by repealing subsection (8) and substituting -

"(8) Subsections (1) and (2) do not apply to an election advertisement proposed to be sent by facsimile transmission.";

(B) in subsection (13) by repealing "並未就某選舉廣告遵從本條的規定" and substituting "本條的規定並未就某選舉廣告獲得遵從";

(C) in subsection (15) by repealing "有人並未就任何在展示中的選舉廣告遵從本條的規定" and substituting "本條的規定並未有就任何在展示中的選舉廣告而獲得遵從";

(zc) in Schedule 2 in sections 5(1) and (5) and 6(1) by adding "or section 18 of Schedule 2 to that Ordinance" after "(134 of 1997)";

(zd) by repealing Schedule 3 and substituting -


## " SCHEDULE 3

(s. 49)

## FORMS OF BALLOT PAPERS FOR A GENERAL ELECTION/BY-ELECTION

## FORM I

## BALLOT PAPER FOR A GEOGRAPHICAL CONSTITUENCY

存根 COUNTERFOIL	(編號) (Serial Number)
<p>《選舉管理委員會(選舉程序)(立法會)規例》 ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION</p> <p>立法會*換屆選舉/補選 *(地方選區名稱) LEGISLATIVE COUNCIL *GENERAL ELECTION/BY-ELECTION *(NAME OF GEOGRAPHICAL CONSTITUENCY) *(選舉日期) *(date of election)</p>	
<p><b>選票</b> <b>BALLOT</b> <b>PAPER</b></p> <div style="border: 1px solid black; padding: 2px; display: inline-block;">#(代號) #(Code)</div>	
<p><b>只可投票選一名單 VOTE FOR ONE LIST ONLY</b></p> <p>在所選名單右邊的圓圈內加上"✓"號。 Mark "✓" in the circle opposite the list of your choice.</p>	
<p><b>1</b></p> <p><b>2</b></p> <p><b>3</b></p> <p><b>4</b></p>	<p>e†(候選人姓名——按候選人 名單上的排名次序) e†(Name(s) of candidate(s) in order of priority)</p> <div style="text-align: center;">  <div style="display: flex; flex-direction: column; align-items: center;"> <div style="border: 1px solid black; width: 60px; height: 60px; margin: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; margin: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; margin: 5px;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; margin: 5px;"></div> </div> </div>

# A code will be assigned to each of the geographical constituencies. Only the appropriate code will be printed.

\* Only the appropriate information will be printed.

† Address of the candidate to be included if required under section 49(13)(b).

‡ Each candidate on the list will be assigned a letter of alphabet starting from 'a' and up to 'e', depending on the number of candidates.

## FORM 2

## BALLOT PAPER FOR A SPECIAL FUNCTIONAL CONSTITUENCY

存根 COUNTERFOIL	(編號) (Serial Number)
<p>《選舉管理委員會(選舉程序)(立法會)規例》 ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION</p>	
<p>立法會*換屆選舉/補選 *(功能界別名稱) LEGISLATIVE COUNCIL *GENERAL ELECTION/BY-ELECTION *(NAME OF FUNCTIONAL CONSTITUENCY) *(選舉日期) *(date of election)</p>	<p>選票 BALLOT PAPER</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>#(代號) #(Code)</p> </div>
<p><b>你必須填寫第一選擇</b> <b>YOU MUST MARK THE FIRST PREFERENCE</b></p> <p>你必須選擇最少一名候選人。請在作為你第一選擇的候選人姓名右邊的圓圈內填上「1」。第二選擇填上「2」。第三選擇填上「3」。如此類推。 You must choose at least one candidate. Mark "1" in the circle opposite the name of candidate of your first preference, "2" opposite the name of candidate of your second preference, "3" opposite the name of candidate of your third preference, and so on.</p>	
<p>@ A</p> <p>@ B</p> <p>@ C</p> <p>@ D</p> <p>@ E</p> <p>@ F</p>	<p>†(候選人提名公告上顯示的 候選人姓名) †(Name of candidate as shown in Notice of Nominations)</p> <div style="display: flex; flex-direction: column; align-items: center;"> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 5px;"></div> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 5px;"></div> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 5px;"></div> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 5px;"></div> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 5px;"></div> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 5px;"></div> </div>

- # A code will be assigned to each of the special functional constituencies. Only the appropriate code will be printed.
- \* Only the appropriate information will be printed.
- † Address of the candidate to be included if required under section 49(13)(b).
- ‡ A code assigned for the relevant special functional constituency will precede a letter of the alphabet to be assigned to each candidate.

## FORM 3(a)

## BALLOT PAPER FOR A PART 3 FUNCTIONAL CONSTITUENCY

存根 COUNTERFOIL	(編號) (Serial Number)
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>《選舉管理委員會(選舉程序)(立法會)規例》 ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION</p> <p>立法會*換屆選舉/補選 *(功能界別名稱) LEGISLATIVE COUNCIL *GENERAL ELECTION/BY-ELECTION *(NAME OF FUNCTIONAL CONSTITUENCY) *(選舉日期) *(date of election)</p> </div> <div style="width: 35%; text-align: right;"> <p><b>選票</b> <b>BALLOT</b> <b>PAPER</b></p> <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto;">             # (代號) # (Code)           </div> </div> </div>	
<div style="background-color: black; color: white; padding: 5px; margin-bottom: 5px;"> <b>只可投票選一名候選人</b>  <b>VOTE FOR ONE CANDIDATE ONLY</b> </div> <div style="border: 1px solid black; padding: 5px; display: inline-block;">             在所選候選人姓名右邊的圓圈內加上“✓”號。              Mark “✓” in the circle opposite the name of              candidate of your choice.           </div>	
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">@</div> <div style="font-size: 2em; font-weight: bold;">1</div> </div> <div style="margin-top: 20px;"> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">@</div> <div style="font-size: 2em; font-weight: bold;">2</div> </div> <div style="margin-top: 20px;"> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">@</div> <div style="font-size: 2em; font-weight: bold;">3</div> </div> <div style="margin-top: 20px;"> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">@</div> <div style="font-size: 2em; font-weight: bold;">4</div> </div> <div style="margin-top: 20px;"> <div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">@</div> <div style="font-size: 2em; font-weight: bold;">5</div> </div> </div> </div> </div></div>	<p>†(候選人提名公告上顯示的 候選人姓名) *†(Name of candidate as shown in Notice of Nominations)</p> <div style="display: flex; flex-direction: column; align-items: center; gap: 20px;"> <div style="border: 1px solid black; width: 60px; height: 60px; border-radius: 50%;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; border-radius: 50%;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; border-radius: 50%;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; border-radius: 50%;"></div> <div style="border: 1px solid black; width: 60px; height: 60px; border-radius: 50%;"></div> </div>

# A code will be assigned to each of the Part 3 functional constituencies. Only the appropriate code will be printed.


\* Only the appropriate information will be printed.

† Address of the candidate to be included if required under section 49(13)(h).

? A code assigned for the relevant Part 3 functional constituency will precede a number to be assigned to each candidate.

## FORM 3(h)

BALLOT PAPER FOR A PART 3 FUNCTIONAL CONSTITUENCY  
(MORE THAN ONE VACANCY)

存根 COUNTERFOIL		(編號) (Serial Number)
(選舉管理委員會(選舉程序)(立法會)規例) ELECTORAL AFFAIRS COMMISSION (ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION 立法會*換屆選舉/補選 *(功能界別名稱) LEGISLATIVE COUNCIL *GENERAL ELECTION/BY-ELECTION *(NAME OF FUNCTIONAL CONSTITUENCY) *(選舉日期) *(date of election)		選票 BALLOT PAPER (代號) #(Code)
只可投票選最多三名候選人 VOTE FOR UP TO THREE CANDIDATES ONLY 在所選候選人姓名(不可超過三名)右邊 的圓圈內加上"/"號。 Mark "/" in the circles opposite the names of not more than three candidates of your choice.		
@ 1	*(候選人提名公告上顯示的 候選人姓名) *(Name of candidate as shown in Notice of Nominations)	 <input type="radio"/>
@ 2		<input type="radio"/>
@ 3		<input type="radio"/>
@ 4		<input type="radio"/>
@ 5		<input type="radio"/>

- # A code will be assigned to the Part 3 functional constituency concerned. Only the appropriate code will be printed.
- \* Only the appropriate information will be printed.
- † Address of the candidate to be included if required under section 49(13)(b).
- ‡ A code assigned for the relevant Part 3 functional constituency will precede a number to be assigned to each candidate.

FORM 4

## BALLOT PAPER FOR THE ELECTION COMMITTEE

(選舉管理委員會(選舉程序)(立法會)規例)  
ELECTORAL AFFAIRS COMMISSION  
(ELECTORAL PROCEDURE) (LEGISLATIVE COUNCIL) REGULATION

選票  
BALLOT  
PAPER

立法會\*換屆選舉/補選

選舉委員會

LEGISLATIVE COUNCIL \*GENERAL ELECTION / BY-ELECTION  
ELECTION COMMITTEE

\*(選舉日期)

\*(date of election)

你必須選出 10 名(不能多過或少過 10 名)候選人  
**YOU MUST MARK YOUR 10 CHOICES, NO MORE AND NO LESS**

請用黑色筆填滿你所選擇的 10 候選人姓名左邊的橢圓圈。  
Please shade in black the ovals against the names of the 10 candidates of your choice.

21. <input type="radio"/> *(候選人提名公告上顯示的候選人姓名) *(Name of candidate as shown in Notice of Nominations)	36. <input type="radio"/>
22. <input type="radio"/>	37. <input type="radio"/>
23. <input type="radio"/>	38. <input type="radio"/>
24. <input type="radio"/>	39. <input type="radio"/>
25. <input type="radio"/>	40. <input type="radio"/>
31. <input type="radio"/>	46. <input type="radio"/>
32. <input type="radio"/>	47. <input type="radio"/>
33. <input type="radio"/>	48. <input type="radio"/>
34. <input type="radio"/>	49. <input type="radio"/>
35. <input type="radio"/>	50. <input type="radio"/>

存根  
Counterfoil

(編號)  
(Serial Number)

- \* Only the appropriate information will be printed.
- The address of the candidate to be included if required under section 49(13)(b)."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the motion moved under the Interpretation and General Clauses Ordinance by Mr IP Kowk-him be approved. We now proceed to a debate. Does any Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): I now put the question to you as stated. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Members' motions. Two motions with no legal effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the amendments. The movers of the amendments will each have 10 minutes for their speeches. Other Members will each have seven minutes for their speeches. Under Rule 37 of the Rules of Procedure, I am obliged to direct any Member speaking in excess of the time limit to discontinue.

First motion: Building management. Dr LAW Cheung-kwok.

## **BUILDING MANAGEMENT**

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam President, I move the motion standing in my name on the Agenda relating to "building management".



Madam President, news about disasters happening to and in old buildings are heard from time to time in recent years, including fires involving casualties arising from leakage of electricity, illegal structures or blocking of fire escape routes; accidents involving fallen balconies or canopies due to structural failure or lack of maintenance; robberies or rapes arising from poor security; and the problem of liability insurance coverage of a building involving the compensation due to a fallen scaffolding worker. We all know such incidents well, I think. I do not want to go into the details of these man-made tragedies.

But Madam President, I stress that these are man-made because it is absolutely possible for these tragedies to be avoided, or the number of victims to be minimized. Ultimately it is due to poor building management that such problems exist which should otherwise have been solved a long time ago. These problems are like time-bombs around us: they will explode one by one sooner or later.

We may think intuitively that poor building management should be blamed on owners or Owners' Corporations (OC). But we have to be fair. What owners would want a tragedy on their premises? And what owners would want fatal incidents to happen to them? If they do not want such things, who caused or allowed such things to happen? My answer is: "The Government"!

If building management is left to owners or the OCs alone, there are these important and intrinsic problems:

1. OC members are just common people. They lack the knowledge in law, accounting, works and maintenance of water and electricity facilities needed to manage buildings. How can they provide quality management?
2. OC members are amateurs. The work listed above requires a lot of time to discuss, study, compare the prices, supervise and follow-up. How can they find the time to tackle these problems?
3. OC members have their own views and will find it difficult to reach a consensus. Matters with financial implications are the more complicated, are they not?

Difficulties mentioned above can be seen from the number of OCs formed. According to government statistics there are at present 50 000 to 60 000 private buildings. Among them only 4 800 have formed their OCs, and only 20% to 30% of which are active ones. Most of the buildings to which tragedies occurred in recent years are old ones without an OC. So, we can see that the present way of promoting building management through encouraging the establishment of OC is indeed a dead alley.

Madam President, if OCs alone are relied on to solve problems above, who are going to deal with the host of problems expected to crop up that cannot be solved? How can the Government sit back and do nothing when what we are talking about are buildings with the lives of over a thousand households at stake! If the Government set up the Labour Department to solve the "private problems" between labour and employer, and the Education Department the "private problems" between teacher and student, how can the Government shirk the responsibility of building management, using the excuse that it is a "private matter" or that it is dealing with "private property"?

Madam President, at the moment the Government has only one kind of support for OCs. It sends liaison officers from the Home Affairs Department to attend OC meetings to provide some abstract advice on matters of principle. This basically cannot provide any real help to solve real problems for owners or to help them reach agreements. A very important duty of the liaison officers is to put their signatures down on paper to confirm the resolutions of meetings after owners have voted. For lack of manpower, very often, and I daresay most of the time, the people sent to attend these meetings are part-time community organizers drawing hourly wages with a Form 5 education standard. One can imagine the kind of actual help they can give to the OCs. We can almost tell immediately with almost zero assistance, how effective these passive, amateurish OCs which lacks solidarity can be.

Madam President, to avoid more tragedies, the Hong Kong Association for Democracy and People's Livelihood (ADPL) holds the view that it is time the Government played a more active role and shouldered more responsibility in helping with the setting up of OCs. It should not remain in its role as a passive, consultative and co-ordinating body. It should be more active by providing sufficient resources to help with the effective operation of OCs. I want to stress again the Government should not be "passive". It should be "active". What

liaison officers did and the recent proposals, including the setting up of a "Building Management Resources Centre", focus on assistance, consultation and provision of information, all of which are passive in nature. They are not helpful at all to OCs which lack initiative even to ask. In fact what owners and OCs need is sufficient resources put in by various parties to enable the active promotion of the establishment of OCs and their sustained and effective operation.

The ADPL objects to legislate for the mandatory establishment of OCs. We suggest that the Government set up professional teams of social workers to promote the establishment of OCs and give assistance to their establishment. It should provide sufficient resources to encourage owners and give them financial assistance in employing professional management companies. It should set up a new department for the sole purpose of taking temporary charge of buildings without OCs but with some problems waiting to be solved. Other ADPL Members will speak about these points in more detail.

With these remarks, Madam President, I beg to move.

**Dr LAW Cheung-kwok moved the following motion:**

"That this Council urges the Government to formulate policy and provide adequate resources to assist building owners in forming Owners' Corporations and to strengthen its support for existing Owners' Corporations, so as to effectively handle building maintenance, fire protection, security and other building management-related matters."

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

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That this Council urges the Government to formulate policy and provide adequate resources to assist building owners in forming Owners' Corporations and to strengthen its support for existing Owners' Corporations, so as to effectively handle building maintenance, fire protection, security and other building management-related matters.

Mr NGAN Kam-chuen has given notice to move an amendment to this motion. His amendment has been printed on the Agenda. I propose that the motion and the amendment be debated together in a joint debate.

**DEPUTY PRESIDENT** (in Cantonese): Council shall now proceed to a joint debate. I now call on Mr NGAN Kam-chuen to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment. Mr NGAN Kam-chuen.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr Deputy, I move that Dr LAW Cheung-kwok's motion be amended as set out on the Agenda.

One may say building management is an old issue. It was debated in the former Legislative Council many times. The issue becomes a focus of attention whenever an accident happens in a multi-storey building. Despite the discussions, however, the problem remains unsolved.

Available data show only 4 800 buildings among the 50 000 or 60 000 private buildings have formed Owners' Corporations (OC). A number of measures recently taken by the Government, such as slope maintenance, inspection of electrical installations in buildings and the up-coming Building Safety Inspection Scheme, all involve OCs and call for assistance to the owners to form their OC. Otherwise individual unit owners of the buildings will not be organized and cannot play their part effectively in the plans of the Government.

The Democratic Alliance for the Betterment of Hong Kong (DAB) seeks to amend Dr LAW's motion mainly because his motion contains certain imperfection. Dr LAW's motion only urges the Government to assist building owners to form OCs but is silent on how the Government should help OCs operate after formation. This is like encouraging the Government to start things without seeing them through.

Undoubtedly, forming OCs can help manage buildings. But OCs are not almighty. Even they are formed, they will just be useless if they cannot operate effectively. For example, there were OCs at the Garley Building which caught fire the year before last, Sun Hing Building at Mong Kok which was ordered by the Court to pay huge compensation, and On Hing Building at Kwun Tong which caught fire recently. These OCs did not seem to have provided effective management for their respective buildings. Therefore, the DAB asks the Government not only to actively provide assistance in the formation of OCs but also to help them operate effectively.

As we all know, people taking part in OC work are enthusiastic residents who provide service on a voluntary basis. They may not have knowledge in law, accounting, engineering or management. They may encounter a lot of problems in their work. If the Government does not give them support but requires them to take up the responsibility when something happens, it will be grossly unfair to them. This will only discourage owners from taking part in OC work and tell enthusiastic residents off.

For instance, last year the OC of Sun Hing Building at Mong Kok was ordered by the Court to pay a record sum of \$25 million to a worker who became a quadriplegic as the result of a fall while working on the external wall of the building. The case shows many owners know very little about building management, and the Government does not provide sufficient support to OCs, especially in the form of legal advice. Because officers from the Home Affairs Department have not received legal training, and the Administration does not provide centralized legal advice, one can say there is almost a total lack of legal support.

On the other hand, although the Building Management Ordinance contains suggestions for OCs to take out insurance against fire and other matters, OCs often fail to recognize the importance of insurance due to a lack of experience in professional management. As a result, they suffer losses that are hard to absorb. The Sun Hing Building case is a case in point. The DAB urges that the Government to consider amending the Building Management Ordinance to require building owners to take out insurance against public liability to better protect third parties and road-users. At the same time, OCs should consider taking out insurance against personal liability to better protect their office-bearers. Thus owners can be encouraged to take part in OC work. If they inadvertently incur personal liability, the insurance can cover them so that they will not become personally liable for their work at OCs.

Mr Deputy, in theory the Home Affairs Department should provide support for the formation and operation of OCs. Unfortunately, it only provides minimal support. Other than the elections of the next term of OC office bearers, officers of the Home Affairs Department seldom attend OC meetings or take the initiative to liaise with them. When they do attend meetings, only temporary community organizers with marginal knowledge about building management are sent. Being inexperienced, these organizers attend the meetings only as observers. They never give any advice. How can these people, who are without professional training, assist in the effective operation of OCs? No wonder, some 20 years after the relevant ordinance has come into effect, only some 4 000 OCs have been formed. The Home Affairs Department should be held largely responsible for this state of affair.

Other than being inadequate in the provision of legal advice, the Home Affairs Department also does a poor job in providing actual support. For example, it has not provided sufficient manpower to provide assistance. Consequently, other than giving advice, the Department does not send community organizers to help in the actual preparatory work in the formation of OCs. Compared with the help the Department provides to Mutual Aid Committees in rental public housing estates, the kind of help given to owners in private buildings is very little indeed.

Mr Deputy, the "Building Management Resources Centre", which has been regarded as a panacea for building management by Home Affairs Department officials, will start its service in April. We have to wait and see how effective it is. But with only one or two of them at the preliminary stage, we can be quite sure they are quite insufficient to satisfy the demand. At present, the Government only promises to open three such centres in stages. The work of providing professional advice, however, falls upon professional bodies. At the moment, some professional bodies, including the Law Society of Hong Kong, the Hong Kong Institute of Surveyors, the Hong Kong Institute of Engineers and the Hong Kong Association of Property Management Companies, have agreed to arrange for their members to attend the Centre one to two evenings per week to give professional advice on a voluntary basis. We can imagine the voluntary help provided is far from being adequate in solving problems. Just imagine: there are only 4 800 OCs and there are several ten thousand buildings without OCs. How can one or two evenings per week be adequate in solving the diverse problems that may crop up in private buildings?

The DAB suggests that the Government provide more substantive support. For example, it can recruit more liaison officers and strengthen their training so that they know more about the relevant laws and can hence effectively help the operation of the OCs. It should also make it mandatory for liaison officers to attend OC meetings. The Government should periodically hold forums to instil in owners an awareness of building management. When the OCs face legal problems, the Government should take the initiative to send officers to help them.

To enable the "Building Management Resources Centre" to effectively assist owners and OCs to solve management problems, the DAB urge the Government to set up more such centres and sooner. In the long term, the Government should employ full-time lawyers, accountants and professional property consultants so that the centres can have longer opening hours for OCs needing assistance so that they can operate more effectively.

With these remarks, Mr Deputy, I move the amendment.

**Mr NGAN Kam-chuen moved the following amendment:**

"To delete "formulate policy and provide adequate resources to" and substitute with "actively"; to add "including hiring more Liaison Officers of the Home Affairs Department and expeditiously setting up more Building Management Resources Centres composed of full-time professionals such as lawyers, accountants and property management consultants," after "to strengthen its support for existing Owners' Corporations,"; to add "improve the operation of Owners' Corporations and enable them to" after "so as to"; and to add "hygiene, insurance" after "fire protection, security,"."

**DEPUTY PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment moved by Mr NGAN Kam-chuen be made to Dr LAW Cheung-kwok's motion. We now proceed to a debate. Does any Member wish to speak? Dr TSO WONG Man-yin.

**DR TSO WONG MAN-YIN** (in Cantonese): Mr Deputy, Hong Kong is a tiny place with a large population. The demand for housing is great. However, the Government is reluctant and unable to build sufficient public housing. The best way to solve the problem of housing therefore lies in the construction of private multi-storey buildings. But this gives rise to the problem of how buildings should be managed.

In multi-storey buildings, the private ownership of each flat is clearly defined. But most owners have been uninterested towards the formation of Owners' Corporations (OC) to manage the buildings for the common interest of all the owners. Without pressure from the owners the Government naturally will not put in great efforts to deal with the matter. At present, there are only about 4 800 OCs, that is, less than one in 10 private buildings in Hong Kong. It can be seen that the issue of building management has long been neglected. So, it does not come as a surprise to see incidents like the Golden Court fire and the proceedings against Sun Hing Building at Mong Kok resulting in an order to pay compensation to the tune of \$25 million.

Like environmental protection, building management must not be neglected. But building management normally has no obvious or direct effect on the residents and is therefore very often easily deemed to be something quite optional. Some may even think we are making a fuss over a trivial matter. So, we have fire escape routes blocked with garbage, substandard smoke lobby doors or such doors kept open, unauthorized demolition of or alteration to the walls of fire escape staircase, and worn-out electrical wiring without fire-proof covers. All these are obviously in contravention of the provisions in the Deed of Mutual Covenant. Most residents do not attend to the problems as they do not think these are their business. Contraventions like these, minor as they seem, downgrade the living conditions and eventually lead to tragedies such as the Golden Court fire.

I think the contraventions found in building management are broadly speaking issues of environmental protection. A starting point in environmental protection is to learn to respect common space. To love common space within a building is like loving the natural environment. Both involve the "free ride" mentality, that is, people want others to pay the cost which they should share. The problem with building management is that owners are reluctant to pay the costs. They do not want to properly manage common space in buildings not belonging to any individual property owners. They hope other owners or even the Government can do the job.



A key to improving building management is for the Government to make owners understand that the economic return they can get from actively taking part in improving building management will exceed the cost they pay. The tragic fire at Golden Court reveals the heavy cost paid in terms of loss of lives and property just because the owners had wanted to save the small sums. Poor management at Sun Hing Building further tells us the economic benefit one can derive from protecting common space in the building. Though the building is located at a busy area with convenient transport and active rental activities, its value did not rise despite the good market conditions because its OC did not exercise control and consequently public facilities were worn-out, thieves and drug-addicts roamed the staircase, drug, pornography and gambling shops abound. As a result, prospective buyers were reluctant to buy and its value went down in a rising market. Owners lost for what little sum they saved. Since the incidents at Sun Hing Building and Golden Court have attracted a lot of attention in the community, the Government should grasp the opportunity to rectify the "free ride" mentality of owners and make them see the benefits of good building management.

Mr Deputy, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): Mr Frederick FUNG.

**MR FREDERICK FUNG** (in Cantonese): Mr Deputy, Dr LAW Cheung-kwok said the Government should not just maintain its passive role as a consultant or co-ordinator, but should take the initiative and directly provide sufficient resources to help OCs operate effectively. I would like to speak about the passive assistance the Government is giving and the prospect of legislating for the mandatory establishment of OCs.

The Hong Kong Association for Democracy and People's Livelihood (HKADPL) objects to legislating for the mandatory establishment of OCs, because such a move does not help solve the problems and may contravene the principle of freedom of association in the Bill of Rights Ordinance. If we have the freedom of association, we also have the freedom not to associate. Other people, including the Government, should not intervene. In addition, even if OCs are formed, they will not help anything if owners do not co-operate well among themselves or if they lack the skills to operate or if they are not interested at all. Indeed, in such cases, the Government might be given a chance to shirk its responsibility by blaming OCs for not being effective.

Mr Deputy, I think the setting up of "Building Management Resources Centres" is useful but not an effective cure for all building management problems. It must not be elevated to a myth for the following reasons:

1. "Building Management Resources Centres" may not be a direct help to owners or OCs if the latter are passive or uninterested in building management. For such buildings, problems in management may continue to exist.
2. As far as we know, professionals on duty in "Building Management Resources Centres" work on a voluntary basis. Their manpower, initiative and enthusiasm may be limited, unless the Government recruits a number of solicitors, professionals and management experts in future to man the Centres. I had an experience in the past in which a solicitor provided the wrong information at a meeting about building management sponsored by a district board. Therefore, I doubt whether the setting up of the Centres can solve all problems.
3. Furthermore, the number, location and opening hours of "Building Management Resources Centres" may affect their activities and consultative function.

So, when owners encounter management problems and approach the Centres for resources, we can expect what they get are "information" and "advice" but not necessarily the specific solutions they need. In addition, I am also worried that the Centres may turn into just another type of libraries in which are placed all kinds of information for owners to pick what they need. Without specific explanation about the merits of the Centres, I remain cautious and skeptical about them.

Another proposal by the Government is that a person from an OC be elected to be the fire-prevention officer to take charge of fire prevention work in the building. If that is the case, I doubt whether it is appropriate to let the fire prevention officer shoulder the important responsibility of fire prevention because he or she as a layperson may not have all the necessary knowledge about fire prevention. His or her first reaction may be: "Secretary LAN, better you be the fire prevention officer." No member in the OC will want to be the fire prevention officer. So, the OC may exist just in name with no actual effect. Who is the

appropriate person to be charged with the responsibility of protecting the lives of the residents in buildings? I am not sure if the Government has made reference to industrial safety officers at construction sites. If it has let me tell the Government this: Industrial safety officers are full-time staff who are salaried and trained. It will be a big joke if we try to dump responsibilities similar to theirs on the amateurish and untrained people in the OCs who work on a voluntary basis.

The HKADPL welcomes the government proposal to set aside \$200 million as fire safety fund to help owners improve their fire-fighting equipment. Indeed it would be very difficult for unprepared owners to take out a large sum of money to improve their fire-fighting equipment. The fund can act as a buffer, and it is a good idea. But the loan interest at the prime rate (10.25% at present) is a bit high and the loan term of three years is too short. This is particularly so for districts such as Kowloon West, including Sham Shui Po, Tai Kok Tsui and Hung Hom because buildings in these districts are largely old ones and most of their owners are elderly people. Thus the Government may need to reconsider its proposal. The owner of each flat may need to incur a debt of up to \$10,000 and this is a great burden. Therefore I hope the interest may be lowered, say to 5%. I understand the return of the Investment Fund of the Housing Authority and that of the Monetary Authority is 5% or less annually. Interest of 5% is already a better return than the two mentioned. As regards the repayment period, I hope it can be changed to five years or even 10, depending, of course, on the means of owners and the age of the buildings before suitable arrangements are made.

I do not agree with Mr NGAN's view that we come up with plans without seeing them through. How we see plans through may be discussed in debates but we must have the plans. So, what should we do? We suggest a basic course of action. This basic course of action actually contains two levels. One concerns how we help OCs operate properly. Mr Bruce LIU will talk about this later. The second deals with ways to good building management. I think OCs should formulate policies and make decisions in building management but they should not manage the buildings. Since management work is a professional thing it is best left to management companies. I suggest three possible ways in which management companies can manage one building, buildings on a street or buildings in an estate:

First, the Government can take over on a temporary basis buildings which are poorly managed and help them do well.

Second, assignment, meaning the Government can assign private management companies to do the management work.

Third, let OCs do the management work.

Thank you, Mr Deputy.

**DEPUTY PRESIDENT** (in Cantonese): Prof NG Ching-fai.

**PROF NG CHING-FAI** (in Cantonese): Mr Deputy, recently a spate of fire tragedies causing serious casualties happened in old style buildings. That has aroused the concern of the Government and the public about the management of old buildings in Hong Kong. The Administration has set up an interdepartmental working group on this and suggested that the old style buildings should be compelled to set up OCs in order to enhance the management of these old buildings. In my opinion, it is necessary to strengthen the contact among the tenants and the owners of the same buildings, particularly old style buildings, in order to improve the management of these buildings. Hence, the setting up of OCs is essential. But will all problems be solved by setting up OCs only? I am afraid the answer is "Not necessarily".

Recently I had a chance to meet people from the district level as well as from different OCs. The impression I got is that the OCs, which have already been established, can get very limited support from the Government. Neither can they obtain support in terms of legal expertise. This is true even for duties within their terms of reference. Whenever they want to seek assistance from government departments, they are usually unable to get positive response. As a result, the OCs feel that they are mere "toothless tigers" and exist in name only. In a nutshell, they have a lot of grievances and I hope the Secretary can understand.

Such an experience can hardly make owners of buildings without an OC enthusiastic in setting up such corporations. I think they should be provided with more information in order to change their views. Some owners are worried that once they have formed an OC, they will be held legally responsible in case anything happens. In fact, this is a misconception because they are still be held responsible even though they do not form an OC. In my opinion, there is still an inadequacy if the Government encourage them to form an OC only. They have a lot of misunderstanding and the relevant departments indeed have not provided them due support. So I strongly support the two Honourable Members' proposals that this problem should be addressed properly. In fact, the focus of our debate tonight is how to provide support to the OCs after they have been set up. I think the Honourable NGAN Kam-chuen's amendment is more comprehensive and specific. In fact, if there is no resources centre to provide appropriate resources to them, I believe the OCs will not be of much help even though they have been formed.

I would like to mention in passing that the kai-fong and other people from the district level wish that: first, the Building Management Resources Centres should be located at appropriate and popular locations, preferably with convenient transport facilities; second, the centre can provide necessary professional services, including expert advice in legal and financial matters; third, the relevant government departments can really provide assistance to them in a timely manner.

With these remarks, Mr Deputy, I support Mr NGAN's amendment.

**DEPUTY PRESIDENT** (in Cantonese): Mrs Selina CHOW.

**MRS SELINA CHOW** (in Cantonese): Mr Deputy, be it the motion moved by Dr the Honourable LAW Cheung-kwok or the amendment moved by the Honourable NGAN Kam-chuen, it has the support of the Liberal Party. The reason is very simple: the objective is the same although the specific requests for policies to be taken by the Government are different. The objective is to urge the Government to help building owners improve the management quality in terms of fire prevention, cleanliness, security and maintenance of the buildings for the effective protection of the lives and property of the residents through the formation of OCs. The Liberal Party has no reason to oppose these motions that seek to improve the management of the buildings and benefit the people.

However, I would like to raise a number of points for Members' consideration before any specific measures are put in place:

- (1) The Government has been emphasizing that the owners should be responsible for building maintenance and repairs. With limited resources, the Home Affairs Department, which only assumes a passive role, is responsible for helping owners manage their buildings by offering the barest of resources. The Liberal Party has never disputed the idea that the property owners should assume the responsibility of managing their own property, but we think the Government can play a more proactive role. Apart from publicizing the issue and educating the people about the effective ways of managing their buildings, the Government should actively take part in and co-ordinate the setting up of OCs. We understand that the people have little initiative and knowledge in building management as well as in the formation of OCs. If the Government, at the initial stage, does not motivate and push, but rather relies on the owners' initiative to set up the OCs, there will definitely not be enough driving force. We are not saying that the Government should step into the owners' shoes to form the OCs for them, rather, the Government should be more proactive in assisting the owners to form the OCs by offering professional and administrative support. In our opinion, to increase the number of liaison officers may not be of much help as they do not have the level of administrative authority and professional knowledge to effectively answer the owners' queries. It is said that at present the liaison officers do not really play a very effective role at OC meetings. Unless they are upgraded, they are not of any help at all.
- (2) Apart from the above dispute about principle, with regard to allocation of resources, I would like to remind the officials of the question whether the additional resources will be used in an effective way. In the expenditure part of the 1998-99 Budget, the Government proposed a trial run of the Building Management Resources Centres. It is believed that additional resources and manpower have to be allocated for this purpose. But what kind of staff and what kind of assistance will be offered to the citizens? I learned from the Home Affairs Department that according to the programme, the professionals on

duty in the Building Management Resources Centres, such as lawyers, accountants and property consultants are nominated by their own professional bodies to take turns to serve as consultants on a voluntary basis to answer the owners' queries. I am sure we all understand that these professionals are very busy people, even though they are enthusiastic in contributing to the community in their spare time, I am afraid their time and capacity are still very limited. How can we expect that they can play an effective part in urging the owners in setting up the OC? Hence the Liberal Party strongly supports that the Building Management Resources Centres should be managed and run by full-time professionals. I believe this will effectively help the OCs to discharge their duties and ensure their smooth operation.

- (3) We are of the view that the procedure for forming OCs should be simplified. At present, the formation of an OC requires the approval of more than half of the owners. But I hope Members can ask themselves honestly, if the attendance at most of the numerous meetings of the Provisional Legislative Council does not exceed 50%, how can we expect that half of the owners will be attending the meetings to decide setting up the OC? I heard that for some meetings, a quorum was not formed. We know what followed. We do not want to make it very difficult to form an OC and waste the valuable time of many people. I think the authorities concerned should consider the request for amending the law.
- (4) Even though an OC has been formed, problems may still pop up from time to time. These problems may arise from policy contradictions on the part of the authorities. Let me cite two examples:

First, there are ambiguities in the provisions of the Building Management Ordinance which have led to lawsuits by flat owners. As far as I know, in a particular case, the argument was over "essential works". In that case, the flat owners won the case. As a result, decorative works is excluded from the terms of reference of the OC. As we all know, it is very difficult to define what is meant by essential works and decorative works in some old areas. The Government must clearly define the purpose of such works as far as possible.

Second, different licences are issued by different government departments. For instance, the Home Affairs Department issues licences to guesthouses in residential buildings while the Urban Services Department issues licenses for restaurants. As a result, a lot of problems that arise cannot be solved easily. Different government departments should work hand in hand in order to solve these problems. Thank you, Mr Deputy.

**DEPUTY PRESIDENT** (in Cantonese): Dr TANG Siu-tong.

**DR TANG SIU-TONG** (in Cantonese): Mr Deputy, Hong Kong is a very small place with a population of 6 million people. About 52% of our population live in private residential buildings. Building management is a professional subject as well as a thorny problem in the area of housing in Hong Kong. Old style private buildings are particularly full of problems which include blocked fire escapes, dilapidation, poor hygiene, illegal structures with potential to cause personal injuries, security problems and so on. A lot of tragedies have been resulted from these problems and have been discussed time and again in this Council. Yet the problems still exist after much discussion.

The Government has been of the view that private building management is the responsibility of the owners themselves. Probably because of this way of thinking, the Government has not taken any proactive measures to eradicate the many problems. Apart from urging the owners to form the Owners' Corporations (OC), the Government has, by means of legislation, passively urged owners and the OCs to manage their own buildings well. No substantive or active measures have ever been taken to assist the owners. Unfortunately, up to today, there are only 4 790 OCs in the whole territory despite the Government's effort over the years to encourage the formation of OC. Given the 50 000-odd private buildings in Hong Kong, this is a pitiful proportion. This is an undesirable consequence of the non-interventionism of the Government in the previous years.



Buildings which have not formed OCs are full of problems. However, buildings which are managed by OCs do not fare much better. A lot of people have complained to me that the OCs do not have sufficient awareness and knowledge in building management. The OCs, which are formed with the help of the Home Affairs Department, solely rely on the assistance of the Liaison Officers whose only substantial assistance is to quote the provisions of the Building Management Ordinance orally, and who are unable to provide sufficient guidance in terms of legal and accounting matters. When advice is sought from them, their replies are very vague. The Home Affairs Department does not send officers to attend the OC meetings on its own initiative. Liaison Officers or Temporary Community Organizers are sent only when invited. The Home Affairs Department will not offer help unless requested by the OCs. No wonder building management is ever deteriorating.

We all understand that the OC's office-bearers, who are responsible for managing their own buildings, meet other residents in the same building every day. Very rarely do they dare to ask the residents who violate rules to put right the irregularities, not to mention taking legal actions against them. Hence, the Government's role as an "unwelcome monitor" is very important. Stringent law enforcement by relevant government departments can compel the OCs and those who have violated the rules to rectify in a serious manner. It is better for the Government to become a target of public criticism than to have the owners who volunteered to serve in the OC becoming subjects of curses of their fellow residents in the same building. Unfortunately the Government has not taken any active role, resulting in deterioration of the problems in building management. The Fire Services Department began fire installation inspections of 60 000 buildings in the recent two months. In the 6 380 buildings inspected in the first five days, about half were discovered to have illegal structures, poor management and problems in electrical installations. And the fire safety and prevention facilities of about 1 400 buildings failed to meet the required standard.

The Government should adopt a more active and aggressive approach in the face of building management problems which have accumulated over a long period of time. Recently it is announced that the first Building Management Resources Centre will be set up in April or May in Yau Ma Tei. Consultation services will be provided by lawyers, accountants and surveyors to OCs. However, as far as I know, the resources centre should have been established by the end of last year, but it has been delayed to the middle of this year and will serve one district only. For

the resources centres in other districts, the opening date is still unknown. In relation to the problems faced by all building owners and OCs in Hong Kong, such assistance is nothing but an utterly inadequate measure.

In view of this, the Hong Kong Progressive Alliance (HKPA) urges the Government to allocate more resources for the setting up of resources centres, urban rehabilitation fund and fire prevention committees. Apart from that, the Government should clearly define the duties of the resources centres and the Liaison Officers of the Home Affairs Department. The Liaison Officers should drop their previous role as an information provider. Instead, they should liaise with the building owners on their own initiative true to their title. Furthermore, the Home Affairs Department should review the manpower and training of the Liaison Officers and the Temporary Community Organizers in order to improve the services provided to the community.

Besides, the functions of the resources centres are similar to that of the Liaison Officers, the only difference being the former offer more professional services. But as the OCs and the owners often lack initiative, I am afraid the centres may not be able to get in touch with them. The HKPA thinks that the Government should adopt other measures to encourage the building owners to manage their own buildings well. For example, for buildings that cannot form OCs because insufficient owner support, the Government may consider appointing some owners to form management committees to take charge of the management of the buildings concerned under the Building Management Ordinance.

Apart from that, the HKPA opines that if the Government enforces the law strictly and orders the owners to rectify irregularities within a period of time, this will help the OC exercise their powers in ordering owners who have violated the regulations to improve the situation. If the Government does so, the OC office-bearers can avoid embarrassment due to their capacity. It will also encourage the public to report irregularities, enabling speedy improvement to the buildings.

Mr Deputy, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): Mr CHAN Choi-hi.

**MR CHAN CHOI-HI** (in Cantonese): Mr Deputy, I speak in support of the Honourable NGAN Kam-chuen's amendment and Dr the Honourable LAW Cheung-kwok's motion.

I hope we do not take building management as a simple matter. I think building management is an important segment of our community development. The Government has also been emphasizing that the owners should form OCs in order to manage their own property well. I hope we can take a broader view. I think this is a matter concerning community development as well as a matter which can help realize democracy at the grassroots level. In Hong Kong, half of our grassroots population live in private residential buildings, while the other half in public housing. Good building management in private buildings can ensure sound development of democracy at the grassroots level. This is very significant. Hence, this is not simply a problem concerning building management, rather it goes deeper than that.

As regards building management, in my 10 years as a District Board member, I assisted many owners in forming themselves into OCs. In my 10 years' experience, I have noted a number of important points which have also been mentioned by Members. First, the present support offered by the Home Affairs Department (HAD) is far from sufficient. In a survey I conducted many years ago, many OCs pointed out that no officers from the HAD visited them even though they had been formed for one or two years. Neither did the HAD care for them or take the initiative to ask them about their operation. When the Liaison Officers made the visits, they did not have the knowledge in that field. Sometimes, the Liaison officers even asked the District Board members for advice and sometimes, the owners themselves knew more about the relevant legislation than they did. Hence, there is a serious shortage of manpower and staff training in the HAD.

At present, not every District Office has a Building Management Co-ordination Team. The Team's Housing Manager is not on the establishment of the HAD but is seconded from the Housing Department to help in the operation of the Team. Relatively speaking, the role such Housing Manager can play is not very effective. The participants in building management seminars organized by the HAD are roughly always the same group of people. Few new attendants are

attracted. Some years ago, there was a joke that some kai-fong were interested in attending such seminars because a buffet meal was provided. They left after taking the meal. No body knew if they ever paid attention to the contents of the talks.

I would like to turn to some specific problems. For some buildings, say in the Western District, Yau Tsim Mong and Sham Shui Po districts, most of the residents are tenants. The tenants to owners ratio may be 7:3. Some tenants are indifferent to the conditions of their buildings and there is difficulty in OC formation and operation. We have been told that at the beginning, everybody was very keen. In case an incident occurred, they were even more enthusiastic in working together. But as time passed, the interest faded and sometimes no one was willing to take up the post as chairman. Sometimes, the chairman had to serve for three to four terms. At the end, the chairman was disheartened and resigned and the operation of the OC stalled. I think less than 20% of the buildings are well managed under active OCs.

A moment ago, an Honourable Member said that plans made were not seen through. I would like to clarify that the Government has no responsibility to see all the plans through and in fact, it does not have the means to do so. Concerning education, at present much resources are not fully utilized and in many areas, services can be further enhanced. Recently, a lot of tragedies have happened and aroused the concern of the Chief Executive. His recent visits to Kwun Tong may have led to the rash proposal of mandatory formation of OC by the Home Affairs Bureau. I do not think this can solve and eradicate the problems. If the Government wants to take legal action against the owners for neglecting the maintenance of their building, the owners can still be sued even though there is no OC. Although the procedures may be more complicated, the necessary mechanism to do so does exist.

The fund to the tune of \$200 million just mentioned is for commercial purpose. For old residential buildings, we do not have adequate supervision. So I suggest that the Government should consider setting up a fund to provide low interest loans to OCs of old style buildings so that they can improve fire prevention facilities or conduct tests on the buildings' electrical installations. The second suggestion is to expand the scope of the Fire Safety (Commercial Premises) (Amendment) Bill 1998 so that old style residential buildings are also placed under this legislation. Third, we should also set up a building management advisory

committee at the central level, to be supplemented by the building sub-committees at various districts. Fourth, the Government should allocate funds to the non-governmental social work sector so that they can help owners set up OCs. I think the formation of OCs will be more effective with the participation of the social workers. I made this proposal in the District Board about six or seven years ago. I thought this would channel the manpower of social workers into building management; with their professional training, background and experience, social workers are well placed to help in managing the buildings well. Finally, I would like to amend .....

**DEPUTY PRESIDENT** (in Cantonese): Mr CHAN, your time is up.

**MR CHAN CHOI-HI** (in Cantonese): I so submit.

**DEPUTY PRESIDENT** (in Cantonese): Dr Raymond HO.

**DR RAYMOND HO** (in Cantonese): Mr Deputy, we all know that there are serious management problems in many of the old type buildings in Hong Kong. Owing to the lack of effective owners' organizations, there are a lot of shortcomings in these buildings. In some buildings, there are OCs but they have failed to perform their functions properly. The recent fatal fires in some of these old buildings have fully exposed the seriousness of these problems.

Without a management body, apart from difficulties in fire prevention work, problems like maintenance, hygiene and security may also arise. These problems have been existing for a long time but I do not understand why they still remain unsolved.

I am a member of the Private Building Management Committee set up some years ago. We aimed to facilitate the setting up of OCs by amending the relevant legislation. I, in fact, gave a lot of talks on building management at the district level and I have been a member of management committee of an OC for over a decade. I know the Government has all along been promoting the establishment of OCs in multi-storey buildings. The Home Affairs Department as well as the former City and New Territories Administration have done a lot in this regard. Possibly because the Government only emphasized the role of OCs as a bridge

between the Government and residents and neglected the positive role of the OCs in managing the buildings, the promotion focus had been biased and as a result the owners failed to understand that the OC was closely related to their own interests. Very often owners are selfish and tenants lack a sense of belonging. Also elderly owners do not have the means. All these do not help the formation of OC in these buildings .

In the past few years, there were a spate of serious incidents in old style buildings, making us aware that these are no longer the individual problems of one or two old buildings. Moreover, the number of old buildings with potential problems is ever increasing. The fact that many of these buildings have not yet formed OCs has made the problems more complicated and knottier. We fully understand the difficulty of these problems. But in view of their seriousness, the Government should help building owners form OCs. By so doing, the Government can, through different channels, such as the Liaison Officers of the HAD, explain to the residents in old style buildings that the formation of OCs is entirely to their benefit because the OCs can effectively handle the maintenance, fire prevention, security and hygiene and other management-related matters. On the other hand, the Government should pass relevant legislation to the effect that all buildings, especially old buildings, have to form an OC as soon as possible in order to solve management problems. The formation of OCs may not entirely solve all these problems because a lot of expertise and knowledge is required in this area. The Government may consider setting up building management resources centres to help the operation of the OCs. It should also consider allocating more resources for promoting knowledge in building management.

Improvement in building management and maintenance will undoubtedly incur certain expenditure. Since improvement in building management will enhance the value of the building and benefit the flat owners, all costs and expenditure should be paid by them. But under special circumstances, particularly when the environmental conditions and situations have become worrying and the flat owners have financial difficulties, the Government should provide low interest loans to them so that management improvement work will not be hampered by the problems of individual owners. For the protection of lives and property of residents living in buildings with management problems, the Government should play a more proactive role.

Mr Deputy, I so submit. Thank you.

**DEPUTY PRESIDENT** (in Cantonese): Miss CHOY So-yuk.

**MISS CHOY SO-YUK** (in Cantonese): Mr Deputy, in Hong Kong where land is scarce and housing demand great, the erection of multi-storey buildings is the best way to solve the housing problem. "Concrete jungle" has become a feature of Hong Kong. But within this concrete jungle, there are many old buildings. According to available figures, in the private housing in the urban area, there are 113 000 odd units over the age of 30, representing 20% of the total private housing in the territory. It is estimated that in the next 10 years, this figure will increase to 260 000, representing over 40% of private housing.

Most of the old buildings completed in or before 1960s are now in a dilapidated condition. As the present regulations stipulating the building design with regard to safety and hygiene standard were not yet adopted in the 1960s, there are a lot of old buildings not up to the safety standard or with no proper management system. As a result, these old buildings have a lot of problems such as dilapidated condition, unauthorized structures, illegal overhanging structures and out-dated fire prevention installations. These are problems found in many old buildings. According to a survey, there are over 800 000 of these unauthorized and illegal items of work including erection of iron cages, canopies, closed entrances and roof-top structures. But for the Buildings Department which is supposed to be the responsible department, there is nothing much they can do. Fatal fires occurred in old buildings like the Garley Building, Mei Foo Sun Chuen and the Golden Court illustrating the serious inadequacy of fire safety installations in these buildings. However, the authorities concerned failed to learn a lesson from these incidents and implement measures to improve the fire safety measures in old style commercial-residential buildings. We cannot but ask: When will we see these tragedies again?

All along the Government has adopted a positive non-intervention policy towards building management. Apart from encouraging owners to set up Owners' Corporations (OCs), little support is ever provided. After years of efforts, the Government only helped the formation of 4 790 OCs in the 50 000-odd buildings in Hong Kong. The meagre number of OCs is so disappointing. What is more frustrating is that the Government is unable to provide any assistance to old buildings that cannot form OCs because of confused ownership.

The Hong Kong Progressive Alliance (HKPA) has supported the Government's efforts in encouraging building owners to set up OCs. We are also very concerned about the Building Management Resources Centre which is due to be established. But the question remains whether the OC and the resources centres can really solve management problems of buildings. It seems that it is not the case. Buildings with OCs still have a lot of management problems. The main reason is that the Buildings Department and the Home Affairs Department (HAD) which are supposed to provide assistance and support are only engaged in doing window-dressing work. The erection of illegal structures or unauthorized work against the provisions of the deed of mutual covenant are common. However, if the OC lodges a complaint with the Buildings Department, the Buildings Department cannot take any action against the owners concerned on the ground that these structures do not pose immediate danger. As far as I know, when some OCs made a complain to a District Office of the HAD, they were told to deal with the problems themselves. This is an excuse for the HAD to shirk its responsibility. On the other hand, the building management resources centre which is due to be set up will play an advisory role and provide professional advice only. No concrete assistance will be given in an active way.

The HKPA has come to the view that building management problems cannot be eradicated by forming OCs alone. The Government must play a leading role. On the one hand, it should help buildings with fragmented ownership or insufficient owner support to form OCs and strengthen support to existing OCs. For example, the Government can enforce the law more strictly and help OCs take actions against owners who have violated the regulations in order to create a deterrent. At the same time, the Government can encourage the public to report such illegal structures to the Government. On the other hand, the Government should enhance the proactive role to be played by the Building Management Resources Centre. This can provide more direct and more concrete support to OCs. It can also directly involve in the work of the OCs rather than sticking rigidly to giving the so-called professional advice only.

Besides, it is also very important to enhance the civic awareness of Hong Kong people. The erection of illegal structures, the undertaking of unauthorized works, blocking of fire escapes with garbage, substandard smoke lobby doors are, to a great extent, results of a lack of civic awareness on the part of the public. As we all know, moral and civic education has not received due attention. According to a survey, moral consciousness of Hong Kong people is inadequate. Only 30%



of the interviewees are willing to abide by the principle of not picking up things left behind by other people. The former Hong Kong British Government only emphasized rights and liberty in civic education but ignored the education on civic obligations and responsibilities. The HKPA does not object that people should fight for the rights they are entitled to. However, civic obligations and responsibilities are equally important to the overall interests of society. On the issue of building management, if there is no moral consciousness on the part of the public, even if we have very good laws, it is difficult to enforce such laws. The HKPA has urged the Government to launch a territory-wide campaign to enhance civic awareness, courtesy and cleanliness of Hong Kong. The objective is to strengthen the sense of civic obligations and responsibilities of Hong Kong people. In the long term, the Government should further intensify civic education in order to create a better living environment in Hong Kong.

Mr Deputy, I so submit.

**DEPUTY PRESIDENT** (in Cantonese): Mrs Peggy LAM.

**MRS PEGGY LAM** (in Cantonese): Mr Deputy, the subject we discuss today is raised by the two Honourable Members at the most appropriate moment. There have been Ocs in Hong Kong for a long time, why are there still so many problems? I think it is high time for the Government to review the issue after listening to our views in the debate.

For many years, there have been many problems with the management of private buildings, those in old buildings are particularly serious. In recent years, there have been a spate of tragedies like fires and collapse of external wall and illegal structures of buildings. These incidents led to casualties and so we cannot take building management lightly. Well-organized and well-operated OCs are a prerequisite to the improvement of building management.

It is the responsibility of the owners to manage their own property. But managing buildings is a specialized job that involves professional knowledge in accounting, law, building maintenance and repairs; it is quite beyond the ordinary owners. When problems pop up, many members of the OC are at a loss as to what to do. The government office most well-placed to offer help is the District Office

(DO). Generally speaking, however there is no professionals in the DO to help OCs solve these problems. There are only some Temporary Community Organizers and Liaison Officers for this kind of work. But in a DO, how many officers are there to help the OC in hundreds of buildings in the district?

As early as the 1970s, the Government passed the legislation concerning the formation of OC in multi-storey buildings. The original objective was to protect the owners' interests, so that they would know they could enjoy the common areas of the buildings and understand their duties and obligations. It was well-intentioned. But still in many private buildings, no OC has been set up. There are a multitude of reasons for this.

As we all know, residents of old buildings are very often tenants rather than owners. There are problems when we try to set up an OC in such a building where there is a mix of owners and tenants. In fact, it is similarly difficult to set up a Mutual Aid Committee (MAC) in these buildings. Because the residents think that the property is that not theirs, they are not willing to put in time and money, especially they may need to argue over some issues with fellow residents. As District Board members, we have to mediate and help resolve their problems. This is a long-standing question and there is no thorough solution. From the beginning to the end, it has been very difficult to motivate people to set up OCs on their own initiative.

The Government has worked hard to encourage people to form OCs. In the past, the formation of an OC required the consent of owners representing over 30% of ownership. Later, the law was amended. However, if the Government just encourages the owners to set up OCs without giving them assistance in terms of resources and manpower, that would not be of much help.

Even if all flats are owners-occupied, most of the owners are very busy and are reluctant to take part in this communal business. They feel that this is everyone's duty and there is no reason they should take on such a thankless job. They feel that it will be an arduous task to knock at every door and ask the owners to attend meetings. So it is no use if the Government just encourages people to set up OCs. Very often, the owners are rather short-sighted and ignore the long-term benefit. They are unwilling to put in much time. Therefore the Government should step up publicity and education so that they understand that the formation of an OC is to their benefit. Secondly, the manpower of DO should be increased and more training should be provided to the staff since inexperienced

Liaison Officers or Temporary Community Organizers cannot help solve the owners' problems. What is more, one resources centre is not sufficient. I suggest that there should be one resources centre in each district. If the Government is to make a success of this, more manpower should be allocated.

With these remarks, I support the motion.

**DEPUTY PRESIDENT** (in Cantonese): Mr Bruce LIU.

**MR BRUCE LIU** (in Cantonese): Mr Deputy, on behalf of the Hong Kong Association for Democracy and People's Livelihood (HKADPL), I would like to continue to express our views.

After the fire at On Hing Building at Kwun Tong, the Secretary for Home Affairs proposed, *inter alia*, the mandatory establishment of OCs in all buildings. In the past, the Government's attitude towards building management was "when there is a headache, treat only the head; a foot pain, only the foot". This time, it is even more appalling because it "is going to treat the foot for a headache". Why do I say so? Because the On Hing Building already has an OC.

What is the crux of the problem? The fact is that these OCs have failed to perform their duties. It can even be said that they exist in name only. This is a pitfall causing the fire in the building. That is very serious. If we rely on the building's OC and the OC is incompetent, this is in fact a big pitfall. "To exist in name only" is itself a pitfall.

About 10% of private buildings have formed OCs, among those only 20% are active. This is a very small number. Buildings can be divided into three types: the first type is those with OCs; the second type is those we can actively help form OCs; the third type is those that will not form an OC at any rate.

For these three types of buildings, the HKADPL would like to put forth the following concrete suggestions. For the first type of buildings with operating OC, the Government should consider ways to provide support to them. For these buildings, the Building Management Resources Centre will definitely have a role to play. However, should the centre take a passive or active approach? We suggest that it should take an active approach. It should not just sit and wait for people's enquiries, rather, it should adopt an outreaching approach and be proactive, such as hiring full-time staff and professionals. At any rate, such centres should be set up in different districts so as to provide adequate support to the OCs and help them with their building management work.

The second type is those that have not yet formed an OC. If the formation of OC is not mandatory, I am sure only 50% to 60% of them at best will eventually form their OC whatever approach is taken. How to assist these buildings to form OCs? The HKADPL suggests that assistance should be provided in the form of social worker teams. We suggest that the whole territory should be divided into districts each with one social worker team to assist buildings in forming OCs. Our emphasis is to help them form OC, advise them on the operation and division of labour, and to encourage them to hire management companies. That will make a difference because the social workers' expertise is in organizing things and they can help owners form an OC. But this does not mean that the OCs have to take up all management work because the social workers will advise them to hire management companies to properly discharge the duties stipulated in the legislation. If this approach is adopted, it is more appropriate for social workers of voluntary agencies to implement this proposal than the Government because the people tend to rely heavily on the Government. Hence, we opine that the Government should discuss this proposal with the social work sector.

The third type of buildings will never form an OC whatever happens. They are time-bombs indeed. How should we deal with them? The Government can consider exercising its residual power, if any, through legislation. For instance, if after an inspection, it is found that the fire prevention installations of these buildings do not meet the minimum standard stipulated by the law, the Government can intervene by helping them improve these facilities and then exercise its power to recover the costs from them. To do so, the Government has to set up a fund. This is similar to the present practice that the Government will demolish illegal structures and recover the costs from the building owners if they have failed to do so on their own. In fact, the costs will be higher than that of work carried out by

the owners themselves. We hope this will induce the owners to form OCs on their own and hire professionals for the fire prevention measures and management of the buildings. If this approach is considered purely from the fire prevention perspective, the Government is able to help the third type of buildings improve fire prevention facilities.

However, for single buildings, even though they have set up OCs, it is of no avail. Since the number of flats is so small, how can they get the same type of service? We can try to help them by advising them to make use of services provided by management companies. For instance, if Company A provides a certain type of services, these single buildings can purchase that type of services, such as fire prevention facilities, from the company. In other words, each building in Hong Kong must be able to meet the most basic fire prevention standard in accordance with the law.

Finally, I would like to discuss the crux of the problem, and that is, some OCs are weak in their organization and government support is inadequate. It is high time for the Government to review these problems now. I hope the Government can provide a detailed report revealing a comprehensive scheme to deal with private building management. A timetable for gradual implementation is much better than the appalling the approach "of treating the foot for a headache". The Government thinks that mandatory formation of OCs is a panacea. In fact, it is not. I hope tragedies due to human factor will not occur in Hong Kong again.

Thank you, Mr Deputy.

**DEPUTY PRESIDENT** (in Cantonese): Mr IP Kwok-him.

**MR IP KWOK-HIM** (in Cantonese): Mr Deputy, the Garley Building fire, which was of an extraordinary magnitude, triggered public concern about building management. The huge compensation awarded against Sun Hing Building and the fire in On Hing Building, both of which occurred later, aroused the alarm of the Government and the public in management problems in old buildings. If we do not quickly improve the management of our buildings, bigger catastrophes will be caused. The tragic events were not simply accidents. They revealed the poor

management that is quite widespread in buildings in Hong Kong. To solve the problem all we need to do is improve the quality of our building management. To achieve the improvement, first and foremost we must form OCs. This is needed because buildings are private property and so to manage them well owners of these buildings must form OCs to manage the buildings. This is a first step.

Mr Deputy, the number of OCs formed in the past has been far from satisfactory. Available data show that among the 50 000 or so private buildings only slightly under 5 000 of them, that is, less than 10%, have an OC. This is a very pitifully small number indeed. As a major department in helping with the establishment of OCs, the Home Affairs Department has been shouldering an important responsibility. It has to find out which part of its work needs to be improved in promoting the formation of OCs.

Of course, to make owners form OCs we must make them understand the significance of OCs, that the formation of which is the first important step in improving their living environment. A top priority for the Home Affairs Department is to step up publicity in this respect, increase owners' understanding of the power and operation of OCs, so as to encourage more buildings to form OCs. As regards the recent proposal of the Department to make OCs mandatory, the DAB thinks this is a move in the right direction and is worth our study. The mandatory formation of OCs by legislation is solidly grounded only if the awareness of residents is raised and sufficient and all-round support provided by the Government.

Mr Deputy, office-bearers or members of OCs do want to improve the public facilities and living conditions of their buildings. (I myself has been Chairman of an OC for six years and I share the same wish with them.) But my experience tells me the power conferred by existing laws on OCs is limited and they lack the necessary support. As a result more often than not OCs are powerless in dealing with those matters they want to deal with. I think the Government's recent amendments to the Buildings Ordinance tabled before this Council, which is designed to increase the power of OCs in improving the common facilities of buildings, is a correct development. They are worthy of our support.

To couple with its efforts in promoting the formation of OC, the Government should step up the training of frontline staff. Just now a number of Members voiced their feelings, particularly feelings about the quality of community organizers. I understand the Home Affairs Department has done a lot of training recently but I am sure there is an acute shortage of manpower. I do hope the Government can recruit more liaison officers and provide more training for them so that they can give adequate support to OCs.

Mr Deputy, when OCs are confronted with legal problems, they often just do not know what to do. The Home Affairs Department has indicated it is going to set up a Building Management Resources Centre to provide specialist services to OCs in accounting, legal, architectural or management matters. This is worthy of our support. But unfortunately the Centre will not start service until April this year. There will only be one instead of four as planned previously. As the professionals on duty in the Centre will work only on a voluntary basis, the assistance they provide will be limited. I had the opportunity to speak to legal professionals who had taken part in providing legal service to OCs. They made me understand the Deed of Mutual Covenant is a very complicated legal document. Voluntary legal service will not be able to provide effective support. Therefore I hope several resources centres with full-time professionals should be set up as soon as possible so that the operation of OCs can be made more effective.

With these remarks, Mr Deputy, I support Mr NGAN Kam-chuen's motion. Thank you, Mr Deputy.

**PRESIDENT DEPUTY** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**DEPUTY PRESIDENT** (in Cantonese): I now invite Dr LAW Cheung-kwok to speak on Mr NGAN Kam-chuen's amendment. The speaking time is five minutes.

**DR LAW CHEUNG-KWOK** (in Cantonese): Mr Deputy, I would like to thank the Honourable NGAN Kam-chuen's amendment. The amendment seeks to focus the issue of building management on the increase of resources for the Home Affairs Department (HAD) and the setting up of more building management resources centres.

In my view, Mr NGAN does not have an in-depth understanding of the real difficulties that the Owners' Corporations (OCs) are facing. Again, his amendment will lead us to the same plight of the Administration as a consequence of its purely passive approach in rendering assistance and evasion of responsibility. More importantly, the amendment has restricted the scope of discussion of the motion debate to these two areas, seriously affecting our review of the OCs. It also limits the areas where Members can comment. I think this is not good to our discussion on the problems faced by buildings in Hong Kong.

As I just mentioned, to increase the number of Liaison Officers sent by the HAD may not be helpful in resolving this issue. As they are civil servants, they may encounter a lot of difficulties in their work. They are not the suitable people to mediate inter-personal disputes that often occur within OCs. What the OCs need most is the intermediaries who are skilled in communication and liaison rather than government officials. That is why we insist that trained social workers are the suitable people to take up the duties. If we simply increase the number of Liaison Officers of HAD, I wonder how effective it may be.

Mr Deputy, if building management resources centres have adequate manpower, we of course welcome that. However, if we only have sufficient technical support, but there are no properly constituted OCs, these technical support will be rendered useless. Even if we put in more well-equipped resources centres, what purpose can they serve? The Hong Kong Association for Democracy and People's Livelihood (HKADPL) would like to reiterate that what we have to solve today is to set up effectively operating OCs. Only if we have set up effectively operating OCs will we be able to make the best use of the resources provided by the building management resources centre. In fact, if we cannot resolve this key issue, even if we have more resources, we will just waste them.



Mr Deputy, the scope of my original motion is very wide. It enables Members to comment on a much wider range of issues so that we can address the problems that the building owners are now facing. I think the additional points in Mr NGAN's amendment are within the spirit of my original motion. His amendment will only restrict the scope of our vision and prevent us from making a comprehensive review on the entire issue or making suggestions. It seems that he has put forth the amendment just for the sake of amendment.

I urge Members to support my original motion and oppose the amendment. The HKADPL will abstain from voting on Mr NGAN's amendment. I so submit. Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): Secretary for Home Affairs.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Madam President, first I would like to thank Dr the Honourable LAW Cheung-kwok for sponsoring this motion and the Honourable NGAN Kam-chuen for moving the amendment. My colleagues and I have listened very carefully to the views expressed by each Member. Members are all very concerned about building management and maintenance issues and have offered a lot of valuable comments for the consideration of the Government. I would like to take this opportunity to brief Members on the Government's policy on building management.

### *Policy*

The Government's policy is to encourage building owners to form Owners' Corporations (OCs) as far as possible, so that they can manage their private property in a more effective manner.

The main objective of building management is to provide a decent and comfortable living environment for building owners and residents, and to properly maintain and repair the common areas in the building, so as to ensure the safety of owners, residents and the public at large.

The Government has been advocating and encouraging owners to actively manage their buildings, because basically all owners have the responsibility to manage their buildings properly to ensure the safety of themselves, family members and neighbours or tenants, and to protect their valuable property. We have formulated a set of measures to provide better services and more detailed information, so as to assist building owners to manage their buildings, set up OCs, and to make improvements in respect of building maintenance. Later on, I shall elaborate on these measures.

### *Owners' Corporations*

OCs are statutory building management organizations set up and registered under the Building Management Ordinance, with independent status and authority as a corporate body. In accordance with the Building Management Ordinance, the management committee of the OCs has the authority and responsibility to represent the Corporation in handling matters relating to the management of the common areas in the buildings and administration, such as building repairs, maintenance of fire safety facilities, insurance, cleaning and security. The Corporation would be responsible for the management, repairs and maintenance of the common areas in the building on behalf of all building owners, and the general authority and duties of the Corporation will be exercised and carried out by the management committee.

The Home Affairs Department has been helping building owners of multi-storey buildings to form OCs. Staff of the various District Offices will inform owners of the procedures for setting up Corporations and to provide them with guidelines and advice, for example, the staff will assist owners to obtain ownership records free of charge from the Land Registry and so on. The staff will also help owners convene owners' meetings, for example, advise them on how to issue notice of meetings. Furthermore, if owners fail to obtain support from the owners representing 50% of the ownership for setting up OC in compliance with section 3 of the Ordinance, I will, at the request of the owners, 30%, of the ownership consider to invoke section 3A of the Ordinance and order that a owners' meeting be convened to appoint a management committee and to set up an OC. Members have pointed out that about 4 900 OCs have been set up in Hong Kong involving some 8 500 buildings. Taken that there are about 50 000-odd multi-storey buildings in Hong Kong, about 15% of the buildings have set up OCs. However, whether it is 15% or some other percentage, this is just a figure, and we cannot rely

on figures alone to solve problems. However, we also have to point out that, although OCs have not been formed in many of the private buildings, some of these buildings are under the management of developers or efficient management companies which provide reasonable management services. Having said that, we do still encourage all building owners in private buildings to set up OCs.

*Services provided by the Home Affairs Department*

Apart from helping owners form OCs, the Home Affairs Department has also actively offered support in private buildings management. District Offices in various districts offer training courses, forums, talks and workshops on building management, and mobile exhibitions on building management from time to time. We have also printed a lot of publications on building management, and produced a series of educational videos on building management, maintenance and insurance to be borrowed by the public free of charge. We also conduct fire drills in various districts in co-operation with the Fire Services Department and OC, to arouse the awareness of the public of fire hazards. All these services aim to increase the knowledge of building owners and members of the public about building management, so as to help them become directly and effectively involved in the management of their own buildings. The Liaison Officers of the Home Affairs Department visit the OCs in their respective districts on a regular basis, and they are also invited to attend owners' meetings to offer advice and assistance on the proceedings of the meetings on the spot.

In order to help solve problems encountered by ageing multi-storey buildings which lack proper management and maintenance, starting from 1985, we set up building management co-ordinating teams in nine densely populated districts, namely, Eastern District, Central and Western District, Wan Chai, Yau Tsim Mong, Shum Shui Po, Kowloon City, Kwun Tong, Kwai Tsing and Tsuen Wan. The teams comprise officers of the Housing Department seconded to the Home Affairs Department. The purpose of seconding officers from the Housing Department is to draw on their experience and expertise in public housing management to help improve private buildings management in these districts.

The building management co-ordinating teams will identify problematic buildings in the districts and, with the consent of the owners, these buildings will be listed as "target buildings". Discussions will then be held by the Inter-departmental Building Management Co-ordinating Committee to map out improvement plans, and improvement works will be implemented in conjunction with the building owners.

*New Resources and Measures*

In view of the achievements of the building management co-ordinating teams, with effect from April this year, we have been allocated additional resources to set up four additional teams to serve the problematic buildings in Wong Tai Sin, Sha Tin, Tai Po and Tuen Mun Districts.

In addition, we shall also introduce a series of new measures to strengthen the services we provided in regard to building management. I would like to take this opportunity to outline the following new measures:

- (1) An Inter-departmental Central Fire Safety Steering Committee chaired by me will convene its first meeting during the first ten-day period in March, to co-ordinate and supervise the fire safety work of related departments and districts. Members of the Committee comprises Bureau Secretaries, Department Heads and unofficials.
- (2) We will soon set up District Fire Prevention Committees in Eastern District, Yau Tsim Mong and Tsuen Wan with members from the Administration and the local community, to promote fire safety in the multi-storey buildings of these districts. We have plans to set up District Fire Prevention Committees in all other districts of the territory.
- (3) The District Management Committees of the 18 districts will also be responsible for co-ordinating the building safety and fire safety plans and measures of the Building Department and Fire Safety Department.

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- (4) The first Building Management Resource Centre in Kowloon will be opened in the middle of this year to provide building owners and the public at large with professional advice on maintenance and repairs, law and accounting in relation to building management. Apart from government departments, the Hong Kong Law Society, Hong Kong Society of Accountants, Hong Kong Institute of Surveyors and the Hong Kong Property Management Companies Association have all agreed to provide professional services free of charge for the public at the Centre.
  - (5) The District Offices of various districts will continue to organize fire drills in co-operation with the Fire Services Department and buildings in the district to enhance public alertness to fire.
  - (6) The Home Affairs Department has been allocated resources to employ 12 additional Liaison Officers starting from the next fiscal year, to help solve problems in building management.
  - (7) On the 11th of this month, I introduced the Building Management (Amendment) Bill 1998 to this Council. The main objective of this bill is to state clearly that the OC is empowered to carry out renovation and decoration works in the common areas in the buildings after the resolution for implementing such works have been endorsed in the OC's meeting. This bill is now under the scrutiny of the Bills Committee. As these amendments have been the aspirations of many OCs, I hope that this Council could pass this bill at the earliest possible time so that the OCs can get the assurance to implement the relevant works, and improve building management and maintenance.
  - (8) The Home Affairs Department is now actively planning to organize a major building management seminar in the middle of this year to draw the attention of the public to the importance of good building management.

- (9) We are also considering to ask District Officers to organize similar but smaller scale seminars on building management in their respective districts.

In view of recent fire accidents, the Government has formulated a series of counter-measures. In addition to the above-mentioned measures, we will also consider to set up a mandatory management body in each building for the purpose of fire prevention. We are now studying the feasibility of establishing such a body, including its legal aspect and implementation details.

*The role of the Home Affairs Department*

I would like to take this opportunity to respond to some of the views on the role of the Home Affairs Department. Many members of the public have misunderstandings on the role of the Home Affairs Department. They think that since OCs are set up with the help of District Offices, the staff of District Offices should also have the responsibility and power to solve private building management problems and settle disputes. Let me emphasize one point, private buildings are private property, and building owners have the responsibility to manage their private property. They cannot and should not rely on others. District Offices should play the role of co-ordinators and consultants and they cannot and should not take up the responsibility of building management on behalf of the owners. Should there be disputes involving building management, the staff of District Offices can act as impartial mediators but they cannot arbitrate in any legal sense.

I have also heard comments to the effect that our Liaison Officers have refused to give legal interpretations of or decision on the relevant legal stipulations or private contracts in relation to building management, for example, Deed of Mutual Covenant. I would like to emphasize that the work of giving interpretations of legal stipulations (such as the Building Management Ordinance) or private treaties (such as the Deed of Mutual Covenant) is to be undertaken by legal professionals. Liaison Officers are not lawyers, therefore, they cannot and should not provide this kind of service. The OCs should consult their own legal advisers or they can go to the Building Management Resource Centre which I referred to earlier to meet with the duty lawyer of the Hong Kong Law Society and seek preliminary legal advice.

The OCs should also consider employing professional property management companies for routine management work. The work of building management requires expertise in a lot of areas such as building maintenance and repairs, accounting, law, management and so on. If owners do not employ professional management companies, and are to do everything themselves, they may only be able to achieve half the results for all their efforts.

### *Conclusion*

With the progress of society and in the economic development of Hong Kong, members of the public have higher expectations of their residences. Members of the public have also attached more importance to building management and are increasingly aware of the need for establishing OCs. As proper private building management and the quality of life of the public at large are closely related, we will continue to fight for resources to assist building owners to set up OCs, strengthen the existing support and services for OCs, encourage and help owners manage their private property, so as to improve their quality of life. To quote what the Chief Executive said in his policy address, "a good home is a safe home", and this is the long-term objective of our work.

Thank you, Members. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr NGAN Kam-chuen, be made to Dr LAW Cheung-kwok's motion. Will those in favour please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Dr LAW Cheung-kwok, you may now speak to reply and you have seven minutes 32 seconds out of your original 15 minutes.

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam President, I would like to thank Mr NGAN Kam-chuen for his amendment and the 11 Members who have spoken on this motion. The large number of Members speaking at this late hours clearly reflects that this issue is every Member's concern. I hope the government officials would contemplate the views expressed by the Hong Kong Association for Democracy and People's Livelihood (HKADPL) as well as the views of various Members. Here I would like to summarize the views expressed by Members.

Concerning the issue of Liaison Officers, Members feel that they are inexperienced and they should be further trained and upgraded. A moment ago, the government official said that 12 additional Liaison Officers would be recruited. But now there are about 60 000 private buildings. In other words, each of them will have to deal with 5 000 buildings. If the Government is to advertise the recruitment of these people, it should make sure that it has to recruit "supermen" for the job because each one of them has to deal with the work of 5 000 buildings on average.

Another issue is concerned with the resources centre. Many Members stressed that the resources centre should be manned by full-time staff and should be set up in different districts. Some Members also pointed out that the current procedures for OC formation are very complicated and should be simplified. Moreover, sufficient support should be provided and law enforcement should also be strengthened.

The Government is now considering the possibility of mandatory establishment of OCs by legislation. Quite a number of Members expressed doubts, reservations and even downright objection. On the other hand, many Members mentioned the need to set up a loan fund for building maintenance, repairs and installation of fire prevention facilities. They also mentioned that the Government should help OCs operate effectively. Besides, a number of Members,



in particular, suggested that the Government should set up an independent special mechanism or institution to assist in the management of the buildings.

Finally, the Honourable Frederick FUNG stressed that the Government should be proactive in its involvement in building management. He proposed that the Government should first take over the management of the buildings and then gradually pass the management responsibilities to the owners of these buildings. Mr FUNG also urged the Secretary for Home Affairs to treat him to a meal before he would give him more ideas. In fact, the Secretary should not just treat Mr FUNG only, he should buy all Members who are still attending the meeting tonight, including the President, a meal. Anyone who is here now should be included. Thank you, Madam President. (*Laughter*)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Dr LAW Cheung-kwok as amended by Mr NGAN Kam-chuen be approve. With those in favour please say "aye".

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**PRESIDENT** (in Cantonese): Second motion: Future of Hong Kong's freight industry. Mrs Miriam LAU.

## **FUTURE OF HONG KONG'S FREIGHT INDUSTRY**

**MRS MIRIAM LAU** (in Cantonese): Madam President, I move the motion as set out on the Agenda. Over 150 years ago, Hong Kong was only a small fishing port

on the coast of China. One and a half centuries later, Hong Kong is now not only the major transshipment hub of China, but also the world's top container port. The container port in Hong Kong has been ranked the world's busiest and the most efficient one for six consecutive years. In 1997, the volume of container handled was as much as 14.5 million TEUs (twenty-foot equivalent units). In other words, it takes just about two minutes to handle one TEU.

Before the mid-1990's, the container throughput in Hong Kong maintained a double-digit growth rate. However, since 1996, the golden age of significant annual growth seemed gone. A few days ago, the Port Development Board (PDB) announced the latest forecast of the port freight volume of Hong Kong for the year 1997-98, the growth rate of the container throughput in the coming few years will decrease from the 11.4% per year as forecast in 1995 to about 6%. In comparison with the annual growth of container throughput of 17% on average from 1986 to 1996, the growth of our freight industry in future is slowing down significantly.

According to the latest forecast of the port freight volume, as Hong Kong is still the major container port for imports and exports of mainland China, the proportion of the freight from southern China in the total container throughput of Hong Kong will increase from 63% as in 1996 to 76% in 2016. Therefore, cargoes from southern China will continue to propel the port development of Hong Kong.

However, I consider that the continuous prosperity of China's economy alone, even with the usual high efficiency of Hong Kong, may not be sufficient to maintain the superior status of the container port of Hong Kong, because the port of Hong Kong is really facing various challenges, including mainly: (1) the direct competition from the container terminals in the Mainland, particularly the ports in southern China region; (2) the direct trading link between China and Taiwan; (3) the high transportation cost and terminal handling charge are constantly weakening the competitiveness of Hong Kong; and (4) if China becomes a member of the World Trade Organization, it will definitely have more and more channels for external trade and its exports will not necessarily pass through Hong Kong.

In the face of these challenges, the PDB is still relatively optimistic, saying that the forecast of the port freight volume has, in fact, taken into account the factors like the port development in southern China and the direct trading between China and Taiwan. Its conclusion is that the direct trading across the Strait will have only a minor effect on Hong Kong. Even it is anticipated that over one million TEUs of freight will be lost, it may be a matter a few years later, implying that there is no need to worry about it right now. Moreover, comparing with other ports in the southern China region, the port of Hong Kong still has a relative edge in container transportation, because although the container handling cost is very high, Hong Kong is superior in various aspects such as efficiency, system, security, shipping frequency, trading, financial services and other support services such as communications, insurance, legal services and so on. It takes some time for other ports to catch up with Hong Kong. Thus, the shipping companies and consignors will continue to use the port of Hong Kong in the near future.

The conclusion drawn by the PDB reminds me of the story about the race between the rabbit and the tortoise. The rabbit thought that as he was born superior and had the edge, there was no way he could be overtaken by the tortoise no matter how hard the latter would try. Thus, the rabbit slowed down and considered it did not matter just to "take a short break".

However, I think that the PDB may be too optimistic about the future of Hong Kong's freight industry. With the swift development of the ports as well as other infrastructures in the Mainland, the cargo handling capability of ports in the Mainland has been greatly increased, particularly Yantian Port and Shekou. These ports will make continuous improvements, simplify the complicated customs clearance and other procedures as far as possible, introduce new technology to raise their efficiency. However, their charges are much lower than those in Hong Kong. Therefore, their container throughput will increase by leaps and bounds. By contrast, the growth rate of Hong Kong's container throughput is declining and the threats we face are become greater. Moreover, the forecast of the port throughput in Hong Kong is to a certain extent affected by the economic performance in Guangdong. The cargoes from southern China will of course continue to drive the port development of Hong Kong. However, as the centre of China's economy has gradually shifted inland from southern China, and no direct rail is available to connect the Mainland to the container port of Hong Kong, there will be a gradual increase for cargoes of the Mainland to be despatched via other ports. This will definitely affect the re-export volume of Hong Kong. Actually, some ports in

southern China have already been opened to international shipping. If China becomes a member of the World Trade Organization, it will have more and more channels for external trading.

Facing these threats and challenges, we would do well to carefully consider how to maintain the competitiveness of Hong Kong's freight industry and its competitive edge as a port. Before considering this question, we should, first of all, understand our current strengths and weaknesses and then figure out ways actively to strengthen our competitive edge as far as possible and remedy our weakness expeditiously.

Basically, the port of Hong Kong has a lot of advantages, including high efficiency, reliability and adaptability of the container port, as well as the support services mentioned above. We should try our best to maintain these advantages. As far as efficiency is concerned, we are undoubtedly superior to most of the ports. However, we are in fact not the world's top in this respect and there is still room for further improvement. For a period of time in the past, the development of the container port in Hong Kong, in fact, could not satisfy the demand of the freight. The delay of Container Terminal No. 9 (CT9) has hindered the overall port development in Hong Kong, leading to the loss of a golden opportunity. Although the container port has raised its productivity and maintained its efficiency by improving port facilities, the cost rises, pushing up container handling charges. Moreover, the cost for developing the container port is itself very high. At present, the terminal handling charge in Hong Kong is the highest in Asia. It is \$1,850 per TEU, about \$800 higher than that of Yantian Port and \$740 more than that of Singapore. The high terminal handling charge is the first major weakness of the port of Hong Kong.

The infrastructural development in Hong Kong is also unable to match the growth of the local freight industry. Back-up land for the container port is insufficient. The road network to the container terminals is constantly blocked by traffic congestion, and parking areas and border-crossing facilities are insufficient. Moreover, the fuel in Hong Kong is very expensive, making the cost of land transportation relatively high. For example, it costs \$4,000 to transport a TEU from Dongguan to Hong Kong on land, but only \$2,000 to Yantian Port. The two routes are quite similar but one costs twice as much as the other. The high transportation charge is the second major weakness of the port of Hong Kong.

To remedy the first weakness, the Government should expedite the building of CT9 and the planning of CT10 and CT11 expeditiously so as to ensure that they can come into operation at an appropriate time so as to match the future development of the freight industry in Hong Kong. We should not commit the mistake made in respect of CT9 again. The Government should provide sufficient back-up land to support terminal operation so as to raise efficiency and productivity.

As regards the second weakness, the Government should adopt strategic measures to release the pressure arising from the cost of land transportation and assist the development of river trade and mid-stream operation.

To lower the cost of land transportation, the Government can in fact start with the facilities and taxation. I think that the Government should improve the customs facilities expeditiously and further extend the opening hours of the border crossings so that the overall crossing capacity can be increased. The queue at the crossings can be cut short and the waiting time can be reduced. Although the port at Lok Ma Chau Crossing has implemented the 24-hour customs services, we still should consider extending the clearance time at Man Kam To Crossing and Sha Tau Kok Crossing. It is hoped that the Government will have discussions with the Shenzhen authorities as soon as possible. The mutual opening of the border crossings can increase the cross-border transportation capacity effectively. As far as I know, the mutual opening is approved in principle, though it cannot yet be fully implemented. I hope the Government can pay more attention to the progress in this aspect. Moreover, the Government should constantly review the facilities for handling the customs procedures, as well as increase and expand the same when necessary so as to cater for the demand of the crossing transport.

Apart from the indirect cost resulting from time lost in queuing up, the severe shortage of parking areas for container trucks and insufficient service area mean high expenses for trucks and container trucks, thus increasing the operation cost. The Government should provide more back-up land for the freight industry so as to solve the problems of parking and servicing of the container trucks and storage of containers.

Hong Kong arguably has the most expensive fuel in the world. Fuel is a necessity for land transportation. In order to lower the cost of land transportation, we should start with the fuel. The Government should review whether it is necessary to maintain the nearly highest fuel tax in Asia so as to assist the freight industry to cut down the cost of land transportation. I will further elaborate this point in the Budget debate.

Lastly, as far as I know, each truck or container truck currently running between Hong Kong and China has to pay a huge sum of user charge and pay the so-called tax to different provinces and cities in the Mainland. These charges have imposed a heavy burden on the freight industry. I hope the Government of the Hong Kong Special Administrative Region can convey this problem to the provincial and municipal governments in the Mainland at an appropriate time and discuss the possibility of reducing or exempting these charges.

When figuring out ways to cut down an land transportation costs, the Government should also provide more facilities and land for the mid-stream operation and the river freight, so that they can enhance their competitiveness respectively. Thus, the overall freight industry will be developed in a balanced way without undue emphasis on either side.

The shipping industry and the container terminals are closely related. If the shipping companies can lower their operation costs, the competitiveness of the port of Hong Kong will be raised too. Therefore, I welcome the acceptance by the Financial Secretary of the shipping industry's opinions as regards double taxation. I hope the Government can amend the Inland Revenue Ordinance expeditiously so as to provide the shipping industry reciprocal taxation arrangements.

Besides, the Government should give assistance to the peripheral businesses related to the container port, such as the ship-maintenance industry, so as to improve the quality and efficiency of the port service. Furthermore, the Government should expand the terms of reference of the Port Development Board without delay so that its work will include co-ordination and promotion of the freight development in Hong Kong, as well as the strengthening of the overseas publicity on the superiority of the port of Hong Kong.

Just a moment ago, I told only half of the story about the race between the rabbit and the tortoise. What is the result? Who reaches the finishing line first? The rabbit or the tortoise? As the story is only half-told, I cannot provide an ending. We should see whether the Government will decide to make this rabbit start running fast or just let it move slowly.

Madam President, these are my remarks. I beg to move.

**Mrs Miriam LAU moved the following motion:**

"That, as it is expected that there will be a significant slowdown in the future growth of Hong Kong's overall container throughput, this Council urges the Government to actively adopt practicable measures to maintain the competitiveness of the territory's freight industry and the competitive edge of Hong Kong as a port."

**PRESIDENT** (in Cantonese): Does any Member wish to speak? Mr YUEN Mo.

**MR YUEN MO** (in Cantonese): Madam President, I would like to express my basic opinions on the present situation of the port freight industry and its future.

I. *Growth rate slows down but future still optimistic*

The implementation of the open door policy in the Mainland in 1979 brought our port freight industry a golden opportunity. Our transshipment volume increased significantly, the port cargo throughput skyrocketed, the container throughput in particular had double-digit growth rates for several consecutive years. This has established Hong Kong's status as the world's top container port.

In the recent two years, the growth of the port cargo throughput has slowed down. The growth rate of the container throughput was 6.9% in 1996 and about 8% last year. What is the situation here? I think that despite the competition from the neighbouring ports, the future of our port freight industry is still optimistic, mainly due to the following reasons:

1. Our position as a world-class major hub port has been established — Ports in the world can be classified according to their functions and the magnitude of their cargo handling capacity. Basically, they can be divided into hub ports such as Hong Kong, Singapore, Rotterdam and so on; regional main ports such as Shanghai, Kaohsiung, Kobe and so on; and sub-route ports which mainly serve the above two types of ports. With the development in the past 10 odd years, Hong Kong has become a typical major hub port and the transshipment freight accounts for over 70 per cent of the total. That is to say, Hong Kong has become the largest transshipment port of China. Even if Shanghai and other ports in the Mainland are to develop quickly, Hong Kong's status as the largest transshipment port for the whole southern China region will not change. Shanghai, Shenzhen, Kaohsiung and other ports can be regarded as "followers" but they can hardly catch up. It is because once the maritime transport and the port structure are established, it is not easy to be changed. Of course, we should continue to work hard.

2. After growing continuously for several years, it is natural to have a slowdown in the growth rate — our port handled 14.5 million containers last year and the base figure is very large. With such a large base figure, even the annual growth of cargoes remains the same, the growth rate will be decreased relatively. In terms of actual figure, the annual growth for the recent two years was maintained at the million level. It is estimated that 1997 saw an increase of about 1.04 million TEUs (twenty-foot equivalent units) over 1996. The actual figure has not decreased. With the base figure of 10 odd million TEUs, an annual growth rate of 7% to 8% is arguably still a significant growth.

3. The various advantageous factors have not disappeared and some of them are still waiting to manifest themselves — Firstly, we believe that the economy of the Mainland will maintain its sustained and long-term growth. The southern China region is the natural hinterland of Hong Kong's port and will continue to supply sufficient cargoes. Some neighbouring ports such as Shenzhen Port, Yantian Port and Shekou will divert some cargoes from Hong Kong. However, in view of the present situation, the quantity is after all very limited. The port in Hong Kong and these ports have the relationship of a main port and ancillary ports. The development of these ports will also bring a definite volume of cargoes to Hong Kong. In the port development process of Hong Kong, there exists a weakness of



having insufficient back-up transportation facilities for gathering and dispersing cargoes. However, with the further strengthening of the transportation linkage between Hong Kong and the Mainland, this weakness can be gradually overcome. We are now planning a large-scale railway and the highway network building programme. The completion of the Beijing-Kowloon Rail provides us access to the rail network further inland in the Mainland and this advantage has yet to be utilized. Our port freight industry does have development potential. Even there exist challenges from the neighbouring ports and the growth rate will slow down, I believe that there will not be any significant decline and the future is still optimistic.

II. *Increased efficiency of port operation is key to the competitiveness of our port*

Our port needs to raise its competitiveness. How to raise the competitiveness? There are varied views. Some say that prices should be cut whilst others say that more container terminals should be built.

Firstly, the development of the port in Hong Kong, and that of the container terminals in particular, is very unique and successful. The Government is responsible for the planning and for granting land whilst private enterprises are responsible for investment, construction, operation and management. Such method is completely different from that of many other countries or regions in the world where the government invests or operates. As private investments are involved, we cannot expect the private enterprises to invest a huge sum of money as the government in Singapore did to build a number of terminals first so as to attract cargo owners and shipping companies. If a lot of terminals are built but are left empty under the sun for a long time, the investment will be lost completely. In Hong Kong, due to the high land prices and high labour costs, the operation costs of the terminals are very high. We, of course, do not want the cargo handling charge of our container terminals to be too high as it will affect the competitiveness of the port, but .....

**PRESIDENT** (in Cantonese): Mr YUEN Mo, please stop. Mr CHAN Kam-lam.

**MR CHAN KAM-LAM** (in Cantonese): Madam President, Hong Kong has all along had a top-class natural harbour. Since the beginning of the 1980s, Hong Kong has become the world's largest container port in terms of container throughput. However, this position has been challenged in recent years. The most important reason is, of course, the swift development of the ports in the southern China region. Moreover, the high terminal handling charge in Hong Kong also deters factories owners and consignors.

According to the studies by the Port Development Board (PDB), the average growth rate of the total container throughput of Hong Kong in the first half of last year was 12.8% and that of the second half dropped to 9.8%. It is anticipated that there will be a continuous decline from the average growth rate of 5.8% in the coming 10 years to 3.1% in the decade from 2007 to 2016.

In fact, the Government fully understands the reasons for the slowdown in the growth of the freight industry. They include competition from the ports in southern China, direct shipping and trading between China and Taiwan, high local costs and so on. These factors seriously affect the future of Hong Kong's freight industry. However, in the face of these unfavourable factors, the Government does not seem to have, for quite sometime, proposed many concrete ways to maintain or enhance our competitive edge.

Madam President, the container handling charge of Yantian Port in Shenzhen is much lower than that in Hong Kong. Even though the current clearance procedures in Shenzhen are very complicated and there is no comprehensive transportation linkage available, it poses a very great competitive pressure on Hong Kong. I think that for the cargo owners and the consignees, the cost is still the most important factor to consider. In fact, the procedures can be simplified and further improved through accumulation of experience, and the connection transportation service can also be upgraded gradually. If Hong Kong does not make good preparations now but wait until actual threats arise to figure out remedies, it will definitely be too late.

Actually, since the middle of last year, some foreign factory owners and cargo owners have gradually turned to neighbouring ports as costs in Hong Kong are high. Moreover, as most of the local factory owners have factories in the Mainland, if they use the container terminals of Hong Kong, they have to transport the finished products from the factories in the Mainland to Hong Kong first, and land transportation creates further costs. Therefore, at present, Shekou, Yantian and the like have become alternative ports in their attempt to reduce costs.

As regards the cargo handling charge, the Government can actually appoint a reasonable level after co-ordinating with various shipping companies through consignors' associations.

Moreover, the Government should also consider ways to maintain the competitive edge of Hong Kong's freight industry over other regions by raising the efficiency of our container terminals, including supplying more back-up land for the container terminals, granting longer-term tenancies for such land and so on.

Madam President, back-up land for the container terminals has all along been on short-term tenancies of two to three years. As the tenancy is short, most of the container terminal operators are not willing to invest too much to install large-scale facilities. Therefore, if the Government can extend the length of the tenancies, the efficiency of the container terminals can be greatly increased, and containers can be handled more quickly and the waiting time can be shortened.

Besides, enhancing the river freight capacity can also help lower the cost of land transportation to cargo owners. Encouraging the operators of the container terminals to open their terminals to river vessels can also raise the competitiveness of the local freight industry.

Land transportation is very important to port development. For years the transportation network in Kwai Chung area and the roads to and from the Shenzhen Crossing cannot meet the demand resulting from port development. This must be improved promptly, otherwise the cost to container trucks will increase, adding to the total cost of the container transportation and hurting our competitiveness.

On the other hand, I think that there is a grave shortage of container yards at present. It is also an issue worth our consideration. Earlier on, a lot of people in the community criticized that turning some farmlands in the New Territories into container yards not only affected the environment, but also caused traffic problems. The Government has yet to come up with a good method to deal with these problems and is not willing to make land available to the industries concerned to solve their problems, giving us a feeling that the Government is very slow in response.

Madam President, it is believed that those living in Kowloon or the New Territories will feel more strongly about container platforms or truck tractors parking everywhere at night. Such situation is seldom seen in the streets of Hong Kong Island. The transportation sector been demanding a large parking area for several years. However, the demand has not been met. I think that the Government should find ways to solve this problem.

The problems mentioned above have to be solved for the development of the port. Strictly speaking, it was due to a mere streak of good luck that Hong Kong became the world's top container port in the past. However, in the face of the continuous development of the ports in the southern China region with their increasing competitiveness Hong Kong can no longer solely rely on "luck".

We believe that Container Terminal No. 9 (CT9) will be completed in 2001. That and the opening of the river trade terminal in Tuen Mun are believed to be able to cater for the demand brought by the growth of container transportation in the coming few years. As regards the building of CT10 and CT11, we think that we should make a decision after the opening of CT9 when we can better understand the cargo diverting effect of Yantian Port on us.

In the long run, the Government should consider to discuss and co-ordinate with the Government in the Mainland so that the port in Hong Kong can maintain its relationship with the ports in the southern China region both in terms of competition and co-operation so as to boost the freight industry in Hong Kong.

Thank you, Madam President.

**PRESIDENT** (in Cantonese): Mr NG Leung-sing.

**MR NG LEUNG-SING** (in Cantonese): Madam President, I have to say good morning to you now. At this time of the morning, we are discussing the future of our freight industry. Since 1993, the growth rate of the container throughput in Hong Kong has started to show an obvious slowdown. It was just mentioned that the growth rate was only 7% in 1996 and that of the 1997 was estimated to be about 8%. Comparing with the annual growth of about 20% to 30% at the beginning of the 1990s, this is undoubtedly inferior performance. It is anticipated in the coming 10 years, the average annual growth rate of the container throughput will drop to about 4%. This development trend is very much worth our attention.

The slowdown in the growth of the port freight volume in Hong Kong these years is partly due to the expected fact that the rapid development of the container terminal facilities in the Mainland has diverted cargoes from Hong Kong, and partly because of the excessively high handling charges of the container industry in Hong Kong as well as the decline of its competitiveness. At present, the "cargo handling charge" for each TEU (twenty-foot equivalent unit) is nearly 40% higher than that in Singapore, and amounting to more than 10% of the total transportation cost for delivering the TEU to the USA, greatly exceeding the normal rate. Moreover, the neighbouring Yantian Port is developing rapidly and the container handling capacity is doubled each year. This is mainly due to the significant improvement of its efficiency and the much lower charges as compared to that of Hong Kong. Therefore, its competitive edge becomes more prominent.

In analyzing the present conditions, Hong Kong's freight industry still have a lot of development advantages, including high efficiency, wide market net, favourable development prospect in the markets of China, Europe, the USA and so on. However, as a lot of the coastal city ports in the Mainland, including Yantian Port, are now developing quickly and the currencies of Singapore, Taiwan and the neighbouring countries in Southeast Asia have greatly depreciated recently, the cost advantage of these ports will become more significant. As a whole, Hong Kong's freight industry will face more rigorous challenges. I think that the authorities concerned should adopt stronger measures, including introducing new local competition, lowering operation costs of and charges by the industry, focusing on the upgrading of the competitive edge of the industry and using some local

resources which can be utilized continuously. Yesterday morning, we went to the Lantau Island and found that there were, in fact, a lot of potential resources which could supplement the freight industry. Therefore, the container freight industry in Hong Kong should adopt some new arrangements to meet the challenges ahead so as to strengthen its international status.

As at 1996, Hong Kong had been the world's busiest port for six consecutive years. I believe Hong Kong still maintained this status in 1997. As the saying goes "adopting measures in line with the local conditions", with Hong Kong's natural deep harbour, the development of ocean-going shipping is our strength, and this should have the full attention of the Government at all times. The Government should take strong measures to boost the long-term development of this industry.

Madam President, these are my remarks.

**PRESIDENT** (in Chinese): Miss CHOY So-yuk.

**MISS CHOY SO-YUK** (in Cantonese): Over 150 years ago, Hong Kong was just a small trading port in southern China. With the hard-working spirit of Hong Kong people, the geographical advantage of the natural harbour as well as other factors, Hong Kong has now become the world's busiest container port. More than 1.3 million TEUs (twenty-foot equivalent units) are handled each year. At present, the port-related industrial and commercial enterprises contribute some 20% to Hong Kong's GDP and provide employment for 600 000 people of our workforce. The port freight industry is arguably crucial to the economic development of Hong Kong.

However, data have shown that the growth of Hong Kong's overall container throughput in future is expected to slow down dramatically, and the situation is worrying. Although from 1986 to 1996, the annual growth of the container throughput is 17% on the average, there has been an obvious slowdown in recent years. The growth in 1995 as compared to 1994 was 14%, but that in 1996 was just 7%. According to the 1997-98 forecast of the freight volume of the port of Hong Kong, the average annual growth rate in the coming decade and the next decade after that will only be 6% and 3.1% respectively. Facing the trend of a significant slowdown in the future growth of the overall container throughput, the

Government should actively plan to maintain the competitive edge of our freight industry and our port.

Madam President, in order to run a shop successfully, we should, first of all, attract customers. The way of doing so is largely twofold, namely price and service quality. Similarly, the port development of Hong Kong can hardly ignore these two significant elements. Being different from the ports of other regions, terminals at the port of Hong Kong are built and operated by private companies. The Government's responsibility is only to ensure that land is handed over to the operators on time. Owing to this mode of free market operation, the port freight service of Hong Kong can maintain its high efficiency. According to the statistics, in the Kwai Chung Container Terminals, no container vessel needs to stay more than one day on average and upon arrival, vessels can dock immediately without waiting. The highly efficient service is a favourable condition of Hong Kong's port development.

However, there has been flourishing port development in the neighbouring regions in recent years. Although the service quality and efficiency are still inferior to that of Hong Kong, the price is relatively low and undoubtedly, a lot of our customers have gone there. Moreover, the container terminals of Hong Kong are operated in the free market. As no subsidies are received from the Government, the handling charge is thus increased and is among one of the most expensive in the world. In comparison with terminals of the neighbouring regions, the port of Hong Kong with its relatively high freight costs has its competitiveness affected.

Some may think that without directly intervening in the operation of the free market, the Government can start with the supply of terminal facilities and consider to provide sufficient number of berths expeditiously to allow different private operators to run the business, thus promoting healthy competition which in turn will raise efficiency, improve services and reduce the handling charge of the terminals.

I am in favour of healthy competition. However, the Government should be very careful in constantly assessing the change of future demand as the cost of building new terminals is very high and matching transportation infrastructure is required. The Government should not plan it rashly so as to avoid wasting resources due to errors in the assessment. Container Terminal No. 9 in Tsing Yi Island and the terminal at Tuen Mun for river freight will come into operation soon.

It is advisable that the Government should make a careful assessment on the demand for the container terminals after the opening of the two terminals, so as to review the concrete arrangements for building new ones.

The Government can also begin by improving the service quality of the port. For example, simplifying procedures of customs clearance, immigration and quarantine requirements and so on, so as to shorten the time of stay of vessels. The Government can also strengthen the maritime support services so as to raise the efficiency and effectiveness of the port management service.

Moreover, as southern China is an important region that propels the port development of Hong Kong, the Government should establish co-operation with their port departments and appoint officials to have discussion with their representatives regularly, or set up a permanent team to discuss the plan for joint port development projects.

Even though direct freight link between China and Taiwan will not be fully operational until several years later, it will eventually threaten the entrepot trade of Hong Kong, the Government should not be complacent. To strive to become stronger is the only golden law to enhance competitiveness.

Madam President, these are my remarks.

**PRESIDENT** (in Cantonese): Mr Howard YOUNG.

**MR HOWARD YOUNG** (in Cantonese): Madam President, 28 years ago, as a freight agent ranking as an administrative assistant, I accompanied my boss to Britain for a study tour. At that time, my duties were to find out what "container" and "container terminal" were. Later in 1972, the first ocean-going container vessel, the "Cardigan Bay", docked at Kwai Chung Container Terminal for the first time. I was the first person, after the staff of the Immigration Department and the Customs and Excise Department, to go aboard as my duty was to collect the customs clearance documents. At that time, Hong Kong started from nothing. And within less than 20 years, Hong Kong became the world's top container port. This reputation has been hard-earned. Nowadays, the pressure on Hong Kong is enormous, mainly because new ports in southern China region, such as Yantian Port and Shekou, have to some extent become our competitors. At the same time,



we are not too far ahead of Singapore, which is the No. 2. Both ports have the capacity to handle over 10 million TEUs (twenty-foot equivalent units) and the difference in throughput may only be a matter of a hundred odd thousand TEUs. Our top position hangs in the balance.

Some operators in the freight industry point out that the golden age of high growth of the freight industry in Hong Kong was over in the mid-1990's. For example, the container throughput of Hong Kong recorded a growth as high as 29% in 1992. However, last year, the container throughput of Hong Kong was only 14.58 million TEUs, a growth of just 8.5% over the number in 1996. And according to the forecast by the Port Development Board, the growth rate of the freight volume in 1998 will still be maintained at 8.5%. Although Hong Kong is still the world's busiest container port, such development trend should be our concern.

The freight industry in Hong Kong has a very long history, the scope of our services include the existing port facilities, the operation system and so on. Although they are not easy to be replaced by the neighbouring regions, the threats arising from the rapid development of the neighbouring ports should not be neglected. In order to enhance the competitiveness of Hong Kong's freight industry, apart from figuring out ways to lower the costs, encourage the building of terminals and further increase the facilities, the Government should promptly study cross-border infrastructural projects, for example, the western passage, Lingdingyang Bridge and Tonggu Waterway which will help reduce land transportation cost. At present, a lot of cargo owners still prefer land to sea transportation even the latter is cheaper in terms of cost per tonne. However, as land transportation is not restricted by shipping schedules, it is more flexible than the river transportation. In order to enhance the competitiveness of the freight industry in Hong Kong and maintain a steady growth, it is necessary for us to strengthen the cross-border infrastructural development. If we take a look at the major container ports in the world such as Europe, America and Asia, we will discover that, for example, Rotterdam in Europe has the whole Holland and even part of Germany as its hinterland; Hamburg with northern Germany as its hinterland; Kaohsiung in Taiwan, the whole Taiwan; Kobe in Japan, the entire Honshu; New York of the USA, the whole New York and New Jersey states. At present, the hinterland of Hong Kong is the Pearl River Delta with the potential of extending into the Yangtze valley. Looking at the Guangdong Province, we can see that cargoes mainly come from areas east rather than west of the Pearl River.

In fact, the Guangxi region also has a very great potential. When we, of the Liberal Party, visited Zhu Hai several years ago, the local people concerned said that, after Tianjin, Jiuzhou Port was the container port with the second largest throughput in the Mainland. At that time, I was very surprised that once containers were delivered there, no land transportation facilities were available and they had to be transhipped to Hong Kong. Therefore, in the "Economic Policy Proposal" published by the Liberal Party this January, we urged the Government to study the feasibility for building the Lingdingyang Bridge more quickly and strive for its direct connection to Hong Kong. This can benefit not only the promotion of the freight industry, but also the economic development of both areas. Upgrading the cross-border road facilities is the key to maintaining the competitive edge of our freight industry.

With these remarks, I support the motion moved by Mrs Miriam LAU.

**PRESIDENT** (in Cantonese): Dr LAW Cheung-kwok.

**DR LAW CHEUNG-KWOK** (in Cantonese): Madam President, the freight industry is one of the vital economic supports of Hong Kong, representing about 10% of the overall economy.

According to the forecast by the Port Development Board, though the growth of the freight industry was 11% on average in the past decade, it is anticipated that in the coming years to 2016, the growth will only be about 4.7% on average. In container throughput, the growth rate will drop from 17% in the past to 6%.

In order to maintain the position of Hong Kong, we should be clear about where the problems lie. The slowdown of the growth of the Hong Kong's freight industry is mainly due to the following reasons:

1. The slowdown of the economic growth in the whole Asian Pacific region leads to the decline of the overall freight volume;
2. Competition from the ports in the Mainland has become keener;

3. The point-to-point direct route between China and Taiwan and the possibility of opening new routes reduces the transshipment freight business of Hong Kong;
4. The operation cost is relatively high; and
5. The related investment is not sufficient.

In order to solve these problems, we should consider the following three main aspects:

1. *Strengthening the long-established connection between Hong Kong and international enterprises*

The relationship network established between Hong Kong and other places in the world has all along been our very important economic capital which should be maintained and further developed, so that Hong Kong can continue to be the loyal and reliable trading partner in the eyes of international enterprises. The Government should step up the promotion of Hong Kong's image and disseminate information about the favourable trading environment in Hong Kong through the Trade Development Council and its oversea offices.

2. *Promoting high quality port services in Hong Kong and lowering the charges*

The container freight industry in Hong Kong has all along been the world's leader and is famous for its high quality services. The container port in Hong Kong has advanced facilities, high efficiency, simple customs regulations, clean and reliable government and enterprises as well as a fast system for handling imports and exports. And this is why our clients are still willing to use our facilities despite the fact that the transportation costs in Hong Kong are higher than that of most of our competitors. However, this advantage would not be taken for granted. If we do not strive for improvement constantly, our competitors will catch up with us soon once they have corrected their past mistakes.

Madam President, we should not only maintain, but also further sharpen and make use of this favourable edge. The port facilities should be updated constantly, more advanced and efficient facilities for loading and discharging, storage and management of cargoes should be installed. If necessary, the Government should consider to help the freight industry to fully implement the computerised cargo operation, transportation co-ordination system and so on, so as to maintain the status of Hong Kong as a highly efficient freight port utilizing advanced technology.

Actually, as Hong Kong handles numerous containers with high efficiency, the handling cost for each container is relatively low. As regards the charges, under the operation of private enterprises, there is still room for downward charge adjustment. Lowering the transportation cost of our international trading partners will be the main attraction for them to continue to use the freight facilities in Hong Kong.

3. *Improving the whole transportation system, particularly connection with southern China*

Although the facilities of the container port in Hong Kong are of the top class, support facilities are severely inadequate. At present, no direct rail link to the container port is available and the facilities for river transportation do not complement the container port. The cargoes have to be hoisted ashore in far away places, loaded into containers and then delivered to the port for handling. The land transportation system, restricted by the serious problems in Hong Kong like narrow roads, traffic congestion, customs clearance and so on, is really difficult to be improved shortly.

Furthermore, at present the existing rail system in Hong Kong still does not have a direct link with that in the Mainland. The so-called Beijing-Kowloon Rail stops at Shenzhen. Cargoes must be moved to another train. According to a consultant research, in the coming decade, the relative importance of southern China to the local freight industry will be increased from the current 63% to 77%. Recently, the State Council has approved the building of the Guangdong-Fujian Rail. The opening of this east-west transportation link will have further adverse effects on the future of Hong Kong's freight industry.

Therefore, the Government should speed up the review on Phase II of the West Rail regarding the freight route and set a timetable promptly, proceed quickly with the discussion for the fourth or even the fifth border crossing to Shenzhen, improve the facilities for loading and discharging cargoes of the river vessels in Hong Kong and so on.

These are my remarks. I support the motion.

**PRESIDENT** (in Cantonese): Mr HO Sai-chu.

**MR HO SAI-CHU** (in Cantonese): Madam President, as regard this motion, two of my colleagues of the Liberal Party and other Honourable colleagues have expressed a lot of opinions and I just want to stress one point. I think the Government should advertise more vigorously overseas the superiority of the port of Hong Kong. Although Hong Kong is the world's largest container port, in order to maintain its competitive edge and stability in the eyes of overseas traders, it is necessary for the Government to strengthen its promotion effort overseas by emphasising the superior conditions of the port of Hong Kong. Actually, as compared with the neighbouring regions, the port development in Hong Kong is well-established and can provide the related trading and financial services at the same time. For example, a lot of banks in Hong Kong are willing to extend loans to ship owners. We have an arbitration centre with good and experienced arbitrators and ships surveyors. Moreover, Hong Kong has insurance agents and adjusters with the most comprehensive coverage in Asia and a number of the maritime organizations and associations. At the same time, most importantly, we have a top container port, the best berths in Southeast Asia as well as regional offices of nearly all the major shipping companies. These are the advantages our neighbouring ports do not have. With these favourable conditions, Hong Kong can then provide high quality and reliable services to the traders and cargo owners. The Government should focus on the existing superior position of Hong Kong and step up its overseas promotion effort, so as to further upgrade and strengthen the status of the port of Hong Kong in the eyes of foreign traders.

Increasing cross-border infrastructural development and strengthening the promotion of the port of Hong Kong are ways to maintain the competitive edge of the freight industry and the port. As regards the slowdown of the growth of the freight industry in Hong Kong, the Government should have a long-term and comprehensive plan so that the industry can maintain its superior position and the outstanding competitive ability.

With these remarks, I support Mrs Miriam LAU's motion.

**PRESIDENT** (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Secretary for Economic Services.

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Madam President, I would like to thank the Honourable Mrs Miriam LAU for sponsoring today's motion debate. We are fully aware that operators in the freight industry are recently very concerned about the increasingly intense competition they face. Both the Administration and the Port Development Board have carried out a very detailed study on the future of Hong Kong's freight industry and have formulated a set of measures to enhance the competitiveness of Hong Kong's freight industry and to maintain the competitive edge of Hong Kong as a port.

Before I go into the details of these measures, I would first like to respond to the forecast on the growth of our future container throughput, and to analyze the strengths and weaknesses of Hong Kong as a major container port in the world in terms of competitiveness. I think such analysis would have important bearing on formulating our long-term port development policies.

In the early and mid-90's, the throughput of our freight industry was always able to maintain a double-digit annual growth rate, but in 1996 the figure dropped to 7.3%, and then bounced back to 8% last year. When we study the reason behind the drop in the growth rate, we have to understand that the majority of containers we handled came from the Mainland. At present, transshipments to and from the Mainland via Hong Kong account for over 60% of the containers handled

by our port every year. Take last year for example, we handled more than 8 million TEUs (twenty-foot equivalent units) for the Mainland. In fact, 90% of the cargoes in the South China region have been imported or exported via Hong Kong. From this, we can see that Hong Kong is still the most important port for China trade. From another perspective, as a result of our reliance on the Mainland for our cargoes, the throughput of our port is greatly affected by the economic performance of the Mainland. Actually, the drop in our throughput to 7.3% in terms of growth rate in 1996 could be attributed to the fact that the Mainland export trade was affected by the macroscopic adjustment drive on the Mainland; the export from Guangdong Province only grew 6.2% in the same year.

Undeniably, the development of neighbouring ports like Yantian and Shekou has diverted cargo from Hong Kong, but we have to look at the actual figures before we can assess the impact of such development on Hong Kong. Take last year again for example, Shenzhen ports like Yantian and Shekou handled about 1.1 million TEUs; whereas in the same year, we handled a total of 14.5 million TEUs. And for six years in a row, we remain the largest container port in the world. In terms of growth rate, we achieved a growth rate of only 8% in 1997, but in terms of additional TEUs that we handled, the number was 1 million TEUs, and that was almost the total number of containers handled by the ports in Shenzhen in the same year.

Since the base figure of the number of containers we handle today is already very substantial, and on the other hand, the economy of our major source of containers, that is Guangdong Province, especially that of the Pearl River Delta, is becoming more and more mature with an estimated growth rate of only 8% to 9% this year, we cannot expect Hong Kong to continue to grow at a double-digit rate on a yearly basis. The Hong Kong Port Development Board has just completed its latest long-term Port Cargo Forecast, and after seeking the views of those in the freight industry and considering the long-term economic forecasts of the Mainland, Hong Kong and our major trading partners such as the United States and Europe, the diversion of cargoes from Hong Kong as a result of the development of the ports in Shenzhen, and the possibility of direct navigation between Taiwan and the Mainland, we forecast that the freight industry of Hong Kong will be able to maintain a growth rate of 5.8% in the coming 10 years, and will gradually drop to 3.1% due to the existing huge base figure and development in the ports of Shenzhen.

However, if we look at the actual figures, in the coming 10 years, the port of Hong Kong will still have to handle an additional 0.8 million to 1 million TEUs each year. We anticipate that by 2006, the port of Hong Kong will have to handle 24 million TEUs, that is, the existing throughput will be increased by 50%. In the year 2016, the throughput will be 33 million TEUs, more than doubling the existing throughput. Therefore, we expect that in the coming 10 to 20 years, the throughput of our port will still maintain a healthy growth, and we still need to build new container terminals in order to cope with the demand.

I totally agree with the points made by Mrs Miriam LAU and other Members who spoke. We cannot be complacent because of our achievements, and since there will be diversion of cargoes from Hong Kong, we cannot underestimate the long-term impact of the development of our neighbouring ports on the port of Hong Kong, and the impact of direct navigation between Taiwan and the Mainland. We need to have a broad vision and adopt positive measures to enhance the competitiveness of our port and to maintain the competitive edge of our port and freight industry.

First of all, we have to understand our strengths and weaknesses and our competitive edge as the largest port in South China as well as one of the most important container ports of the world. Our most important competitive edge lies in the fact that our container terminal operators and the members of our freight industry are all very experienced, our ships and cargoes customs clearance procedures are simple and efficient, and our advanced banking, insurance and communications services enable us to provide highly efficient, fast and secure services to our consignors. In fact, our highest competitiveness is that our throughput is huge and we have very frequent sailing schedules, providing the consignors a wide range of choices of routes to send their goods to anywhere in the world within the shortest time. On the other hand, our greatest hidden worry is our high labour and operating costs. In fact, our terminal charges are also rather high, our cargo handling charge is a few hundred dollars more for each container when compared with neighbouring ports. However, our biggest problem lies in the high land transportation cost, for at present, the cost to send a container from Dongguan to Hong Kong is \$1, 000 to \$2, 000 more than the trip to Yantian or Shekou.



In order to tackle these problems, the Hong Kong Port Development Board conducted a detailed study towards the end of last year and has recommended a number of measures to enhance the long-term competitiveness of Hong Kong as a port and its freight industry. These measures include:

First, since adding additional handling capacities at existing terminals is cheaper than constructing new terminals, we will examine the feasibility of providing more land in the vicinity of the Kwai Chung Container Terminals as back-up areas for Container Terminal No. 1 to 8, to raise their productivity and handling capacities and lower their operation costs.

Second, we will try to expedite the construction works of Container Terminal No. 9 as much as possible, and upon the completion of the Terminal, the handling capacity of our container terminals will be increased by 2.6 million TEUs, and will be able to cope with the anticipated growth in our throughput. Furthermore, the new Terminal will also bring along a new operator, and competition in the market may push down the handling charge of our terminals, thus enhancing our competitiveness.

Third, as I have mentioned that it is anticipated by 2006, the port of Hong Kong will have to handle 24 million TEUs, and in the year 2016, that will increase to 33 million TEUs. Therefore, we still need to plan for Terminals No. 10 and 11, and we should complete all the advance preparations to ensure timely construction of the new terminals in order to cope with the anticipated demand. Furthermore, the design of the new terminals should also cater to the operation requirement of the bigger new generation of container ships, so as to maintain the competitive edge of Hong Kong as one of the major container ports in the world.

Fourth, mid-stream operations are now handling more than 3 million TEUs on a yearly basis, and as a result, consignors are given a cheaper alternative. However, the greatest obstacle faced by mid-stream operations is the lack of back-up land. We are going to provide sites with a longer tenure, so that mid-stream operators can increase their investments so as to increase their productivity to further lower their costs and thus charges. We have recently granted two sites on Stonecutter Island with 50-year tenancies for use as back-up land for mid-stream operations.

Fifth, at present, when we plan for new container terminals or new mid-stream operations areas, we only consider their respective forecasted rate of growth of throughput, but when we plan for the construction of new container terminals or new mid-stream operations areas, we will take into account the demand of the overall throughput of the port, to increase their cargo handling capacity and to encourage competition between container terminals and mid-stream operations, and thus reduce our fees further.

Sixth, in order to solve the problems of high land transportation operation cost and traffic congestion, and to expand our market, we will further encourage consignors to use the Pearl River waterway to send their containers to Hong Kong or the Mainland. We will ensure that the Tuen Mun river trade terminal will be commissioned in October this year, and we will try to encourage the operators of the Kwai Chung Terminals to establish strategic partnerships with the operators of the river trade terminals of the Pearl River Delta, so as to make full use of the favourable location of Hong Kong at the mouth of the Pearl River and to abate unhealthy competitions between Hong Kong and Yantian Port and so on.

Seventh, we are going to co-operate with the Mainland with a view to further streamlining cross-border crossing procedures to reduce land transportation costs, so as to raise the efficiency and competitiveness of the port of Hong Kong.

Eighth, we would strengthen our co-ordination with the port authorities of the Mainland on the formulation of ports development plans and exchange data concerning freight forecasts so as to prevent any unhealthy competition that will harm the confidence of port investors and affect the long-term port development in both the Mainland and Hong Kong.

Ninth, in order to protect the interests of the consignors, we will increase our co-operation with the Hong Kong Shippers' Council, to encourage all liners associations to have a higher degree of transparency in setting the terminal fees, to lower the annual raise in the fees, so as to reduce the burden of Hong Kong consignors and enhance the competitiveness of Hong Kong as a port.

We are fully aware that the freight industry is very concerned about its future. Since our cargo mainly comes from the Mainland, especially the South China region and the Pearl River Delta area, therefore, the future growth of our throughput is, to a great extent, dependent on the economic performance of the South China region. According to the latest cargo forecast, in the next 20 years, the port of Hong Kong will still have an annual growth rate of 3% to 5%, that is 0.8 million to 1 million TEUs in terms of actual growth. However, in face of the continuous intense competition from neighbouring ports, we must continue to reduce our cost of operation, raise our efficiency and improve our services. We have formulated a set of measures to enhance the competitiveness of the freight industry of Hong Kong, and the Hong Kong Port Development Board will also maintain close liaison with those in the freight industry, listen to their views and adopt every possible measure to help the freight industry of Hong Kong so as to maintain the competitive edge of our port.

Thank you, Madam President.

**PRESIDENT** (in Chinese): Mrs Miriam LAU, you may now reply and you have up to two minutes and 47 seconds out of your original 15 minutes.

**MRS MIRIAM LAU** (in Cantonese): Madam President, I am very grateful that at this time of midnight, so many Members are still here and seven Members have participated in this debate.

Port development is a topic people rarely talk about, but it is a vital topic. As mentioned by the Honourable Miss CHOY So-yuk, the manufacturing and services industries related to the port, contributing 20% of Hong Kong's GDP, are very important to the economy.

I was greatly surprised by the speech of the Honourable YUEN Mo. He said that Hong Kong, in fact, still had all the advantages, the future of the port was still optimistic and the prospect of the freight development would still flourish, while the status of Hong Kong as the biggest entrepot would not change. This reminds me of the rabbit in the original version of the story about the race between the rabbit and the tortoise. Its mentality might be the same as Mr YUEN Mo's. Listening to Mr YUEN's speech, I thought it was the reply given by the government

official. However, I am very glad that Mr YUEN is not a government official. Even the government officials are not as optimistic as Mr YUEN. Fortunately, other Members who spoke understood that there were a lot of hidden problems in the freight industry at present. As just mentioned by the Honourable CHAN Kam-lam, there are areas worrying us in the present development. Thus, we should take actions now, otherwise, it will be too late to make remedies in future.

The motion I proposed today is neither aimed at exaggerating the situation to scare the public nor describing a worst-case scenario. I just want to remind the Government to be more alert to the challenges and difficulties faced by the freight industry and the port development, and to adopt a series of proactive actions to safeguard the interests of Hong Kong.

I would like to thank the Members who spoke and provided valuable opinions. This is my objective in moving the motion today. I wanted to draw out valuable opinions from Members with my humble ideas. I wanted to arouse your concern as well as the Government's concern. I hope more people can speak on the subject and express their opinions so as to urge the Government to do more and to continue to work for our port development. Thank you, Madam President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Miriam LAU be approved. Will those in favour of the motion please say "aye"?

(Members responded)

**PRESIDENT** (in Cantonese): Those against please say "no".

(No Member responded)

**PRESIDENT** (in Cantonese): I think the "ayes" have it. The "ayes" have it.

**NEXT MEETING**

**PRESIDENT** (in Cantonese): In accordance with the Rules of Procedure, I now adjourn the Council until 2:30 pm on Wednesday, 4 March 1998.

*Adjourned accordingly at sixteen minutes to One o'clock.*

**Annex I****PROVIDENT FUND SCHEMES LEGISLATION  
(AMENDMENT) BILL 1997****COMMITTEE STAGE**Amendments to be moved by the Secretary for Financial ServicesClauseAmendment Proposed

New

By adding -

**"14. Amendment of Personal Data (Privacy)  
Ordinance - (Schedule 13)**

The Personal Data (Privacy) Ordinance (Cap. 486) is amended as indicated in Schedule 13."

Schedule  
1, item 14

- (a) In the proposed definition of "Advisory Board", by deleting "Board" where it twice appears and substituting "Committee".
- (b) In the definition of "chief executive", by adding "officer" after "executive".
- (c) In the definition of "controller", in paragraph (c), by adding "officer" after "executive".
- (d) By deleting the proposed definition of "Executive Director".
- (e) In the definition of "officer", in paragraph (b), by adding "officer" after "executive".
- (f) By deleting the proposed definition of "subsidiary".

ClauseAmendment Proposed

(g) By adding -

""Managing Director" (行政總監), in relation to the Authority, means the Managing Director appointed under section 6AB, and includes any person appointed to act as Managing Director -

- (a) when that director is absent from Hong Kong or absent through illness or any other reason; or
- (b) when the office of Managing Director is vacant;".

Schedule By adding -  
1, new item

"15A. Section 4(4) Repeal and substitute -  
and (5)

"(4) The regulations may make provision for the purposes of this section and may, in particular, specify the circumstances in which the exemption of a person referred to in subsection (3) is to apply.

(5) In this section, "limited period" (有限期間) means a period determined for the purposes of this section in accordance with the regulations."."

ClauseAmendment Proposed

Schedule (a) By deleting the proposed section 6 and substituting -  
1, item 17

**"6. Establishment of Mandatory Provident  
Fund Schemes Authority**

(1) There is established by this section a corporation with the corporate name of "Mandatory Provident Fund Schemes Authority".

(2) The Authority -

- (a) has perpetual succession; and
- (b) may take legal proceedings and be proceeded against in its corporate name; and
- (c) may, for the purpose of enabling it to exercise or perform its functions -
  - (i) acquire, hold and dispose of real and personal property; and
  - (ii) enter into and carry out, any agreement with the Government for the management and control by the Authority of any property held, or managed and controlled, by the Government; and



ClauseAmendment Proposed

(iii) enter into and carry out, any agreement with the Government for the employment by, or the secondment to, the Authority of any specified public officers or specified class of public officers; and

(iv) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation; and

(d) may do, and be subject to, all other things that bodies corporate may do and be subject to and that are necessary for, or are incidental to, the exercise of its functions.

(3) The Authority is required to have a seal."

(b) By adding -

**"6AA. Membership of Authority**

(1) The Authority is to consist of not fewer than 10 directors appointed by the Chief Executive.

(2) Of the directors -

(a) not fewer than 4 are to be executive directors; and

ClauseAmendment Proposed

- (b) the remainder are to be non-executive directors.
- (3) Of the non-executive directors -
  - (a) at least 1 but no more than 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of participating employers; and
  - (b) at least 1 but no more than 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of relevant employees.
- (4) In appointing the directors, the Chief Executive must ensure that -
  - (a) a majority of the directors are non-executive directors; and
  - (b) the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers.
- (5) A director must exercise a reasonable degree of care and diligence so as to ensure that the Authority exercises and performs its functions properly.
- (6) The Authority may exercise or perform any of its functions despite a vacancy in its membership.

ClauseAmendment Proposed

(7) Schedule 1AA has effect with respect to the directors and procedure of the Authority."

(c) By adding -

**"6AB. Managing Director or Authority**

(1) The Chief Executive is to appoint one of the executive directors as the Managing Director of the Authority.

(2) The Managing Director -

(a) is the administrative head of the Authority and is responsible, subject to the direction of the Authority, for administering the affairs of the Authority; and

(b) has, subject to that direction, such other responsibilities as may be assigned by the Authority."

(d) By adding -

**"6AC. Chairperson and deputy chairperson of Authority**

(1) The Chief Executive is to appoint one of the directors as the chairperson of the Authority and another of those directors as the deputy chairperson of the Authority.

(2) If the person appointed as chairperson is a non-executive director, the person appointed as deputy chairperson must be an executive director.

ClauseAmendment Proposed

(3) A person holding office as chairperson or deputy chairperson ceases to hold that office on ceasing to be a director of the Authority."

(e) By adding -

**"6AD. Authority may establish committees**

(1) The Authority may establish committees to give advice and assistance to the Authority in connection with any matter with which the Authority is concerned.

(2) The Authority may appoint any person to be a member of a committee. A member of a committee is not required to be a director of the Authority.

(3) The Authority may, at any time, remove such a member from office by notice in writing given to the member. A member of a committee may, at any time, resign from membership of the committee by giving notice in writing to the Authority.

(4) The procedure for convening meetings of a committee and for the conduct of business at those meetings is to be as determined by the Authority or (subject to any determination of the Authority) by the committee.

(5) In exercising its functions, a committee is required to comply with any direction given by the Authority."

ClauseAmendment Proposed

(f) In the proposed section 6A(1)(f), by adding "or any other Ordinance" after "this Ordinance".

(g) By deleting the proposed section 6B(1) and substituting -

"(1) The Authority may delegate any of its functions (other than this power of delegation) to a committee established under section 6AD or to a designated person."

(h) In the proposed section 6B(2), in the definition of "designated person", by deleting "member of staff" and substituting "director or employee".

(i) In the proposed section 6D, by adding -

"(2A) A guideline may require persons (including persons belonging to a class) specified in the guideline to give to the Authority information or documents of a kind specified in the guideline. The guideline may only specify information or documents of a kind that the Authority reasonably requires for the exercise or performance of its functions. This subsection has effect whether or not regulations are made for the purposes of section 21C(2)(k), 22A(2)(b) or 46(1A)(s)."

(j) In the proposed section 6F, by adding -

"(6) The Authority may also, if it thinks fit, attach to a corporate plan a proposed corporate plan for 1 or more financial years following the financial year to which the first-mentioned plan relates."

ClauseAmendment Proposed

- (k) In the proposed section 6L(1), by deleting "As soon as practicable after the end of each financial year of the Authority" and substituting "Not later than 6 months after the end of each financial year of the Authority, or such longer period as the Financial Secretary approves in writing".
- (l) In the subheading appearing before the proposed section 6N and in the proposed sections 6N(1), (5) and (8), 6O and 6P, by deleting "**Board**" and "Board" wherever they appear and substituting "**Committee**" and "Committee" respectively.
- (m) By deleting the proposed section 6N(2) and (3) and substituting -

"(2) The Advisory Committee is to consist of -

- (a) an executive director of the Authority designated by the Authority; and
- (b) no fewer than 9, and no more than 11, other members appointed by the Chief Executive.

(3) The Chief Executive is to appoint one of the members of the Advisory Committee to be its chairperson and another of its members to be its deputy chairperson."

- (n) By adding after the proposed section 6N(3) -

"(4A) In appointing persons under subsection (2)(b), the Chief Executive must ensure that included among those persons are -

ClauseAmendment Proposed

- (a) one or more persons who, in the Chief Executive's opinion, have knowledge of, or experience in, investments and financial management; and
- (b) one or more persons who, in the Chief Executive's opinion, have knowledge of, or experience in, the conduct of retirement benefit schemes; and
- (c) one or more persons who, in the Chief Executive's opinion, represent the interests of participating employers; and
- (d) one or more persons who, in the Chief Executive's opinion, represent the interests of relevant employees,

and that the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers."

- (o) In the proposed section 6O(1), by deleting "在符合本條規定下" and substituting "除本條另有規定外".
- (p) In the proposed section 6O, by adding -

"(3) The quorum for a meeting of the Advisory Board is a majority of its members for the time being."

ClauseAmendment Proposed

(q) By deleting proposed section 6Q(2)(c) and (d) substituting -

"(c) an executive director of the Authority designated by the Authority;

(d) not fewer than 6 other persons."

(r) In the proposed section 6Q, by adding -

"(4A) In appointing the persons referred to in subsection (2)(d), the Financial Secretary must ensure that included among those persons are -

(a) one or more persons who, in the Financial Secretary's opinion, represent the interests of participating employers; and

(b) one or more persons who, in the Financial Secretary's opinion, represent the interests of relevant employees,

and that the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers."

Schedule 1, item 24 In the proposed section 12A(3)(c) by deleting "are" and substituting "is".



ClauseAmendment Proposed

Schedule 1, item 25 (a) By deleting the proposed section 14(2) and substituting -

"(2) Subject to subsection (1), and in accordance with the regulations, the accrued benefits of a member of a registered scheme may be transferred -

(a) to another registered scheme to which the member is eligible to belong; or

(b) to another account within the same registered scheme,

but only in a circumstance permitted or required by the regulations.".

(b) In the proposed section 14(3) -

(i) by deleting "a member of a registered scheme makes an election under this section for the transfer of the member's accrued benefits" and substituting "the accrued benefits of a member of a registered scheme are to be transferred under this section";

(ii) in paragraph (b), by deleting "the election is for the transfer of those benefits" and substituting "those benefits are to be transferred".

(c) In the proposed section 14(4), by deleting "who makes an election under this section for the transfer of the member's accrued benefits" and substituting "whose accrued benefits are to be transferred under this section".

Schedule 1, item 27 (a) In the proposed section 15(5), by deleting "涵意" and substituting "涵義".

ClauseAmendment Proposed

- (b) In the proposed section 15, by adding -

"(6) Except as may be prescribed by the regulations, no period of limitation prescribed by the Limitation Ordinance (Cap. 347) applies to proceedings for the recovery of a member's accrued benefits that have become payable under this section."

- Schedule 1, item 35      (a) By deleting the proposed section 18(1), (2) and (3) and substituting -

"(1) A mandatory contribution is in arrears for the purposes of this Ordinance if it is not paid within the period prescribed by the regulations. The contribution becomes due to the Authority on the expiry of that period.

(2) If a mandatory contribution is in arrears, the person who is liable to pay the contribution is also liable to pay to the Authority as a contribution surcharge an amount determined by multiplying the arrears by the prescribed percentage rate. The prescribed percentage rate is a rate prescribed by the regulations, not exceeding 20 per cent per annum.

(3) The Authority may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Authority a mandatory contribution that is in arrears, together with any contribution surcharge payable under subsection (2) in respect of those arrears.

ClauseAmendment Proposed

(3A) In any proceedings brought under subsection (3), a certificate, purporting to be issued by the Authority, specifying the amount of a mandatory contribution that is in arrears, or of any contribution surcharge payable in respect of those arrears, is, in the absence of evidence to the contrary, proof of the matters specified in the certificate."

- (b) In the proposed section 18(4), by deleting "penalty interest" and substituting "contribution surcharge".

Schedule  
1, item 38

- (a) In the proposed section 20(3)(b), by deleting "High".

- (b) In the proposed section 20(6)(a) -

(i) by adding "is" after "approved trustee";

(ii) by adding "to perform" after "this Ordinance".

- (c) In the proposed section 20B(4)(b)(ii), by deleting "High".

- (d) By deleting the proposed section 22B(3) and substituting -

"(3) The amounts likely to be received by the Authority from other fees payable to it under this Ordinance are to be taken into account when fixing the level of the annual registration fee."

- (e) In the proposed section 22B(5), by deleting "the District Court" and substituting "a court of competent jurisdiction".

ClauseAmendment Proposed

Schedule 1, item 39 By deleting "Repeal." and substituting -

"(a) Repeal subsection (1) and substitute -

"(1) The Authority may establish, or arrange for the establishment of, a provident fund scheme, to be known as the "Residual Provident Fund Scheme", for the purpose specified in subsection (2). On establishing, or making arrangements for the establishment of, the Residual Provident Fund Scheme, the Authority must appoint a company this is an approved trustee to administer the scheme."

(b) In subsection (2)(a)(ii), repeal "section 7(4)" and substitute "section 7C".

Schedule 1, item 41 In the proposed section 25 -

(a) by deleting "sufficient";

(b) by deleting "so as" and substituting "sufficient".

Schedule 1, item 45 In the proposed section 27(3), by adding ", the same powers as those conferred," after "imposed".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1, item 62	<p>(a) In the proposed section 34, by adding -</p> <p style="padding-left: 40px;">"(4A) The regulations may prescribe conditions that the Authority may or must impose as a condition of giving its consent to the voluntary winding up of the scheme, including requirements that must be complied with by the approved trustee of the scheme or by the participating employer concerned."</p> <p>(b) In the proposed section 34(7), by deleting "must" and substituting "may".</p>
Schedule 1, new item	<p>By adding -</p> <p style="padding-left: 40px;">"62A. Section 35(1) Add after the full stop "An appeal must be made within the period prescribed by the regulations."."</p>
Schedule 1, item 63	<p>In the proposed section 38(4A)(a), by deleting "Executive Director" and substituting "Managing Director".</p>
Schedule 1, item 64	<p>In the proposed section 38(6) and (7), by deleting "the District Court" and substituting "a court of competent jurisdiction".</p>
Schedule 1, item 67	<p>(a) In the proposed section 42(1), by deleting "The Authority may do any of the following" and substituting "Section 41 does not prevent the Authority from doing any of the following".</p> <p>(b) In the proposed section 42(6), by deleting "Despite section 41, the Authority may also disclose" and substituting "Section 41 does not prevent the Authority from disclosing".</p>

ClauseAmendment Proposed

Schedule 1, item 68 By deleting the proposed section 42A and substituting -

**"42A. Protection for auditors and service providers**

(1) An auditor or a service provider appointed or engaged by an approved trustee under this Ordinance does not contravene a duty owed by the auditor or service provider in law only because the auditor or service provider has given to the Authority in good faith information, an opinion or a document concerning a matter if -

- (a) the auditor or service provider became aware of the matter in the auditor's or service provider's capacity as such; and
- (b) the matter is relevant to a function of the Authority under this Ordinance.

(2) Subsection (1) has effect with respect to information, an opinion or a document given to the Authority whether or not it is given in response to a request of the Authority.

(3) Subsection (1) applies -

- (a) to a person whose appointment or engagement as an auditor or service provider has ceased; and
- (b) to an auditor or service provider who was appointed by a trustee whose approval has been revoked."

ClauseAmendment Proposed

Schedule  
1, item 69

(a) In the proposed section 43 -

- (i) in subsection (2)(a), by adding "or has been appointed under section 33A(3) as administrator of the scheme" after "trustee";
- (ii) by deleting the proposed subsection (3) and substituting -

"(3) A person who contravenes subsection (1) or (2) commits an offence and is liable -

- (a) to a fine at level 6 and to imprisonment for 12 months on the first occasion on which the person is convicted of the offence; and
- (b) to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion on which the person is convicted of the offence."

(b) By deleting the proposed section 43A(4) and substituting -

"(4) An approved trustee who is convicted of an offence against this section is liable -

ClauseAmendment Proposed

- (a) to a fine at level 6 and to imprisonment for 12 months on the first occasion on which the person is convicted of the offence; and
  - (b) to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion on which the person is convicted of the offence."
- (c) In the proposed section 43B(1), by deleting "(subsection (8) excepted)".
- (d) By deleting the proposed section 43B(2).
- (e) By deleting the proposed section 43B(4) and substituting -
  - "(4) An employer who is convicted of an offence against this section is liable -
    - (a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and
    - (b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence."
- (f) In the proposed section 43C(1) -
  - (i) in paragraph (b), by deleting "scheme." and substituting "scheme; or";



ClauseAmendment Proposed

(ii) by adding -

"(c) being a member of a registered scheme -

(i) fails to pay a mandatory contribution on time; or

(ii) pays as a mandatory contribution an amount that is less than the required amount.".

(g) By deleting the proposed section 43C(2) and substituting -

"(2) A self-employed person who is convicted of an offence against this section is liable -

(a) to a fine at level 5 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and

(b) to a fine at level 6 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence.".

(h) In the proposed section 43D(1), by deleting "to a fine at level 5." and substituting -

ClauseAmendment Proposed

"\_

(i) to a fine at level 6 and to imprisonment for 12 months on the first occasion on which the person is convicted of the offence; and

(ii) to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion on which the person is convicted of the offence."

(i) In the proposed section 43E -

(i) by adding ", or recklessly makes a statement which is false or misleading in a material respect," after "respect";

(ii) by deleting "to a fine at level 6 and to imprisonment for 12 months." and substituting -

"\_

(a) to a fine at level 6 and to imprisonment for 12 months on the first occasion on which the person is convicted of the offence; and

(b) to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion on which the person is convicted of the offence."

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1, item 72	<p>(a) In the proposed section 45(2), in the definition of "prescribed financial penalty", by deleting "subsection (3)(a)" and substituting "section 45A(1)(a)".</p> <p>(b) In the proposed section 45A(1), by deleting "45,".</p> <p>(c) By deleting the proposed section 45A(3).</p> <p>(d) In the proposed section 45C(1), by deleting "the District Court" and substituting "a court of competent jurisdiction".</p> <p>(e) In the proposed section 45C(2), (6) and (7), by deleting "District Court" and substituting "court".</p> <p>(f) In the proposed section 45C(2), by adding "命令被告人繳付" after "即可".</p> <p>(g) By adding -</p>

**"45DA. Person not liable to be proceeded against for offence and financial penalty relating to same matter**

(1) A person may not be charged with an offence arising out of a contravention of a provision of this Ordinance if proceedings for the recovery of a financial penalty have been brought for the same contravention.

(2) Proceedings for the recovery of a financial penalty may not be brought against a person for a contravention of this Ordinance if the person has been charged with an offence arising out of the same contravention."

ClauseAmendment Proposed

- (h) By deleting the proposed section 45E.

Schedule  
1, item 73

- (a) In the proposed section 46(1A), by adding-
- "(ja) permitting approved trustees, despite section 12, to deduct from scheme members' accounts fees for administrative expenses;"
- (b) In the proposed section 46(1A)(s), by deleting "with respect to registered schemes" and substituting "relevant to the exercise of the Authority's functions".
- (c) In the proposed section 46(1A)(v), by deleting "." and substituting ";"
- (d) In the proposed section 46(1A), by adding -
- "(w) prohibiting funds of a registered scheme from being invested in pooled investment funds except as permitted by the regulations or as approved by the Authority."
- (e) In the proposed section 46(1B)(d), by adding ", including fees for the granting of approvals for the purposes of this Ordinance" after "regulations".

Schedule  
1, new item

- By adding -
- "73A. Section 46(2) Repeal "level 5" and substitute "level 6"."

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1, item 74	By deleting the item.
Schedule 1, item 76	By deleting the item.
Schedule 1, item 77	By adding -  <b>"47B. Rules against perpetuities not to apply to registered schemes</b>  The rules of law relating to perpetuities do not apply to the trusts relating to registered schemes or to the approved trustees of those schemes."
Schedule 1, item 78	(a) By deleting paragraph (a) and substituting -  "(a) Repeal item 7 and substitute -  "7. Any relevant employee (other than a casual employee) who has been employed under a contract of employment for a period of less than 60 days."."  (b) In the proposed item 8 of Part I of Schedule 1, by deleting "(other than a self-employed person)".
Schedule 1, item 80	(a) By adding before the proposed Schedule 1A -

ClauseAmendment Proposed

"SCHEDULE 1AA

[s. 6AA]

## PROVISIONS RELATING TO AUTHORITY

## PART 1

## DEFINITIONS

**1. Definitions**

In this Schedule -

"chairperson" (主席) means the chairperson of the Authority;

"deputy chairperson" (副主席) means the deputy chairperson of the Authority;

"director" (董事) means a director of the Authority.

## PART 2

## DIRECTORS OF AUTHORITY

**2. Periods for which directors may be appointed**

Subject to this Schedule, a director holds office for such period (not exceeding 4 years) as is specified in the director's document of appointment, but is eligible (if otherwise qualified) for re-appointment.

**3. Terms and conditions of office of directors**

A director is entitled to such terms and conditions of office (including remuneration and travelling and subsistence allowances) as the Chief Executive may, from time to time, determine in respect of the director.

ClauseAmendment Proposed**4. Vacancy in office of director**

(1) The office of a director becomes vacant if the director -

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) is, under the Mental Health Ordinance (Cap. 136), found by the Court to be of unsound mind and incapable of managing himself or herself and his or her affairs; or
- (e) is convicted in Hong Kong of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence which, if committed in Hong Kong, would be an offence so punishable; or
- (f) resigns the office by written notice given to the Chief Executive; or
- (g) is removed from office by the Chief Executive under this section.

ClauseAmendment Proposed

(2) The Chief Executive may remove a director from office at any time.

**5. Filling of vacancy in office of director**

If the office of a director becomes vacant, the Chief Executive must arrange for a suitable person to be appointed to fill the vacancy in accordance with this Ordinance as soon as practicable after the date on which the vacancy occurred.

**6. Acting executive directors etc.**

(1) The Chief Executive may, from time to time, appoint a person to act in the office of the Managing Director -

- (a) during the illness or absence of the Managing Director; or
- (b) during a vacancy in the office of Managing Director,

and the person, while so acting, has all the functions or, and is taken to be, the Managing Director.

(2) The Chief Executive may, at any time, remove from office a person appointed under subsection (1).

(3) The Financial Secretary may, from time to time, appoint a person to act in the office of an executive director (other than the Managing Director) -

- (a) during the illness or absence of the director; or



ClauseAmendment Proposed

- (b) during a vacancy in the office of such a director,

and the person, while so acting, has all the functions of, and is taken to be, an executive director.

(4) The Financial Secretary may, at any time, remove from office a person appointed under subsection (3).

(5) The deputy chairperson has the functions of the chairperson under sections 8 and 12 of this Schedule, and is taken to be the chairperson for the purposes of those section -

- (a) during the illness or absence of the chairperson; or

- (b) during a vacancy in the office of chairperson.

**7. Disclosure of pecuniary interests**

- (1) If -

- (a) a director has a pecuniary interest in a matter that is considered or is to be considered at a meeting of the Authority; and

- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

ClauseAmendment Proposed

the director must, as soon as practicable after becoming aware of the relevant facts, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure by a director at a meeting of the Authority that the director -

- (a) is an officer or member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the Authority in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

(4) After a director has disclosed the nature of any interest in any matter, the director must not, unless the Authority otherwise determines -

- (a) be present during any deliberation of the Authority with respect to the matter; or

ClauseAmendment Proposed

- (b) take part in any decision of the Authority with respect to the matter.

(5) For the purposes of the making of a determination by the Authority under subsection (4), a director who has a pecuniary interest in a matter to which the disclosure relates must not -

- (a) be present during any deliberation of the Authority for the purpose of making the determination; or

- (b) take part in the making by the Authority of the determination.

(6) A contravention of this section does not invalidate a decision of the Authority.

(7) This section does not apply to or in respect of an interest of a director in a matter or thing which arises merely because the director is a member of a registered scheme.

### PART 3

#### PROCEDURE AT MEETINGS OF AUTHORITY

#### 8. General procedure for meetings of Authority

(1) Meetings are to be held as often as necessary to enable the Authority to exercise and perform its functions.

(2) A meeting of the Authority may be convened by the chairperson.

(3) The chairperson must convene a meeting of the Authority on being given a notice for that purpose by 2 or more other directors.

ClauseAmendment Proposed

(4) The procedure for the convening meetings of the Authority and for the conduct of business at those meetings is, subject to this Schedule, to be as determined by the Authority.

**9. Quorum for meetings of Authority**

The quorum for a meeting of the Authority is a majority of its directors, but at least 3 of the directors present must be non-executive directors.

**10. Presiding director at meetings of Authority**

(1) A meeting of the Authority is to be presided over by -

- (a) the chairperson; or
- (b) in the absence of the chairperson, the deputy chairperson; or
- (c) in the absence of the chairperson and deputy chairperson, a director elected by the directors present at the meeting.

(2) The director presiding at a meeting of the Authority has a deliberative vote and also has a casting vote if the numbers of votes for and against a motion are equal. However, that director must consult with the Financial Secretary before exercising a casting vote.

**11. Voting at meetings of Authority**

A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present is the decision of the Authority.

ClauseAmendment Proposed**12. Transaction of business otherwise than at ordinary meetings**

(1) The business of the Authority may be transacted by the circulation of papers among all of the then existing directors.

(2) Any of the directors may initiate a motion concerning Authority business by circulating a paper.

(3) On becoming aware that a majority of directors has approved a motion circulated under subsection (2), the chairperson must notify the other directors that the motion has been so approved.

(4) Within 3 working days after being notified that a majority of the directors has approved the motion, any 2 of those other directors may, in accordance with section 8(3) of this Schedule, require a meeting of the Authority to be convened to consider the business to which the motion relates.

(5) A motion approved under this section takes effect as a decision of the Authority at the end of the period referred to in subsection (4) if no meeting of the Authority is required to be convened within that period in accordance with that subsection.

(6) In approving a motion under this section, the directors have the same voting rights as they have at an ordinary meeting of the Authority.

(7) Papers may be circulated among directors for the purposes of this section by facsimile message or other means of transmitting the information in the papers concerned."

ClauseAmendment Proposed

- (b) In section 1(b) of the proposed Schedule 1A, by deleting "Executive Director" where it twice appears and substituting "Managing Director".

Schedule 1, item 82 In the proposed Schedule 3, in section 3, by deleting "或每" and substituting "或每年".

Schedule 1, item 85 In the proposed Schedule 5A, by deleting section 3.

Schedule 1, item 87 In the proposed Schedule 8, by deleting sections 19, 20 and 21 and substituting -

**"19. Meaning of "subsidiary"**

A company is the subsidiary of another company for the purposes of this Schedule as prescribed by section 2(4) to (6) of the Companies Ordinance (Cap. 32).".

Schedule 1, item 94 By adding ", 46(3), 47(4)" after "35(8)".

Schedule 1, item 95 By adding before paragraph (a) -

"(aa) In paragraph (a), repeal "視察" and substitute"查察".".

Schedule 3, item 1 By deleting the item and substituting -

ClauseAmendment Proposed

"1. Section 2(1) Repeal the definition of "the Registrar" and substitute -

""Registrar" ( 處 長 ) means the  
Mandatory Provident Fund  
Schemes Authority;".

Schedule By adding -  
3, new item

"2A. Section 5 Repeal and substitute -

**5. Registrar of Occupational Retirement Schemes**

(1) The Mandatory Provident Fund Schemes Authority is the Registrar of Occupational Retirement Schemes and has the functions imposed or conferred on the Registrar by this Ordinance or any other law.

(2) The Authority is required to have a seal, which is to be used to authenticate documents issued by it under this Ordinance in its capacity as Registrar.

(3) The Authority must arrange for all amounts paid to, or recovered by, it under this Ordinance in its capacity as Registrar to be paid into the MPFA Administration Account established and maintained under section 6I of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).".

ClauseAmendment Proposed

Schedule     In the proposed section 24A -  
3, item 3

- (a)     in subsection (1), by deleting the definition of "arrears" and substituting -

""arrears" (欠款), in relation to a contribution payable to the funds of a scheme by a relevant employer, means so much of the contribution as has not been paid by that employer when it became due;"

- (b)     in subsection (1), in the definition of "relevant scheme", by deleting "that is" and substituting "in respect of which the members or a class of members and their employer are";

- (c)     by deleting subsections (2) and (3) and substituting -

"(2) If any arrears arise in respect of a relevant scheme, the Registrar may, in accordance with rules made under section 73 for the purpose, impose on the relevant employer -

- (a)     a financial penalty that does not exceed the greater of \$5,000 and an amount equal to 10 per cent of the arrears; and
- (b)     a requirement to pay a contribution surcharge at a rate prescribed by rules in force under section 73, not exceeding 20 per cent per annum of the arrears.



ClauseAmendment Proposed

(3) The Registrar may, by proceedings brought in a court of competent jurisdiction in Hong Kong, recover as a debt due to the Registrar any arrears payable by the relevant employer under this section, and any financial penalty or contribution surcharge imposed in respect of those arrears under subsection (2).

(3A) In any proceedings brought under subsection (3), a certificate, purporting to be signed by the Registrar, specifying the amount of any arrears, or of any financial penalty or contribution surcharge imposed in respect of those arrears under subsection (2), is, in the absence of evidence to the contrary, proof of the matters specified in the certificate.";

- (d) in subsection (5)(b), by deleting "fine" and substituting "financial penalty";
- (e) in subsections (5)(b), (6)(b) and (7), by deleting "penalty interest" and substituting "contribution surcharge";
- (f) in subsections (5)(b), (6)(b) and (7), by deleting "(2)(b)" and substituting "(2)";
- (g) in subsection 6(a), by deleting "(4)(b)" and substituting "(5)(b)".

ClauseAmendment Proposed

Schedule 3, new item By adding -

"3A. Section 36(10) Repeal "general revenue" and substitute "MPFA Administration Account established and maintained under section 6I of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)".

3B. Section 64(6) (a) Repeal "Crown" and substitute "Registrar".

(b) Repeal "general revenue" and substitute "MPFA Administration Account established and maintained under section 6I of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)".

Schedule 3, item 5 In the proposed section 73(1)(ea), by adding "and, in particular, for the purposes of determining when a contribution becomes due" after "section 24A".

Schedule 5, item 1 In the Chinese text, by deleting the item and substituting -

"1. 第2(1)條，"認可職業退休計劃"的定義 在(e)段中，廢除兩度出現的"任何條例"而代以"《強制性公積金計劃條例》(第485章)以外的任何條例"。"

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 5, item 6	In the proposed section 8(4)(b), by deleting "been".
Schedule 5, item 7	In the proposed section 9(1)(ae) - <ul style="list-style-type: none"> <li>(a) by deleting "been";</li> <li>(b) by deleting "(在退休、死亡、無行為能力或服務終止時收取的除外)".</li> </ul>
Schedule 5, item 12	<ul style="list-style-type: none"> <li>(a) In the proposed section 17(1)(h), by deleting "made" where it twice appears and substituting "paid".</li> <li>(b) In the proposed section 17(1)(k), by deleting "made" where it first appears and substituting "paid".</li> </ul>
Schedule 10, item 1	In the proposed section 4(1)(ea)(ii), by adding "in respect of which the members or a class of members and their employer are" after "scheme".
New	By adding -

"SCHEDULE 13 [s.14]  
 AMENDMENT OF PERSONAL DATA  
 (PRIVACY) ORDINANCE

Item	Provision affected	Amendment
1.	Section 2(1), definition of "financial regulator"	By adding -

ClauseAmendment Proposed

"(ga) the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);".

2. Section 58(3)(a)(i)

By adding -

"(BA) concerned in the administration of provident fund schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485);".

PROVIDENT FUND SCHEMES LEGISLATION  
(AMENDMENT) BILL 1997

**COMMITTEE STAGE**

Amendments to be moved by Hon Ronald ARCULLI, JP

Clause

Amendment Proposed

Schedule  
1, item 17

By adding -

**6AA. Membership of Authority**

(1) The Authority is to consist of not fewer than 10 directors appointed by the Chief Executive.

(2) Of the directors -

(a) non-executive directors must be the majority; and

(b) the remainder are executive directors.

(3) Of the non-executive directors -

(a) at least 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of participating employers; and

(b) at least 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of relevant employees.

(4) In appointing the directors the Chief Executive must ensure that -

ClauseAmendment Proposed

- (a) the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers; and
- (b) the total number of persons representing relevant employees and participating employers must not be less than half of the total number of non-executive directors.

(5) A director must exercise a reasonable degree of care and diligence so as to ensure that the Authority exercises and performs its functions properly.

(6) The Authority may exercise or perform any of its functions despite a vacancy in its directorship.

(7) Schedule 1AA has effect with respect to the directors and procedure of the Authority.

Schedule  
1, item 80

- (a) By adding before the proposed Schedule 1A -

"SCHEDULE 1AA [s.6AA]

PROVISIONS RELATING TO AUTHORITY

PART 1

DEFINITIONS

1. **Definitions**

In this Schedule -

"chairperson" (主席) means the chairperson of the Authority;

ClauseAmendment Proposed

"deputy chairperson" (副主席) means the deputy chairperson of the Authority;

"director" (董事) means a director of the Authority.

## PART 2

## DIRECTORS OF AUTHORITY

**2. Periods for which directors may be appointed**

Subject to this Schedule, a director holds office for such period (not exceeding 4 years) as is specified in the director's document of appointment, but is eligible (if otherwise qualified) for re-appointment.

**3. Terms and conditions of office of directors**

A director is entitled to such terms and conditions of office (including remuneration and travelling and subsistence allowances) as the Chief Executive may, from time to time, determine in respect of the director.

**4. Vacancy in office of director**

(1) The office of a director becomes vacant if the director -

(a) dies; or

(b) completes a term of office and is not re-appointed; or

ClauseAmendment Proposed

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) is, under the Mental Health Ordinance (Cap. 136), found by the Court to be of unsound mind and incapable of managing himself or herself and his or her affairs; or
- (e) is convicted in Hong Kong of an offence which is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence which, if committed in Hong Kong, would be an offence so punishable; or
- (f) resigns the office by written notice given to the Chief Executive; or
- (g) is removed from office by the Chief Executive under this section.

(2) The Chief Executive may remove a director from office at any time.

**5. Filling of vacancy in office of director**

If the office of a director becomes vacant, the Chief Executive must arrange for a suitable person to be appointed to fill the vacancy in accordance with this Ordinance as soon as practicable after the date on which the vacancy occurred.



ClauseAmendment Proposed**6. Acting executive directors etc.**

(1) The Chief Executive may, from time to time, appoint a person to act in the office of the Managing Director -

(a) during the illness or absence of the Managing Director; or

(b) during a vacancy in the office of Managing Director,

and the person, while so acting, has all the functions of, and is taken to be, the Managing Director.

(2) The Chief Executive may, at any time, remove from office a person appointed under subsection (1).

(3) The Financial Secretary may, from time to time, appoint a person to act in the office of an executive director (other than the Managing Director) -

(a) during the illness or absence of the director; or

(b) during a vacancy in the office of such a director,

and the person, while so acting, has all the functions of, and is taken to be, an executive director.

(4) The Financial Secretary may, at any time, remove from office a person appointed under subsection (3).

(5) The deputy chairperson has the functions of the chairperson under sections 8 and 12 of this Schedule, and is taken to be the chairperson for the purposes of those section -

ClauseAmendment Proposed

- (a) during the illness or absence of the chairperson; or
- (b) during a vacancy in the office of chairperson.

**7. Disclosure of pecuniary interests****(1) If -**

- (a) a director has a pecuniary interest in a matter that is considered or is to be considered at a meeting of the Authority; and
- (b) the interest appears to raise a conflict with the proper performance of the director's duties in relation to the consideration of the matter,

the director must, as soon as practicable after becoming aware of the relevant facts, disclose the nature of the interest at a meeting of the Authority.

**(2) A disclosure by a director at a meeting of the Authority that the director -**

- (a) is an officer or member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

ClauseAmendment Proposed

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the Authority in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.

(4) After a director has disclosed the nature of any interest in any matter, the director must not, unless the Authority otherwise determines -

- (a) be present during any deliberation of the Authority with respect to the matter; or
- (b) take part in any decision of the Authority with respect to the matter.

(5) For the purposes of the making of a determination by the Authority under subsection (4), a director who has a pecuniary interest in a matter to which the disclosure relates must not -

- (a) be present during any deliberation of the Authority for the purpose of making the determination; or
- (b) take part in the making by the Authority of the determination.

(6) A contravention of this section does not invalidate a decision of the Authority.

(7) This section does not apply to or in respect of an interest of a director in a matter or thing which arises merely because the director is a member of a registered scheme.

ClauseAmendment Proposed

## PART 3

## PROCEDURE AT MEETINGS OF AUTHORITY

**8. General procedure for meetings of Authority**

(1) Meetings are to be held as often as necessary to enable the Authority to exercise and perform its functions.

(2) A meeting of the Authority may be convened by the chairperson.

(3) The chairperson must convene a meeting of the Authority on being given a notice for that purpose by 2 or more other directors.

(4) The procedure for the convening meetings of the Authority and for the conduct of business at those meetings is, subject to this Schedule, to be as determined by the Authority.

**9. Quorum for meetings of Authority**

The quorum for a meeting of the Authority is a majority of its directors, but at least 3 of the directors present must be non-executive directors.

**10. Presiding director at meetings of Authority**

(1) A meeting of the Authority is to be presided over by -

- (a) the chairperson; or
- (b) in the absence of the chairperson, the deputy chairperson; or
- (c) in the absence of the chairperson and deputy chairperson, a director elected by the directors present at the meeting.

ClauseAmendment Proposed

(2) The director presiding at a meeting of the Authority has a deliberative vote and also has a casting if the numbers of votes for and against a motion are equal. However, that director must consult with the Financial Secretary before exercising a casting vote.

**11. Voting at meetings of Authority**

A decision supported by a majority of the votes cast at a meeting of the Authority at which a quorum is present is the decision of the Authority.

**12. Transaction of business otherwise than at ordinary meetings**

(1) The business of the Authority may be transacted by the circulation of papers among all of the then existing directors.

(2) Any of the directors may initiate a motion concerning Authority business by circulating a paper.

(3) A motion under this section is to be approved by a simple majority of the directors unless within 3 working days of the date of the paper the chairperson orders, or any 2 other directors require under section 8(3) of this Schedule, that a meeting of the Authority to be convened to consider the motion.

(4) Papers may be circulated among directors for the purposes of this section by facsimile message or other means of transmitting the information in the papers concerned."

PROVIDENT FUND SCHEMES LEGISLATION  
(AMENDMENT) BILL 1997

**COMMITTEE STAGE**

Amendments to be moved by Hon CHAN Yuen-han

Clause

Amendment Proposed

12            By deleting the clause.

Schedule    By adding -  
1, item 17

**"6AA. Membership of Authority**

(1)    The Authority is to consist of not fewer than 10 directors appointed by the Chief Executive.

(2)    The Chief Executive must as far as practicable ensure that the ratio of number of persons appointed as non-executive directors is 2 to 1 the number of other persons who are executive directors.

(3)    Of the non-executive directors -

- (a)    at least 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of relevant employees; and
- (b)    at least 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of participating employers.

ClauseAmendment Proposed

(4) In appointing the directors, the Chief Executive must ensure that the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers.

(5) A director must exercise a reasonable degree of care and diligence so as to ensure that the Authority exercises and performs its functions properly.

(6) The Authority may exercise or perform any of its functions despite a vacancy in its membership.

(7) Schedule 1AA has effect with respect to the directors and procedure of the Authority.

### **6AC. Chairperson and deputy chairperson of Authority**

(1) The Chief Executive is to appoint one of the non-executive directors as the chairperson of the Authority.

(2) The Chief Executive is to appoint one of the other non-executive directors as the deputy chairperson of the Authority.

(3) A person holding office as chairperson or deputy chairperson ceases to hold that office on ceasing to be a non-executive director of the Authority."

Schedule 1, item 23 (a) In the proposed section 12(1), by deleting "Subject to section 12A, a" and substituting "Every";

(b) In the proposed section 12(2), by deleting "Subject to section 12A," and substituting "Any".

Schedule 1, item 24 By deleting the item.

ClauseAmendment Proposed

Schedule 3, item 4      By deleting the item.

Schedule 4      By deleting the Schedule and substituting —

"SCHEDULE 4  
AMENDMENT OF EMPLOYMENT ORDINANCE

Item	Provision affected	Amendment
1.	Section 2(1)	In the definition of "retirement scheme", add "but does not include any provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485)" after the "length of service".

Schedule 11      By deleting the Schedule.



PROVIDENT FUND SCHEMES LEGISLATION  
(AMENDMENT) BILL 1997

**COMMITTEE STAGE**

Amendments to be moved by Dr Hon LAW Cheung-kwok

Clause

Amendment Proposed

Schedule  
1, item 17

By adding -

**"6AA. Membership of Authority**

(1) The Authority is to consist of not fewer than 12 directors appointed by the Chief Executive.

(2) Of the directors -

(a) not more than 40% are to be executive directors; and

(b) the remainder are non-executive directors.

(3) Of the non-executive directors -

(a) at least 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of participating employers; and

(b) at least 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of relevant employees.

ClauseAmendment Proposed

(4) In appointing the directors, the Chief Executive must ensure that the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers.

(5) A director must exercise a reasonable degree of care and diligence so as to ensure that the Authority exercises and performs its functions properly.

(6) The Authority may exercise or perform any of its functions despite a vacancy in its directorship.

(7) Schedule 1AA has effect with respect to the directors and procedure of the Authority.

**6AC. Chairperson and deputy chairperson of the Authority**

(1) The Chief Executive is to appoint one of the non-executive directors to be the Chairperson of the Authority.

(2) The Managing Director is, by virtue of holding that office, the deputy chairperson of the Authority.

(3) A person holding office as chairperson of the Authority ceases to hold that office on ceasing to be a director of the Authority."

ClauseAmendment Proposed

Schedule      By adding -  
1, new item

"32A.            Section 17            Add -

"(6A) Where the Financial Secretary is of the opinion that the compensation fund referred to in subsection (1) may not be sufficient for the purpose stated therein, he must as soon as practicable seek the approval of the Legislative Council for the provisions referred to in subsection (6).".

**Annex II****OCCUPATIONAL DEAFNESS (COMPENSATION)  
(AMENDMENT) (NO. 2) BILL 1997****COMMITTEE STAGE**Amendments to be moved by the Secretary for Education and Manpower

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting "sections 21 and 22" and substituting "section 21".
1(3)	(a) By deleting "Sections 21 and 22" and substituting "Section 21".  (b) By deleting "January" and substituting "April".
6	In paragraph (a), by adding before subparagraph (i) -  "(ia) by repealing paragraph (a) and substituting -  "(a) (i) that he has had at least 10 years of employment in aggregate in any noisy occupation in Hong Kong before the date of the relevant application under section 15; or  (ii) that he has had at least 5 years of employment in aggregate in any noisy occupation specified in paragraphs (c), (j), (k) and (y) of Schedule 3 in Hong Kong before the date of the relevant application under section 15;"

ClauseAmendment Proposed

21 By deleting the proposed Schedule 2 and substituting -

"SCHEDULE 2 [SS. 4, 6(3) & 7(1)]  
BODIES SPECIFIED FOR THE PURPOSES OF SECTION 7(1)

Item	Specified body	Proportion of the net resources of the Board to be distributed		
		Proportion of the net resources up to the relevant period ending on 31 March 1998	Proportion of the net resources in respect of the relevant period ending on June 1998	Proportion of the net resources in respect of the relevant period ending on 30 September 1998 and thereafter
1.	The Occupational Safety and Health Council	2/7	4/9	20/53
2.	The Employees Compensation Assistance Fund Board	2/7	2/9	10/53
3.	The Occupational Deafness Compensation Board	3/7	3/9	23/53".

ClauseAmendment Proposed

22 By deleting the clause and substituting -

**"22. Prescribed rate of levy**

Paragraph 2(c) of the Employee's Compensation Insurance Levy (Rate of Levy) Order (Cap. 411 sub. leg.) is repealed and the following substituted -

"(c) on or after 1 January 1998 and before 1 April 1998 is 4.5%;

(d) on or after 1 April 1998 is 5.3%."."