

OFFICIAL RECORD OF PROCEEDINGS

Tuesday, 7 April 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 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 CHOY KAN-PUI, 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

THE HONOURABLE TAM YIU-CHUNG, J.P.

THE HONOURABLE CHOY SO-YUK

MEMBERS ABSENT:

THE HONOURABLE HUI YIN-FAT, J.P.

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

DR THE HONOURABLE LAW CHEUNG-KWOK

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE DONALD TSANG YAM-KUEN, J.P.
THE FINANCIAL SECRETARY

MR I G M WINGFIELD, J.P.
SECRETARY FOR JUSTICE

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

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

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

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

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

MRS RITA LAU NG WAI-LAN, J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT

MR KEVIN HO CHI-MING, J.P.
SECRETARY FOR TRANSPORT

MR MATTHEW CHEUNG KIN-CHUNG, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

CLERKS IN ATTENDANCE:

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

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

MRS JUSTINA LAM CHENG BO-LING, 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

L.N. No.

Marriage and Children (Miscellaneous Amendments)	
Ordinance 1997 (69 of 1997) (Commencement)	
Notice 1998	199/98

Sessional Papers

- No. 106 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1997-98
(Public Finance Ordinance : Section 8)
- No. 107 — Report of the Broadcasting Authority
September 1996 - August 1997
- No. 108 — Employees' Compensation Insurance Levies
Management Board
Annual Report 1996/97
- No. 109 — Employees Compensation Assistance Fund Board
Annual Report 1996/97
- No. 110 — Occupational Safety and Health Council
Annual Report 1996-1997

Reports

Report of the Committee on Rules of Procedure 1997/98

Report of the Panel on Health Services 1997/98

Report of the Panel on Administration of Justice and Legal Services 1997/98

Report of the Panel on Education 1997/98

Report of the Panel on Environmental Affairs 1997/98

Report of the Panel on Home Affairs 1997/98

Report of the Panel on Housing 1997/98

Report of the Panel on Information Policy 1997/98

Report of the Panel on Manpower 1997/98

Report of the Panel on Planning, Lands and Works 1997/98

Report of the Panel on Public Service 1997/98

Report of the Panel on Security 1997/98

Report of the Panel on Trade and Industry 1997/98

Report of the Panel on Welfare Services 1997/98

Report of the Bills Committee on Adaptation of Laws (Interpretative Provisions) Bill

Report of the Bills Committee on Legal Practitioners (Amendment) Bill 1998

Report of the Bills Committee on Adaptation of Laws (Nationality Related Matters) Bill

Report of the Bills Committee on Land (Compulsory Sale for Redevelopment) Bill

Report of the Bills Committee on Inland Revenue (Amendment) Bill 1998

Report of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 1998

Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 1998

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Mrs Selina CHOW will address the Council on the Report of the Committee on Rules of Procedure 1997/98. Mrs Selina CHOW.

Report of the Committee on Rules of Procedure 1997/98

MRS SELINA CHOW (in Cantonese): Madam President, on behalf of the Committee on Rules of Procedure of the Provisional Legislative Council, I submit the Report as set out in the PLC Paper No. CB(1) 1236 circularized to Members days ago.

The Committee on Rules of Procedure was formally established in October 1997 to take over the duties of the Working Group on Rules of Procedure. Members of the Committee are basically members of the former Working Group. During the 14 months from the Working Group to the Committee on Rules of Procedure, we have held 23 formal meetings and nine informal meetings for exchange of views, among which many were held in marathon sessions.

The work of the Committee can be divided into two major parts. The first part is the formulation of the Rules of Procedure, the House Rules and the Procedure of the Finance Committee of the Provisional Legislative Council, in the hope that the business of the Provisional Legislative Council can be conducted in a smooth manner. The Committee is also committed to ensuring that essential steps pertaining to the effective processing and enactment of legislation are properly incorporated into the present legislative procedures.

The second part is the tendering of advice on the Rules of Procedure pertaining to the first Legislative Council of the Hong Kong Special Administrative Region (SAR), particularly on the incorporation of certain procedures into the Rules of Procedure in accordance with the stipulations of the Basic Law in order to tie in with the existing mechanism. Some examples are the matters related to the voting procedures and the procedure for reconsideration of bills returned by the Chief Executive. The Committee hopes that it can provide advice to the Provisional Legislative Council Secretariat in regard to policies and principles on some significant and controversial issues and that it can be taken as reference when the Secretariat prepares the draft Rules of Procedure for the first Legislative Council of the SAR.

I am delighted to inform Members that the Committee has already attained the above goals. Here, I would like to thank members of the Committee for their time and efforts. On behalf of the Committee members, I would also like to thank all other Members of this Council for their precious advice and support for the Committee. Besides, I have to thank the staff of the Secretariat for their hard work. This I hope to put on record.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Ambrose LAU will address the Council on the Report of the Panel on Administration of Justice and Legal Services 1997-98. Mr Ambrose LAU.

Report of the Panel on Administration of Justice and Legal Services 1997/98

MR AMBROSE LAU (in Cantonese): Madam President, as Chairman of the Panel on Administration of Justice and Legal Services, I hereby submit the Report of the Panel for the year 1997-98.

The Panel was concerned about the implementation of the use of Chinese in courts and the resources available for this programme. Members noted that the Department of Justice had produced authentic Chinese texts for all legislation enacted in English and that all new legislation was now drafted in both official languages. Moreover, the Judiciary had already put in place a bilingual court system, in which either or both of the Chinese and English languages could be used

in courts. To help judges to accustom themselves to using Chinese in courts and to assess the adequacy of Chinese summing-ups in jury trials in the High Court, the Judiciary had conducted a series of mock trials. The Administration had also decided to set up a Committee on Bilingual Legal system in Hong Kong to oversee and facilitate the implementation of the policy of bilingualism in the legal system.

The Panel has also discussed with the Administration on the progress of localization in the Department of Justice. Members noted that with the help of three special localization schemes, the Department had made significant progress with localization in the past nine years. Some members observed that the percentage of local strength at the Deputy Principal Government Counsel rank was still rather low at 50% and suggested recruitment from the private sector be considered. The Administration explained that while the existing human resources policy of the Department of Justice did not rule out open recruitment, it would first try to identify suitable staff within the Department or related government departments before it went for open recruitment. As an ongoing exercise, the Department of Justice would continue to groom those Government Counsel grade staff with demonstrated potential for higher responsibilities by providing local and overseas training and other career development opportunities to realize their potential.

Besides, the Panel has held a special meeting to discuss the prosecution policy of the Department of Justice, in the light of concern expressed by the media and members of the public over the decision of the Secretary for Justice not to prosecute Madam AW Sian, the named co-conspirator in the Hong Kong Standard case. The Secretary for Justice assured members that in reaching her decision, she had strictly adhered to the established prosecution policy of the Department and to Article 63 of the Basic Law. She explained the policy of non-disclosure and the various reasons for not charging all alleged co-conspirators in a case. Observing the principle that no comments should be made on matters which are *sub judice*, members requested for a full statement to be made on the case after the trial.

The other work of the Panel has been listed in the Report which I shall not repeat here.

I so submit.

PRESIDENT (in Cantonese): Mr YEUNG Yiu-chung will address the Council on the Report of the Panel on Education 1997/98. Mr YEUNG Yiu-chung.

Report of the Panel on Education 1997/98

MR YEUNG YIU-CHUNG (in Cantonese): Madam President, in the policy address delivered in October 1997, the Chief Executive gave high priority to education and made undertakings in various aspects. The Panel on Education has conducted thorough discussions and taken follow-up actions on various major issues, the details of which have been stated in the Report. As Chairman of the Panel, I will speak on some of the major items.

In regard to mother-tongue teaching, the Panel supported the Administration's issuance of firm guidance requiring schools to use Chinese as the medium of instruction unless with special permission. The Panel was deeply concerned about the controversy aroused by the announcement of 100 schools being allowed to use English as the teaching medium and the appeal by 20 schools against the decision of the Vetting Committee requiring them to teach in Chinese, and sought explanation from the Administration on the vetting criteria and procedures. In order to allay the worries of the public and to demonstrate the determination of implementing mother-tongue teaching, the Panel urged the Administration to take active measures to assure parents and the community of the merits of mother-tongue teaching, and to provide greater resources to schools adopting Chinese as the medium of instruction.

In regard to the Native-speaking English Teacher Scheme which the Administration is going to launch in order to enhance the English proficiency of secondary students, the Panel reckoned that apart from recruiting expatriate teachers, the Administration should also enhance the training in English teaching for local teachers. On the proposed terms and conditions of employment for these expatriate teachers, in particular the monthly housing allowance and end-of-contract gratuity which compared more favourably than those of their local counterparts, the Panel urged the Administration to align as far as possible the employment terms between local and expatriate teachers so as not to affect the morale of local teachers. The Administration took note of members' concern and subsequently, in its funding request to the Finance Committee, adjusted the proposed monthly housing allowance and gratuity for expatriate teachers.

Promotion of information technology (IT) in education is another major area of work. The Panel supported the Administration's formulation of a five-year IT education strategy and would continue to follow up the formulation and implementation of the IT strategy. However, members also cautioned the Administration against adopting a hasty and rigid approach to achieve targets and stressed the need to equip teachers with the necessary training and to provide adequate supporting resources to schools to tie in with the wider application of IT.

The Panel also urged the Administration not to overlook the quality of education when implementing various improvement measures. For instance, the Panel has much reservation about the Administration's measure of raising the percentage of whole-day schools by increasing the number the students in each class. The Panel also urged for greater co-operation among relevant bureaux and departments to expedite the implementation of the School Building Programme.

In regard to tertiary education, the Panel has discussed with the Government and the University Grants Committee (UGC) about the newly proposed Non-means Tested Loan Scheme and improvements to the existing Local Student Finance Scheme. Members also called upon the Administration and the UGC to ensure that the quality of tertiary education would not suffer as a result of the 10% reduction in student unit cost of tertiary institutions for the 1998-2001. The Panel will keep the development of the situation under close attention in the future.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese): Dr TSO WONG Man-yin will address this Council on the Report of the Panel on Environmental Affairs 1997/98. Dr TSO WONG Man-yin.

Report of the Panel on Environmental Affairs 1997/98

DR TSO WONG MAN-YIN (in Cantonese): Madam President, as Chairman of the Panel on Environmental Affairs, I would like to highlight two main areas of work of the Panel on Environmental Affairs in this Session.

Firstly, on the work in respect of the waste reduction plan. Waste management was a subject of special concern to the Panel. Members expressed their great support to the waste reduction plan proposed by the Administration. We were of the view that waste reduction was the long-term strategy to deal with the ever increasing waste in Hong Kong. In particular, we supported the proposal on the construction of waste-to-energy incinerators in Hong Kong, so that advanced incineration techniques could be employed for the treatment of different types of wastes. Members considered that this proposal was cost-effective and urged the Administration to expedite the feasibility study in order to materialize the building plan. In addition, Members also noted that the Administration's plans to alter the Chemical Waste Treatment Centre at Tsing Yi for treating clinical wastes, and to build an animal cremator in the North District or Tuen Mun for treating animal carcasses as interim measures. Members urged the Administration to assess the cost-effectiveness of these plans, to consult the relevant district organizations and professions concerned, as well as to conduct environmental and financial assessments before making a final decision. These were our work on waste reduction.

Secondly, on environmental protection, especially on the idea of "pollution is no respecter of administrative boundaries", Members advocated cross-boundary co-operation in environmental protection work. The Panel urged the Administration to liaise closely and strengthen co-operation with the mainland authorities in addressing environmental issues of mutual concern. For example, the Administration might consider extending the service of the Chemical Waste Treatment Centre to receive chemical wastes produced in the Pearl River Delta. On the other hand, Hong Kong might make use of the facilities in the Mainland for the treatment of its low-radioactive wastes. With the establishment of the Hong Kong-Guangdong Environmental Protection Liaison Group, studies on a wide range of environmental issues had been undertaken, notably the Deep Bay Regional Control Strategy, and joint studies on Mires Bay and on conservation and protection of Chinese White Dolphins. Members called for the Liaison Group's enhanced transparency.

Members noted the Administration's proposal to provide an interest-free loan of HK\$2.364 billion to the Guangdong Provincial People's Government for the purpose of constructing a new closed aqueduct, in order to improve the quality of Dongjiang water supplied to Hong Kong.

Details of our work in other areas are listed in the report, therefore, I will not repeat them here. I hope the "plan on sustainable development" will be carried out carefully so that our environment will be improved in line with our economic development.

I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Mrs Peggy LAM will address this Council on the Report on the Panel on Home Affairs 1997/98. Mrs Peggy LAM.

Report of the Panel on Home Affairs 1997/98

MRS PEGGY LAM (in Cantonese): Madam President, as Chairman of the Panel on Home Affairs, I hereby submit the Panel's report for the year 1997-98. Since details on various aspects of our work are already covered in the report, I will only highlight a few major issues here.

With regard to the protection of the rights of women and the provision of services to women, the Panel came to the view that the Administration should step up co-ordination in these areas between the Government and non-governmental organizations. More resources should be provided for these organizations to facilitate the provision of more services for women. I also suggested that the Government should set up a one-stop resource centre to assist women to get the services they needed.

As regards youth services, the Panel was concerned about the absence of a well-defined youth policy by the Government and we received views of deputations from youth organizations. The Panel considered that the Government should follow up the motion on youth policy passed by the Provisional Legislative Council on 3 December 1997 and formulate a better-defined policy objective, revise the Charter for Youth, enhance the education of youth about China and strengthen the role of the Commission on Youth in formulating and implementing these policies.

The Panel also had a lot of discussions on building management and maintenance. Members opined that the Government should take a proactive approach to assist owners of private buildings to form owners' corporations and tackle problems encountered in building management and maintenance. As to the issue of mandating the formation of organizations to effect proper building

management, members considered that the Government should give careful consideration to the legal and practical implications involved. On improving fire safety of buildings, members supported the establishment of District Fire Safety Committees and thought that community participation at the district level should be encouraged in order to enhance people's sense of fire safety.

As regards whether an intermediary body should be set up to assist maintenance payees to recover alimony, the Panel requested the Provisional Legislative Council Secretariat to study the operation and effectiveness of such intermediary bodies in overseas countries in order to facilitate further discussions by the legislature and the Administration. The Panel also urged the Government to consider introducing legislative amendments to accord priority to maintenance payments in the distribution of a bankrupt's property.

Lastly, I would like to take this opportunity to thank members of the Panel, the Administration, the Equal Opportunities Commission, the Provisional Legislative Council Secretariat and deputations and individuals who have offered their views to the Panel in various aspects.

Thank you.

PRESIDENT (in Cantonese): Miss CHAN Yuen-han will address the Council on the Report of the Panel on Housing 1997/98. Miss CHAN Yuen-han.

Report of the Panel on Housing 1997/98

MISS CHAN YUEN-HAN (in Cantonese): Madam President, as Chairman of the Panel on Housing, I will highlight the work done by the Panel this year.

The past nine months had been marked with a number of significant changes in the housing policy by the Administration, including the formulation of the *White Paper on Long Term Housing Strategy*, the setting of the annual production target of 85 000 flats, the launching of the Tenants Purchase Scheme (TPS) and the Home Starter Loan Scheme. With this series of policy changes, the Panel on Housing had held 23 meetings with the Administration and exchanged views on various issues.

In examining the Government's *White Paper on Long Term Housing Strategy* published in February 1998, the Panel studied how the slowing-down of the property market resulting from the recent financial turmoil would impact on the annual production target of 35 000 private housing flats. Members noted that the Administration had implemented a flexible land supply policy in view of the poor response to property sales. Members urged the Administration to take into account the actual housing needs rather than the state of the private property market in its conduct of the land disposal programme for the private sector. In considering whether to increase the proportion of public housing to make up for the shortfall in private housing as a result of poor market condition, the Administration undertook to review the ratio between public and private housing in the light of new projections on housing demand derived by the housing demand model.

On the issue of rent increase for public housing, there had been repeated debates between the Panel and the Administration. The Administration subsequently accepted the views of the Panel and withdrew its intention to amend the triennial rent review cycle.

With regard to the construction of public sector housing, the Panel held a number of meetings with the Administration, urging the Government to conduct a comprehensive review on the quality of subsidized home ownership flats and public housing estates, as well as its mechanism for monitoring the works concerned. During the meetings, the Administration undertook to take on the damages arising out of the defects caused by site settlement in On Ning Garden first. Members welcomed this move by the Administration.

The other housing target laid down by the Chief Executive is that by the year 2007, 70% of the territory's families must possess their own homes. In order to realize this target, the Administration launched the TPS last December. Apart from studying the scheme in detail, the Panel had, during the meetings, over and over again put forward to the Government its views on matters arising from the scheme. In addition, the Panel also invited submissions on the scheme from members of the public. The introduction of the TPS has a direct impact on the sale of Home Ownership Scheme (HOS) flats. While the Administration has to return the deposits for HOS flats to purchasers under the TPS on one hand, it has to make available flexible discount rates for the new phase of HOS flats on the other. As a result, prospective HOS buyers who have not yet taken possession of their flats

feel that they are being treated unfairly because they cannot enjoy the same benefit. In view of the impact of the TPS, members urged the Administration to announce as soon as possible the names and relevant sale schedule of all the TPS estates and to conduct a comprehensive review on the problems caused by the TPS, including the sale of HOS flats, the avoidance of inequality resulting from the public housing hereditary system upon purchase of the said TPS flats, the new management model for TPS estates and so on.

All in all, the Panel had exchanged views with the Administration on a wide range of housing issues. The Administration had even accepted the Panel's proposals on certain major issues and made corresponding adjustments. Here I would like to thank members for their efforts, the Provisional Legislative Council Secretariat for their assistance and all government officials concerned.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese) : Miss CHOY So-yuk will address this Council on the Report of the Panel on Information Policy 1997/98. Miss CHOY So-yuk.

Report of the Panel on Information Policy 1997/98

MISS CHOY SO-YUK (in Cantonese): Madam President, as Chairman of the Panel on Information Policy, I hereby submit the Panel's work report for the year 1997-98.

Over the past nine months, the Panel on Information Policy has dedicated its effort to urging the Administration to draw up detailed strategies and work plans in respect of future information technology development to enable Hong Kong to maintain its competitiveness in this rapidly developing information era and not to lag behind other advanced countries in the world. The Panel held a number of meetings to discuss with 22 deputations from the information technology industry and educational institutions and to receive their views on the policy initiatives on information technology development set out in the Chief Executive's policy address. In this respect, the industry and the education sector put forward a lot of proposals that were full of foresight and insight. The Panel concluded that the Government should take the lead in the application of advanced information technology and

encourage a more widespread application of such technology in the fields of trade and industry, education and different sectors of the community. The Panel thought that as technology progressed with each passing day, while implementing various measures to promote the development and education of information technology, the Government should plan with details and vision to ensure the effective use of resources and the acquisition of the latest technology. At the same time when we educate our next generation on the application of information technology, it is equally important to train the teachers and the workforce to enable them to adapt to the current information society. The Panel also urged the Administration to set up as soon as possible a dedicated policy bureau on information technology development, as well as a high-level steering committee to co-ordinate the overall strategy for information technology development and application in both public and private sectors.

As regards the liberation of the telecommunications market, the Panel urged the Administration to, in line with the international competitive environment, resolve the franchise of external circuits and telephone services as soon as possible to ensure effective and fair competition in the external telecommunication services market.

Furthermore, discussions were held with the Administration and the Privacy Commissioner on the protection of press freedom and privacy of personal data, and reports in these areas were received. Details of these discussions are set out in the work report and so I will not repeat them here.

I would like to take this opportunity to thank members of the Panel, the Administration, the Privacy Commissioner, the Provisional Legislative Council Secretariat and deputations and individuals who have offered their views to the Panel.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam will address the Council on the Report of the Panel on Manpower 1997/98. Mr CHAN Kam-lam.

Report of the Panel on Manpower 1997/98

MR CHAN KAM-LAM (in Cantonese): Madam President, as Chairman of the Panel on Manpower, I hereby submit the report and highlight some of the main points.

The Panel has all along been extremely concerned about the issue of employment of local employees. At the end of last year, the Asian financial crisis has dealt a severe blow to the economy of Hong Kong, aggravating the unemployment problem. The Panel had, on numerous occasions, discussed with the Administration about various improvement measures and members had also come up with a series of proposals. In regard to retraining, members urged the Administration to improve the existing programmes to meet the genuine needs of the market so that the retrainees can return to the market smoothly, and to follow up the implementation of the retraining programme tailor-made for long-term job vacancies. Other proposals included the stipulation of priority employment for local workers as a tender condition for contractors bidding for government projects, and the studying of the unemployment problem by a high-level task force. The Administration has already agreed to further consider members' proposals.

The Panel fully understands that the unemployment problem at present is closely related to the development of the entire economy and that it cannot be solved overnight. The Panel reiterates that only with the close co-operation of the government bureaux concerned and their wide acceptance of views that the present situation can be wholly improved. The Panel will continue to closely monitor the effectiveness of various improvement measures in future.

In regard to the controversial importation of labour problem, although there are different views among members, there is an unanimous view that local workers should be given priority to employment. Members have emphasized from time to time that before the Government formally implements the labour importation scheme, it should carefully assess the changes in the economic situation and the labour market. The Panel also noted the Administration's decision to defer the implementation of the Construction Labour Importation Scheme proposed earlier in the light of the prevailing economic and labour market situation and public feedback.

In view of the huge demand for manpower by the massive infrastructural projects to be carried out very soon and in order to reduce the demand for imported labour, the Panel urged the Administration to conduct a comprehensive review of and improve the terms of employment of construction workers, such as offering remuneration on a monthly basis and employment on contractual terms in order to attract and retain effective workers. The Administration has agreed to relay the proposal concerned for consideration by the quadrilateral working Group set up to study matters in relation to manpower situation in the construction industry.

Apart from employment and manpower resources, the Panel has also paid close attention to the statutory rights of employees. Earlier on, it has discussed in detail about the implication due to deferment of implementation of those laws and provisions concerning the right to collective bargaining and the right to reinstatement of employees as well as certain trade union activities, and has positively given advice to the Administration before it further puts forward its legislative proposal. In regard to occupational health and safety, the Panel has studied the various improvement measures of the Administration and urged that apart from legislation, the Administration should also enhance co-operation with the employers and employees through publicity and education. The Panel on Manpower will definitely follow up the development of various legislative matters in future.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese) : Mr IP Kwok-him will address this Council on the Report of the Panel on Public Service 1997/98. Mr IP Kwok-him.

Report of the Panel on Public Service 1997/98

MR IP KWOK-HIM (in Cantonese): Madam President, as Chairman of the Panel on Public Service, I hereby submit the Panel's work report and highlight some of the major issues.

As regards the current review of the system for declaration of interests by civil servants, Members were assured that, in conducting the review, the Administration would maintain the right balance between civil servant's right of private investments and the Administration's determination to uphold a high standard of integrity and impartiality in the Civil Service. The Administration aimed at drawing up a new set of guidelines on declaration of interests for the Civil Service in mid-1998 after consultation with the relevant parties.

The Panel was briefed on the revised criteria and arrangements for transfer from agreement to local permanent and pensionable terms in the Civil Service. This was to give effect to the Court of Appeal's judgement handed down in November 1996 in respect of a legal challenge brought by the Association of Expatriate Civil Servants in Hong Kong. A majority of members agreed with the Administration that the Chinese language requirement for transfer should be consistent with the long-term policy objective to develop a biliterate, trilingual Civil Service. Noting that exemptions on the Chinese language requirement might be granted to individual officers under justifiable circumstances, members urged the Administration to determine, as soon as possible, the required standard in each grade having regard to operational needs.

Members were also concerned about the monitoring mechanism in posts creation. In this respect, the Administration assured members that the respective roles played by the Establishment Subcommittee, the Finance Committee, the Civil Service Bureau, Controlling Officers, the departmental establishment committees and the advisory bodies had provided the necessary checks and balances to ensure that additional posts were only created when functionally justified. The "establishment ceiling" was another effective mechanism used to monitor the growth of the Civil Service.

In addition, the Panel was also briefed on the mechanism for pay scales review of individual grades. Referring to the grievances expressed by the Staff Side of the Disciplined Services Consultative Council over a proposal to adjust Junior Police Officers' pay scales, the Administration informed members that as the police was on a different pay scale, it was necessary to consider cases separately. Members were assured that any requests on adjustment of pay scales received from other disciplined services would be examined on their own merits under the established mechanism.

I would like to take this opportunity to thank Members for their contribution to the work of the Panel, and the Administration for its co-operation in response to the various requests made by Members. I would also like to thank the Secretariat for its assistance to the Panel. I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Mrs Selina CHOW will address the Council on the Report of the Panel on Security 1997/98. Mrs Selina CHOW.

Report of the Panel on Security 1997/98

MRS SELINA CHOW (in Cantonese): Madam President, as Chairman of the Panel on Security, I present to the Provisional Legislative Council the Panel's report. I will only highlight some of the major issues.

The Panel was much concerned about the prolonged serious overcrowding in penal institutions in Hong Kong and a subcommittee was tasked to examine in detail possible ways to resolve the problem. Recommendations of the subcommittee were sent to the Administration for study and follow-up action. Members were of the view that long-term relief lay most importantly in the provision of new prison facilities. The Administration was urged to expedite the projects to increase the supply of penal places and to identify possible sites for building an additional prison complex. The subcommittee had hoped that a motion debate on the issue could be held during this Session to show the importance attached to it but things go contrary to its wishes, for we could not secure a slot in the lot-drawing exercise. Nonetheless, we still hope that the Administration would step up its efforts and come up with a solution to this serious problem as soon as possible.

The Panel had also urged the Administration to step up measures to deter Vietnamese illegal immigrants (VII) from entering the territory and reach an early agreement with Vietnam for speedy repatriation arrangements for VIIs. Members asked the Administration to continue to urge the United Nations High Commission on Refugees to make arrangements for those Vietnamese refugees (VR) stranded in Hong Kong to be resettled overseas and to settle the outstanding debt. They

also asked the Administration to continue to urge the British Government to discharge its moral obligation to assist Hong Kong in reaching a solution to the VR and Vietnamese migrants problems.

Under Article 24(2)(3) of the Basic Law, mainland children who are born to the permanent residents of Hong Kong are entitled to the right of abode in Hong Kong and are allowed to come to the territory. Members were much concerned about this. Given the serious implications of the current appeal court cases relating to right of abode on the number of eligible children, members urged the Administration to consider contingent measures to ensure the speedy and orderly admission of eligible children of all ages.

With respect to a discharge of firearms incident in the Aberdeen Police Station, members were concerned about the adequacy of the relevant procedures and the psychological counselling services provided to police officers in need. The Administration expressed that in carrying out a full review of the management of police officers encountering psychological problems, the above issues would also be examined. Members also put up a strong request for the Administration to expedite the installation of a video interviewing facility at each police station.

Members listened to the Administration's explanation on the need to retain the Closed Area as a buffer zone to facilitate effective operations against illegal immigrants, smuggling and other cross-boundary crimes as well as the coverage of the Closed Area. However, they still urged the Administration to re-examine the coverage of the Closed Area with a view to achieving an effective use of land resources. The Panel had also asked the Administration to further examine the arrangements for the issue of Closed Area permits to ensure a unified and consistent system and introduce an appeal mechanism as soon as possible.

The Panel learned that the Administration had adopted a three-pronged approach to tackle the problem of domestic violence. Members considered that the protection of victims against further attack was of utmost importance. Hence, the Administration should consider ways of shortening the time taken to bring prosecution against the offenders. In addition, the Administration should also strengthen the training for frontline police officers in tackling such cases.

As regards the other major issues, I do not think that it is appropriate for me to mention them one by one here. I hope that Honourable colleagues will go through our report. I would like to take this opportunity to thank Members for their contributions to the Panel and the Administration for its positive response to Members' requests.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr WONG Siu-yea will address this Council on the Report of the Panel on Welfare Services 1997/98. Mr WONG Siu-yea.

Report of the Panel on Welfare Services 1997/98

MR WONG SIU-YEE (in Cantonese): Madam President, as Chairman of the Panel on Welfare Services, I hereby submit the work report of the Panel on Welfare Services for 1997-98.

Welfare services for the elderly was a major concern of the Panel. In addition to discussing with the Administration the recommendations of the Working Group on Care for the Elderly, the Panel discussed the study on elderly recipients of Comprehensive Social Security Assistance (CSSA) conducted by the University of Hong Kong. The Panel was of the unanimous view that the Mandatory Provident Fund Scheme to be implemented by the Government soon would not offer retirement protection to the retirees, non-working population and the low income workers, the Administration therefore should consider the views put forward by the Panel and deputations to explore once again the possibility of implementing the old age pension scheme.

Members were also concerned about the supply of subvented residential care places for the elderly and the staffing provisions in private homes for the aged. In addition to discussing with the Administration the Government's plans to increase the supply of residential care places, the Panel discussed the outcome of the review on sites reserved for development of community centres. The Panel urged the early utilization of land that could be released for the development of welfare facilities.

In addition, the Panel was also concerned about the review of and the manpower for the CSSA Scheme. Members noted the shortage of Social Security Assistants at a time when the number of CSSA cases was continuing to increase. They were worried that easement measures would lead to more abuse of the system. Besides, the automatic renewal of cases for the elderly meant that the Social Security Assistants would not be able to detect any changes in the family circumstances of the elderly and to note their needs for services or supplies. Therefore, the Panel urged the Administration to employ sufficient staff to cope with the workload and to review the CSSA application and investigation procedures to prevent abuses.

As the number of cases of the unemployed applying for CSSA was on the increase, members favoured to adopt a positive attitude in encouraging and helping them with their job search and to deal leniently with regard to the deduction of their salaries after they found jobs. Moreover, services for single-parent families, such as nursery services, would enable these people to join the workforce instead of relying solely on CSSA.

As details of the Panel's other areas of work are included in the report, I will not repeat them here.

Madam President, I would like to take this opportunity to sincerely thank members of the Panel on Welfare Services for their efforts, and the public officers of various government departments, such as the Health and Welfare Bureau, the Social Welfare Department and the Home Affairs Bureau who have attended our meetings for their co-operation. I would also like to pay tribute to the staff of the Secretariat for their great support.

Lastly, I would like to thank all the social welfare organizations and members of the public who have attended our meetings. They have offered valuable opinions for the consideration of the Panel. Moreover, the Panel had arranged two visits to social service organizations such as elderly centres. I would also like to thank these organizations for their warm reception and presentation.

Madam President, I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Dr TANG Siu-tong will address the Council on the Report of the Panel on Health Services 1997-98.

Report of the Panel on Health Services 1997/98

DR TANG SIU-TONG (in Cantonese): Madam President, as Chairman of the Panel on Health Services, I hereby submit the Report of the Panel on Health Services 1997-98.

In the wake of a series of medical incidents at public hospitals, the Panel met representatives of the Hospital Authority (HA) to express its concern over the incidents and urged the HA to ensure the independence of the investigations to be conducted. To better understand how the HA ensure the quality and standards of its services as well as the professional accountability of its clinical staff, members discussed the following items with the HA at three meetings of the Panel:

- (a) review on clinical audit and monitoring;
- (b) report on the comprehensive reviews conducted to assure quality of care and enhance professional accountability; and
- (c) remedial measures for medical incidents and review of complaints management.

As regards the question on H5N1 virus, members urged the Administration to adopt a more open approach in releasing information on the virus, to set up a special task group to publicize up-to-date information, to closely liaise with the medical profession and to educate the public on precautionary measures against infection. Following the Administration's decision to slaughter all chickens in Hong Kong, the Panel held a special meeting at which members expressed their deep regret with the way the operation had been conducted and stressed the need for the Administration to improve public confidence in the Government's ability to handle crises.

In addition, the Panel was particularly concerned about the surveillance and precautionary work on infectious diseases. Members expressed their dissatisfaction with the existing arrangement of "two councils and three departments" under which the Department of Health had to work with the two Municipal Councils and two other departments in order to carry out its

responsibility for the prevention and control of infectious diseases. Members considered that there was a need for a review of this arrangement in order to enhance the efficiency of surveillance on and precaution against infectious diseases.

The Panel had also discussed the two incidents of wrong dispensing of medicine and the follow-up actions taken by the Department of Health. The Panel came to the view that immediate improvement to dispensary services is necessary, including to review the dispensing services, procedures and manpower and to enhance guidance and supervision on work after recruitment with a view to avoiding similar mistakes in the future and improving the quality of services.

The other areas of the Panel's work have been listed in the report which I shall not repeat here. I hereby take this opportunity to thank all members of the Panel, the government officials who have attended the Panel meetings and the staff of the Secretariat.

I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr NGAI Shiu-kit will address the Council on the Report of the Panel on Trade and Industry 1997/98. Mr NGAI Shiu-kit.

Report of the Panel on Trade and Industry 1997/98

MR NGAI SHIU-KIT (in Cantonese): Madam President, as Chairman of the Panel on Trade and Industry, I present to Honourable Members the work report of the Panel during its term.

The Panel was set up on 16 July 1997 for the purpose of monitoring and examining government policies and issues of public concern relating to trade and industry matters. The Panel was made up of 18 members with me acting as the Chairman.

Government support to the development of manufacturing and service industries in Hong Kong was a subject of major concern to the Panel. Apart from deliberating on the Government's general industrial support policy, the Panel also gave views on the various initiatives outlined in the Chief Executive's 1997 policy address, namely, the Science Park, Credit Guarantee Scheme, and the enhancement of the Applied Research and Development Scheme and the Co-operative Applied Research and Development Scheme.

To increase Hong Kong's competitiveness in international markets, members urged the Administration to put in additional efforts in supporting the manufacturing industries, in particular, the small and medium enterprises. Some members suggested that instead of relaxing the admission criteria to admit service industries into the industrial estates, the Administration should consider admitting labour-intensive manufacturing industries into the estates to tackle the present unemployment problem. Members welcomed the introduction of the pilot credit guarantee scheme whereby the Government would guarantee a certain percentage of the loan application of these enterprises. Members also expressed concern about the increase in operating costs due to government regulation. In this respect, the Administration assured the Panel that continuous efforts would be made to streamline procedures and improve efficiency, which in the long run would cut down operating costs. The Government was committed to providing a favourable and business-friendly environment for investments. As regards consultation with various trades, members urged the Administration to maintain close liaison with the manufacturing and service sectors to ensure a good understanding of the needs of the industries.

In view of the numerous cases of Hong Kong businessmen encountering problems while doing business in the Mainland, members exchanged views with the Administration on the scope of the Government's assistance to these Hong Kong-based entrepreneurs. Noting the Administration's explanation on the existing policy which was based on the "one country, two systems" principle, members urged the Administration to be more proactive in providing assistance to the entrepreneurs in distress. They considered that the existing scope of assistance was even smaller than that provided to those who encountered similar problems in foreign countries. Members came to the view that the setting up of effective channels to offer assistance to entrepreneurs in resolving their problems in connection with their commercial activities would help to attract more investments in the Mainland, to the benefit of both Hong Kong and the Mainland. Members also made several proposals such as conducting research on the

standardization of commercial contracts in relation to business activities in the Mainland, and establishing an avenue empowered with authority to handle cases of commercial disputes. The Administration undertook to take serious consideration of members' proposals.

On the protection of intellectual property rights, members exchanged views with the Administration on the enforcement actions against copyright piracy activities at a Panel meeting. Members noted that the Administration was considering a series of actions such as short-term closure orders on shops convicted of copyright piracy, greater reward for intelligence-gathering, more stringent regulation of compact disc factories and manufacturing equipment, and so on. With members' support for preventing and controlling the copyright piracy at source, the Administration introduced the Prevention of Copyright Piracy Bill to the Council on 21 January 1998. This Bill aimed to introduce a licensing system for the manufacture of optical discs and to require the use of source coding on all optical discs manufactured and produced in Hong Kong. To further understand the operation of the Customs and Excise Department in combating infringement of copyright and its other duties, members of the Panel on Trade and Industry and Panel on Security conducted a joint visit to the Department in February 1998.

On competition policy, the Panel was briefed on the Administration's report entitled "Competition Policy for Hong Kong" which was a response to the Consumer Council's proposals on this policy. Members noted that instead of introducing a comprehensive competition law at this stage, the Administration would establish a Competition Policy Advisory Group (COMPAG) under the chairmanship of the Financial Secretary. The COMPAG would monitor the degree of compliance and the progress of reviews on trade practices in sectors and assess the feasibility of new initiatives. Members were concerned about the absence of non-government representatives on the COMPAG. The Administration assured that whilst government officials would be the core members of the COMPAG at the initial stage of operation, relevant local or overseas experts would be invited to participate in the deliberations on a need basis. The Administration undertook to review the need for non-government representatives in the COMPAG after it had operated for a period of time.

As regards the rice trade, members generally supported the retention of the rice control scheme as rice was still the staple diet of the local population. During the review of the rice control scheme, members noted that the Government had

implemented a series of measures to enhance competition in the rice trade, including increasing the number of stockholders, modifying the level of reserve stock from absolute tonnage to number of days of consumption, removing the admission criterion on prior experience for registration as a stockholder, and introducing the Optional Quota Scheme. Members also supported the Administration to conduct an overall review on trade practices in the rice market to ensure a fair competition in the rice trade.

From July 1997 to March 1998, the Panel had totally conducted seven meetings and one visit. The certain achievements that the Panel had been able to make during its term came as a result of the concerted efforts of Honourable colleagues and government officials. I would like to mention in particular the great assistance provided by staff of the Provisional Legislative Council Secretariat. Despite the fact that almost all our meetings were overrun, they had never complained. I believe they had contributed much to the Panel's achievement and would hereby like to extend my thanks to them.

PRESIDENT (in Cantonese): Mr Kennedy WONG will address the Council on the Report of the Bills Committee on Adaptation of Laws (Interpretative Provisions) Bill. Mr Kennedy WONG.

Report of the Bills Committee on Adaptation of Laws (Interpretative Provisions) Bill

MR KENNEDY WONG (in Cantonese): Madam President, as Chairman of the Bills Committee on Adaptation of Laws (Interpretative Provisions) Bill, I hereby report to Honourable Members the deliberations of the Bills Committee.

Apart from examining the technical aspects of the clauses, the Bills Committee deliberated in great detail the definition of "State" in clause 4(b) and considered this adaptation of particular significance.

The Bill seeks to replace the reference to "the Crown" with "the State" in the context that legislation which is expressed to be binding on "the Crown" is to be binding on "the State".

Members noted that the term "the Crown" was a common law expression of complex meaning because of the concept involved and that there was no statutory definition for it. The "Crown" is a single indivisible entity in the Commonwealth and there is no such equivalent entity in the People's Republic of China. The Administration has therefore adopted a functional approach for arriving at the conclusion that the term "State" is the closest equivalent.

Regarding the suggestion that an alternative expression be used, the Administration's considered view is that the term "State" remains the most appropriate term to reflect the position after the reunification. The Administration has however reviewed the expression and definition of "the State" and "國家" in the light of comments made by members and will move an amendment to clarify its definition.

Members have sought clarifications from the Administration as to what constitutes a subordinate organ and whether the Xinhua News Agency will be a subordinate organ within the meaning of "State" as proposed in the Bill. Regarding the first question, the Administration has explained that a functional test is included in paragraph (c) of the definition of "State" in clause 4. Paragraph (c) of the definition provides that subordinate organs have to exercise any of those functions as set out in paragraph (b) on behalf of the Central Authorities and do not exercise commercial functions, when acting within the scope of the delegated authority, and the delegated functions of the subordinate organ concerned. The Administration has also pointed out that nationalized industries and statutory bodies with commercial functions in the United Kingdom are not regarded as part of "the Crown" unless there is a specific express provision to that effect. Therefore the Administration has introduced a similar restriction in the definition. As regards the Xinhua News Agency, since it is established by the State Council, it is a subordinate organ in fact but whether it is a subordinate organ within the meaning of the definition of "State" will depend upon what its official functions are, and also in any particular case, whether or not it is exercising those official functions. Therefore both the legal status and functions of a particular body and the particular functions that were being exercised at the relevant time will depend upon the facts established before the courts. On the question of how the relevant facts could be established, the Administration is considering whether a certification system should be provided.

In principle, the Bills Committee supports the Committee stage amendments which the Secretary for Justice will move later.

Madam President, ever since the House Committee agreed on 27 March to resume the Second Reading debate on the Bill, the public and the legal organizations have expressed certain opinions which have been covered widely by the media. The Government has also given its response which includes the letters by the Secretary for Justice and the acting Secretary for Justice to Members of the Provisional Legislative Council on 1 April and 3 April respectively. In the letter on 3 April, the Government has undertaken to review as soon as possible those ordinances that were expressed to be binding on the Special Administrative Region (SAR) Government in order to decide whether some ordinances should only be binding on the SAR Government and not on the subordinate organs of the People's Republic of China.

I believe that apart from considering the opinions of the Bills Committee, Members will also consider the opinions of the public and the clarifications and undertakings of the Government. During the resumption of the Second Reading debate on the Bill, they will express their own opinions or stances or will do so on behalf of the political parties they belong.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mrs Miriam LAU will address the Council on the Report of the Bills Committee on Legal Practitioners (Amendment) Bill 1998. Mrs Miriam LAU.

Report of the Bills Committee on Legal Practitioners (Amendment) Bill 1998

MRS MIRIAM LAU (in Cantonese): Madam President, as Chairman of the Bills Committee on Legal Practitioners (Amendment) Bill, I would now report the deliberations of the Bills Committee to Honourable Members.

The Bill provides for compulsory membership of the Hong Kong Society of Notaries (HKSJ) for practising notaries. This requirement is supported by members of the Bills Committee. However, as the Administration, in introducing the Legal Practitioners (Amendment) Bill 1996 (the 1996 Bill) to the former Legislative Council in 1996, considered that such a prerequisite would probably infringe the right to freedom of association under Article 22 of the International Covenant on Civil and Political Rights (ICCPR), members had asked the

Administration to explain the reason for the change in policy. The Administration explained that in withdrawing the 1996 Bill, the Administration was concerned that if the law required notaries public to be members of the HKSJ but did not give the HKSJ a regulatory role in respect of its members, such compulsory membership would probably infringe the right to freedom of association. To address this human rights concern, the Administration has included in the current Bill provisions on the regulatory role of the HKSJ in relation to the practice, conduct and discipline of notaries public. With the regulatory framework, the requirement of compulsory membership of the HKSJ would be compatible with the right to freedom of association.

Besides, upon request from members, the Administration also provided some information to explain its policy on membership of professional bodies, including a comparison of the functions and regulatory powers between the HKSJ and the Hong Kong Academy of Medicine (HKAM). The Administration pointed out that the HKAM was not a regulatory or registration body, while the HKSJ would be empowered to make rules regarding the conduct and discipline of its members, thus having a regulatory power similar to those of the Law Society of Hong Kong and the Hong Kong Bar Association.

In regard to qualifications for appointment, members were concerned that under the proposed new section 40A(1)(a), non-practising solicitors could be eligible for appointment as notaries public if they met other requirements. In order to maintain the *status quo*, members had asked the Administration to amend the relevant section to stipulate the requirement for seven years' practice. In response to members' proposal and after consulting the HKSJ, the Administration will move Committee stage amendments to the effect that in addition to other requirements, the applicant must have practised as a solicitor in Hong Kong for an aggregate period of at least seven years before his application.

Members also expressed concern about the stipulations concerning making of indemnity rules in the Bill. The HKSJ had informed the Bills Committee that it planned to provide for indemnity jointly with the Law Society of Hong Kong. Since notaries public have been *de facto* covered in the past, there has been neither claim in respect of notaries public nor complaint about the conduct of any notary in the past. Thus, the HKSJ is confident that the proposed arrangement will be accepted by insurers.

The Bills Committee supports the Committee stage amendments to be moved later by the Secretary for Justice.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Ambrose LAU will address the Council on the Report of the Bills Committee on Adaptation of Laws (Nationality Related Matters) Bill. Mr Ambrose LAU.

Report of the Bills Committee on Adaptation of Laws (Nationality Related Matters) Bill

MR AMBROSE LAU (in Cantonese): Madam President, as Chairman of the Bills Committee on Adaptation of Laws (Nationality Related Matters) Bill, I hereby report to Honourable Members the deliberations of the Bills Committee.

The purpose of the Bill is twofold: first, to introduce necessary adaptations to references to "British national", "British citizen", "Commonwealth citizen" and similar expressions in 16 ordinances to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region (SAR) of the People's Republic of China; second, to make supplementary provisions for right to land in Hong Kong enjoyed by former permanent residents.

Clause 1(2) of the Bill provides for retrospective effect to 1 July 1997 subject to non-application to criminality. The Administration explained that it is necessary to have clause 1(3) in place so that the Secretary for Security can appoint a different commencement date for amendments to the Registration of Persons Ordinance, that is, items 4 and 5 of Schedule 1, which will enable the Immigration Department to complete processing the outstanding cases of application for permanent identity cards by British National (Overseas) Passport applicants. The Bills Committee accepts this provision.

Members were concerned about whether the adaptations to Schedule 1 as proposed by the Administration would involve changes in the policy intent of existing ordinances. Having examined in detail the rationale given by the

Administration for the proposed adaptations and their practical implications, the Bills Committee accepted the adaptation amendments as proposed, subject to committee stage amendments to be proposed for item 3.

As regards Schedule 2, the Administration confirmed that persons who have the right to land would not lose this right pursuant to the enactment of the Bill. The proposed amendments only provide in more detailed form the nature of "right to land" and which of the existing provisions in the Immigration Ordinance would apply to people of "right to land" status.

The Bills Committee supports the resumption of the Second Reading debate on the Bill today as well as the Committee stage amendments that are of a technical nature to be moved by the Secretary for Security.

Madam President, I so submit.

PRESIDENT (in Cantonese): Mr Ronald ARCULLI will address the Council on the Report of the Bills Committee on Land (Compulsory Sale for Redevelopment) Bill. Mr Ronald ARCULLI.

Report of the Bills Committee on Land (Compulsory Sale for Redevelopment) Bill

MR RONALD ARCULLI: Madam President, with your consent, I wish to address the Council on the deliberations of the Bills Committee on Land (Compulsory Sale For Redevelopment) Bill of which I was elected Chairman.

The objects of the Bill are apparent from its title. Whilst fully supporting the policy intent of the Bill to facilitate private sector participation in expediting urban renewal in order to improve our environment as well as provide much needed housing, members of the Bills Committee were equally concerned about the introduction of a mechanism for proper and fair compensation for lawful deprivation of private property rights. To this end, the Bills Committee has held 12 meetings and critically examined the provisions of the Bill. I wish to highlight a few major areas which merit particular attention.

The appropriateness of setting the minimum ownership level at 90% of the undivided shares in a lot unless lowered to 80% by the Chief Executive in Council as a condition for making an application for a compulsory sale order was vigorously debated by the Bills Committee. There was also much debate on the provision in the Bill which empowers the Chief Executive in Council to lower the percentage to not less than 80%. Some deputations are concerned that owners who have acquired three units in a four-unit building, that is 75% of undivided shares, still fall short of the lower threshold and would not be able to make an application. The Bills Committee has explored the desirability and viability of lowering the acquisition threshold to 75% of the undivided shares. However, we are concerned that the number of owners holding 25% of undivided shares in a multi-storeyed building who refuse to sell could be numerous. Moreover, we are told by the Administration that the number of four-unit ageing buildings due for redevelopment is dwindling and small. The Bills Committee, therefore, considered the primary threshold of 90% acceptable but inadvisable to reduce the lower threshold of 80% to cater for one specific situation.

Another focal point of discussions in the Bill Committee was whether owners holding an average of 90% of aggregate undivided shares in contiguous lots should be allowed to make an application to redevelop the lots as a package. Whilst we fully support the concept of comprehensive redevelopment, our concern was that should such an approach be adopted, there may be situations where an applicant did not own any undivided shares in one of the lots whilst holding 90% of the aggregate undivided shares. The Bills Committee considered that it could not be justified on the sole ground of comprehensive redevelopment to compel all the owners of such a lot to sell their properties against their will. We, therefore, agreed that the ownership percentage should apply to each lot except where two buildings served by a common staircase in which case it would be the average of the undivided shares of the lots on which the buildings stand.

The last point I would like to mention relates to compensation to affected persons. I trust Members of this Council will agree that without the assistance from the Government, it is unrealistic to expect private developers to provide rehousing. The Bills Committee, therefore, agreed that compensation to owners, owner-occupiers and tenants should be cash compensation. In this regard, we hold the view that to prevent the creation of spurious tenancies to perhaps defeat the policy of the Bill or even to maximize benefits, a fair and equitable arrangement would be that compensation to tenants be paid out of the apportioned share of the proceeds of sale receivable by the tenants' landlord.

Finally, I would like to emphasize that in the course of our deliberations, many suggestions have been made to improve both the policy and technical aspects of the Bill. The amendments to be moved later by the Secretary for Planning, Environment and Lands at the Committee stage are the product of concerted efforts on the part of the deputations appearing before the Bills Committee, members of the Bills Committee and the Administration so as to ensure a fair and balanced new policy to expedite urban renewal in order to provide environmental improvement as well as much needed housing for the community, and I wish to thank them very much for their invaluable contribution.

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

PRESIDENT (in Cantonese): Mr IP Kwok-him will address the Council on the Report of the Bills Committee on Inland Revenue (Amendment) Bill 1998. Mr IP Kwok-him.

Report of the Bills Committee on Inland Revenue (Amendment) Bill 1998

MR IP KWOK-HIM (in Cantonese): Madam President, I present the report as Chairman of the Bills Committee on Inland Revenue (Amendment) Bill 1998. Since the report has detailed the deliberations of the Bills Committee, I will only highlight the main points of our deliberations.

The Bill seeks to amend the Inland Revenue Ordinance so as to implement the proposals on salaries tax contained in the 1998-99 Budget. Such proposals include new concessionary deductions, widening the marginal tax bands and reducing the marginal tax rates, as well as increasing the salaries tax allowances.

In the course of examination, the Bills Committee made reference to the submissions from the Hong Kong Society of Accountants and members of the public.

Members were especially concerned about the issue of home loan interest, the definition of "principal place of residence" in particular. The Bills Committee had exchanged opinions with the Government which included the possibility for a taxpayer to nominate his "principal place of residence" if he had more than one

place of residence. Finally, the Bills Committee accepted the Government's explanation that "principal place of residence" should be determined on the basis of facts and a person could only have one principal place of residence at one time. Members also noted that this concept was widely applied in other legislation.

Regarding the discretion of the Commissioner of Inland Revenue in respect of deciding on deductions for home loan interest, members are concerned that the scope for the discretion of the Commissioner is too wide. The Administration has accepted members' views on this and agreed to propose an amendment.

On the definition of "home loan interest", the Administration has also accepted members' view that if a taxpayer is paying interest to his employer on his home loan, a claim for interest deduction can be made in accordance with the provision concerned. The Administration has agreed to propose an amendment to this effect.

As to whether discrimination against married couples exists in the case of interest deductions for dwellings owned by joint tenants, the Administration explained that the owners of a property held on joint tenancy or tenancy in common basis would be jointly subject to the maximum deduction of \$100,000 for that property per year in any five years of assessment, regardless of the relationship between the co-owners. In cases where the husband and wife each owns a home and each uses his/her respective home as the principal place of residence, then each of them, as individual taxpayer, will be eligible for a maximum mortgage interest deduction of \$100,000 a year in respect of his/her self-occupied home. However, the couple has to prove to the satisfaction of the Commissioner of Inland Revenue that, despite being married, each of them has a separate home as his/her principal place of residence. The Administration has stressed that there is no question of discrimination against married couples. Members have no objection to the Government's explanation.

On the issue of deduction for the Mandatory Provident Fund (MPF) contributions of spouses of the self-employed, the Administration has clarified that it is a long-standing tax principle that expenses incurred in respect of the spouse are not allowed for tax deduction. Hence, contributions paid to MPF scheme in respect of a spouse are also not allowed for tax deduction. Members noted that under the Employment Ordinance, a spouse of an employer is not normally regarded as an employee and no contribution to MPF scheme in respect of the

spouse as an employee is thus necessary. Hence, members have accepted the Administration's explanation.

The Bills Committee has examined in detail all issues related to the amendment Bill. Members unanimously support the Committee stage amendments to be proposed by the Administration and asked that the Second Reading debate on the Bill be resumed as soon as possible.

Madam President, I so submit. Thank you.

PRESIDENT (in Cantonese): Mr Eric LI will address this Council on the Report of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 1998. Mr Eric LI.

Report of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 1998

MR ERIC LI (in Cantonese): Madam President, as Chairman of the Bills Committee on Inland Revenue (Amendment) (No. 2) Bill 1998, I hereby report to this Council the major results of the deliberations of the Bills Committee.

The Inland Revenue (Amendment) (No. 2) Bill 1998 (the Bill) seeks to implement, with effect from the year of assessment commencing on 1 April 1998, the proposals in relation to profits tax in the 1998-99 Budget. The proposals have been made as a result of the comprehensive profits tax review conducted by the Administration in 1997, and they include among other things the reduction of corporate profits tax rate from 16.5% to 16%.

In the course of our deliberations on the Bill, the Bills Committee met with the Administration and also invited the Hong Kong Society of Accountants to express its views on the Bill.

While members of the Bills Committee welcomed the proposed tax concessions, we were concerned that these concessions were to some extent offset by the clawback provisions in the Bill, resulting in taxpayers not fully enjoying the expected benefits. The tax proposals of concern to us included the expansion of the scope of deductions for capital expenditure on scientific research and the write-

off for capital expenditure on prescribed fixed assets. The provisions related to these two concessions stipulated that when a deduction was allowed under these provisions, the proceeds of subsequent sale of the assets concerned would be fully taxed as trading receipt. In response to members' concerns, the Administration accepted that when such assets were sold, only the proceeds to the extent of the deduction allowed, and not the full proceeds, should be taxed as trading receipt and Committee stage amendments would be proposed accordingly.

Moreover, the Bills Committee came to view that a right in, or arising out of scientific research should be treated like plant and machinery used in these research and be given the same tax concession. In this regard, the Administration also agreed to propose relevant Committee stage amendments.

As regards the Bill's proposal to extend the annual depreciation allowance for commercial buildings from 2% to 4% in order to bring it in line with the provisions relating to industrial building allowances, members were concerned about the provision that stipulated a balancing charge was imposed when the property concerned was sold. Since no such charge was levied on commercial buildings previously, members were concerned that while the taxpayers would receive a tax benefit on annual depreciation, the tax would be recouped from the sales proceeds when the building was sold. The Administration's explanation was that since the annual depreciation allowance for commercial buildings was brought in line with that for industrial buildings, the disposal of commercial buildings should also be subject to balancing allowance or charge as in the case of industrial buildings.

While not raising any further objection to the provision, the Bills Committee, however, noted the Hong Kong Society of Accountants' standpoint. The Society was of the view that the relevant provision, though named as a tax concession, actually changed the tax regime. This might lead to some taxpayers having to pay more tax in this respect.

In relation to the application to the Commissioner of Inland Revenue for advance rulings, the Administration agreed with the Bills Committee that if the Commissioner declined an application for a ruling or withdrew a ruling made, the reasons for the refusal or withdrawal would be given in writing to the applicant. The Administration would propose relevant Committee stage amendments accordingly.

In response to the comments made by the Bills Committee during the scrutiny of the Bill, the Administration agreed to propose transitional provisions and amendments at the Committee stage in order to clarify matters in implementing some tax proposals.

To sum up, subject to the Committee stage amendments to be moved by the Administration, the Bills Committee supports the Bill. Thank you.

PRESIDENT (in Cantonese): Mr Eric LI will address the Council on the Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 1998. Mr Eric LI.

Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 1998

MR ERIC LI (in Cantonese): Madam President, as Chairman of the Bills Committee, I would hereby report the main deliberations of the Bills Committee.

The Stamp Duty (Amendment) (No. 2) Bill 1998 seeks to give effect to the proposals in the 1998-99 Budget and to introduce other proposals to streamline the operation of the stamp duty scheme.

During the course of deliberation, the Bills Committee had considered written submissions from the organizations concerned.

Among the 1998-99 Budget-related proposals, one is to extend the stamp duty exemption to cover transactions in regional derivative warrants which have not more than 40% weighting by value in Hong Kong stock. Pointing out that derivative trading might have exacerbated the financial turmoil that occurred last year and pending the release of a report on the review on the subject by the Administration, a few members and individual organizations had asked whether it was opportune to implement the proposals. Besides, some organizations had also called for the Administration to reinforce its monitoring and regulation of derivatives.

The Administration has explained that apart from facilitating the development of new products, the proposals will also improve Hong Kong's competitiveness over other international or regional exchanges which offer similar

products and maintain Hong Kong's position as a world class international financial market. As regards the proposal to extend the exemption to transactions in regional derivative warrants having not more than 40% weighting by value in Hong Kong stock, the Administration has advised that it has taken into account the view of the Stock Exchange of Hong Kong in this respect and considers that 40% is indeed a right balance. While the general issue of derivative warrants would be addressed in the review report on the October 1997 financial turmoil, the Administration considers that the report would have no direct bearing on the proposals.

In further response to members, the Administration has agreed to give a number of undertakings on the development and monitoring of the derivative market when the Bill resumes Second Reading debate, which I believe that the Secretary for the Treasury will mention in his speech today.

In addition, Members and the organizations concerned are also in support of the non-budgetary proposals. The Administration has explained to members about the functions of these proposals. In brief, the proposals involve three aspects.

First, it is to make specific provisions to allow for postponement in payment of stamp duty in appropriate circumstances pending an appeal to court on the stamp duty assessment.

Second, it is to plug a potential loophole in respect of duty evasion. With the establishment of the Central Cleaning and Settlement System (CCASS), a transfer of stocks or interests in stocks is no longer necessary to be effectuated by executing an instrument of transfer. A transfer can be simply effected by an entry to be made in the books of accounts of the central depository or the brokers or the custodians. The Bill seeks to state clearly that this kind of transactions shall be deemed to be a sale and purchase of Hong Kong stock and stamp duty is thus payable.

Third, it is to make other technical changes to improve the operation of the stamp duty scheme.

In response to the views of the industry and in order that the meaning of the stipulations can stand out more clearly, the Administration will move two amendments and other related minor amendments.

Madam President, the Bills Committee supports the resumption of Second Reading of the Bill and the various amendments moved by the Administration.

PRESIDENT (in Cantonese): Mr CHAN Wing-chan, Mrs Selina CHOW, Mr WONG Siu-yee and the Secretary for Economic Services will separately address this Council on the following three pieces of subsidiary legislation which were laid on the table of the Council on 4 and 11 March respectively: the Public Health (Animals and Birds) (Amendment) (No. 2) Regulation 1998, the Food Business (Urban Council) (Amendment) Bylaw 1998 and the Food Business (Regional Council) (Amendment) Bylaw 1998. Mr CHAN Wing-chan.

Public Health (Animals and Birds) (Amendment) (No. 2) Regulation 1998, Food Business (Urban Council) (Amendment) Bylaw 1998 and Food Business (Regional Council) (Amendment) Bylaw 1998

MR CHAN WING-CHAN (in Cantonese): Madam President, these three pieces of subsidiary legislation have been formulated to prevent the recurrence of avian flu. They empower the authorities concerned to implement segregation policy on live chickens, including pigeons and quails, and web-footed water birds, including live ducks at retail outlets and market stalls, and to monitor the hygienic conditions of the vehicles used for the transportation of poultry carcasses. I support the major principle of such legislation.

Segregation

A segregation policy can minimize the risk of the spread of viruses. The avian flu staged an all-out attack on Hong Kong last year and people became jittery at the mere mention of chicken. It subsided only after the Government slaughtered all the chickens and set up a quarantine system. However, it is not going to vanish into thin air just like that.

Some overseas experts have pointed out that migrant birds carrying the avian flu virus from Australia usually fly to warmer climates in May and June. This coincides with the peak of Influenza A in Hong Kong. If the H5N1 and H3N2 viruses should successfully mutate, there will be another outbreak of avian flu. Experts have indicated that a feasible way to prevent its recurrence is to segregate the slaughter of live chickens from that of live ducks and geese.

Transportation

Moreover, the chilled transport of poultry carcasses and offal is stipulated for the sake of hygiene. Summer in Hong Kong spans several months and the temperature is high, which provides a favourable environment for the germs to multiply at high speed. For example, the salmonella micro-mechanism grows faster between 6 and 40 degrees Celsius, therefore, the dressed poultry carcasses and offal should be transported in a chilled environment with the temperature set at the optimal 4 degrees Celsius.

Concerns about the trade

Madam President, while I support the passage of these three pieces of subsidiary legislation, I am concerned about the difficulty of the lack of operating space faced by the Kowloon laan merchants as a result of the segregation policy on ducks and geese. The Government has stipulated that the trading and slaughtering of live ducks and geese can only take place at the Western Wholesale Poultry Market (WWPM) before the birds are transported to various retail outlets over the territory. As to the sale of live chickens and other non-web-footed birds, it has to take place centrally in the Cheung Sha Wan Poultry Market.

At present, the WWPM has 14 stalls with slaughtering facilities which are occupied by 11 tenants. One of these stalls will be made available to 10 laan merchants from Kowloon. The Government has also planned to take back three other stalls for allocation. Nevertheless, the Kowloon laan merchants still find it difficult to operate. The major problem is that there are not enough stalls to go around. Ten laan merchants have to share three stalls at most which measure only several hundred sq ft each. The ratio between merchants and stalls is ten to three. How can they operate when the resources are not evenly distributed?

Under such circumstances, the laan merchants have indicated that they will not operate in the WWPM and strongly put forward to the Government their preference to resume the slaughter of geese and ducks only upon the completion of the market in west Kowloon three years later. But then it is impossible to implement the segregation policy of chickens from geese and ducks. I suggest that rather than allowing wholesalers to wait and see, the Government should be proactive in identifying a market with sufficient stalls in Kowloon for the slaughter of geese and ducks in order to solve the practical difficulties faced by the wholesalers.

Madam President, the passage of the relevant subsidiary legislation will allow the supply of geese and ducks to resume. This will help the business of the eating establishments and meet the public's demands for fresh geese and ducks. However, the Government should put in place feasible measures to allow wholesalers to survive and not rush things through and leave business unfinished. The Federation of Trade Unions and the Democratic Alliance for Betterment of Hong Kong will follow up the development of this issue.

Madam President, I so submit.

PRESIDENT (in Cantonese): Mrs Selina CHOW.

MRS SELINA CHOW (in Cantonese): Madam President, the avian flu which broke out a month ago has aroused the community's concern over public health and exposed problems stemming from the slaughtering and handling of poultry for consumption. In the interest of public health, I fully support that there is the need for the Government to segregate the handling of chickens and other live water fowls such as ducks and geese. Nonetheless, I am extremely disappointed with the arrangements made by the government department concerned for the actual implementation of the segregation policy.

The Government's arrangements over this issue can be described as a complete mess. This is because officials of the department concerned have acted according to their wishes only, disregarding totally the history and the existing operation of the local poultry trade, as well as the interests and opinions of the traders affected.

For decades, poultry traders in Hong Kong have been concurrently involved in the wholesale and sale of chickens, ducks and geese. While the ten traders of the Cheung Sha Wan Temporary Poultry Market (CSHTPM) are responsible for the supply for Kowloon and the New Territories, representing three quarters of the territory's poultry wholesale, the eight traders of the Western Wholesale Food Market (WWFM) on Hong Kong Island are responsible for the supply for Hong Kong island, taking up the remaining one quarter. For public health reasons, the segregation of the slaughter and sale of chickens, ducks and geese is beyond criticism but the specific policy should ensure that the operation and interests of those in the trade will not be compromised.

Nevertheless, in implementing its segregation policy, the Government has failed to provide sufficient room for operation for the traders, thus giving rise division and conflicts, and the businesses of the traders are forced to dwindle. In the first place, the Government asked the original traders of the CSWTPM to choose either chickens or ducks and geese. This is the first instance of unfairness. Then, on the pretext of failing to identify new market locations in Kowloon, traders of geese and ducks are forced to move their operations to WWFM, thus increasing their operating cost and difficulty. This is the second instance of unfairness.

What is more absurd is that even if traders are willing to move, only three stalls are available in the WWFM. In other words, if the ten traders all choose to trade in ducks and geese in the future, they are required to move to Hong Kong Island to operate and seven of them will be forced to give up because there is an insufficient number of stalls. The Government simply has not taken the interests of the traders into serious consideration. This is the third instance of unfairness.

In fact, the avian flu which broke out a month ago has not only exposed the incompetence of the local health authorities but also the Agriculture and Fisheries Department's failure over the years to manage properly the territory's poultry wholesale market, thereby resulting in poor hygienic conditions. Just consider the fact that the temporary market has remained temporary for over 20 years, the situation there is horrendous and the operation of the stalls is simply like no man's land. This is another living example that the Government's positive non-intervention policy is actually positive shirking of responsibility. Not only has the Government failed to learn the lesson but has also created new difficulties and new conflicts for the trade in formulating the new poultry segregation policy. This is something which I totally cannot accept. Why is it that the Government cannot find new locations for the affected traders so that all of them can continue with their operations? I hereby strongly urge the Government to find an alternative location in Kowloon for a new wholesale market which will provide adequate stalls for those traders who have chosen to continue to trade in ducks and geese. I will follow up in this respect.

Incidentally, the Government has adopted double standards in waiving rental for traders on Hong Kong Island and in Cheung Sha Wan. Why is it that traders on Hong Kong island can have their rental waived for six months while those in

Kowloon can only have it for three months? Moreover, the Government has failed to complete alteration works at Cheung Sha Wan site B intended to facilitate the resumption of business. To make matters worse, officials resolve to buck-passing. If the Chief Executive and the Financial Secretary keep on promising that favourable trading environment will be created, I am afraid that a review on the situation of Cheung Sha Wan has to be conducted to see if things are going in the opposite direction under the Agriculture and Fisheries Department. No matter which official or department is concerned, please communicate with those in the trade as soon as possible to facilitate the resumption of their business. This will be doing them a great favour.

I so submit.

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

MR WONG SIU-YEE (in Cantonese): Madam President, on 17 February, Hong Kong resumed the importation of chickens, whereas the consumption of ducks and geese will await the segregation policy worked out by the Government. The people of Hong Kong have been waiting for more than 100 days in the hope that they can consume fresh ducks and geese while a lot of food establishments are also longing for the announcement of the Government. After 100 odd days, the Government finally introduces the Public Health (Animals and Birds) (Amendment) (No. 2) Regulation 1998 to the Provisional Legislative Council today, which seeks to provide the departments concerned with statutory powers to execute the segregation measures in handling live chickens, including pigeons and quails as well as web-footed water fowls which include ducks and geese.

We originally reckoned that this amendment was carefully thought through which would be in line with public health as well as welcomed and supported by the people in the poultry trade. Regrettably, this amendment is now regarded as the product of "black box operation". As the Kowloon Poultry Laan Merchants Association, the Hong Kong and Kowloon Poultry Laan Association and the Fresh Poultry Wholesalers Association pointed out in the letter addressed to me dated 26 March in relation to the segregation of ducks and geese, the Agriculture and Fisheries Department (AFD) claimed that people in the trade had been widely consulted, which however was not true. The sale of ducks and geese in Kowloon

accounts for 75% of the market in the whole territory. However, there were no representatives for the trade from Kowloon in the consultation meeting, not to say they had agreed with the segregation policy of the AFD. What is more unreasonable is that the Kowloon traders wrote to the AFD on 26 January to express their dissatisfaction towards the segregation policy and to elaborate on the losses that would be incurred. However, the AFD only met three persons from three associations and issued a notice on 31 March saying that the laan merchants had already agreed with the segregation policy of the Government. When the Government asserted that the decision of a few persons was the view of the majority, it is tantamount to defiling public opinions. Moreover, the three representatives attended the meeting clarified afterwards that they did not agree the segregation policy of the Government.

Without obtaining agreement from the trade on the segregation policy, the AFD claimed that it had already made a proper arrangement for the trade and that there was no objection from the trade at all. As a matter of fact, there were originally 10 stalls selling ducks and geese in Kowloon Site B. However, the Administration has only arranged three stalls in the Western Market while one of them has no slaughtering facilities. That means there are actually two stalls which, however, cannot be made available on time. With this perfunctory move, how can the Administration say that this is a proper arrangement?

The Government has even adopted the "stall-for-stall" measure with an intent to stir up conflicts among the trades so that it can get all the benefits at the end. With my proposal, although the Government has agreed with the trade after further discussion that it can allocate nine stalls immediately, the size of each stall provided to the laan merchants is less than a quarter of the area they need to occupy. The crux of the problem is that the Government has jeopardized the major ducks and geese business of the Kowloon laan merchants while retaining only the operation on live chickens, thus making it impossible for the traders to maintain their living

Besides in 1974, the AFD rehoused the merchants in Site B of Cheung Sha Wan Market to the temporary stalls built as an extension with asbestos. For more than 20 years, it was oblivious to their situation and disregarded the hazard that asbestos would cause cancer. But after the avian flu incident, the Government removed and rebuilt the roof for health and refurbishment reasons, leaving the merchants in Site B in a difficult plight of a suspended business while facing removal. People in the trade have asked the Government to identify land in

Kowloon so that they can continue operating the ducks and geese business and expressed their wish that the Government should compensate for their losses. The above request put forward by them is actually reasonable but the Government has just turned a deaf ear to it.

Madam President, I do not think that the Government should, under the pretext of avian flu, jeopardize the poultry business and disregard the culture, tradition and rights of the public in consuming chickens, ducks and geese. Hitherto, the source of avian flu is still unknown and it is not clear whether the virus has been transmitted from poultry to human beings. In the absence of a full scientific study and identification, the Government has simply put the blame of avian flu on the poultry trade in order to shirk its responsibilities in regard to epidemic prevention, health and hygiene, facilities and quarantine on importation at the expense of the living of the people in the trade. It is irresponsible of the Government in shifting the blame onto others.

This kind of attitude is in fact unacceptable. However, if we do not pass this amendment Bill today, it is also unfair to other suppliers of ducks and geese as well as to other restaurants and food establishments, and the public will have no idea when they can consume live ducks and geese. Madam President, I reckon that the Government should review anew the segregation policy, consult again the people in the trade in an open and conscientious manner and make a proper arrangement in regard to their means of living. In addition, the Government is responsible for assisting those merchants affected by the segregation policy in resuming their business. For those operators who are forced to suspend or close down their business, the Government has the responsibility to give compensation or to arrange other way out.

As regards the segregation policy on ducks and geese, the Government has been very unfair to the wholesale and retail industry, and this is only the tip of the iceberg. Over the years, the Government has adopted an irresponsible and bureaucratic attitude towards the wholesale and retail industry, which is a major pillar of the service sector in Hong Kong, and has brought a few difficulties to it. Instead of creating favourable business conditions for this industry, the Government has been oblivious to its situation and passes the buck to it in the first instance once any problem arises and will then denounce the industry for the fault. What follows is the formulation of some stringent measures and laws which render the operation of the trade more and more difficult. It is because of the Government's lack of vision that both the public and the trade concerned have suffered.

Madam President, in order that the people of Hong Kong can enjoy fresh and delicious ducks and geese and that the ducks and geese trade can resume operation as soon as possible, although I personally have reservations about the segregation policy on ducks and geese, I still support the proposal. However, the Government should continue its discussion with the trade in a positive and sincere manner as soon as possible with a view to identifying a proper solution.

Finally, during the whole avian flu incident, the three poultry associations and all the laan merchants have been given the biggest raw deal, exercised the utmost forbearance and given their best co-operation. I hereby express my heartfelt thanks to them for taking the whole situation and the interests of the entire society into consideration.

Madam President, I so submit.

PRESIDENT (in Cantonese): Secretary for Economic Services.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Madam President, in order to prevent the cross infection of the H5N1 bird flu and to protect the health of the public, the Government thinks that the segregation policy for the handling of geese and ducks must be implemented. I am pleased to note that most of the Members support this policy. In implementing the policy, the trade has suggested to us that the slaughtering and wholesaling of both local and imported live geese, ducks and other water fowls should be centralized in the Western Wholesale Poultry Market (WWPM). This is a feasible method which the Government has accepted and will put into practice. Once the relevant subsidiary legislation is passed, the above segregation arrangement will be executed.

As Members are concerned about the allocation of stalls in the WWPM, I would like to take this opportunity to brief Members on the situation. There are 14 stalls in the WWPM, among which eight have already been rented out to poultry wholesalers and three are temporarily rented out to fruit and vegetable wholesalers. In other words, there are three vacant stalls available for immediate allocation. With regard to the allocation of stalls in the market, from the end of January up to

now, the Agriculture and Fisheries Department (AFD) has held over 10 meetings and discussions with local geese and ducks farmers as well as relevant traders separately to consult their views. Finally, after careful consideration, the AFD decided to allocate the stalls according to the following priority, hoping that the limited number of stalls can be allocated to those people with the most urgent needs.

First priority: local geese and ducks farmers. It is because the policy has stipulated that local live geese and ducks have to be centralized in this market for slaughter and wholesale.

Second priority: the traders selling geese and ducks in the Cheung Sha Wan Temporary Wholesale Poultry Market before the destruction of chicken took place. They have already given up their stalls in the Cheung Sha Wan market and moved to the stalls specialized in the sale of geese and ducks in the WWPM.

Third priority: similar to the category of the second priority, but these traders will maintain their stalls in the Cheung Sha Wan market and continue selling chicken there while they hope to be allocated stalls in the WWPM for geese and ducks business.

There are 10 wholesalers in Market B of the Cheung Sha Wan market and all of them used to running a concurrent business in chicken, geese and ducks in the past. In the course of the AFD's consultation, in early March, they expressed objection to the method of swapping stalls to decide the priority of lease. However, they have since not given a definite answer to the AFD about whether they intend to rent the stalls in the WWPM. On the other hand, local geese and ducks farmers and other traders in the Cheung Sha Wan market and the WWPM have already handed in their applications for renting the stalls. In order to resume the import of geese and ducks as early as possible and to meet the demands of the public, as well as to let the relevant traders and government departments make preparations before business resumes, in mid-March, the AFD rented out the three vacant stalls to the applicants pursuant to the priority mentioned above. It was not until the allocation of all the stalls in the WWPM had been finished that the 10 traders of Market B asked the AFD to arrange stalls for them in the WWPM. Although it seemed to be an imposing request for the AFD, the AFD nevertheless tried its best to solve the problem for them. At last, an extra area for nine stalls

was found. Although the sizes of these stalls are smaller than those of the standard stalls and do not have slaughtering facilities, those traders with slaughtering facilities in the WWPM have already agreed to provide the newcomers with slaughter service, and they have also said that they were willing to consider temporarily lending the facilities to them for their own operation.

Besides, the AFD has already started work to take back the three stalls rented to the fruit and vegetable wholesalers. After they move out in June, the AFD will have three extra stalls equipped with slaughtering facilities for allocation. The AFD will discuss with the poultry traders concerned about the allocation of these three stalls. If the wholesalers of Market B still want to do geese and ducks business in the WWPM, the AFD will be glad to continue discussing with them and provide them with assistance.

As to Members' proposal of providing another live geese and ducks wholesale market on Kowloon side, this is a relatively long-term issue which the Government will study carefully. Some Members also suggested exempting the stalls from payment of rents and modifying Market B. Although these suggestions are not directly related to the subsidiary legislation, I would also like to take this opportunity to brief Members on the situation. After the action of destroying the chickens, the Government decided to exempt the tenants of Cheung Sha Wan market and WWPM from payment of rents for the three months of January to March. While the Cheung Sha Wan market has resumed the wholesale of chicken since February, the tenants of the WWPM have still not resumed business because the market will be used for the centralized slaughter and wholesale of live geese and ducks. In view of the fact that these tenants will need some time for co-ordinating and adapting their operations after the resumption of business, the Government has decided to exempt them from payment of rents from April to June, as a form of assistance to their resumption of business. Afterwards, the tenants of Market B made different requests for rent reduction or exemption. The Government has already asked them to put forward their arguments for its consideration.

During the modification works of Market B, the AFD had arranged for the commercial tenants concerned to temporarily operate in Market A. The works were completed on time and the AFD informed the tenants concerned on 17 March,

asking them to clean their own stalls and clear illegal structures before they resume business. Unfortunately, the tenants did not take action expeditiously, especially in the clearance of illegal structures. So the Architectural Services Department arranged for the clearance of such illegal structures on 20 March and the job was completed on 27 March. Last Friday, the AFD carried out a site inspection together with the tenants concerned and both parties agreed that all tenants can move back to Market B within one week to continue their businesses.

Madam President, I believe the poultry wholesalers, retailers, restaurants and public all share the same hope as the Government, that is, to resume the import of geese and ducks as soon as possible. As long as these parties are sincere, accommodating and co-operative, solutions to problems will eventually be found and soon the community will be able to enjoy delicious dishes of live geese and ducks again. Thank you, Madam President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. The time allocated to each question seeking an oral reply is about 15 minutes. First question. Mr Howard YOUNG.

Short-term Use of the Former Tamar Site

1. **MR HOWARD YOUNG:** *Will the Government inform this Council whether the former Tamar site will be employed for any short-term purpose before works on the new government office buildings start; if so, what the details are?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam President, the Administration will make available the former Tamar site for temporary use before construction works on the new government headquarters start. In this connection, on 13 March 1998, the Director of Lands advertised for expressions of interest in the temporary use of the site. The invitation is intended to gauge the interests of prospective users of the site and the viability of their proposals. After considering all the proposals received, we will decide on the specific temporary use of the site. Thereafter, we intend to advertise tender for a short-term tenancy in early June and to award it in July for a period up to June 2000.

PRESIDENT (in Cantonese): Mr Howard YOUNG.

MR HOWARD YOUNG (in Cantonese): *Madam President, I heard that the Urban Council has recently rejected an organization's application to hold a performance in the Victoria Park which is similar to the "Allegria" circus held last year. I know that the programme was not only welcomed by the people of Hong Kong but had also attracted several thousand Taiwanese to come here specially for it. I would like to ask if the Administration has received any enquiry on and application for using the former Tamar site for similar purposes?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, we do have.

PRESIDENT (in Cantonese): Mr Ronald ARCULLI.

MR RONALD ARCULLI: *Madam President, no one can blame the Secretary for Planning, Environment and Lands for brevity. But what I would like to ask him is that: Could he tell us what criteria the Government or his Bureau would adopt in deciding the temporary use of the site? For example, whether it will be, as proposed by Mr Howard YOUNG, used for promotion of tourism? Whether cash*

offer or the amount of money offered is important? Whether the opening hours will be controlled? Can we have a night market, for instance? What criteria would the Bureau adopt in deciding all these and who should get the award? Thank you.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam President, we have just closed the period for expressions of interest. So, at the moment, the Lands Department is accessing or analysing all the expressions of interest received. It is rather difficult to say at this stage what criteria would be used in awarding the tender because we have not yet invited the tender. We have received a number of proposals from some companies or organizations. What we need to do is to analyse the nature of these proposals in order to find out the one which is in the best interests of Hong Kong. Obviously, we do not want the site to be vacant or unmanaged for a long period of time only because somebody wants to hold an event once a month on the site. Thus, we may employ criteria like the assurance of a continuous period of management, the continuous use to the best interests of Hong Kong and the trustworthiness of the organizations. Of course, we will also consider the revenue potentials for the Government, because it is going to be tendered out for two years for rental. So, we will take certain factors into account before we decide on the use of the site.

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

MISS CHOY SO-YUK (in Cantonese): *Madam President, will the Government inform this Council whether priority will be given to activities conducive to the development of Hong Kong and of a non-commercial or charitable nature? Will there be rental concessions for such activities?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, I thank Miss CHOY for this idea but the period for expression of interest has closed. At the moment, we are analysing the expressions of interest received and the majority of them have a commercial background.

PRESIDENT (in Cantonese): Mr Howard YOUNG.

MR HOWARD YOUNG (in Cantonese): *Madam President, the Government mentioned in the last sentence of the main reply that the short-term tenancy will be awarded. In our understanding, the Government generally adopts the principle of the highest bidder wins in awarding tender. However, in his reply just now, the public officer said that they would not only consider the bid offered. Is the Government saying that in awarding this particular tender, the principle of the highest bidder wins will not be the only criterion and there will be a more comprehensive consideration?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, just as I have just said, we are now analysing the expressions received and have not yet decided on what criteria to adopt in awarding the tender. Of course, in the case of short-term tenancies in general, the rent offered should be the sole consideration and we should make our decision having regard to our revenue from rent. If however other criteria for assessment are involved, we have to discuss with the Central Tender Board as regards the final weighting. We have not yet reached this stage as the period for submitting expressions just closed before the holidays.

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

MR WONG SIU-YEE (in Cantonese): *Madam President, having read the Government's main reply, I have the feeling that it is being too bureaucratic and time-consuming. I understand the relationship between the Government's move in inviting organizations to submit expressions and in advertising the tender afterwards. Is it the intention of the Government that if the majority of the expressions indicate that a circus performance is favoured, it will then call tender to see which overseas organizations are interested in staging such a performance in Hong Kong? Why does it have to ask organizations to submit expressions first before calling tender? Will the tender so called be finally on the same type of activity?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, this is in fact our established practice. If the expressions we receive represent different opinions, we will have to assess the intention of the public and that of the organizations concerned towards the use of the site.

I can provide some supplementary background information here. We know that no works will be carried out on the former Tamar site for two years. Since the site is in a central location, we should make good use of it so that the Government can receive the rent which the site should generate for the said period. A few months ago, various organizations contacted the Administration, suggesting to us directly to use the site for commercial purposes. In view of this, we have followed our usual practice of openly inviting all organizations or companies concerned to submit expressions of interest on the use of the site. Having assessed all the expressions, the Government will choose one and call open tender. By so doing, the main stream of opinion of the community will be reflected.

PRESIDENT (in Cantonese): Mr Henry TANG.

MR HENRY TANG (in Cantonese): *Madam President, from the point of view of social interest instead of having pure consideration for the Government's coffers,*

since the economy is now in a downturn and many people of the wholesale and retail trade are facing unemployment, will the Government consider using the site as a temporary retail centre for the community? This can attract tourists to the territory on the one hand and enable people of the wholesale and retail trade to remain in business on the other.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, just as I have told the Honourable Miss CHOY So-yuk, I am grateful to Mr TANG for his idea. Since the expressions we have received have not included such a proposal, the possibility of such a use has been ruled out.

PRESIDENT (in Cantonese): Second question. Prof NG Ching-fai.

Home Financing Scheme for Tertiary Institution Staff

2. **PROF NG CHING-FAI** (in Cantonese): *Will the Government inform this Council whether it knows the exact date for implementing the home financing scheme for tertiary institution staff and whether the scheme can be implemented in the next academic year, and if it cannot be implemented by that time, the reasons for it?*

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

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, the Government agrees in principle to the introduction of the home financing scheme for eligible staff of the institutions funded by the University Grants Committee (UGC), so that we can provide housing benefits for these staff in a more cost-effective manner and meet their home ownership aspirations. Consensus has been reached among the Government, the UGC and the tertiary institutions on certain basic principles, including the need to ensure that the

scheme would achieve long-term savings for the Government, and that it is in line with the subvention policy that the terms and conditions of service for staff of the UGC sector should not be better than those of comparable ranks in the Civil Service.

The Government, in consultation with UGC-funded institutions, is working on the details of the home financing scheme, including ascertaining the level of expenditure, and cash flow required for the scheme and how to make the best use of surplus quarters of the institutions arising from the implementation of the scheme. If consensus can be reached on the details after a thorough assessment, we will submit the proposal to the Finance Committee of the Legislative Council for consideration as soon as possible within the next Legislative Session. Subject to the Finance Committee's approval, it is possible to implement the scheme in the next academic year.

PRESIDENT (in Cantonese): Prof NG Ching-fai.

PROF NG CHING-FAI (in Cantonese): *I would like to raise a few questions on the Secretary's answer. First, he said that the terms and conditions of service for staff of the tertiary institutions should not be better than those of the civil servants. We all agree to this principle. However, I remember the Administration has clearly indicated that the tertiary institutions' special characteristic of recruiting staff worldwide is duly recognized. Will the Secretary reiterate the Government's respect to this special characteristic of the tertiary institutions? Second, the Government has stated repeatedly that it has to work on and assess every detail of the scheme. However, during the discussions of this new scheme, the staff associations concerned and the vice-chancellors of the tertiary institutions have already made a lot of concessions. One of the concessions is that at present, staff of the institutions are entitled to housing benefits for more than 10 years while in future, they can enjoy such benefits for only 10 years. In fact, we all know the details that the Government has to work on for this scheme, why does it take such a long time to assess them? I would like the Secretary to respond to these queries.*

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

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, on the first query, I would like to state clearly that the tertiary institutions' special characteristic of recruiting overseas quality scholars to Hong Kong is duly respected by the Government. It is exactly because of this reason that both the Government and the institutions need all the more to work on the details in order to reach a consensus. On the major premise that the benefits enjoyed by the staff of the institutions should not be better than those of comparable ranks in the Civil Service, a breakthrough has to be sought. As to the second query, I hope Honourable Members will not doubt the sincerity of the Government. We aim at finding an answer, a feasible arrangement as soon as possible for examination by the Finance Committee of the first Legislative Council of the Special Administrative Region.

PRESIDENT (in Cantonese): Prof NG Ching-fai.

PROF NG CHING-FAI (in Cantonese): *Can the Secretary reiterate his undertaking made at the meeting of the Panel on Education a few weeks ago that the new package would be submitted to the Legislative Council in July? Is my understanding correct?*

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

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Madam President, at the meeting of the Panel on Education held on 26 March, I made a clear undertaking that we would spare no effort in making sure that all the details would be worked out in the next two months and that the scheme can be submitted to the Finance Committee for consideration in the first instance within the next Legislative Session. However, the final decision rests with the Finance Committee, not the Government.

PRESIDENT (in Cantonese): Third question. Mr Kennedy WONG.

Celebrating First Anniversary of Hong Kong's Reunification with the Motherland

3. **MR KENNEDY WONG** (in Cantonese): *Will the Government inform this Council:*

- (a) *of the plans to organize or organize jointly with non-governmental organizations activities to celebrate the first anniversary of Hong Kong's reunification with the motherland;*
- (b) *of the details and estimated expenditure of such activities (such as issuing special publications and souvenirs); and*
- (c) *whether there is any plan to launch publicity campaigns abroad in this respect, so as to enhance overseas countries' understanding of Hong Kong's situation after the reunification?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I am sure Honourable Members will agree that 1997-98 will be a most significant and memorable year. Following the smooth transition, the newly established Hong Kong Special Administrative Region (SAR) has continued to function in a steady and progressive manner, with the concept of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" fully realized.

1 July 1998 would be a time to look back on the achievement of the SAR during its first year in existence. Apart from having it declared as a public holiday, the Administration is actively considering various celebration events to mark the occasion.

The Administration has yet no plans to co-organize with non-governmental organizations celebration activities. I would, however, like to stress that we welcome non-governmental bodies organizing their own activities for, after all, celebrating the achievements of the SAR over the past year cannot be a government monopoly.

As regards details and expenditure of such activities, I am afraid I am not in a position to inform this Council, as planning is still ongoing. I can assure Members that we will, as usual, be prudent in spending public funds.

As regards the third part of the Honourable Member's question, the Secretary for Trade and Industry has been co-ordinating plans for our overseas Economic and Trade Offices to organize functions in celebration of the SAR's first anniversary. Activities range from cocktail reception, sit-down dinner with cultural performances to organizing major business conferences to show how the SAR could be a launching pad to business opportunities in the Asian-Pacific Region. 1 July 1998 will be an occasion for our overseas offices to brief their host countries on the latest developments in Hong Kong and to reassure our contacts of our free and open economy as well as our autonomy under the "one country, two systems" principle.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Kennedy WONG.

MR KENNEDY WONG (in Cantonese): *Madam President, overseas sources reported that President CLINTON might visit Hong Kong around the first anniversary of Hong Kong's reunification with the Motherland. Will the Government confirm whether it is true? If it is the case, will President CLINTON be invited to some of the celebration events? Will any other international celebrities visit Hong Kong during that period?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Madam President, I have also come across reports speculating on the visits of some celebrities or President CLINTON of the United States to Hong Kong. However, we cannot confirm whether they will visit Hong Kong at that time. If the President of the United States or other overseas honorary guests do visit Hong Kong during that period, provided there are suitable events, they will be invited to participate circumstances permitting. I would like to thank Mr WONG for raising this question.*

PRESIDENT (in Cantonese): Mr CHAN Choi-hi.

MR CHAN CHOI-HI (in Cantonese): *Madam President, will the Secretary inform this Council what measures will be taken to step up co-ordination of the events? If both the private and public sectors organize activities at the same time, there might be duplication of events, resulting in a waste of resources. The Secretary has mentioned in the fourth paragraph that they will be prudent in spending public funds. This is indeed a good intention, but I am rather concerned about this. What practical measures will be taken to ensure resources will not be wasted?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): As I have mentioned in the main reply, celebrating the achievements of Hong Kong over the past year after the reunification cannot be a government monopoly. We certainly cannot co-ordinate all the activities by ourselves, therefore, in this regard, we have liaised with a number of organizations and some of them have informed us of their intention of organizing celebration events at the district level. Since Hong Kong is such a large metropolis, in this way, the atmosphere of celebration will prevail over the territory and I think this is a better way to celebrate. As regards the duplication of events, I think it will not be too difficult to avoid. I would like to thank Mr CHAN for raising this point.

PRESIDENT (in Cantonese): Mr James TIEN.

MR JAMES TIEN (in Cantonese): *Madam President, it has been a year since Hong Kong's reunification with the Motherland. I am aware that a lot of people overseas still do not understand the actual situation in Hong Kong. The Secretary has mentioned that our overseas Economic and Trade Offices will organize a lot of events. However, unfortunately, it is not the business sector but members of the public of the overseas countries who do not understand the situation in Hong Kong. A lot of questions still come to us concerning our human rights condition after the reunification, for example, whether demonstrations and protests are*

allowed and whether people have been put in jail. These are apparently not the case in Hong Kong, but no one is going to answer these questions. As regards activities held overseas, I think the organization of cocktail receptions merely by the Trade Development Council and the Economic and Trade Offices under the Trade and Industry Bureau on 1 July cannot achieve much purpose. Apart from such offices, will other government departments organize celebration activities to brief people overseas on the situation in Hong Kong?

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, in the main reply, I have only mentioned events organized by our overseas Economic and Trade Offices for the celebration of the first anniversary of the reunification. As regards our overseas publicity for Hong Kong, our effort is not confined to such activities. In fact, various publicity activities will be organized throughout the year, which include some major publicity programmes. For example, when the Chief Executive and senior officials of the SAR visit overseas countries, they will certainly take the opportunity to publicize Hong Kong. As far as I know, the Information Services Department has planned a series of programmes to promote Hong Kong overseas.

As regards the frequent reports that Hong Kong has a lot of problems, such as the loss of freedom of speech, most of them are in fact incorrect reports. Unfortunately, they are very appealing because people think that there will be inside stories. Under such circumstances, as Mr TIEN has said, we have to maintain an ongoing effort in this respect. We have to clarify such wrong messages and reflect the true picture of Hong Kong to people overseas, especially our major trading partners. I am also aware that a lot of our businessmen, for example, Mr James TIEN and Mr Henry TANG, have explained the situation of Hong Kong to various organizations and individuals in the business sector while they are overseas. I recall the assistance they had rendered me when I was working in Japan. This is a long-term task and we will continue to dedicate our effort in this respect. Thank you, Mr TIEN.

PRESIDENT (in Cantonese): Mr TIEN, which part of your question has not been answered?

MR JAMES TIEN (in Cantonese): *The Secretary has not answered my question. Actually, I am not referring to events organized during the year. I would like to know whether other government departments, apart from those Economic and Trade Offices, will organize activities on 1 July? As the Secretary did not give me an answer, I assume there will not be any other activities.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add?

SECRETARY FOR HOME AFFAIRS (in Cantonese): I have only one point to add and that is, the Information Services Department will issue a lot of reports overseas on that day. Moreover, the Hong Kong Tourist Association and the Trade Development Council will take advantage of the event to organize a series of activities in Hong Kong and overseas. The Tourist Association will take the opportunity to step up the promotion of Hong Kong and persuade people overseas to pay a visit to Hong Kong so that they can have a look at Hong Kong's situation at the first anniversary of the reunification.

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

MISS CHOY SO-YUK (in Cantonese): *Madam President, will the heads of state of the Mainland and other countries be invited to participate in our celebration for the first anniversary? And will studies and reviews on the concept of "one country, two systems" and "Hong Kong people ruling Hong Kong" be conducted?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): For the time being, we do not have any plans to invite certain personalities from the Mainland to visit Hong Kong. However, if we receive any indication of interest, we will certainly give it consideration.

As regards Miss CHOY's second question, sorry, what is the main point?

PRESIDENT (in Cantonese): Miss CHOY, will you please repeat the second part of your supplementary question.

MISS CHOY SO-YUK (in Cantonese): *Will the Government conduct studies on the concept of "one country, two systems"?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Madam President, as far as I know, before 1 July, the Trade Development Council and other organizations will conduct a series of seminars on business matters in which the concept of "one country, two systems" will be included. The seminars organized by the overseas Economic and Trade Offices will also involve the concept of "one country, two systems". Therefore, studies in this respect will be conducted.*

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

MR CHAN KAM-LAM (in Cantonese): *Madam President, the Secretary has mentioned in the main reply that the Government is actively considering various celebration events. When will the Government inform us of the results of its deliberations? As we all know, the Government had to approach the former Legislative Council for the funding of celebration events before 1997. However, until now, the Government has not sought the approval of the Provisional Legislative Council for funding of such events. As the Provisional Legislative Council will rise after tomorrow, how can the Government seek funding from the legislature after the list of events has been finalized?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we are now considering the feasibility of a series of events. It is very difficult to decide the budget and how we conduct these activities when the list of events is not yet finalized. In 1997, we prepared for the reunification ceremony and it was of a very large scale. Though the celebration of the first anniversary of the reunification is an important event, it cannot be compared to the reunification ceremony held in 1997. We understand that the seeking of funding poses a technical problem. In this regard, discussions have been held with policy bureaux concerned to look for ways to overcome the problem. I would like to thank Mr CHAN for his question.

PRESIDENT (in Cantonese): Fourth question, Mr CHAN Choi-hi.

Government Officials Lodging Complaints Against the Media

4. **MR CHAN CHOI-HI** (in Cantonese): *It is reported that a government official lodged a complaint with the management of a television broadcasting company about the comments made on him by a compere in a programme due to his non-appearance in that programme, and the Chief Secretary for Administration later expressed her support for that official's move. In this connection, will the Government inform this Council whether:*

- (a) *it knows why that official chose to complain to the management of the television broadcasting company, rather than responding to the compere's comments through other channels, such as appearing in the programme to make a response;*
- (b) *it has studied if the Chief Secretary for Administration's expression of her support for that official's move will affect the Government's relationship with the media;*
- (c) *there is any plan to formulate guidelines and procedures for government officials to follow when lodging complaints against the media; if so, what the details are; if not, why not; and*

- (d) *it has studied if this incident will affect the freedom of the press and, if it will, of the follow-up actions to be taken by the authorities?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the government official mentioned by the Honourable CHAN Choi-hi had already accepted an apology from the television broadcasting company and the case had come to an end.

My reply to Mr CHAN Choi-hi's question is as follows:

- (a) It is normal practice for anyone, a public officer or otherwise, to reflect his views on a particular television programme to the management of the television broadcasting company since the management is ultimately responsible for all the programmes;
- (b) As an open government, officials have an obligation to explain to the public, including the media, the policies and measures of the government and candidly accept different viewpoints and comments. Government officials have always responded to suggestions and comments in a positive and pragmatic manner. Where there are any extreme, unreasonable or unfair comments by a particular media company, provided that the department concerned adopts a fair, objective, reasonable and impersonal attitude when responding, it should not have affected the Government's relationship with the media;
- (c) The Hong Kong Special Administrative Region Government attaches great importance to the freedom of press as well as the communication and contact with the media. Should there be extreme reports or criticisms, officials of the relevant departments will normally offer clarification in public or contact the media concerned. There is no need to formulate guidelines on this matter since each case differs from the other in their nature and should not be dealt with in the same way;

- (d) Both the Chief Executive and the Chief Secretary for Administration have clearly stated, on various occasions, that the Government values highly and uphold press freedom. This case has no bearing whatsoever on the freedom of press.

PRESIDENT (in Cantonese): Mr CHAN Choi-hi.

MR CHAN CHOI-HI (in Cantonese): *Madam President, the storm seems to have died down. However, in regard to paragraph (a) of the main reply, I wonder if the Secretary wants to normalize some irregular moves? Has it ever occurred to us that to achieve anything through pressure is a very bad precedent and will the Secretary extend this very bad precedent? Does the Secretary reckon that it is a normal practice to ask for apology from the management of the television broadcasting company by exerting pressure?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, in any one organization, the management shall bear the ultimate responsibility. If it is a newspaper, the management should also be responsible for the reports made in the newspaper. The same applies to a radio broadcaster. If anyone has any opinions on the radio broadcaster or the newspaper, he can reflect his opinions to the management. I do not think that this is pressure nor can we say that it has something to do with pressure. I think that it is very normal, feasible and reasonable. I believe that not only in Hong Kong, but in anywhere else in the world, this is a reasonable practice. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Kennedy WONG.

MR KENNEDY WONG (in Cantonese): *Madam President, I would like to know how much resources the Government will actually give to these officials to launch their counterattacks? For instance, if these officials think that the comments concerned are tantamount to libel, will the Government issue letters from the*

solicitor on behalf of these officials? Besides, if these officials write to the media concerned for clarification, is he spending public funds? I would like to know how much resources the Government will provide as back-up.

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): I think this depends on the complexity of the matter. If the matter concerned is directly related to the work of the official, I think the official has the right to ask the Government for assistance. Take myself as an example. If I have arguments with the mass media or people outside the Civil Service in the discharge of my official duties and that I have to ask for legal investigation into the matter which is directly related to my duties, I think that it is reasonable to ask the Government to shoulder the expenses incurred. And I believe that colleagues from the Civil Service Bureau and other government officials will deal with this kind of cases in a reasonable manner.

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

MR NG LEUNG-SING (in Cantonese): *In paragraph (b) of the main reply, it is mentioned that as an open government, officials have an obligation to explain to the public, including the media, the policies and measures of the Government. However, to the clause that follows, "and candidly accept different viewpoints and comments", I have some doubts. Does it mean that the officials will meekly accept all the viewpoints and comments which are regarded as incorrect even by the Government? Will they further explain or further rebut these incorrect viewpoints?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): I thank Mr NG Leung-sing for his supplementary question. I think it is very difficult to give a general answer on what the officials should do. I remember when I first joined the Civil Service, one senior official, who has now retired, told me that part of the remuneration of the government officials was for "swallowing" bitter pills, and that explanation was not necessary as it would not help the matter at all. If the matters are trivial, clarification often worsens the relationship between both parties. It would thus be better that the official concerned "swallows" the whole issue. After all, part of the remuneration may be the compensation for "swallowing" these things. Therefore, I cannot give a general answer to the question. However, for matters of principle, officials of course cannot adopt this kind of attitude as this may have implications on the whole issue and even to the policy concerned. Hence, for the sake of public interests, clarification is necessary even if it means offending some people. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr CHAN Choi-hi.

MR CHAN CHOI-HI (in Cantonese): *Madam President, the Secretary has just mentioned that the move was "reasonable". Does it mean that this approach will be adopted by the Government in the future? Will it continue to be adopted and become a conventional practice? As the Secretary was performing remarkably in the programme, could he not teach his colleagues how to face the media?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I do not deserve the last compliment by Mr CHAN Choi-hi. I believe that the majority of, and indeed an overwhelming majority of our colleagues serving the Hong Kong Special Administrative Region Government are very hardworking and we take a positive and conscientious attitude towards work. I hope that our relationship with the mass media can improve progressively. Although there are times when incidents may happen, what is important is that we all aim at serving the people of Hong Kong. With Members' encouragement, I believe that we will further encourage ourselves. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr CHAN Choi-hi, has your supplementary question not been answered by the Secretary? You may repeat the part of the question concerned.

MR CHAN CHOI-HI (in Cantonese): *The first part of my question was: Does it mean that this approach will be used to deal with these matters in the future? Is the exertion of pressure in such a tortuous way a practice within the Civil Service? Will this kind of practice become a convention?*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Sorry, Madam President, I very much disagree with Mr CHAN Choi-hi that this is a high-handed approach. If I was not clear enough in my earlier explanation, I shall explain once again. If anyone, whether he is a civil servant or not, has any views on a media organization (be it a newspaper, a radio station or a television broadcaster), he has the right to reflect his views to the management of that organization if he deems necessary. This is also a reasonable approach. Of course, according to the normal practice of the Government, this is not the only approach. It is also possible that under certain circumstances, the civil servant concerned may choose other approaches. But under this situation, I think that this is a reasonable approach.

PRESIDENT (in Cantonese): Mr James TIEN.

MR JAMES TIEN (in Cantonese): *Madam President, perhaps due to the economic downturn and hardships in living, these comperes would like to ask government officials some particularly difficult questions. If the Bureau Secretary concerned does nothing after issuing a press release and attend any compere's programme upon invitation, other comperes will again lodge complaints against him. I think this will pose a difficult situation for the Secretary. At present, the approach of each bureau is different from the other. Some Secretaries are willing to attend the programmes while some are not. I would like to ask whether there is thorough co-ordination within the Civil Service. For*

instance, the Assistant Secretaries or other Secretaries can be required to help to explain the case, which I believe can absolutely be done. Somehow, the Government cannot ask the officials to "swallow" anything because things are not as simple as that. Once the official has "swallowed" the case, others will think that what has been said is true and then the government policy will be totally and incorrectly reported. I wish to ask the Government whether it will conduct a comprehensive review in order to identify other better measures? In case there are similar situations in the future, should the Secretary concerned attend the programme? Which kind of programmes should he attend or can he choose to attend a combined programme? Can the Administration make a decision after review instead of giving us a rough answer like this one? Thank you, Madam President.

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): I think that the proposal of Mr James TIEN, which is to review what to do under the circumstances, is a good one, and I will relay this message to my colleagues, including the Director of Information Services, for further consideration. In my personal experience, for example, it is very often that I know the requirements of these programmes. When a compere calls at me and invites me to attend his programme and if I have other business to do on that day (for example, I have to attend the Provisional Legislative Council meeting at 4.30 p.m. today and it is thus impossible for me to attend his programme), I will tell him that there are two alternatives under this situation. One is that I will ask other colleagues to attend the programme if I reckon that it is necessary, while the other is that I will ask him to make it another day if my attendance is required. However, if I think that it has nothing to do with my duties and that it is basically not necessary for me to attend the programme, I will explain to him that he has chosen the wrong person. I consider that Mr James TIEN's proposal is a good one which I will study with my colleagues, particularly the Director of Information Services as he is responsible for co-ordinating the information work of other bureaux and departments. Thank you.

PRESIDENT (in Cantonese): Mr Frederick FUNG.

MR FREDERICK FUNG (in Cantonese): *Madam President, in paragraph (d) of the main reply, it has in fact reflected that the Chief Secretary for Administration has clearly stated, on various occasions, that the Government upholds press freedom. However, in the case mentioned by Mr CHAN Choi-hi in the question, after the Secretary concerned has given a response, the Chief Secretary for Administration later expressed her support for the move of that Secretary. This may cause worries to the mass media as the Government is perceived to be making such a strong response to this case through a different but high-ranking official. My question is whether the Government has "overdone" it when after the Secretary concerned had made a response, the Chief Secretary for Administration made a further response to the case? Has the Government discussed with the mass media on the best approach in dealing with such cases in the future according to the culture of mass media so that such matters can be handled smoothly? Thank you, Madam President.*

PRESIDENT (in Cantonese): Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, I think in this case, it is necessary for the Chief Secretary for Administration to make a response at an appropriate time. The difficulty is that people may feel that the Government does not explain at all when there is no response, but they may query why a response should be made by such a high-ranking official even when there is a response. In my view, the most important point has been stated in paragraph (d) of the main reply as quoted earlier by Mr Frederick FUNG which I would like to repeat and that is, the Chief Executive and the Chief Secretary for Administration value highly and uphold press freedom. I think that we should set our minds at ease on this point. Thank you.

PRESIDENT (in Cantonese): Fifth question. Mr CHOY Kan-pui will ask this question on behalf of Dr TANG Siu-tong. Mr CHOY Kan-pui.

Improving the Design of Lam Kam Road

5. **MR CHOY KAN-PUI** (in Cantonese): *Madam President, I ask this question on behalf of Dr TANG Siu-tong.*

Will the Government inform this Council:

- (a) of the number of traffic accidents involving heavy vehicles which occurred at Lam Kam Road in the past three years; and*
- (b) whether it has studied how to improve the design of Lam Kam Road, especially the design of road bends; if so, what the results (including the implementation programme for improvement works and the anticipated effectiveness of such works) are?*

PRESIDENT (in Cantonese): Secretary for Transport.

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, the number of traffic accidents in Lam Kam Road in the past three years involving heavy vehicles has remained steady at nine cases in 1995, six in 1996 and seven in 1997.

We have already examined the design of Lam Kam Road and improved sections of the road. Lam Kam Road is a 6 km single two-lane road between Tai Po and Yuen Long. We have widened and improved the section (3.9 km long) of Lam Kam Road between the interchange at Hong Lok Yuen and Kadoorie Farm. The carriageway was widened from about 5.5 m to the current highway standard of 7.3 m in April 1994. The improvements included a climbing lane of 600 m long between Pak Ngau Shek and Kadoorie Farm where the road is steep.

We completed a further investigation in late 1997 to upgrade the section of Lam Kam Road between the Route Twisk roundabout and Kadoorie Farm to a standard dual two-lane road. The study however concluded that by simple widening of the road and improving the design of road bends would not be sufficient to improve safety standards because of the steepness of the road.

With a view to improving the road gradient to an acceptable standard, the Administration will carry out an engineering feasibility study on options for realignment of the entire road between Tai Po and Yuen Long. The study will also assess the land resumption requirements and the ways to minimize its impact on the rural environment and the Country Park. In designing the realignment of the road, both the carriageway and the radius of bends would comply with the current road standard. The study is expected to be completed in 1999. Subject to the findings of the feasibility study, the Administration will also draw up an implementation programme.

In the meantime, more traffic signs will be put up in the downhill direction of Lam Kam Road between Kadoorie Farm and Route Twisk to advise motorists of the steep downward slope and the need to use low gear.

PRESIDENT (in Cantonese): Mr CHOY Kan-pui.

MR CHOY KAN-PUI (in Cantonese): *Madam President, will the Government inform us as to how many bends are there along the major section of Lam Kam Road in the New Territories that are not able to cope with the current traffic volume and the sizes of the vehicles?*

PRESIDENT (in Cantonese): Secretary for Transport.

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, it is not only the bends that are causing trouble for Lam Kam Road because at present, vehicles over 11 m long are prohibited to run on the Road. As for the other vehicles, if they are running at the appropriate speed, no danger will be posed. Nonetheless, for the sake of road safety, apart from the design of road bends, road gradient and driving speed should also be taken into consideration. Hence, improvements will be carried out at appropriate spots and suitable traffic signs will be put up to remind motorists of paying attention to road safety.

PRESIDENT (in Cantonese): Mrs Miriam LAU.

MRS MIRIAM LAU (in Cantonese): *Madam President, in order to ensure that vehicles running on a steep road will keep to a safe speed, I believe the most effective way is to set a maximum speed limit for that section of the road. In the fifth paragraph of the main reply, it is mentioned that more traffic signs will be put up in that part of Lam Kam Road between Kadoorie Farm and Route Twisk. I would like to know if these traffic signs will include signs limiting driving speed? If there is a limit, at what level will it be set? Moreover, how will the law be enforced?*

PRESIDENT (in Cantonese): Secretary for Transport.

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, those suitable traffic signs include signs relating to road safety and speed limit. At the moment, the speed limit for most of the road sections is 50 km. Driving at this speed and using low gear are in line with the design of those sections. As regards law enforcement, we will step up enforcement duties at those sections if necessary.

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

MR NGAN KAM-CHUEN (in Cantonese): *Madam President, that section mentioned in the fifth paragraph of the main reply is the location where a traffic accident took place the last time. There are already traffic signs there advising that buses have to stop for a while after finishing the downhill section. I would like to know if there are similar directions advising that other vehicles with a greater passenger capacity, such as coaches, also have to stop for a while before continuing? Will the Government consider this?*

PRESIDENT (in Cantonese): Secretary for Transport.

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, all motorists should pay attention to road condition. If they are driving at the appropriate speed using low gear, they need not stop purposely when going

downhill. Of course, making a stop will be helpful to maintaining speed because before stopping, the vehicle must be slowed down. This however is not a statutory requirement. What is important is that motorists can maintain appropriate speeds and use low gear. We will remind motorists to pay attention to this.

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

MR NGAN KAM-CHUEN (in Cantonese): *That particular sign at present is a direction for buses to stop. I would like to ask if the Government will consider extending it to other large passenger coaches?*

PRESIDENT (in Cantonese): Secretary for Transport.

SECRETARY FOR TRANSPORT (in Cantonese): Madam President, we can consider this proposal.

PRESIDENT (in Cantonese): Last question seeking an oral reply. Mr LAU Kong-wah.

Levy of Government Rent

6. **MR LAU KONG-WAH** (in Cantonese): *Will the Government inform this Council whether there are lessees who have paid land premium to the Government and are currently required to pay government rent equivalent to 3% of the rateable value of their land; if so, whether it will consider abolishing the levy of government rents to avoid double charges?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, there are lessees who have paid a premium to the Government and are currently required to pay an annual rent to the Government equivalent to 3% of the rateable value of their land, adjusted in step with changes in the rateable value from time to time.

The requirement to pay a premium has no direct relationship with that to pay Government rent. Under the current land policy, a premium is charged for each new land grant and no additional premium is charged upon extension of an existing non-renewable land lease. During the term of a new land lease or the extended term of a renewed land lease, we charge Government rent equivalent to 3% of the rateable value of the land from time to time. Such requirement to pay Government rent forms an integral part of the land lease conditions, which establish the contractual relationship between the Government and the lessees. There is little justification for the Government not to collect Government rent.

PRESIDENT (in Cantonese): Mr LAU Kong-wah.

MR LAU KONG-WAH (in Cantonese): *Madam President, a lot of owners feel that having to pay Government rent is a burden. I do not know when there will be an end to this but I would like to ask the Secretary if it is possible to lower the rate. Is this possible?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, I have mentioned just now that the charging of Government rent is required by the existing land policy and it will be adjusted in step with changes in the rateable value. If the rateable value is lowered, the 3% Government rent will also be lowered accordingly.

PRESIDENT (in Cantonese): Mr CHOY Kan-pui.

MR CHOY KAN-PUI (in Cantonese): *Madam President, will the Government inform us whether the Administration will conduct a comprehensive review on the existing policy?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, the Basic Law gives the Special Administrative Region (SAR) absolute power to formulate its own land policy. Upon inauguration, the SAR Government has only formulated this land policy in July and given it wide publicity. Since this policy has been implemented for less than a year, it is premature to talk about a review.

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

MR NGAN KAM-CHUEN (in Cantonese): *Madam President, in reviewing this policy, apart from the present arrangement of charging Government rent equivalent to 3% of the rateable value, will the Government consider another alternative of charging a one-off additional premium if the lessee agrees to this instead of paying the Government rent equivalent to 3% of the rateable value each quarter?*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, I have said just now that the SAR Government will not review this policy for the time being. If it happens that there are lessees willing to pay the Government at one go the Government rent equivalent to 3% of the rateable value for 50 years, I believe we must have a very strong message to support it. I cannot give a hypothetical answer here.

PRESIDENT (in Cantonese): Mr Bruce LIU.

MR BRUCE LIU (in Cantonese): *Madam President, Article 121 of the Basic Law stipulates that the rent should be equivalent to 3% of the rateable value. As this has been spelled out in the Basic Law, I believe it would be very difficult to change it. Since the Basic Law has not mentioned anything on rates, can the Government consider the issue from another angle when conducting a review, that is, if the lessees have to pay rent, is it possible for them to apply for exemption, including the dropping of rates, so that they do not have to be charged double? Will the Government further consider this? Thank you.*

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, this is one of the requirements of the existing land policy and is also a contractual condition for the Government in granting a lease to a lessee. As I have already mentioned, we see no justifications to adjust or change it at the moment.

PRESIDENT (in Cantonese): That is all for the questions.

WRITTEN ANSWERS TO QUESTIONS

Expansion of the VIP Room at New Airport

7. **MR LEE KAI-MING** (in Chinese): *It is reported that the authorities have decided to double the size of the VIP Room at the new airport which is nearing completion, and will thus incur an additional construction cost of \$40 million. In this connection, will the Government inform this Council of:*

- (a) *the reasons for the decision to double the size of the VIP Room at the new airport, when it is nearing completion; and*

- (b) *the cost per sq ft of the expanded VIP Room at the new airport and the method of calculating the cost; and how it compares to the average cost of five-star hotels?*

SECRETARY FOR WORKS (in Chinese): Madam President,

- (a) The original space earmarked for the VIP Suite at the new airport was 1 260 sq m. The allocation was done in 1993. The size is smaller than the existing VIP Suite at Kai Tak Airport which measures 1 800 sq m. The Government has subsequently anticipated that the original space earmarked for the new VIP Suite would not be sufficient to cater for the future demand and therefore indicated to the Airport Authority that additional space for the new VIP Suite would be required.

The extension of the new VIP Suite was based on actual needs. In updating the future demand for VIP service in order to identify the space required for extension, the Government has taken into account the projected growth in the future use of the VIP Suite and the operational experience of the demand for VIP service during the handover period in June/July 1997, the World Bank/International Monetary Fund Conference in September 1997 and the reception of overseas dignitaries who paid official visits to the Hong Kong Special Administrative Region after the reunification. After a number of discussions with the Airport Authority on the basis of these projections and experience, the Government secured an additional site of 1 240 sq m in November 1997 for the extension of the new VIP Suite.

- (b) The average cost of the extended VIP Suite at the new airport is about \$2,500 per sq ft, including the costs of fitting-out and building services work. The average cost of fitting-out work of five-star hotels is about \$1,200 per sq ft. This amount does not include the costs of building services work.

The higher costs of the building services work for the extended area of the new VIP Suite are attributed to the diversion of ducts to increase the ceiling height since the area is not originally intended for the use

of visitors. In addition, due to the remote location of the new airport at Chek Lap Kok, construction costs are normally 40% to 60% higher than those for work conducted in the urban area. Taken together, the current contract price of the VIP Suite at the new airport is considered reasonable.

Relocation of Servicing Companies to the Mainland

8. **DR CHARLES YEUNG** (in Chinese): *It is learned that in recent years some companies in the service sectors (such as computing services and accounting firms, and companies providing supporting services to the manufacturing sector) have relocated their business to the Mainland. In this connection, will the Government inform this Council:*

- (a) *whether it knows the number of companies in the service sectors which have relocated their business to the Mainland in each of the past three years and the consequential number of posts lost in the local market; if such information is not available, whether the authorities will consider compiling statistics in this respect; and*
- (b) *whether it has assessed the impact of the relocation of these companies on the local labour market; if so, what the details are?*

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

- (a) The Government does not have specific statistics on service sector companies which have relocated across the border. Compilation of these statistics is subject to considerable technical difficulties. First, for those companies which have relocated the whole of their operations across the border, they are no longer in the Census and Statistics Department's sampling frame. It is thus not possible for us to contact these companies to make the statistical enquiry. For those companies which have relocated part of their operations to the Mainland, it is likewise difficult to ascertain the number of affected employees and the vacancies involved. In addition, in considering the compilation of statistics in this area, the Government must also give due regard to the additional reporting burden for the companies

concerned as well as the cost of collecting the data. Therefore, at present the Government has no plan to compile statistics in this area.

- (b) In assessing the impact of relocation of service sector companies on local employment, it has to be recognized that such a relocation move arose mainly from the rapid expansion of the service sectors in recent years. The rising demand for labour and the relatively high local wages induced service sector companies to relocate some of their lower-end service operations to the Mainland. Yet on the whole, the expansion of the service sectors has contributed directly to the sustained growth in local employment. Statistics indicate that total employment in Hong Kong has grown substantially, by 15% over the past five years. Within this, the share of the service sectors in total employment was continuously rising, from 69% in 1992 to 79% in 1997. This points to the ever increasing significance of the service sectors over the recent years. Over the same period, the unemployment rate had not risen to any significant extent. The most recent pick-up in unemployment was mainly due to the impact of the regional financial turmoil, and was not related to any massive relocation or contraction of the service sectors.

Bidding Price for a Hotel Site in Ma On Shan

9. **MR HUI YIN-FAT** (in Chinese): *Recently, a property developer successfully bid for a hotel site in Ma On Shan at a price of about \$200 per sq ft. In this connection, will the Government inform this Council:*

- (a) *of the number of valid tenders received in that particular tendering exercise, and the price offered in each of the tenders;*
- (b) *of the land development cost per sq ft of the site and the method of calculating the cost;*
- (c) *whether it has stipulated in the sale and purchase agreement that the land use of the site cannot be changed in future; if not, why not;*

- (d) *whether it had set an internal upset price for the above site; if so, of the basis for setting the upset price as well as the upset price per sq ft for the above site on that basis; if not, how the authority decided whether or not the bidding price of the successful tenderer was reasonable; and*
- (e) *whether it has studied the effect of the price in this land sale on the prices of future land sales; if so, what the details are?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Madam President, the question repeats a common misconception about the sale value of the Ma On Shan hotel site. The figure of \$200 per sq ft or about \$2,150 per sq m refers to the accommodation value, based on the total permissible gross floor area. The site value, which should be calculated on the basis of the site area, is \$15,049 per sq m or about \$1,400 per sq ft, which is higher than the average land production cost set out in (b) below. The use of accommodation value for this site is misleading as accommodation value is normally applied to properties which can be sold on a flat by flat or floor by floor basis. A hotel is an integral business which cannot be subdivided for title transactions.

Turning to the question, I would like to inform Members that:

- (a) Two valid tenders were received. The price of the successful tender was \$120,388,000 and is the higher of the two. We do not consider it appropriate to disclose the price of the unsuccessful tender;
- (b) The average land production cost is \$5,480 per sq m. It is calculated based on the engineering costs and the basic compensation rate for land resumption, that is, the formula employed by the former Land Commission;
- (c) The lease document has restricted the use of the site to hotel use only. The Building Covenant requires the hotel to be completed within four years. It is our policy not to allow the purchaser of a tendered site to modify the lease within five years from the date of sale. The site is also zoned for hotel use only in the Outline Zoning Plan;

- (d) We did not pre-set an internal upset price. The Ma On Shan site is the first site restricted to hotel use only. There are no precedents for comparison purposes. Nevertheless, the Administration analysed the bids received thoroughly before a decision was made on the successful bidder. Taking into account the construction costs, any additional foundation costs due to the possible presence of cavernous marble below the site surface, and other costs (such as interests and so on), we estimated that, with the tendered sum of \$120,388,000, the value of a hotel room in a completed development at the Ma On Shan site would be \$1.78 million. Comparing it with the transaction prices of other hotels in 1995-1997, we considered that the tendered price was not unreasonable, having regard to the location of the site, the higher level of risk in developing the site (with the possible presence of cavernous marble) and the current state of the market; and
- (e) The Ma On Shan site is for hotel use only. The sale of this site should not have any impact on the sales of other sites coming on stream because the uses are completely different.

Electrical Products (Safety) Regulation

10. **MR CHAN CHOI-HI** (in Chinese): *The Electrical Products (Safety) Regulation will come into operation in May this year, but as the List of Recognized Certification Bodies was published by the Electrical and Mechanical Services Department (EMSD) only on 16 January this year, dealers in electrical products may not have sufficient time to send their products to the certification bodies for testing prior to the commencement of the Regulation. In this connection, will the Government inform this Council:*

- (a) *of the reasons for the EMSD publishing the List of Recognized Certification Bodies only on 16 January this year; and*
- (b) *whether it has looked into the difficulties faced by the dealers and considered deferring the commencement of the Regulation to a later date?*

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Madam President,

- (a) The Electrical Products (Safety) Regulation provides, among other things, that no person shall supply an electrical product unless a "certificate of safety compliance" has been issued in respect of the product and the product is in compliance with the safety requirements applicable to the product.

If the product is a "prescribed product" under the Regulation, the certificate may be issued by a recognized certification body or in the form of a "declaration of conformity" by a recognized manufacturer. The Regulation provides that the Director of Electrical and Mechanical Services may publish in the Gazette the names of the certification bodies and manufacturers recognized by him.

If the product is not a "prescribed product", the certificate may take the form of a declaration of conformity issued by the manufacturer.

The Regulation was gazetted on 2 May 1997. It was made clear to the trade and the public at the time that the safety requirements in the Regulation would be brought into effect 12 months later, in May 1998. Those parts of the Regulation relating to recognition of certification bodies and manufacturers commenced on 24 October 1997, allowing about seven months for certification bodies and manufacturers to apply for and be granted recognition before the Regulation commences. Applications for recognition are considered as and when they are received. Applications have been received since November 1997 and the first list of recognized certification bodies was gazetted on 16 January 1998.

- (b) The purpose of the 12-month grace period is to enable suppliers of electrical products to inform the manufacturers, many of whom are based overseas, of the safety requirements in the Regulation and give the manufacturers time to conform to the requirements in advance. Many electrical products manufactured for international markets meet the internationally accepted safety requirements upon which the Regulation is based. Therefore, a manufacturer whose product conforms with the Regulation should not have difficulty in issuing a declaration of conformity with the safety requirements in respect of

the product. Such a declaration may be accepted by the Director as a certificate of safety compliance and there is no need for the product to be sent to a certification body for further testing.

Where the product does need to be sent to a certification body for testing, it is desirable that the supplier and manufacturer should know in advance whether the certification body is recognized by the Director as being qualified to issue certificates of safety compliance in respect of the product concerned. Some trade associations have suggested that gazetting of the list of recognized certification bodies on 16 January 1998 may allow insufficient time for product testing and issue of a certificate of safety compliance. The Director of Electrical and Mechanical Services has held several meetings with the relevant trade associations to discuss their requests for extension of the 12-month grace period. A decision will be taken on the trade's request shortly.

Implementation of the Residential Care Homes (Elderly Persons) Ordinance

11. **MR HUI YIN-FAT** (in Chinese): *Regarding the implementation of the Residential Care Homes (Elderly Persons) Ordinance, will the Government inform this Council:*

- (a) *of the total number of private residential care homes in Hong Kong as at March this year and, among these residential care homes, of the respective numbers of those which have either been issued with licences or are holding certificates of exemption;*
- (b) *of the validity period of the certificates of exemption issued to these residential care homes;*
- (c) *of the criteria adopted by the authorities in approving applications for the renewal of certificates of exemption, and the number of residential care homes which had to cease operation during the past two years because of non-renewal of their certificates of exemption;*

- (d) *of the progress of the financial assistance scheme implemented by the authority to assist private residential care homes in carrying out improvement works so as to comply with the licensing requirements; and of the number of residential care homes which have been granted financial assistance under the scheme and, among them, the number of those which have obtained licences after being granted such assistance; and*
- (e) *whether it plans to require those private residential care homes which have been issued with certificates of exemption as at the end of 1996 to obtain licences before a certain deadline; if not, why not?*

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

- (a) As at March 1998, there were 420 private residential care homes for the elderly in Hong Kong, of which 33 had been issued with licences and the remaining 387 had been granted certificates of exemption.
- (b) The validity periods of the certificates of exemption issued to these residential care homes range from six to 12 months, depending on the progress of the improvement works and the time needed for making further improvements.
- (c) An application for renewal of certificate of exemption and the renewal period will be determined by the Government on the basis of the improvements made and further improvements needed by the residential care home in respect of manpower, space, building safety, fire prevention equipment, and quality of nursing and care services. Over the past two years, some elderly homes have ceased operation for their own reasons, such as expiry of lease contracts and commercial considerations. According to the data kept by the Government, no elderly homes have ceased operation as a result of non-renewal of certificates of exemption.
- (d) As at 20 March 1998, the Social Welfare Department had approved 69 applications under the Financial Assistance Scheme. Another 105 were being processed. Among the 17 private residential care

homes which have completed improvement works under the scheme, three have submitted applications for a licence, and five are expected to meet the licensing requirements shortly, upon which applications for a licence will be submitted. The remaining nine residential care homes have made improvements to building services and fire prevention equipment; but due to staff shortage and floor space problems, they will need more time to meet the licensing criteria.

- (e) Since private residential care homes provide services for over 20 000 elderly people in Hong Kong, members of the community are rightly concerned about the quality of their services. The Government has all along adopted the policy of encouraging operators of elderly homes to improve their services so that they will meet the licensing requirements or attain a higher standard. Through the Financial Assistance Scheme, the Government offers assistance to private residential care homes in carrying out improvements to building and fire prevention facilities. Besides, an Enhanced Bought Place Scheme is being introduced to further encourage and assist private homes to upgrade the service quality. I hope operators of elderly homes will grasp the opportunity and strive to improve their service standard. Since the circumstances of individual elderly homes differ, the Government, for the time being, has no intention to set a deadline before which all elderly homes are required to obtain a licence. However, if the standard of services of any residential care home is consistently unacceptable, the Director of Social Services may, under section 7(4) of the Residential Care Homes (Elderly Persons) Ordinance, revoke its certificate of exemption.

Regulation on Practising Pharmacists

12. **DR TSO WONG MAN-YIN** (in Chinese): *Will the Government inform this Council:*

- (a) *whether it knows:*
- (i) *the circumstances under which a practising pharmacist will be disqualified for practice;*

- (ii) *of the total number of practising pharmacists who were disqualified for practice in the past three years; and of the circumstances involved; and*
- (b) *whether it has any plans to amend the legislation so as to step up the regulation of practising pharmacists; if so, what the details are?*

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

- (a) (i) The Pharmacy and Poisons Board (the Board), established under the Pharmacy and Poisons Ordinance (Cap. 138), has the authority to regulate the practice and conduct of registered pharmacists through the statutory powers accorded to the Board by the Ordinance. In accordance with section 15 of the Ordinance, the Board may appoint a Disciplinary Committee to conduct a disciplinary inquiry against a registered pharmacist under the following circumstances:
 - (1) on receipt by the Board of a complaint regarding the conduct of the registered pharmacist; or
 - (2) in the event that the registered pharmacist is convicted of an offence under the Pharmacy and Poisons Ordinance, the Dangerous Drugs Ordinance (Cap. 134) or the Antibiotics Ordinance (Cap. 137);

Besides the above circumstances, when it appears necessary or desirable to the Board that the conduct of any registered pharmacist should be inquired into, the Board may appoint a Disciplinary Committee to take follow-up action.

In the case that a Disciplinary Committee, at the conclusion of an inquiry, finds a registered pharmacist guilty of professional misconduct, it may, in accordance with the severity of the misconduct, award suitable disciplinary penalties on the registered pharmacist, which may include disqualifying the registered pharmacist for practice for a short or long period.

The Board also has the statutory power to disqualify for practice any pharmacists who obtained registration by fraudulent means.

- (a) (ii) In the past three years, a total of eight registered pharmacists, found guilty of professional misconduct, had been disqualified for practice for one to four weeks by a Disciplinary Committee appointed by the Board. Of these eight cases, six were related to registered pharmacists dispensing expired dangerous drugs. For the remaining two cases, one related to a registered pharmacist providing incorrect information to the Board in respect of his employment, while the other arose from a registered pharmacist being convicted of an offence under the Dangerous Drugs Ordinance for failing to keep a proper record of dangerous drugs.
- (b) Like other medical and health care professionals, pharmacists are regulated by a statutory body through proper registration and disciplinary procedures, based on the principle of self-regulation. Regular inspections of dispensaries in the private sector are conducted by the Department of Health to ascertain whether registered pharmacists comply with the provisions of relevant Ordinances. In the event of any registered pharmacists being found to involve in malpractice or professional misconduct, necessary prosecution actions will be taken by the authority, and relevant disciplinary inquiries will be conducted by the Pharmacy and Poisons Board. We consider the existing legislative provisions sufficient for monitoring the practice and conduct of registered pharmacists.

Vetting Exercise of the Appeals Committee for Medium of Instruction

13. **MRS PEGGY LAM** (in Chinese): *It is reported that, having concluded the vetting exercise, the Appeals Committee for Medium of Instruction (the Appeals Committee) considered that 14 of the secondary schools which had lodged appeals could continue to use English as the medium of teaching. In this connection, will the Government inform this Council:*

- (a) *whether it knows the criteria (including student ability, teacher capability and support strategies and programmes) according to which the Appeals Committee conducted the vetting exercise, and the differences between the criteria used by the Appeals Committee for considering the appeals of the secondary schools and those used by the Vetting Committee for Medium of Instruction Guidance for Secondary Schools;*
- (b) *of the respective percentages of Secondary 1 entrants of each school who belong to the following groups under the Medium of Instruction Grouping Assessment in the total number of Secondary 1 students in each Chinese-medium secondary school and English-medium secondary school throughout the territory, in each of the past three years:*
 - (i) *Group I (that is, able to learn effectively in either Chinese or English);*
 - (ii) *Group II (that is, able to learn more effectively in Chinese); and*
 - (iii) *Group III (that is, able to learn better in Chinese but may also learn effectively in English); and*
- (c) *whether it knows the respective proportions of graduates from Chinese-medium secondary schools and English-medium secondary schools in the total intake of the various tertiary institutions, in each of the past three years?*

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

- (a) According to the Report of the Appeals Committee (Medium of Instruction Guidance) (the Report), the overriding principle guiding the Committee's work is whether the use of English as the medium of instruction would be educationally beneficial to the students in each of the appealing schools. In arriving at its decisions, the Committee had regard to the three requirements stipulated in the Medium of

Instruction Guidance for Secondary Schools, these being student ability, teacher capability as well as the language support strategies and programmes of the school. However, the Committee did not consider any one of the requirements should be determinative or applied rigidly.

The Report pointed out that the Committee was also prepared to take into consideration any special circumstances of the school, as well as any relevant materials that would show that English would be an effective medium of instruction for the students. In the course of its deliberations, the Committee examined an array of data drawn from various sources. These included quantitative and qualitative data provided by the Education Department and drawn from school visits, meetings with schools and materials made available to the Committee by the 20 appealing schools. It was mentioned in the Report that the Committee agreed to take account of the following aspects:

- culture and ethos of the school, in particular, where it has plans and support measures that created an English-rich environment for its students;
- the provision of a unique curriculum which depended upon the continuing use of EMI;
- value-added improvement in terms of students' academic achievement as measured in performance in public examinations, especially where EMI had been used; and
- schools with a relatively short history and had been able to demonstrate improvement especially during the time when EMI was used.

The Report stated that, in analysing the data of a school, members endeavoured to integrate to the best of their ability all information available to form a holistic picture. This provided a better understanding of each school on which an informed decision could be made on the medium of instruction suited to the students' needs.

- (b) In the past three school years, the respective percentages of Secondary 1 entrants to public-sector Chinese-medium secondary schools in the three groupings under the Medium of Instruction Grouping Assessment (MIGA) are as follows:

1995-96			1996-97			1997-98		
<i>I</i>	<i>II</i>	<i>III</i>	<i>I</i>	<i>II</i>	<i>III</i>	<i>I</i>	<i>II</i>	<i>III</i>
5%	93%	2%	4%	94%	2%	5%	93%	2%

The corresponding percentages for Secondary 1 entrants to other public-sector secondary schools are as follows:

1995-96			1996-97			1997-98		
<i>I</i>	<i>II</i>	<i>III</i>	<i>I</i>	<i>II</i>	<i>III</i>	<i>I</i>	<i>II</i>	<i>III</i>
39%	52%	9%	39%	52%	9%	39%	52%	9%

- (c) As the admission record of the tertiary institutions do not categorize students as coming from Chinese-medium secondary schools or English-medium secondary schools, we are not able to provide such information.

Assistance to Elderly People Living in Public Housing

14. **MR TAM YIU-CHUNG** (in Chinese): *Will the Government inform this Council of:*

- (a) *the total number of cases in which elderly people living in public housing sought assistance from the authorities for being battered or maltreated by family members living with them, in the past three years; and*
- (b) *the measures in place to assist those elderly people, for example, by allocating other public rental flats to them?*

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

- (a) In 1995, 1996 and 1997, there were 82, 61 and 76 cases respectively of elderly people seeking assistance from the Social Welfare Department (SWD) for being battered or maltreated by family members living with them. Separate statistics are however not available for those living in public housing units.
- (b) Some of these cases were first reported to public housing estate offices. The estate staff would try to settle the dispute in the first instance, referring them to the SWD as necessary. Social workers would provide counselling service to both the elderly people and their family members. In addition, social workers would, whenever necessary, make referrals for the elderly people to receive other welfare services, including financial assistance, housing assistance, home help services, medical service, psychological service, day or residential elderly services and so on. In line with the Government's policy of encouraging the family to care for its elderly members, social workers would try to reconcile the differences between the elderly people and their family members where possible. As a last resort, the Housing Department would allocate an alternative accommodation to the family on compassionate grounds upon the SWD's recommendation. During the last three years, the Housing Department arranged accommodations for 10 such families.

Traditional Chinese Medicine

15. **MR AMBROSE LAU** (in Chinese): *The Report of the Preparatory Committee on Chinese Medicine recommends that traditional Chinese medicine should be included, on a gradual basis, in Hong Kong's health care system. In this connection, will the Government inform this Council:*

- (a) *of the specific plans for implementing the above recommendation (including the timetable for implementation);*

- (b) *whether it will consider providing Chinese medicine out-patient service in public hospitals, so as to relieve the financial burden of senior citizens in seeking Chinese medicine treatment and to enhance public confidence in the safety and efficacy of Chinese medicine; if so, when such arrangements will be implemented; if not, why not; and*
- (c) *of the plans to promote research and training in the use of Chinese medicine, and to facilitate mutual exchanges and co-operation between Hong Kong and the Mainland in scientific researches on Chinese medicine, for instance, by sending government officials or sponsoring relevant organizations to pay study visits to the State Chinese Medicine Quality Assessment Centre?*

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

- (a) To facilitate the inclusion, on a gradual basis, of Chinese medicine into Hong Kong's health care system, the priority task is to establish a statutory status for Chinese medicine, similar to that for other regulated medical and health care professions. This statutory status helps to acknowledge the professional contribution of Chinese medicine and will become the cornerstone for the future development of Chinese medicine in our health care system. We plan to introduce a bill in the 1998-99 Legislative Session to recommend the establishment of a statutory framework for controlling the practice, use and trading of Chinese medicine. After the passage of the bill, we would immediately proceed to set up the regulatory framework. Professional registration of Chinese medicine practitioners and introduction of measures for regulating the trading of Chinese medicine would commence in 2000.
- (b) At present, the most important task is to establish a regulatory system for Chinese medicine so as to enhance public confidence in the use of Chinese medicine. We are of the view that we should wait until this regulatory system is implemented and in smooth operation before it is the suitable time for considering whether Chinese medicine out-patient service should be provided in public health care organizations.

- (c) The Administration has plans to actively promote information exchanges and scientific researches in Chinese medicine. The Government Laboratory will set up a Chinese medicine section in 1998-99 to implement and intensify its activities in the collection of chemical information and researches in the quality and safety of Chinese medicine. In the coming year, the Government Laboratory will strengthen its close co-operation with the drug-control institutes, scientific research organizations, and import/export commodities inspection bureaux in the Mainland to exchange information and knowledge in Chinese medicine. The Chemists of the Government Laboratory will participate in international academic research forums/organizations for conduct of research work in collaboration with local and overseas academics.

Separately, the "Industrial Support Fund" managed by the Industry Department has, in past years, supported many researches which help to promote the development of the Chinese medicine industry, including a contribution of \$7 million to establish the Laboratory for Quality Control of Chinese Medicines and Health Foods Based on Chemical Components in the Chinese University of Hong Kong, and a contribution of \$13 million to establish the Biotechnology Research Institute — Traditional Chinese Medicine Centre in the Hong Kong University of Science and Technology. This "Industrial Support Fund" subsidizes support projects which may benefit Hong Kong's industrial or technological developments. Any organizations which are involved in researches related to support projects for the development of the Chinese medicine industry may continue to apply to the Fund for financial assistance.

We support the provision of various training courses in Chinese medicine by different local organizations. These training activities will help to maintain and enhance practice standards. The Hong Kong Baptist University will introduce Hong Kong's first full-time bachelor degree programme in Chinese medicine in 1998-99.

Assistance to PLB and GMB Operators Affected by Urban Development

16. **MRS MIRIAM LAU** (in Chinese): *Will the Government inform this Council whether:*

- (a) *before proceeding with urban redevelopment projects in a district, it will consult the affected operators of public light buses (PLBs) and green minibuses (GMBs) and make necessary arrangements in respect of the termini and routes of the PLBs and GMBs affected during the redevelopment period; if not, why not; and*
- (b) *it will make corresponding arrangements in respect of the original termini and routes of PLBs and GMBs in the district, upon the completion of redevelopment; if not, why not?*

SECRETARY FOR TRANSPORT (in Chinese): Madam President, public transport operators, including PLB and GMB operators, are consulted on urban redevelopment proposals which would affect their services, routings and terminal facilities. If necessary, terminal facilities would be reprovisioned during redevelopment. The timetable and vehicle allocation for GMB services would also be adjusted, having regard to changes in demand and traffic patterns. Throughout the redevelopment period, the Transport Department would maintain close contact with all interested parties to ensure that any inconvenience is kept to the minimum.

It is the Government's policy to provide, wherever possible, off-street terminal facilities for use by public transport operators. Urban redevelopment offers an opportunity for the provision of proper terminal facilities to public transport operators. The Administration will consult public transport operators again if changes to the original terminal points and routings are considered necessary after redevelopment has been completed.

Adjustment to Prime Rate

17. **DR LAW CHEUNG-KWOK** (in Chinese): *The interbank interest rates in Hong Kong have eased lately, but the Hong Kong Association of Banks (HKAB) decided to slightly lower the prime rate only on 27 March 1998. In this connection, will the Government inform this Council:*

- (a) *whether it is aware of the reasons why, before that date, the HKAB had not lowered the prime rate;*
- (b) *whether it has studied if it was appropriate for the HKAB to have decided not to lower the prime rate before that date; if so, what the results are; and*
- (c) *of the objective conditions for determining and adjusting the prime rate?*

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

(a) and (b)

The prime rates are set by individual banks themselves. The Hong Kong Association of Banks (HKAB) does not determine the prime rates. According to the Interest Rate Rules, the HKAB only prescribes the maximum interest rates for deposits with maturity below seven days.

- (c) In determining the prime rates, banks will normally have regard to, among other things, their cost of funds taking into account the outlook for the change thereof. Recently, although the interbank interest rates have softened, there is continuing active competition for customer deposits which has kept the corresponding interest rates offered relatively high. Despite this, banks have recently lowered their minimum lending rates by 25 basis points.

Explosion Incidents of Container Trucks

18. **MRS MIRIAM LAU** (in Chinese): *Following the incident in February last year in which a container truck exploded whilst in transit, a container truck exploded recently while transporting used motorcycles. In this connection, will the Government inform this Council whether:*

- (a) *it has assessed if the improvement measures (including the guidelines on the safe loading and mounting of goods on vehicles formulated by the Transport Department) adopted by various government departments in the wake of the incident in February last year are adequate to prevent the recurrence of similar incidents; if so, what the findings are; and*
- (b) *it will consider introducing legislation to stipulate that non-closed vehicles shall be used for conveyancing cars, motorcycles or engines with fuel tanks; if not, why not?*

SECRETARY FOR SECURITY (in Chinese): Madam President,

- (a) In the wake of the incident on Lung Cheung Road in February last year, an inter-departmental working group comprising the Fire Services Department (FSD), the Transport Department (TD), the Marine Department (MD) and the police was set up and agreed on a package of measures to improve the control on the transportation of motorcycles and vehicles:
 - (i) issue advisory letters to remind the trucking industry to observe safety procedures on the transportation of motorcycles and vehicles;
 - (ii) produce and circulate safety guidelines to publicize safety precautions on the transportation of motorcycles and vehicles;
 - (iii) incorporate the safety guidelines into the TD's Code of Practice for Loading of Vehicles; and
 - (iv) study the feasibility of proposing legislative amendments to tighten up the control.

On (i) and (ii), we have already issued advisory letters and a pamphlet which set out, *inter alia*, guidelines on the safe loading of vehicles and motorcycles. The guidelines make it clear that fuel tanks of all vehicles and motorcycles must be drained before they are carried by vehicles or such items should be carried in "open" vehicles. We have

also met and explained to members of the trucking industry, motorcycle importers and the Motor Traders Association of Hong Kong the safety guidelines on the transportation of motor vehicles. A further briefing for members of the trade, including second hand motorcycle and accessory dealers and other relevant groups was conducted on 3 April 1998. We reiterated the importance to transport fuelled vehicles and motorcycles in "open" vehicles instead of sealed containers. We will continue to step up publicity with a view to widening our publicity coverage to the relevant sectors of the community.

As regards (iii) and (iv), the safety guidelines published by the TD will be incorporated into the Department's Code of Practice for the Loading of Vehicles issued under the Road Traffic Ordinance as soon as possible in the next Legislative Session. Furthermore, we are, as a matter of priority, reviewing the need to strengthen our package of improvement measures and considering the legislative framework to tighten up the control on the transportation of fuelled vehicles and motorcycles.

- (b) We are considering the legislative framework to tighten up the control on the transportation of fuelled vehicles and motorcycles. The control measures under consideration include the requirement to use "open" vehicles for conveying fuelled vehicles and motorcycles.

Soil Settlement in Reclamation Areas

19. **MR NGAN KAM-CHUEN** (in Chinese): *It has been reported that severe soil settlement has occurred in the Tseung Kwan O Industrial Estate which is situated in a reclamation area. In this connection, will the Government inform this Council:*

- (a) *of the causes of the soil settlement in the Industrial Estate; and the party which will bear the responsibility for the losses arising from the soil settlement;*

- (b) *of the reclamation areas which were reclaimed by the same method as that adopted for the Tseung Kwan O Industrial Estate;*
- (c) *whether the authorities have prescribed in the reclamation contracts the specific reclamation methods that have to be used by contractors, and the responsibility of contractors for the maintenance work concerned should soil settlement occur within a certain period after the reclamation; and*
- (d) *of the methods for stabilizing the sludge on the sea floor when reclamation is carried out?*

SECRETARY FOR WORKS (in Chinese): Madam President, the land at the Tseung Kwan O Industrial Estate was reclaimed by the Hong Kong Industrial Estates Corporation (HKIEC). The HKIEC appointed their own consultant for the design and supervision of the construction of the reclamation. They also directly employed the contractor for the reclamation works. The Territory Development Department, however, was engaged by the HKIEC to give advice in connection with their consultant management, and assisted in any necessary co-ordination with nearby government works projects.

The Administration's response to parts (a) to (d) of this question is as follows:

- (a) As for all land formed from reclamation, settlement occurs both during and after construction as a result of consolidation of soil beneath the original seabed as water is squeezed out due to the weight of fill material placed on top, as well as consolidation of the fill material itself. Such consolidation is a long-term process and may take many years to complete; and residual settlement is normally expected for some years after construction, the extent of which varies depending on the method of reclamation. Contractors cannot be held liable for such settlement or its effects if they have completed the reclamation in accordance with the contract specifications.

In the case of the Tseung Kwan O Industrial Estate reclamation, the measures that have been taken to accelerate the consolidation process

include the placement of 600 000 sq m of geotextile fabric and the installation of vertical drains with a total length of some 5.4 million metres. Land plots in industrial estates are granted to the companies which satisfy the selection criteria of the HKIEC. These companies are responsible for building their own premises to suit their purposes. We understand that all grantees are given data on the site conditions and are warned to adopt appropriate foundation and building design for works on the newly reclaimed estate prior to commencing their works.

- (b) The following reclamation areas have been reclaimed using the same or similar reclamation method as that adopted in Tseung Kwan O Industrial Estate:
 - (i) all other reclamation in Tseung Kwan O;
 - (ii) about one third of the West Kowloon Reclamation area;
 - (iii) Aldrich Bay Reclamation;
 - (iv) Tuen Mun Area 38 Reclamation;
 - (v) Pak Shek Kok Reclamation; and
 - (vi) Tamar Basin, Central Reclamation
- (c) The relevant reclamation method and the required standards have been specified in all of the above contracts including that for the Tseung Kwan O Industrial Estate reclamation works. The contractor is only liable for any settlement resulting from his non-compliance with the contract specifications. In such circumstances, he will be responsible for any remedy as provided under the terms of the contract. Maintenance is normally the responsibility of the land user or allocatee as stipulated under the relevant conditions of grant or allocation.

- (d) In general, for reclamation works where the marine mud is not dredged away, a suitable geotextile fabric is placed on top of the marine mud to contain it in position while allowing water dissipation. It is then covered with a layer of sand to help control lateral displacement of the mud and to drain away the water dissipated from the marine mud. Fill material is then placed on the sand in layers of uniform thickness until the reclamation is complete.

Vertical settlement occurs as the great weight of the fill material squeezes the water out of the mud causing it to consolidate. We can speed up the consolidation process and hence settlement by inserting vertical drains through the marine mud to allow water to drain away more quickly. Placing temporary surcharge loads on the reclamation, say, for up to one year can further speed up the settlement. However, this is expensive and time consuming, and some noticeable minor residual settlement may still occur for a number of years. There is currently no practical method available to completely prevent such settlement.

Denying Entry of Foreign Passport Holders into Hong Kong

20. **MR KENNEDY WONG** (in Chinese): *Will the Government inform this Council of the number of foreign passport holders who were denied entry into Hong Kong in each of the past three years, and the criteria according to which the authorities made those decisions?*

SECRETARY FOR SECURITY (in Chinese): Madam President, in the past three years, 17 661 foreign passport holders were refused entry into Hong Kong. A breakdown by year is as follows:

<i>Year</i>	<i>Number</i>
1995	5 309
1996	6 242
1997	6 110

	17 661
	=====

The Director of Immigration may exercise her authority to refuse a particular individual permission to land if allowing that person to enter the territory would not be in the interest of Hong Kong. The main reasons for refusing entry are:

- (a) economic grounds
(for example, insufficient means, or seeking unapproved employment)
- (b) undesirability
(for example, suspected involvement in prostitution/criminal activities)
- (c) inadequate documentation
(for example, unacceptable travel document)
- (d) Others
(for example, adverse records, deportees from other countries)

BILLS

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): Bills. We will resume the second reading debate on the Adaptation of Laws (Courts and Tribunals) Bill.

ADAPTATION OF LAWS (COURTS AND TRIBUNALS) BILL

Resumption of debate on Second Reading which was moved on 11 February 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 Adaptation of Laws (Courts and Tribunals) Bill 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): Adaptation of Laws (Courts and Tribunals) Bill.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (COURTS AND TRIBUNALS) BILL

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".

(No Member responded)

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

CLERK (in Cantonese): Schedule.

CHAIRMAN (in Cantonese): Chief Secretary for Administration.

CHIEF SECRETARY (in Cantonese): Madam Chairman, I move the amendments to items 2, 9, 19, 23, 28, 41, 53, 69, 98, 99 and 136 in the Schedule, as set out in the paper circularized to Members.

These are technical amendments made in response to the proposals put forward by the Legal Service Division of the Provisional Legislative Council Secretariat.

Proposed amendment

Schedule (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 Chief Secretary for Administration 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): Schedule 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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading. Chief Secretary for Administration.

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

ADAPTATION OF LAWS (COURTS AND TRIBUNALS) BILL

has passed through Committee with 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 Adaptation of Laws (Courts and Tribunals) Bill 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): Adaptation of Laws (Courts and Tribunals) Bill.

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): The Council now resumes the Second Reading debate on the Adaptation of Laws (Interpretative Provisions) Bill.

ADAPTATION OF LAWS (INTERPRETATIVE PROVISIONS) BILL**Resumption of debate on Second Reading which was moved on 25 February 1998**

PRESIDENT (in Cantonese): The Council now resumes the Second Reading debate on the Adaptation of Laws (Interpretative Provisions) Bill. Does any Member wish to speak? Will Members please raise their hands higher so that I can see clearly? Thank you. Mr CHAN Choi-hi.

MR CHAN CHOI-HI (in Cantonese): Madam President, first of all, the Secretary for Justice, Miss Elsie LEUNG, has written to all Members of the Provisional Legislative Council stating very simply the Government's intention to change the term from "the Crown" to "the State". I have actually thought about it myself whether it is as simple as that because unconventional wisdom tells us that we have to look especially carefully when something is packaged in such a simple way. In fact, the people are worried whether there may be organizations or individuals who could override the Laws of Hong Kong. We do not wish to see anyone or any organization overriding the Laws of Hong Kong because our laws are the most precious and most important assets of the Hong Kong Special Administrative Region.

Secondly, I think that the consultation period and consultation as regards the Bill are rather inadequate. At least, the views of the Hong Kong Bar Association have not been sought. The Association has also indicated in its letter that it has not been consulted and it does have a very strong opinion on this Bill.

Thirdly, I think that we had better leave this Bill to the first Legislative Council because we do need a rather long time to consult various sectors so as to reduce the public's worries about this Bill. I do not see that it will do Hong Kong any good by passing this Bill in a great hurry — like the last time when we rushed through the passage of the Hong Kong Bill of Rights (Amendment) Bill 1998, as it will have negative effects on our international image. I feel that this point merits our consideration. Of course, if we insist on passing this Bill even though there are doubts and misgivings, our image in implementing the "one country, two systems" concept will also be jeopardized.

I hope that Members will think very carefully on whether we need to pass this Bill in such a great hurry today.

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

MR IP KWOK-HIM (in Cantonese): Madam President, the Adaptation of Laws (Interpretative Provisions) Bill is in fact very simple. It is a piece of legislation drawn up for the adaptation of laws, that is, to amend those legal provisions that, even after the implementation of the Hong Kong Reunification Ordinance, still do not conform with the status of Hong Kong after the reunification with China. This is only a technical amendment that should not involve any changes in policy.

The Bills Committee has held two meetings which lasted for four hours in total. As a member of the Bills Committee, I have attended all two meetings. During the scrutiny, the Committee devoted almost all the time and paid all attention to the discussion of the definition of "the State", which included the status of the Xinhua News Agency in the Hong Kong Special Administrative Region (SAR), how to determine under what circumstances the Central subordinate organs shall be free from "the binding effect" of local laws, the definition of "the State" and whether the term "the Crown" shall continue to be used. In fact, during the Committee meetings, I was also very frustrated over the use of the term "the State" because I could not think of any better alternatives to the present term of "the Crown". I dare not say with certainty that four hours alone are enough for discussing the term "the State", but I can assure Members and the public that the Committee has discussed the term "the State" thoroughly and in an in-depth manner. Finally, the Government adopted Members' views on "the State" in the Bill and make the relevant amendments on the basis of listening to the views expressed.

While I accept that the Committee should be criticized for any oversights on its part during the scrutiny, I cannot agree to the accusation that Members have handled the Bill rashly. I dare ask those critics whether they have sit in at the meetings of the Bills Committee throughout the scrutiny. Have they really listened to the Members' deliberations on the relevant provisions? Pointless criticisms in total defiance of the facts are utterly undesirable.

At present, the focus of all disputes falls on whether the subordinate administrative organs of the Central People's Government in Hong Kong should be excluded from the definition of "the State" after adaptation. During the rule of the British Hong Kong Government, "the Crown" referred to the British monarch, the government of the United Kingdom and its administrative departments in Hong Kong and the Hong Kong Government while after the adaptation, the "Crown" is replaced by "the State" and "the State" is defined as the President of the People's Republic of China, the Central People's Government, the Government of the HKSAR, and the authorized organs of the Central People's Government or the Central Authorities in Hong Kong that exercise the executive functions for them. It is very clear that the amendment is meant to conform the provisions to the present status of Hong Kong. It seems that the crux of the problem lies in the worry that the Xinhua News Agency will be given too much power when it may be included in the definition of "the State" after the adaptation of the laws.

In accordance with the definition of "the State", the Xinhua News Agency, like the Office of the Commissioner of the Ministry of Foreign Affairs in the SAR, the People's Liberation Army garrison in Hong Kong, the Sino-British Joint Liaison Group, comes under the category of the Central People's Government's subordinate administrative organs in Hong Kong. It is hard to imagine that it is reasonable to remove the Agency from that category. Therefore, the Committee has come to the general view that we have to stipulate under what circumstances the Central People's Government's subordinate organs in Hong Kong such as the Agency are not subject to the "binding effect" of Ordinances; in other words, only when the Agency is acting within the scope of the executive functions delegated to it by the Central People's Government is it included in the definition of "the State" by virtue of section 66 of the Interpretation and General Clauses Ordinance for exemption from the binding effect of other Ordinances of Hong Kong. The Democratic Alliance for Betterment of Hong Kong (DAB) supports this direction of amendment.

Madam President, the SAR Government is actually also included in the definition of "the State" and there are at present 17 Ordinances that have express binding effect on the SAR Government, including three anti-discrimination ordinances, nine on social security and five on environmental protection. The DAB considers that the Central People's Government's subordinate organs in Hong Kong should not be subject to a slacker binding effect than which the SAR Government is subject to. Therefore the DAB urges the SAR Government to,

after the inauguration of the First Legislative Council, amend as soon as possible all ordinances that are already binding on the SAR Government, including the Personal Data (Privacy) Ordinance, in one go to the effect that both the Central People's Government's subordinate organs in Hong Kong within the scope of the definition of "the State" and the SAR Government are subject to the same binding effect. Here, I must say that quite many of those people who have participated in the scrutiny and approval of these 17 Ordinances are exactly the apologists who are now sternly and severely criticizing why the Provisional Legislative Council have to retain those colonial laws. I dare ask why they did not add provisions to the ordinances concerned to bind on the administrative departments of the United Kingdom in Hong Kong at that time.

Madam President, there are criticisms to the effect that when the Central People's Government's subordinate organs in the SAR within the definition of "the State" exercise their functions by virtue of section 66 of the Interpretation and General Clauses Ordinance of Hong Kong they will in fact be contravening Article 22 of the Basic Law which stipulates that all offices set up by the Central People's Government or by provinces or municipalities in Hong Kong shall abide by the laws of the SAR. They consider that it is in contravention of the Basic Law. I wish to point out categorically here that the Interpretation and General Clauses Ordinance is a law of the SAR. How can the enforcement of the laws of Hong Kong be a contravention of Article 22 of the Basic Law?

The DAB supports the Adaptation of Laws (Interpretative Provisions) Bill. I so submit. Thank you.

PRESIDENT (in Cantonese): Mr Frederick FUNG.

MR FREDERICK FUNG (in Cantonese): Madam President, I will speak on the Adaptation of Laws (Interpretative Provisions) Bill on behalf of the Members of the Hong Kong Association for Democracy and the People's Livelihood (HKADPL).

Madam President, the Provisional Legislative Council will have accomplished its task and retired from the scene after today and tomorrow. But now that the Secretary for Justice has tabled the Adaptation of Laws (Interpretative Provisions) Bill and requested the Provisional Legislative Council to examine and

pass it. This attitude of the Secretary for Justice makes me feel that her gesture is that "even though thousands of people are against me, I still charge forward". We are quite disappointed at this gesture.

The Government requires us to pass the Second and Third Readings of the Adaptation of Laws (Interpretative Provisions) Bill today and the Secretary for Justice has told us that this is only a technical amendment. However, if this is purely a technical amendment, I do not believe that it would have aroused such a great controversy in the community and particularly great concern among the legal sector and the public. The Bar Association, legal scholars and human rights bodies in Hong Kong have made statements to express their opposition to this amendment and the editorials of most newspapers also hold opposing views. All these voices in the community have indicated that this amendment has gone beyond the scope of a purely technical amendment.

In the Bill, the Government proposes to replace the term "the Crown" by the term "the State" and also defines the term "the State". As regards the definition of a subordinate organ of the Central People's Government in the proposed amendment, it has to satisfy three tests: firstly, it exercises the executive function of the Central People's Government, or functions for which the Central People's Government has responsibility under the Basic Law; secondly, it does not exercise commercial functions; and thirdly, it is acting within the scope of the authority and functions delegated to it by the Central People's Government.

From the legal point of view, the amendment for the purpose of adaptation by replacing "the Crown" with "the State" appears to be a technical or purely technical amendment. But if the amendment, the amendment to definition of the subordinate organs in particular, will have the legal effect that some subordinate organs of the Central People's Government in Hong Kong, such as the Xinhua News Agency (Hong Kong Branch), are no longer subject to the binding effect of the Laws of Hong Kong and specifically to the binding effect of the Personal Data (Privacy) Ordinance, it may lead to two serious consequences. Firstly, it may contravene Article 22 of the Basic Law which stipulates that all offices set up in the Hong Kong Special Administrative Region (SAR) by departments of the Central People's Government and the personnel of these offices shall abide by the laws of the SAR. I would like to quote some of the legal opinions of the Bar Association. Point 6 of a paper of the Bar Association states, "The effect of Article 22 is that all Central People's Government organs (or subordinate organs)

in Hong Kong are presumed to be governed and bound by the laws of the SAR. The only exceptions are matters of foreign affairs and defence over which the SAR legislature is incompetent to legislate. In short Article 22, which came into effect on 1 July replaced the colonial presumption of exclusion of the Crown by a presumption of inclusion of Central People's Government organs under the SAR law. Contrary to Article 22, the proposed amendment reverses the presumption of inclusion. We see no justification for this reversal." Secondly, the definition of subordinate organs of Central Authorities in Hong Kong is vague and ambiguous, resulting in many grey areas such as whether or not organs like the Xinhua News Agency (Hong Kong Branch) should be included, and this will easily give rise to legal disputes in future.

Since once the amended provisions are passed, the above-said serious consequences will be resulted, I wrote to the Secretary for Justice on behalf of the HKADPL last Friday asking her to postpone the handling of this Bill until after the establishment of the First Legislative Council, citing three reasons. Firstly, the legal consequences resulted from the amendment may contravene Article 22 of the Basic Law, arousing great controversy among the legal sector and giving rise to divergence of views. Besides, given that the Government's explanation has failed to clear all doubts, we should not pass the amendment before debating it thoroughly and considering the views of the legal sector. Secondly, as the amendment involves some sensitive matters, I consider that we should leave it to the First Legislative Council to conduct a thorough scrutiny. Thirdly, since the Government has undertaken to review a total of 17 Ordinances that are binding on the Government, I think that the amendment of these Ordinances and the adaptation of Chapter 1 of the Laws of Hong Kong should all be given to the First Legislative Council for a comprehensive scrutiny.

Unfortunately, the Secretary for Justice replied last Saturday, saying that they would not consider the HKADPL's request for a postponement of the handling of the Bill. The HKADPL considers the Secretary's reply unacceptable for three main reasons. First, the Secretary for Justice has not answered our first point about the conflict between the adaptation to section 66 and Article 22 of the Basic Law but this is indeed the crux and the crucial point of the issue. She has neither answered in detail nor given any explanation. Second, in the Secretary's opinion, since the Bills Committee was established late last year, there should have been sufficient time for discussion. But in fact, the different points of views did not emerge until only recently. The Bar Association has also pointed out that when

the Government consulted them at the early stage, it only suggested substituting "the Government of the SAR" for "the Crown" but only changed to substituting "the Government of the SAR" for "the State" at a later stage, that is, to substitute "the State" for "the Crown". On the basis of these reasons, we in the HKADPL consider that a postponement of the deliberations of the Bill merits government consideration. But the outright refusal by the Government and the Secretary to consider it is unacceptable. Third, the HKADPL thinks that it will be more comprehensive and cautious to review the 17 Ordinances that are binding on the Government and the adaptation of section 66 of Chapter 1 of the Laws of Hong Kong together. But the Secretary for Justice thinks that section 66 of Chapter 1 should be amended first so as to set the orientation and direction for the review of the 17 Ordinances. If we pass the amendment for the adaptation of section 66 of Chapter 1 now and in case problems are really identified when we review the 17 Ordinances in future, it will be more difficult to make any amendments then. Particularly, if the Government does not agree to the amendment but Members feel that the amendment is necessary, then under the Basic Law, it is then very difficult for Members to move amendments to it by way of a Members' Bill. Therefore, we suggest reviewing them together.

Despite the many opinions expressed by the various sectors, the Government still insists that this is purely a technical amendment and that it must be passed in this Legislative Session. We are very disappointed that the Secretary for Justice is so stubborn. The HKADPL still maintains that it is unnecessary to pass this Bill in such a great hurry this year for the SAR Government can actually invoke other laws to handle the disputes concerned. For example, the Hong Kong Reunification Ordinance has already provided adequate legal bases for the court of the SAR to deal with the interpretation of "the Crown". If the Government is willing to postpone the adaptation of Chapter 1 of the Laws of Hong Kong and let the Legislative Council conduct a comprehensive and in-depth scrutiny of the legislation in future, we believe that the adaptation work will be done even better, and that the SAR Government will do better in the implementation of the "one country, two systems" and "Hong Kong people ruling Hong Kong" policies and also in maintaining Hong Kong people's confidence in the Government. Hence, we still think that the discussion of this Bill should be postponed. If the Government does not wish to postpone it, we can only choose to vote against it. Thank you, Madam President.

PRESIDENT (in Cantonese): Mrs Miriam LAU.

MRS MIRIAM LAU: Madam President, the Adaptation of Laws (Interpretative Provisions) Bill has aroused considerable public debate, the focus of controversy being on the proposal to substitute the term "State" in place of the term "Crown" under section 66 of the Interpretation and General Clauses Ordinance (Cap. 1) and the definition of the term "State".

The Liberal Party has carefully considered all the arguments that have been put forth. The Liberal Party is very much aware of the public concerns that have been raised, and has reviewed the provisions of the Bill in the light of such concerns. However, we arrived at the conclusion that there is no sufficient justification to reject the Bill or request for its deferment.

Our conclusion is premised on the following considerations.

We accept that the present exercise is purely one of adaptation of laws and not law reform. After 1 July 1997, it is clearly necessary to adapt the reference to the "Crown" under Cap. 1 since that term is no longer applicable. As we are already in the tenth month after reunification, we do not think that the matter should be further delayed. The term "State" as defined in the proposed Committee stage amendment which the Administration will move at the Committee stage, closely corresponds what was previously covered by the "Crown". From a legal point of view, we find that the proposal is an acceptable one and that there is nothing wrong with the proposed adaptation.

Some have queried why certain laws should not bind the "Crown" or, as proposed, the "State", and why the opportunity should not be seized to extend the binding effect of our laws, on the sovereign power. However, we must not forget that what we are carrying out is a law adaptation exercise, the effect of which is to maintain the *status quo*. If it is intended to change the current law, then we would need to carry out a law reform exercise separately.

There is some concern that the proposed definition of the "State" will allow many subordinate organs of the Central People's Government or Central Authorities to be included under the term "State", therefore enabling them to enjoy the, so to speak, "immunity" granted under section 66 of Cap. 1. The amended definition of the "State" makes it clear that, in order to fall within the definition, the subordinate organ must satisfy three tests, namely:

- (a) it carries out executive functions of the Central People's Government, or functions for which the Central People's Government has responsibility under the Basic Law;
- (b) it does not exercise commercial functions, and;
- (c) it is acting within the scope of the authority and functions delegated to it by the Central People's Government or the relevant Central Authority.

Clearly, the Central People's Government has power to delegate its executive functions or its responsibilities under the Basic Law to a subordinate organ. Provided that the subordinate organ acts within the authority so delegated, it is acting for and on behalf of the Central People's Government. Accordingly, if the Central People's Government is included under the definition of "State" and the Liberal Party is satisfied that it should be so included, there is no reason why a subordinate organ to which authority is so delegated should not also fall within the definition. The existence of the three tests, which are set out in the law, makes this clear. However, subordinate organs which do not satisfy these three tests will be excluded.

It is true that whether a subordinate organ falls within the definition depends on what its official functions are and whether it was at the material time exercising those functions. Particular concern was raised in regard to the Xinhua News Agency as some people are not too clear as to what its official functions are. To overcome this concern, the Administration has agreed to consider whether a system of certification should be provided. The Liberal Party strongly supports a certification system whereby those subordinate organs which fall into the definition of the "State" can be identified. Although we can have no control over what organs the Central People's Government appoints to carry out its executive functions or functions under the Basic Law, at least we should know who they are.

The Liberal Party notes that some have strongly argued that the Bill violates Article 22 of the Basic Law. Article 22 provides that "All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region". Those who put forth this argument seem to have overlooked the

fact that the right to make laws for the Region vests with the Hong Kong Special Administrative Region Government. We have the right to decide what laws should be binding on the Central People's Government and its subordinate organs and what laws should not be so binding. In making that decision, we will, of course, be guided by the practices in other common law jurisdictions. Whether the relevant organs of the People's Republic of China (PRC) need to abide by any particular law in Hong Kong actually depends upon the legislation itself and not on section 66 of Cap. 1. Therefore, the argument that Article 22 has been violated is misconceived. In response to the concerns raised, the Administration has undertaken to urgently conduct a review of 17 Ordinances, which are expressed to bind the Government, to see whether the binding effect of these Ordinances should be extended to Central People's Government organs. These Ordinances include the Personal Data (Privacy) Ordinance in relation to which much of the present controversy has arisen. We agree that the review, being in the nature of a law reform exercise, should be kept separate from the present law adaptation exercise. Accordingly, we do not feel that the adaptation exercise needs await the outcome of the review exercise. However, we would urge that the review exercise be conducted as expeditiously and in as open a manner as possible to allay public concerns over this issue.

Madam President, with these remarks, the Liberal Party supports the Bill.

PRESIDENT (in Cantonese): Mr CHOY Kan-pui.

MR CHOY KAN-PUI (in Cantonese): Madam President, I agree to the Adaptation of Laws (Interpretative Provisions) Bill. Since Cap. 1 of the Laws of Hong Kong has been endorsed as one of the many previous laws of the Hong Kong Special Administrative Region (SAR), the adaptation of that Ordinance is an indispensable item on the legislative agenda of the Provisional Legislative Council. The purpose of the adaptation is to ensure that the original laws of Hong Kong will not contravene the Basic Law after the return of sovereignty, and that these original laws will bring into play their desired effects.

One of the main provisions of this Bill is to substitute a reference to the "State" for the reference to the "Crown" in section 66 of Cap. 1 of the Laws of Hong Kong. The purpose is to bring it into conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

Before the return of sovereignty, the reference to the "Crown" means the various departments of the British Government that exercise executive functions, the British Trade Commission Hong Kong, the British Garrison in Hong Kong and the former Hong Kong Government. The principle of section 66 of Cap. 1 of the Hong Kong Laws applies to a common law jurisdiction. Since common law is still adopted in Hong Kong after the return of sovereignty, the adaptation of this Ordinance will not change the original intent of the provision or affect the spirit of the rule of law. The passage of this Bill will not create a so-called "supersovereign" or "a major threat to the rule of law" as some people have suggested.

For the above reasons, the Hong Kong Progressive Alliance supports this Bill.

PRESIDENT (in Cantonese): Mr Andrew WONG.

MR ANDREW WONG (in Cantonese): Madam President, I have an urge to read out my third letter home in a month or so. The first letter was addressed to my fifth younger brother and was read out on Radio Television Hong Kong on 28 February. The second letter was addressed to my old alumnus, the Financial Secretary, Mr Donald TSANG and was read out at a meeting of this Council on March 12.

Madam President, I like to express my views in the form of a letter home since "Hong Kong is my home". Family, friends, members of the public, government officials and members of the legislature are all part of the family. The rise and fall of Hong Kong depends entirely on whether members of the big Hong Kong family can treat one another as family. If so, there will be prosperity. If not, there will be decline and fall.

Madam President, you are also an alumna of mine, but not from Wah Yan College, since that is a boys' school. We were alumni at the University of Hong Kong. My third letter home is addressed to you. I hope that through you acting as the traffic policewoman of this Council, I can persuade government officials and Members of the big Hong Kong family to rein in their horses before the precipice and not go through with the deliberation of the Adaptation of Laws (Interpretative Provisions) Bill.

Madam President, my philosophy of life is always not to wildly speculate on other people's motives. Therefore, I believe that the purpose of the Government and the Secretary for Justice, Miss Elsie LEUNG, in proposing the original Bill as drafted and the proposed amendment to the definition of "State" later is nothing more than to make technical amendments to adapt the Interpretation and General Clauses Ordinance, Cap. 1 of the Laws of Hong Kong. The three major parties in this Council supporting the Government — the Hong Kong Progressive Alliance (HKPA), the Democratic Alliance for Betterment of Hong Kong (DAB) and the Liberal Party, as well as members of the "Breakfast Group" also have no ulterior motives. Neither can one say that the Hong Kong Association for Democracy and People's Livelihood (ADPL) which originally supported the Government but has now turned against it has ulterior motives. By the same token, the political parties outside this Council, the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong Human Rights Monitor and most media comments which are unanimously against or have reservations about this Bill should not be considered as having ulterior motives, and should not be labelled as being "anti-government", "anti-Hong Kong" and "anti-China".

Madam President, my philosophy of life could not be simpler for speculating on other people's motives will only lead to two consequences. Both amount to no good. If you guess it wrong, people will think you are up to no good. This will intensify the conflict and the struggle will escalate and even run out of control. If you guess it right, people will be furious. The struggle will also escalate and an unbridgeable rift will be created. Should one adopt this attitude towards one's family? Why can we not look at the bright side? One might well have divergent views, but relations should not be broken off. What the big Hong Kong family seeks is a competition of ideas, not a fight among its members.

Madam President, I always tell myself not to speculate on other people's motives, and not to do so even if other people have speculated on my motives. Only in this way can we have differences without falling apart, and compete without getting into a fight. Only then will the big Hong Kong family have a better tomorrow.

Madam President, it is true that I have strong objections against the Adaptation of Laws (Interpretative Provisions) Bill. Naturally, I can state my strong views calmly and dispassionately. However, to preclude what

misunderstandings government officials and Members might have about my intentions and motives, I prefer to raise my doubts and urge government officials and Members not to consider this Bill in the form of this letter home, in order to show my sincerity.

Madam President, I have indeed too many questions about the Adaptation of Laws (Interpretative Provisions) Bill. My questions have not stemmed entirely from the article entitled "False Analogies" by Professor Yash GHAI, professor in public law at the University of Hong Kong, published in the *South China Morning Post* last Sunday (5 April). Nor do they derive entirely from the statement released by Audrey EU Yuet-mee QC, Chairman of the Hong Kong Bar Association on Monday (6 April). I mentioned these two articles in particular because they deserve to be read carefully by government officials and Members, and so that the titles of these two articles will at least be quoted in the official record of proceedings of this Council.

Madam President, first of all, let me raise some questions about the term "Crown".

First, how many different meanings does the term "Crown" have in the many laws of Hong Kong?

Second, does the term "Crown" in the Interpretation and General Clauses Ordinance have the same meaning as that in the Crown Proceedings Ordinance (Cap. 300)? If so, why is the latter not amended for adaptation?

Third, why are references to the "Crown" in the above Crown Proceedings Ordinance, the garrison law and the original laws of Hong Kong considered fit to be (meaning that they may be) adapted later?

Fourth, conversely, why can one not deal with the term "Crown" in the Interpretation and General Clauses Ordinance later? Just as the Honourable Frederick FUNG asked, why can it not be discussed in the next term, that is, in the First Legislative Council?

Madam President, allow me to raise some questions about the Government's proposal to straightforwardly replace the term "Crown" by the term "State":

Fifth, since the term "Crown" is rich in meanings and has many different meanings, would problems arise if it is arbitrarily changed to the term "State", a new reference in Hong Kong laws?

Sixth, if the reference is unimportant since it is only a short title and it is its legal definition that counts, does it have exactly the same definition as that of the "Crown"?

Seventh, is the term "State", whether as defined in the original Bill or in the amendment to be proposed at the Committee stage, a pure technical adaptation, or does it imply drawing up or amending a constitutional provision? Even if it has no such implication, does it at least imply enacting or amending a law? In that case, it is a substantial rather than a purely technical amendment. Then why can we not wait until the next term and let the First Legislative Council deal with it?

Madam President, commentators often refer to Article 22 of the Basic Law and comment that the definition of the "State" is in contravention of the Basic Law. Actually, with regard to the definition of the term "State", this piece of legislation itself is in contravention of Article 22 of the Basic Law. I wish to take the discussion to a deeper level and raise questions about Articles 19 and 16, in addition to Article 22:

Eighth, while the term "State" is not mentioned in Article 22, it is mentioned in Article 19. How should we interpret the reference to "acts of state such as defence and foreign affairs"? Are there any other "acts of state" apart from "defence and foreign affairs"? If so, what other acts of state are there? How wide is their scope?

Ninth, is it the original intent of Article 16 to vest the SAR with all executive powers except for defence and foreign affairs so that it will fully enjoy "a high degree of autonomy"?

Tenth, read together with Article 22, does it mean that departments of the Central Government, provinces, regions, municipalities and their subordinate organs operating in Hong Kong, except for defence and foreign affairs, will not be exempted from the binding effect of Hong Kong laws? Is this a correct interpretation?

Madam President, I do not intend to comment on the details, such as executive functions, since there are already too many questions of principle. In my opinion, we cannot brush them aside by calling them "technical" amendments. Due to the above questions of principle, I move that the Second Reading debate be now adjourned in accordance with Rule No. 40 of the Rules of Procedure. It has already been decided that today and tomorrow will be the last meeting of this Council. In other words, I am moving to revoke this Bill. I urge Members to support my motion, rather than taking a false step which may cause a life-long regret.

Madam President, if my motion is negatived and the Bill passes through Second Reading, I urge the Government to withdraw this Bill. It can still withdraw a Bill after the Second Reading and before the Committee stage. Even after the Committee stage, it can withdraw it before the Third Reading. Having withdrawn the Bill, it should immediately widely consult the legal profession, the academic circle and the political sector so as to perfect the laws of Hong Kong, instead of creating more doubts.

Madam President, some commentators are concerned that if the adaptation is not undertaken immediately, the operation of the Central and Hong Kong Governments might be jeopardized. The Secretary for Justice has denied this herself. Since the Hong Kong Reunification Ordinance has already provided adequate safeguards, there will not be a legal vacuum. Madam President, I do not think we should hastily make laws or amend them. In July last year, this Council lost no time in freezing and repealing laws enacted by the former Legislative Council, saying that they had been passed too hasty. Today, are we not in the same situation? Is this not the biggest irony?

With these remarks, Madam President, I move that the debate be now adjourned and urge Members to support my motion.

Your old alumnus,
Andrew WONG

PRESIDENT (in Cantonese): Mr WONG, will you please repeat your motion so that we can all hear it clearly?

MR ANDREW WONG (in Cantonese): Madam President, I move that the Second Reading debate on the Adaptation of Laws (Interpretative Provisions) Bill be now adjourned.

PRESIDENT (in Cantonese): In accordance with Rule No. 40 of the Rules of Procedure, a Member may move without notice that the debate be now adjourned. Mr WONG has moved such a motion. Does any Member wish to speak on this motion that the debate be now adjourned? (*Pause*) If not, I now put the question to you and that is: That the motion that the Second Reading debate on the Adaptation of Laws (Interpretative Provisions) Bill be now adjourned moved by Mr Andrew WONG be approved. Will those in favour please say "aye"?

(Members responded)

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

(Members responded)

Mr Andrew WONG rose to claim a division.

PRESIDENT (in Cantonese): Mr Andrew WONG has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Honourable Members, the division bell is still ringing. I would like to take this opportunity to repeat the question put and that is: That the motion that the Second Reading debate on the Adaptation of Laws (Interpretative Provisions) Bill be now adjourned moved by Mr Andrew WONG be approved.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

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

Dr LEONG Che-hung, Mr MOK Ying-fan, Mr CHAN Choi-hi, Mr Frederick FUNG, Mr Andrew WONG and Mr Bruce LIU voted for the motion.

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, 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 Ronald ARCULLI, Mr YUEN Mo, Mr MA Fung-kwok, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, 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 Kennedy WONG, Mr Howard YOUNG, Dr Charles YEUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr CHIM Pui-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr CHOY Kan-pui, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr NGAN Kam-chuen, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted against the motion.

THE PRESIDENT announced that there were six Members in favour of the motion and 47 against it. She therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): The Second Reading debate will now continue. Does any Member wish to speak? Mr Ronald ARCULLI.

MR RONALD ARCULLI: Thank you, Madam President. I really did not intend to speak at today's debate. But several Members have actually referred to the statement given by the Hong Kong Bar Association, with particular regard to Article 22 of the Basic Law. I think my colleague, the Honourable Mrs Miriam LAU, has already given one explanation as to why there is no infringement of Article 22 and I would like to offer for Members' consideration a couple of other reasons.

As far as the legislative power of this Council or of the Hong Kong Special Administrative Region is concerned, Article 17 provides that we shall be vested with legislative power. It also provides that in the event that we pass any laws, we have to report the same to the Standing Committee of the National People's

Congress. That particular Standing Committee, Madam President, can, after consulting the Committee on the Basic Law, give a view as to whether it conforms or does not conform with the Basic Law in respect of several areas, one of which is regarding the affairs which are within the responsibility of the Central Authorities, and the second one, which seems to have escaped most of us, in these words, "or regarding the relationship between the Central Authorities and the Region". So, we are not talking only of defence and foreign affairs. We can be talking about matters beyond that.

Now, if the Bar Association is correct that Article 22 raises a presumption that any central government department or organ is bound by the Basic Law and if one does not accept Mrs Miriam LAU's argument that these laws that we enact can stipulate whether these departments should or should not be bound, no doubt the Standing Committee will say, "Hong Kong, you've gone completely mad! Article 22 says every single law in Hong Kong has to bind the Central People's Government, Central Authorities, every single department, without exception. What are you doing?", and will then send the law back to us and say, "Sorry, it's in breach of Article 22."

Let us say that fails. The Central Government does not do that. Our courts can still do that. Our courts can still rule that the Bill, if passed today, when it becomes law, infringes Article 22 and if that is so, it will be struck down. I do not like saying too often that I practise in the profession. But if I give you a problem, I can guarantee that two lawyers with identical reasoning can give you two opposite answers. And sadly, this might be one of the occasions on which it is extremely technical and difficult. It is a problem that, frankly, we wrestled with long and hard in the Liberal Party. We did not come to our conclusion lightly. We would like to believe, Madam President, that we are not turning our backs on the community, on the rule of law, but instead, we are upholding it.

And with those words, Madam President, I would like my colleagues to seriously think about this, that it is an attractive argument to say some of the things that have been said in the press, in different articles by highly respected academics, and expressed as legal opinion. But after all, we are the lawmakers in this Council and I think the Government as yet has not really come in for any criticism. But I would really say loudly to them that if this matter had been brought to this Council last summer, I would suspect that some of the concerns today may still have been expressed at that time, but I am quite sure that the extent of the concern is unfortunately a matter of timing of this Bill.

Yes, this Council did not have too much time to consider this Bill. I think it was first brought to our notice in early February this year. But we have dealt with difficult and long Bills and this is no easy Bill. I do not belittle the complexity and the difficulty, particularly for lay people in grasping it. And therefore, I think there is understandable concern in the community and in the media, about the result of a Bill that we might pass into law today.

Madam President, with those words, I urge Members to support the Second Reading of the Bill.

PRESIDENT (in Cantonese): Mr CHIM Pui-chung.

MR CHIM PUI-CHUNG (in Cantonese): Madam President, the reverse of the voting result just now will be the result of the voting on this Bill today.

The Bill has clearly shown that whenever amendments and alterations are needed, they have to be undertaken. We firmly believe that Hong Kong and China are now one country. Of course, some government officials, members of the public or the media might still think that it is the same as before. However, we have to accept one fact, and that is, when there is a need to amend laws, we will amend them.

I find it very strange. It is now 16 months since the Provisional Legislative Council was established. During the year, we have amended many laws and done much work on legislation. Just now, some reporters asked me how I feel as a Member of the Provisional Legislative Council. I said we had finished the scrutiny of the majority of Bills submitted to the Provisional Legislative Council by the Government. In respect of the mandatory provident fund especially, we have done a lot of work which has been recognized by the majority of the public. Today's amendment is based on the concept of one country and one principle. We have to understand that after 1997, Hong Kong is no longer a colony. Why are there so many arguments? Do other countries all have different opinions at home?

Some people hold different views about today's amendment. Just now the Honourable Ronald ARCULLI pointed out that there are divergent views especially among the legal profession. I fully understand this, since this is the only way we can have litigation. (*Laughter*) If they hold the same views, the court needs not hear any cases, since everything has been decided and the verdict has been made. Most lawyers concoct something out of nothing. (*Laughter*) I do not mean that they do this by profession. Their real profession is to argue with different views. Of course, I do not mean that they concoct the problems for argument, or concoct different views to argue these problems.

I very much hope that the media will play down these matters in order not to cause the public to form a judgment when they do not understand certain facts. We firmly believe that we can raise issues with our state, senior government officials and the present leadership. We should try to solve these issues, instead of making mischief and stirring up trouble in the community, which will not benefit the public at all. In view of the financial turmoil and the world's lack of confidence in Hong Kong (which is reflected in the recent blow suffered by the tourist industry), we have to unite to maintain Hong Kong's stability, rather than stirring up a storm over such a small matter. It is now 10 months after the transition. For those who have no confidence in Hong Kong, they can still leave again in time after these 10 months.

Madam President, I so submit.

PRESIDENT: Secretary for Justice, do you wish to reply?

SECRETARY FOR JUSTICE: Thank you, Madam President. On 25 February, the Secretary for Justice introduced the Adaptation of Laws (Interpretative Provisions) Bill into this Council. The main purpose of the Bill is to adapt the Interpretation and General Clauses Ordinance (Cap. 1) in order to ensure conformity with the Basic Law and with the status of Hong Kong as a Special Administration Region of China.

I am grateful to the Honourable Kennedy WONG, the Chairman of the Bills Committee, and to the members of the Committee, for their thorough consideration of the Bill.

Many definitions in Cap. 1 are adapted by the Bill in order to reflect the reunification, but without changing their substance. For example, the definition of "common law" is to be amended from "the common law of England" to "the common law in force in Hong Kong". Some definitions are added.

The Bills Committee has considered carefully the definition of "State" contained in the Bill. It is proposed that "State" (as defined) will replace the "Crown" in provisions relating to the binding effect of ordinances. I wish to emphasize that there is no intention to replace all statutory references to the "Crown" with references to the "State". For example, in some contexts, the "Crown" will be replaced by the "Hong Kong Special Administrative Region Government". The definition of "State" in this Adaptation Bill has nothing to do with "acts of state" in Article 19 of the Basic Law. This definition in the Bill deals with the binding effect of individual ordinances.

Under the Bill, legislation that is expressed to be binding on the "Crown" is to be construed as binding on the "State". The presumption that, in the absence of express words or any necessary implication, ordinances do not bind the "Crown" is to be adapted by replacing the "Crown" by the "State". The proposed definition of the "State" corresponds to what was previously covered by 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. This is in line with the objective of ensuring the continuation of Hong Kong's legal system. I must emphasize that this Bill is not an exercise of law reform. Some critics of the Bill would like the principle in section 66 to be reversed, so that relevant organs would be bound by an ordinance and less expressly exempted. This was the view expressed by the Bar Association when it was consulted last year. It is true that the Bar Association was consulted on an earlier draft of the Bill, but in view of the Bar's comments on that draft, the Administration justifiably assumed that its view of section 66 would not change. This has proved to be the case. I repeat, this is not an exercise of law reform. The Bill does no more than retain and adapt to the common law principle in section 66.

If an ordinance provides that it binds the "Crown", the effect of the reunification (and of the Bill) is that the Ordinance now binds relevant organs of the People's Republic of China. If, however, an ordinance provides that it binds the "Government", and therefore did not previously bind other parts of the "Crown", it has since the reunification been binding on the Government of the Hong Kong Special Administrative Region (SAR), but not other organs of the "State". The

Administration has provided the Secretariat of this Council with a list of over 90 ordinances that bind or apply to the Crown or the Government in whole or in part. The principle that legislation does not bind the sovereign power unless it expressly says so or it appears by necessary implication that this was intended applies in almost all other common law jurisdictions. Examples are the United Kingdom, New Zealand and Australia.

The retention of that principle in Hong Kong is not, as some have suggested, based on the mistaken assumption that Hong Kong is a colony of China. Hong Kong is, of course, an integral part of China. The principle is retained not because it is a colonial law but because it is an aspect of the common law. Under the Basic Law, Hong Kong remains a common law jurisdiction. Moreover, the principle is not inconsistent with Article 22 of the Basic Law, which provides that offices set up in the SAR by departments of the Central People's Government shall abide by the laws of the Region. Section 66 of Cap. 1 does not place anyone above the law. People's Republic of China organs which fall within the definition of "State" will continue to be bound by Hong Kong laws. The People's Liberation Army Garrison is required to comply with the Garrison Law and relevant Hong Kong laws. Central People's Government organs must comply with the Bill of Rights, the general criminal law, civil law and ordinances which bind the "Crown" (that is, the "State" after adaptation). All state-owned enterprises which perform commercial functions will be outside the definition of "State" and will have to abide by the laws of Hong Kong.

The Bills Committee was satisfied with the substance of the definition of "State", but some Members suggested that another expression should be used instead of "State" and its Chinese equivalent. They queried whether it is appropriate to include the Government of the SAR under that expression. Members were also concerned that the definition of "State" and its Chinese equivalent might not be an appropriate replacement for "Crown" in all contexts.

We have considered this question very carefully but have concluded that the expression "State" remains the most appropriate term to accurately reflect the position after reunification, without changing the *status quo*. We have considered a number of other alternatives, such as "Authorities" and "Government" to stand for "State". These, however, do not adequately reflect the parties covered by the expression. We also consider it appropriate to include the Government of the SAR within the definition of "State" as the SAR is an inalienable part of the People's Republic of China.

Members requested clarification as to what makes up the "State" as defined. As I mentioned earlier, we have defined the term to correspond to what was previously covered by the "Crown". Our intention is that the components of the "State" will be: the President of the People's Republic of China, the Central People's Government, the Government of the SAR, the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law, and certain subordinate organs when they act within the delegated authority and the delegated functions.

The definition of "State" in the Bill does not refer expressly to the President of the People's Republic of China, or to the Central People's Government, but instead refers to the Central Authorities of the People's Republic of China that exercise executive functions. After discussion with the Bills Committee, the Administration has decided that it would improve the clarity and precision of the definition if the President and the Central People's Government were expressly referred to, and I will be moving a Committee stage amendment to achieve this.

There have been some concerns on what constitute the "subordinate organs". A subordinate organ is within the definition if it is a subordinate organ of the Central People's Government or of those defined Central Authorities, and it satisfies three tests:

- The first test is that the organ carries out executive functions of the Central People's Government, or functions for which the Central People's Government has responsibility under the Basic Law.
- The second test is that it does not exercise commercial functions.
- The third test is that the relevant organ must be acting within the scope of the authority and functions delegated to it by the Central People's Government or those Central Authorities as defined.

Some Members asked how it would be decided whether a particular body is or is not a subordinate organ falling within the definition of the "State". Ultimately, this will be a matter for the court to decide in the light of evidence presented to it. This is no different from the position before the reunification when the courts were responsible for deciding whether particular authorities were part of the "Crown".

With regard to the concern that it may not be appropriate to replace all references to the "Crown" with references to the "State", as I have already said, the Administration does not propose to do this. Under the Bill, the proposed definition of "State" will apply only in respect of provisions relating to the binding effect of ordinances.

There have been some public comments questioning the need for proceeding with the adaptation of Cap. 1, and particularly section 66, within this legislative session. These comments focus largely on the perceived effect of the adaptation of section 66 on certain ordinances that are expressed to bind the "Government". I wish to respond to those comments.

Firstly, it is necessary to adapt Cap. 1 during this legislative session since that adaptation forms an essential foundation for the interpretation of all other ordinances, and for the adaptation of all other ordinances. For example, the long list of new definitions in the Bill will be of general application and will facilitate the drafting of all future adaptation bills. The adaptation of section 66 is even more vital since, without it, there will be uncertainty as to the binding effect of many existing ordinances, and the drafting of provisions relating to the binding effect of future laws will have no clear foundation to start from. The absence of any definition of the "State" would leave great uncertainty as to whether commercial organizations, such as State Owned Enterprises, and provincial and municipal authorities are within the principle in section 66.

Secondly, some concern has been expressed over the fact that the Personal Data (Privacy) Ordinance, and a number of other ordinances, are binding on the "Government" but not on other parts of the "Crown". I wish to emphasize that the adaptation of section 66 will not change the current binding effect of those ordinances. As I have said earlier, by virtue of the reunification, those ordinances are already binding on the Government of the SAR, but not on other People's Republic of China state organs that are equivalent to the "Crown".

The Administration, nevertheless, is aware that there is public concern as to why certain ordinances should be binding on the SAR Government but not on relevant People's Republic of China organs. In the light of that concern, the Administration is proposing to review all those ordinances that are expressed to be binding on the "Government" in order to decide whether this difference in treatment can be justified. If, in relation to any particular ordinance, the difference cannot be justified, the Administration will propose an amendment to its binding effect. The review will involve a total of 17 ordinances, the names of which have been given to Members.

This commitment to a review of relevant ordinances underlines the fact that two issues need to be kept separate. The first issue is the adaptation of the general principle in section 66. The second issue is the extent to which those 17 ordinances are binding. The concern of some Members about the second issue has led to suggestions that the whole Adaptation Bill should be deferred for the first Legislative Council to consider. However, the concern in respect of the second issue can adequately be addressed by way of the review that I have just explained. Moreover, once the review is completed, the first Legislative Council will have the opportunity to discuss and address the issues of public concern which have recently arisen, in the context of the relevant ordinance.

It is, therefore, unnecessary to defer the debate on the first issue, which is a separate matter. The adaptation of section 66 ought to be enacted now, since it is no more than a reflection of the reunification. Moreover, that adaptation will greatly assist the review of the 17 ordinances, since it will clarify the options that exist in respect of their binding effect. I, therefore, call upon Members for their support of that adaptation.

As I mentioned earlier, I will be moving a Committee stage amendment to clarify the meaning of "State". There is another technical amendment that I shall move. That is to amend the reference to the "Supreme Court Ordinance" in the definition of "High Court" in clause 4(b) to read the "High Court Ordinance". This amendment reflects the change in title of that Ordinance effected when the Adaptation of Laws (Courts and Tribunals) Bill received its Third Reading earlier today.

Madam President, the early adaptation of Cap. 1, which contains provisions on the construction, application and interpretation of Hong Kong laws, is necessary for providing clear guidance in interpreting our laws in the light of the Hong Kong Reunification Ordinance. The adaptation of Cap. 1 is, therefore, the foundation of the programme to adapt all other laws. Specifically as regards section 66, we need to proceed with the adaptation early as it affects the operation of the binding effect of the rest of the ordinances, and its effect must be clear to avoid any possible confusion in the construction, application and interpretation of the relevant ordinances. It is, therefore, essential that the Bill is enacted as soon as possible. I commend this Bill to Members for early passage into law.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Adaptation of Laws (Interpretative Provisions) Bill 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 Frederick FUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Frederick FUNG has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): If there are no queries, the result 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, 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 Ronald ARCULLI, Mr YUEN Mo, Mr MA Fung-kuok, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, 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 Kennedy WONG, Mr Howard YOUNG, Dr Charles YEUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr CHIM Pui-chung, Mr LAU Kong-wah, Mr LAU

Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr CHOY Kan-pui, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr NGAN Kam-chuen, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted for the motion.

Dr LEONG Che-hung, Mr MOK Ying-fan, Mr CHAN Choi-hi, Mr Frederick FUNG, Mr Andrew WONG and Mr Bruce LIU voted against the motion.

THE PRESIDENT announced that there were 47 Members in favour of the motion and six against it. She therefore declared that the motion was carried.

CLERK (in Cantonese): Adaptation of Laws (Interpretative Provisions) Bill.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (INTERPRETATIVE PROVISIONS) BILL

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, 3, 5 to 23, 25 to 42 and 44.

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.

CLERK (in Cantonese): Clause 4.

CHAIRMAN (in Cantonese): Secretary for Justice.

SECRETARY FOR JUSTICE: I move the amendment to the definition of "High Court" in clause 4 as set out in the paper circularized to Members.

Proposed amendment

Clause 4 (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 Justice 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 Justice.

SECRETARY FOR JUSTICE: Madam Chairman, I move the amendment to the definition of "State" in clause 4 as set out in the paper circularized to Members. As I explained in my speech on the resumption of the Second Reading debate of this Bill, it would improve the clarity and precision of the definition if the President of the People's Republic of China and the Central People's Government were expressly included, instead of being included by implication, in the reference to certain Central Authorities. This amendment would achieve that.

Thank you, Madam President.

Proposed amendment

Clause 4 (see Annex II)

CHAIRMAN (in Cantonese): Does any Member wish to speak? Mr Andrew WONG.

MR ANDREW WONG (in Cantonese): Madam Chairman, there are some details I did not mention in the Second Reading debate. I think the term "the State" in clause 4 of the Bill may better be replaced by another term. If we wish to replace "the Crown" with another term to achieve adaptation, I think "the Government" may be a good choice. "The Government" may be defined as the Government of the Hong Kong Special Administrative Region, plus the Central People's Government, and specifically the "Military Commission of the Central Committee of the Communist Party of China". The Central People's Government and the Military Commission may be exempted if they are exercising the powers stated in the Basic Law. I think that can replace "the Crown" and it is an amendment in a more appropriate direction.

It is very much regrettable that we cannot study the matter in detail because there has not been any comprehensive consultation with the legal profession. So I cannot accept the use and definition of the term "the State" either in the Bill or the amendment.

With these remarks, I oppose the amendment. If the amendment is negated, I will oppose the definition of "the State" in the Bill.

CHAIRMAN: Secretary for Justice, do you wish to reply?

(The Secretary for Justice 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 Justice 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 "ayes" have it. The "ayes" have it.

CLERK (in Cantonese): Clause 4 as amended.

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.

CLERK (in Cantonese): Clauses 2 and 24.

CHAIRMAN (in Cantonese): Does any Member wish to speak on these clauses?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 2 and 24 stand part of the Bill.

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 43.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 43 stand part of the 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): 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.

PRESIDENT (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

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

SECRETARY FOR JUSTICE: Madam President, the

ADAPTATION OF LAWS (INTERPRETATIVE PROVISIONS) BILL

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 Adaptation of Laws (Interpretative Provisions) Bill 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.

Mr Frederick FUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr FUNG has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): If there are no queries, the result 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 MG Ching-fai, Mr Eric 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 Ronald ARCULLI, Mr YUEN Mo, Mr MA Fung-kwok, Dr TSO WONG Man-yin, Mr LEUNG Chun-ying, 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, Dr Charles YEUNG, Mr YEUNG Yiu-chung, Mr IP Kwok-him, Mr CHIM Pui-chung, Mr LAU Kong-wah, Mr LAU Wong-fat, Mrs Miriam LAU, Mr Ambrose LAU, Mr CHOY Kan-pui, Dr TANG Siu-tong, Mr Timothy FOK, Mr KAN Fook-yee, Mr NGAN Kam-chuen, Mr LO Suk-ching, Mr TAM Yiu-chung and Miss CHOY So-yuk voted for the motion.

Dr LEONG Che-hung, Mr MOK Ying-fan, Mr CHAN Choi-hi, Mr Frederick FUNG, Mr Andrew WONG and Mr Bruce LIU voted against the motion.

THE PRESIDENT announced that there were 46 Members in favour of the motion and six against it. She therefore declared that the motion was carried.

CLERK (in Cantonese): Adaptation of Laws (Interpretative Provisions) Bill.

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Legal Practitioners (Amendment) Bill 1998.

LEGAL PRACTITIONERS (AMENDMENT) BILL 1998

Resumption of debate on Second Reading which was moved on 11 February 1998

PRESIDENT (in Cantonese): Does any Member wish to speak? Dr LEONG Che-hung.

DR LEONG CHE-HUNG: Madam President, I rise to speak on the Legal Practitioners (Amendment) Bill. In speaking on the Bill, it is not my intention to oppose the Bill except to point out two areas which are considered rather controversial or, I should say, rather ironic.

Firstly, the Bill introduced this time is an about-turn of the Government from the same Bill that was tabled in 1996 in the then Legislative Council. When the Administration introduced the Legal Practitioners (Amendment) Bill 1996, there were proposals by Members of the then Legislative Council to the effect that practising notaries must be members of the Hong Kong Society of Notaries. The Administration ultimately withdrew the Bill on the grounds that if the amendments were to go through, it might infringe on Article 22 of the International Covenant on Civil and Political Rights. It is ironic that the principle behind the Legal Practitioners (Amendment) Bill 1998 sought to introduce the same concept that the Administration used to withdraw the Bill in 1996.

Secondly, in 1996, the Medical Registration (Amendment) Bill was introduced into the then Legislative Council. That Bill, amongst others, seeks to introduce specialist registration. Prior to the Amendment Bill introduced, the Administration has already set up the Hong Kong Academy of Medicine by statute. This Academy is vested with the functions to set standards for training and vet qualifications of specialists of different medical disciplines. One would have thought that the most logical direction was to ensure that all specialists in the specialist registry of the Medical Council must be the Fellows or Members of the Academy of Medicine.

During the Committee stage of the Medical Registration (Amendment) Bill, the Administration strongly objected to the association between specialist registration and membership of the Academy of Medicine on the grounds of infringement of freedom of association.

Madam President, I may be seen to have deviated much from the captioned Bill, yet it borders on the same principle, that is, when is compulsory membership of an organization an infringement of freedom of information? Yes, the

Administration has argued that the Society of Notaries acts like the Bar Association and the Law Society in disciplining its members, but so is the Academy of Medicine which is empowered to strip membership of those who have infringed on professional discipline who are not acceptable to the Academy of Medicine.

Madam President, whilst I am not objecting to the Bill before us today, I seek assurance from the relevant government bureaux to look into these two bodies, that is, the Society of Notaries and the Academy of Medicine, in detail and to draw a parallel between their principles to prevent possible accusation of double standards.

PRESIDENT (in Cantonese): Mrs Miriam LAU.

MRS MIRIAM LAU: Madam President, Article 142 of the Basic Law provides that the Hong Kong Special Administrative Region shall formulate provisions on its own for the assessment and conferment of professional qualifications.

Since 1 July 1997, the previous system of appointment of notaries public by the Archbishop of Canterbury came to an end. By reason of the withdrawal by the Administration in June 1997 of the Legal Practitioners (Amendment) Bill 1996, consequential on the carriage of a Committee stage amendment which provided for compulsory membership of notaries public with the Hong Kong Society of Notaries, there is no legislative framework upon which to appoint new notaries after the transition. Accordingly, although existing notaries public can continue to practise after the transition, new blood cannot be added. At this juncture, I wish to declare my interest as a practising notary public. The present Bill is, therefore, urgently required to fill this legal vacuum.

I am pleased that the Administration has now seen fit to include the proposal of compulsory membership of notaries in the present Bill. Had the Administration not been so adamant in declining this very proposal a year ago, it would not be necessary for the provisional legislature to deal with this Bill. The Administration sought to explain the change of stance by proposing to give the Hong Kong Society of Notaries a regulatory role similar to the Law Society and the Bar Association, thereby overcoming any possible infringement of the right to freedom of association under Article 22 of the International Covenant on Civil and

Political Rights. I just wish to point out that the proposition of the Society assuming a regulatory role was brought up when the 1996 Bill was discussed, but did not then find favour with Administration.

We do not know what prompted the Administration to change its policy, but that change is certainly welcomed.

The Bill provides for a rather elaborate system of regulation of notaries by the Hong Kong Society of Notaries, similar to the regulation of solicitors by the Law Society of Hong Kong. It also empowers the Council of the Hong Kong Society of Notaries to make rules relating to the practice, conduct and discipline of notaries public and their employees, and rules concerning indemnity against loss arising from claims in connection with the practice of a notary public. Whilst I support the regulation of notaries with a view to ensuring the quality of service provided by notaries to the public, I must caution against over-regulation. It must be recognized that the types of service provided by notaries are much more restrictive than those of the other two legal professions. Bearing in mind that most notaries public are themselves practising solicitors and therefore, already subject to the stringent rules laid down by the Law Society, I would urge the Hong Kong Society of Notaries to adopt a pragmatic approach when deciding what rules are necessary for notaries. Compliance with rules may have cost implications on the notary public's practice which will eventually find its way to the fees charged to the public. In this regard, I am pleased to note that the Hong Kong Society of Notaries will not insist on separate professional indemnity but will work on providing indemnity jointly with the Law Society. As fees from notarial work are already included in the gross income of legal practices for computation of premium payable under the professional indemnity scheme of solicitors, hopefully no additional premium will be charged even if notaries public are formally included under the scheme.

The proposed section 40A(1) under the Bill provides that in order to be appointed as a notary public, a person must be a solicitor whose name has been on the roll of solicitors for a continuous period of not less than seven years and who has passed a notarial examination. Prior to the transition, the requirement was that the person must be a solicitor who has practised for not less than seven years. As solicitors can be on the roll without practising, this would mean that under the Bill, non-practising solicitors can become notaries public. This is undesirable as it may be viewed as a relaxation of the admission criteria of notaries. I am pleased that the Administration has agreed to move a Committee stage amendment to

restore the criteria to the same level of stringency as that prior to the transition, that is, the seven years' practice will continue to be required.

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

PRESIDENT: Secretary for Justice, do you wish to reply?

SECRETARY FOR JUSTICE: Madam President, on 11 February 1998, the Secretary for Justice introduced the Legal Practitioners (Amendment) Bill 1998 into this Council. The main purpose of the Bill is to establish a system of locally appointed notaries so as to ensure that sufficient qualified notaries will be available for professional services in the Hong Kong Special Administrative Region.

I am grateful to the Honourable Mrs Miriam LAU, the Chairman of the Bills Committee, and to the members of the Committee for their very thorough consideration of the Bill. We have incorporated their helpful suggestion into the Committee stage amendments which I will move later.

The only substantive amendment that I shall move concerns the appointment criteria for notaries. The Bill requires an applicant's name to have been on the roll of solicitors continuously for the period of seven years immediately preceding the application. In response to the helpful suggestion of the Bills Committee, we propose to add an additional requirement that an applicant must have practised as a solicitor in Hong Kong for a period or periods amounting (in aggregate) to seven years. This is to ensure that the applicant has a reasonable level of practical experience as a solicitor in Hong Kong before being eligible for appointment as a notary public. I will, therefore, move an amendment to the proposed section 40A(1) to this effect.

The other amendments that I shall move are drafting improvements and consequential amendments to tie in with the coming into force of the Bankruptcy (Amendment) Ordinance 1996.

Some Members have asked why there has been a change in the Government policy of the issue of compulsory membership of notaries public with the Hong Kong Society of Notaries. Following the withdrawal of the Legal Practitioners

(Amendment) Bill 1996 by the Administration in June 1997, we reviewed the proposal for appointment of notaries. With the coming to an end of the previous system of appointment of notaries by the Archbishop of Canterbury on 1 July 1997, it has become important and necessary that a local system of appointment of notaries be put in place as soon as practicable.

Having consulted the legal profession and the Judiciary, we have considered that the best way forward is to model such a system of appointment on the statutory schemes applicable to solicitors and barristers, which effectively provide for compulsory membership of all practising solicitors and barristers. We are satisfied that the current proposed system of compulsory membership for all practising notaries is consistent with their right to freedom of association under Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

Concern has also been expressed that providing for compulsory membership of the Society of Notaries but not of the Hong Kong Academy of Medicine indicated inconsistency in the Administration's policy-making. However, I should like to emphasize that the two professional bodies perform different statutory functions.

Under Article 22 of the ICCPR, which is underpinned by Article 39 of the Basic Law, everyone has the right of freedom of association with others. This includes the freedom not to associate with others. Any restrictions on this right must be consistent with paragraph 2 of that Article. In deciding whether a restriction is so consistent, regard must be had to the purpose of the restriction.

The Academy of Medicine is essentially a professional training body. It is one of the two routes by which doctors undergoing postgraduate training may be recognized as specialists, the other route being to undertake an overseas course of postgraduate training which is acceptable to the Medical Council of Hong Kong. Membership of the Academy of Medicine is only necessary if a doctor wishes to undergo training organized by the Academy, following which he will be recognized as a Fellow of the Academy and be recommended to the Medical Council of Hong Kong to be accredited with the title "specialist". The Academy itself is not a regulatory or registration body. That power lies with the Medical Council. One must have regard to this fact when deciding whether compulsory membership of the Academy can be justified.

Under this Bill, the Society of Notaries will perform different functions, and in particular, will have a regulatory function. The Bill empowers the Society of Notaries to issue, suspend or cancel a notary public's practising certificate. The Council of the Society of Notaries is also empowered to make rules regulating the professional practice, conduct and discipline of notaries public. In this regard, the Society of Notaries performs similar regulatory functions as the other two legal professional bodies. Those are the Law Society and the Bar Association.

Madam President, there is a clear need to put in place a local system of appointment of notaries as soon as practicable after the reunification on 1 July 1997. I commend this Bill to Members for early passage into law.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Legal Practitioners (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): Legal Practitioners (Amendment) Bill 1998.

Council went into Committee.

Committee Stage

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

LEGAL PRACTITIONERS (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, 2, 4, 6 and 8 to 11.

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): Clauses 3, 5 and 7.

CHAIRMAN: Secretary for Justice.

SECRETARY FOR JUSTICE: Madam President, I move that clauses 3, 5 and 7 be amended as set out in the paper circularized to Members.

The amendments to the proposed section 40A, which I have already referred, provides that the applicant must practised as a solicitor for a period or periods in aggregate of not less than seven years.

The amendments to the proposed section 40J(3) in clause 3 and clause 5(1) are drafting improvements to define both "Society" and "Law Society" as "Law Society of Hong Kong".

The amendments to the proposed sections 40E(8) and 40F(1) in clause 3, clause 7 and the long title are consequential amendments to tie in with the coming into force of the Bankruptcy (Amendment) Ordinance 1996.

Proposed amendments

Clause 3 (see Annex III)

Clause 5 (see Annex III)

Clause 7 (see Annex III)

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 Justice 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): Clauses 3, 5 and 7 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): Long title.

CHAIRMAN: Secretary for Justice.

SECRETARY FOR JUSTICE: Madam Chairman, I move that the long title be amended as set out in the paper circularized to Members.

Proposed amendment

Long title (see Annex III)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Justice be approved.

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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading. Secretary for Justice.

SECRETARY FOR JUSTICE: Madam President, the

LEGAL PRACTITIONERS (AMENDMENT) BILL 1998

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 Legal Practitioners (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): Legal Practitioners (Amendment) Bill 1998.

Second Reading of Bill**Resumption of Second Reading Debate on Bill**

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws (Nationality Related Matters) Bill.

ADAPTATION OF LAWS (NATIONALITY RELATED MATTERS) BILL**Resumption of debate on Second Reading which was moved on 25 February 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 Adaptation of Laws (Nationality Related Matters) Bill 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): Adaptation of Laws (Nationality Related Matters) Bill.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (NATIONALITY RELATED MATTERS) BILL

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"?

(No Member responded)

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

CLERK (in Cantonese): Schedules 1 and 2.

CHAIRMAN (in Cantonese): Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to items 3 and 8 in and the addition of item 10A to Schedule 1, and the amendments to items 2(b), 4, 7 and 8 in Schedule 2, as set out in the paper circularized to Members.

The Adaptation of Laws (Nationality Related Matters) Bill seeks to make adaptations to the Laws of Hong Kong, so as to bring them in line with the Basic Law and to conform with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. These amendments are made to replace references to "British national" and other related terms listed in the two schedules to this Bill and references to the former Hong Kong permanent resident status in relation to the right of entry in the Immigration Ordinance.

I would especially like to thank the Honourable Ambrose LAU and other members of the Bills Committee for examining the Bill thoroughly and effectively, carrying out detailed discussions on each item in the schedules, and for making a number of recommendations to improve the bill. Having considered the views of Members, we agree that it is more appropriate to replace references to "British citizens, British Dependent Territories citizens or British Overseas citizens" with references to "Chinese citizens or permanent residents of Hong Kong Special Administration Region" in item 3 of schedule 1, that is, paragraph 8(a) of the Second Schedule to the Air Passenger Departure Tax Ordinance, so as to make adaptations to the provision on exemption from air passenger departure tax. We, therefore, proposed that references to "other residents in China" in the original draft of the Bill should be deleted.

The addition of item 10A to schedule 1 seeks to amend references to paragraph 2(a) to the First Schedule of the Immigration Ordinance in column 9 of the Form of Entry in Adopted Children Register of the Schedule. As major amendments have been made to the First Schedule of the Immigration Ordinance pursuant to the Immigration (Amendment) (No. 2) Ordinance 1997 passed on 1 July 1997, paragraph 2 of the aforesaid Schedule is already very much different from the original version. Thus references to the aforesaid Schedule in column 9 of the Form should be deleted. Amendments to item 8 in schedule 1 of the Bill are purely textual to rectify a typographical error in the Chinese text, and the amendments to items 2(b), 4, 7 and 8 in schedule 2 of the Chinese text seek to further clarify the legislative intent.

The above amendments, having been considered and scrutinized by the Bills Committee, are also endorsed and supported by the Bills Committee. Madam Chairman, I beg to move.

*Proposed amendments***Schedule 1 (see Annex IV)****Schedule 2 (see Annex IV)**

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 Security 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): Schedules 1 and 2 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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading. Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam President, the

ADAPTATION OF LAWS (NATIONALITY RELATED MATTERS) BILL

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 Adaptation of Laws (Nationality) Related Matters Bill 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): Adaptation of Laws (Nationality Related Matters) Bill.

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Adaptation of Laws (Crown Land) Bill.

ADAPTATION OF LAWS (CROWN LAND) BILL

Resumption of debate on Second Reading which was moved on 11 February 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 Adaptation of Laws (Crown Land) Bill 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): Adaptation of Laws (Crown Land) Bill.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (CROWN LAND) BILL

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 5, 7 to 52 and 55 to 105.

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): Clauses 6, 53 and 54.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam Chairman, I move that clauses 6, 53 and 54 be amended as set out in the paper circularized to Members.

I propose to amend clause 6 which deletes "政府批予" and substitutes "政府批地書", so that the phrase "Government grant" is consistent in the Chinese text. Clause 53 seeks to amend the Conveyancing and Property Ordinance (Cap. 219). I propose to delete this clause because section 1 of the schedule to the Adaptation of Laws (Interpretative Provisions) Bill has already included a similar amendment. Since clause 53 is deleted, a consequential technical amendment has to be made to clause 54.

With these remarks, Madam Chairman, I beg to move.

Proposed amendments

Clause 6 (see Annex V)

Clause 53 (see Annex V)

Clause 54 (see Annex V)

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 Planning, Environment and Lands 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): Clauses 6, 53 and 54 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):	Heading before new clause 48A.	Solicitors' Practice Rules.
	New Clause 48A.	Representation in conveyancing transactions.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam President, I move that the Heading before new clause 48A and new clause 48A as set out in the paper circularized to Members be read the Second time.

New clause 48A seeks to preserve the term "Crown Grant" in the Solicitors' Practice Rules (Subsidiary Legislation, Cap. 159) as a record which could be used in civil proceedings when necessary.

Madam President, I beg to move.

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 please say "aye"?

(Members responded)

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

(No Members responded)

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

CLERK (in Cantonese): Heading before new clause 48A and new clause 48A.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam Chairman, I move that the Heading before new clause 48A and new clause 48A be added to the Bill.

Proposed addition

New clause 48A (see Annex V)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the Heading before new clause 48A and new clause 48A be added to the Bill.

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) : Schedule.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Madam Chairman, I move the amendments to items 46 and 55 in the Schedule as set out in the paper circularized to Members.

I propose the deletion of item 46 from the Schedule as this is a consequential amendment upon the addition of clause 48A. The amendment to item 55 in the Schedule seeks to deal with an omission. Madam Chairman, I beg to move.

Proposed amendment

Schedule (see Annex V)

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 Planning, Environment and Lands 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): Schedule 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.

PRESIDENT (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bills: Third reading. Secretary for Planning, Environment and Lands.

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

ADAPTATION OF LAWS (CROWN LAND) BILL

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 Adaptation of Laws (Crown Land) Bill 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): Adaptation of Laws (Crown Land) Bill.

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Land (Compulsory Sale for Redevelopment) Bill.

LAND (COMPULSORY SALE FOR REDEVELOPMENT) BILL

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

PRESIDENT (in Cantonese): Does any Member wish to speak? Mr IP Kwok-him.

MR IP KWOK-HIM (in Cantonese): Madam President, urban renewal is not a recent topic. As buildings in the urban area age and land resources in the urban area becomes insufficient, urban renewal becomes a hot topic in the community. At present urban renewal is carried out mainly by two organizations: the Housing Authority and the Housing Society when they redevelop the housing estates under their management. Redevelopment of buildings in the private sector is done mainly by the Land Development Corporation (LDC) and private developers. Through the Government invoking the Crown Lands Resumption Ordinance the LDC may force owners to sell their properties in the areas under redevelopment. However, private developers may only acquire land by negotiation. When faced with "unscrupulous punters" or owners who cannot be found, private developers are restricted in the contribution they can make towards urban renewal.

Madam President, the Bill aims at helping private developers in urban renewal and in quickening the pace of urban renewal. The Democratic Alliance for Betterment of Hong Kong (DAB) supports the spirit of the Bill. But by compelling minority owners to sell their properties, the Government may to a certain extent have infringed upon the rights of these owners. Therefore a principle upon which the DAB has scrutinized the Bill is that compulsory sale should only be done when the interests of minority owners are well taken care of.

During the period when the Bills Committee considered the Bill, a number of controversial topics were raised. An example is the minimum percentage of shares required for an application for an order for sale to be made. A major hurdle for redevelopment is, in the view of the DAB, "unscrupulous punters" or owners who cannot be found. The number of these people should be small. So, if the percentage of ownership of an application for an order for sale is too low, it would be unfair to minority owners. Hence, the DAB insists that applications can only be made when developers possess 90% or more of the undivided shares. In special circumstances, the percentage can be lowered to 80% after seeking approval from the Chief Executive in Council.

Moreover, to protect the interests of minority owners, the Lands Tribunal must give them a chance of presentation before deciding whether to grant an order for sale, so that any decision made by the Lands Tribunal is fair and impartial. Meanwhile, to avoid unnecessary loss suffered by minority owners as a result of failure to complete the sale after an order is made, the DAB agrees that in those cases where the sale cannot be completed after being put on auction sale the expenses incurred should be borne by the applicant. As regards apportionment of the proceeds of sale, the DAB considers that it should be done on a *pro rata* basis in accordance with the value of the properties. This may avoid disputes arising from an uneven distribution of ownership.

Now I would like to speak about tenants. As most tenants in old buildings are usually short of means, they would be hardest hit by a compulsory sale of their premises. I have received complaints from a group of old tenants affected by redevelopment and their position saddened me. They lacked retirement protection and had to economize on every aspect, living off the hard savings they had made. They lived in dilapidated buildings under terrible conditions. This was not fair. But then the rent was affordable as the buildings in which they dwelled were old buildings. At least they could find shelter there. It was bad news for them when the buildings in which they lived had to be redeveloped. With a meagre compensation on eviction from their dwelling places, how can they pass their old age in dignity? Although it is not practical to ask developers to relocate all tenants, the DAB holds that tenants must be fairly compensated. That is why we agree with the proposal in the Bill for the Lands Tribunal to refer to the Landlord and Tenant (Consolidation) Ordinance and to heed the views of tenants when adjudicating on compensation, so that the difficulties of tenants can be addressed by way of the compensation.

Madam President, the Bill can undoubtedly overcome the many hurdles encountered by private developers in their redevelopments. But the Bill only provides for a lot to be treated as a unit in an application for an order for sale. This limits the possibility for mass redevelopment. In addition, private developers must use a commercial approach by selecting lots with development potentials. They will in all likelihood ignore lots with low development potentials. In the opinion of the DAB, as far as urban renewal is concerned, the Bill is helpful. The real solution to the problem of urban renewal lies in the LDC and the proposed Urban Renewal Authority, the function of which must be enhanced. With further assistance from the Housing Authority and the Housing Society to handle rehousing, we can truly accomplish urban renewal with good planning and environmental improvement as the objective.

With these remarks, Madam President, I support the Bill on behalf of the DAB.

PRESIDENT (in Cantonese): Mr Edward HO.

MR EDWARD HO (in Cantonese): Madam President, as buildings in some urban areas age the quality of our living environment deteriorates. Many factors, including a lack of community facilities or a lack of basic facilities in some old areas, cause traffic congestions and other problems. In addition, the sanitary conditions of a number of buildings are poor. Their structures are badly in need of maintenance and can be hazardous to safety. Therefore, the Government must urgently review its urban renewal programme. Although since its establishment in 1988 the LDC has carried out urban renewal work for some parts of the urban areas, progress has been slow and disappointing.

The Bill before us today may solve some of the problems connected with urban renewal. It benefits in particular urban renewal plans undertaken by private developers. Naturally, urban renewal has a profound effect on the people. Some owners are forced to sell their properties. Both owners and tenants need to move. Commercial activities are thus affected. All these are complicated issues that require careful attention.

The Bills Committee has held 12 meetings to scrutinize the Bill. This shows the Bill is a complicated one. Basically, I support the Bill, but I would like to make several points.

First, the Bill only allows the "majority owner", that is, an owner who owns not less than 90% of the undivided shares of the lot to make application to the Lands Tribunal for an order for compulsory sale of all the undivided shares of the lot by public auction for the purposes of the redevelopment of the same.

The key lies in the Bill being applicable to single lots only. It is therefore not applicable to consolidated redevelopment plans for buildings straddling several lots. As a result, development of pencil buildings will result. From the angle of town planning and of increasing space and basic community facilities for an area, "pencil buildings" are far from being satisfactory. Hence I hope the Government can look into other ways, which better conform to town planning principles, to help the private sector to conduct redevelopments.

Second, in the discussions of the Bills Committee, I pointed out some buildings sit on more than one lot. This is especially true for some old buildings in which many units share one common staircase. In such cases, redevelopment cannot be limited to a single lot. For this reason, the Government will move an amendment at the Committee stage, suggesting the inclusion of subclause 1(A) in clause 3(b) to tackle the problem I have just mentioned. I welcome the amendment.

Another issue is that under clauses 4(2)(b)(ii) and 12(b) the Secretary for Planning, Environment and Lands (SPEL) may provide one or more grounds specified in the regulation for the Lands Tribunal to consider at the hearing on the subject of the application for an order for sale.

The question is clause 12 does not state clearly the rationale on which the Secretary may specify the grounds. For example, it is not specified the Secretary for Planning, Environment and Lands must act in the interest of the public. So, I think the grounds must be clear. But since the grounds specified by the Secretary have to be scrutinized and approved by the future Legislative Council, we hope the latter can monitor the grounds and approve the same only if they are good enough and in the interest of the public.

Third, the Bill has not stated clearly the correct spirit for urban renewal, such as improvement of the environment. The Bill only stresses the development of buildings with good economic potential using the idea of undivided shares. This deviates considerably from the aims of urban renewal. As urban renewal affects the interest of minority owners, the Government should take account of the effect urban renewal has on the community and see whether the greatest benefit to the community can be achieved after renewal.

Madam President, today's Bill is just a part of the greater issue of urban renewal. I think the Government should continue to review the overall strategy for urban renewal. In the process of renewal, a number of people and shops will have to be moved inevitably. This will cause great disturbance to the social structure. So, to improve the community environment, the Government should not limit its attention on renewal. Instead, it should also consider promoting building maintenance and preserving buildings of value.

With these remarks, Madam President, I support the Bill.

PRESIDENT (in Cantonese): Mr Ronald ARCULLI.

MR RONALD ARCULLI: Madam President, I wish to say a few words on behalf of the Liberal Party on this important Bill which is particularly timely.

I say important and timely because it will do much in assisting the much needed environmental improvement in some of our rather unsightly, unhygienic and dilapidated areas of Hong Kong, as well as in assisting the provision of housing for the community. The Liberal Party supports the essential elements contained in the Bill, but we do have some concerns of which I will highlight later.

As colleagues are no doubt aware, historically, housing production in the private sector has relied essentially on two sources for land: first, land sold by the Government; and second, redevelopment of old areas in the form of urban renewal or change of land use, namely for example, from agricultural use to residential use. The rough proportion was about half of our private housing came from government land sales, with the second source, that is redevelopment and change of land use, providing the other half.

As for redevelopment of old areas, the situation got progressively difficult as the assembly of old buildings got more and more difficult. The private sector experienced serious delays and difficulties for a variety of reasons. The private sector, however, could not redevelop a site unless the developer owned 100% of a site, a lot or a building. Sometimes, it was due to professional investors, if I could put it that way, who would hold the developer to ransom. Other difficulties included the disappearance of owners or, perhaps, complicated situations of adverse possession and so on.

Madam President, some years ago, the property sector sounded warning bells over the dwindling land resources from the redevelopment of old and dilapidated buildings. Indeed, the experience of the Land Development Corporation in this respect demonstrates the difficulties and the resources needed to redevelop such areas of Hong Kong. So, whilst we welcome the new procedure for compulsory sale for redevelopment that will be available to the private sector in very limited circumstances, the Liberal Party would like to register one or two of our concerns.

One concern we have is that, due to the stringent requirement that an applicant for an order for compulsory sale will have to own 90% of the undivided share of the lot or lots which may be the subject of an application, this might result in pencil rather than comprehensive redevelopment. We should keep this issue under scrutiny and see whether it achieves good results. If not, we should not be afraid to review the situation.

Another concern is that of professional investors and tenants. Whilst we believe in a free market, we should be watchful so as to ensure that this new policy will produce a fair and balanced result.

Another concern is the displacement and perhaps, the rehousing of tenants which will again need to be watched carefully so as to avoid the creation of other social problems.

Madam President, no one in this Council takes the lawful and compulsory deprivation of private property rights lightly. In our attempt to provide Hong Kong with a key to environmental improvement and assist in providing the much needed housing, we owe it to the community to ensure that it not only works, but that it works fairly and properly.

With these remarks, the Liberal Party will support the Bill.

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

MR NGAN KAM-CHUEN (in Cantonese): Madam President, urban renewal in Hong Kong and its progress have been subject to severe criticisms. Many residents in the old areas are still living in poor conditions and even dangerous buildings. Up to now, their living condition has not been improved. The Land Development Corporation has devoted a lot of efforts in urban redevelopment but to little avail. For those who are living in the old areas, they have almost been forgotten. Buildings which have redevelopment value will see a bright future, but no one would like to be engaged in programmes which will certainly lead to a loss.

The Democratic Alliance for Betterment of Hong Kong (DAB) welcomes the Land (Compulsory Sale For Redevelopment) Bill for at least it can help private developers expedite the acquisition of old buildings for redevelopment, particularly buildings with fragmented title shares. A private developer with not less than 90% of the undivided shares of a building can apply for an order for compulsory sale from the Lands Tribunal even though some of the owners are missing. This mechanism can ensure that the developer will not acquire a "useless" building.

But I would like to reiterate here that the DAB supports this Bill not because we want to help the developers to remove the so-called "coffin nails", meaning the professional investors. Nor do we want to help them oppress the minority owners. With the objective of improving the environment of old areas, we hope this will encourage redevelopment of these areas by the private developers. Under the Bill, the minority owners' interests are safeguarded as they can dispute the assessed market value of their units and the majority owners' units and the trustees' expenses are also paid by the majority owners. In case the sale of the lot by public auction is not successful, the expenses of the auction will also rest with the majority owners solely. As to those missing owners, their interests are also protected. The proceeds of sale due to them will be held by court and paid into the Government's General Revenue upon the expiration of three years. Any person who claims to be entitled to those proceeds may make a claim against the Government.

Apparently, the Bill can help improve the environment of the old areas. But will all problems be solved by this Bill? The answer must be in the negative due to the limitation of the Bill itself. Members should bear in mind that redevelopment programmes are led by private developers as they are businessmen and their top priority must be profits. For programmes which are not lucrative, basically they are not interested, let alone wasting the time in negotiating with the minority owners and applying for compulsory sale orders from the Lands Tribunal.

Secondly, the Bill provides that a developer can apply for an order for compulsory sale only when it has acquired 90% of the undivided shares of a single lot. We foresee the thriving of "pencil" developments which is not conducive to comprehensive urban redevelopment. So the DAB reckons that the Bill will only play a complementary role in environmental improvement of the old area and it is just better than none.

In view of this, the DAB would like to urge the Government to set up an Urban Redevelopment Authority as soon as possible in order to expedite the progress of urban renewal and to create a better environment for residents in the old areas.

Madam President, I so submit.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I am very grateful to the Honourable Ronald ARCULLI and members of the Bills Committee for their very hard work and patience in examining the provisions of this Bill.

The Bills Committee met 12 times between early February and late March and has received representations from the Real Estate Developers' Association of Hong Kong, the Law Society of Hong Kong, the Hong Kong Institute of Planners, the Hong Kong Institute of Surveyors and the Land Development Corporation. The long hours spent and the wide consultation conducted reflect the importance we all attach to the Bill and the objective of speeding up urban renewal. We are grateful for the Committee's support for the general principles of the Bill.

Furthermore, through thorough clause-by-clause discussion in a spirit of co-operation, the Committee has examined together with us in great detail many technical aspects of the Bill and has helped us greatly in drawing up amendments which will improve the proposed operation of the Bill.

We have reached consensus with the Committee on these amendments which I will explain further when they are introduced at the Committee stage. I will now address some of the more important technical issues which we have discussed with the Bills Committee.

First, the Bill stipulates that the majority owner or owners must own a minimum of 90% of the undivided shares in the lot before he or they can apply to the Lands Tribunal for an order for sale. The Chief Executive in Council can specify a lower percentage which cannot be less than 80% in respect of any class of lots. In the representations received by the Bills Committee, there were suggestions that the 90% threshold stipulated in the Bill should be lowered. However, we feel that it is very important to strike a balance between facilitating urban redevelopment and protecting individual owner's rights, and have reached consensus with the Bills Committee that the stipulated minimum percentage should not be amended.

Second, the Lands Tribunal shall not make an order for sale unless it is satisfied that certain criteria have been met, including criteria that the redevelopment of the lot is justified and that the majority owner has taken reasonable steps to acquire all the undivided shares in the lot.

The question has been raised as to whether the Lands Tribunal should take into consideration whether compulsory sale of the lot would cause undue hardship to the minority owners.

I wish to assure Members that the criteria specified in the Bill are not exhaustive and that the relevant clause has been purposely drafted to allow the Lands Tribunal to take into account other relevant factors, including that of undue hardship on the part of the minority owners. However, we have also reached consensus with the Bills Committee that the factors to be considered shall not include hardship on the part of tenants, as they are entitled to fair compensation as ordered by the Lands Tribunal.

Third, the question arises as to how title disputes, such as those arising from adverse possession, should be dealt with. Our original intention was that any title disputes should be settled through the usual proceedings in the Court of First

Instance and that the Lands Tribunal should have no role to play under the Bill in this regard. However, after careful consideration together with the Bills Committee, we agree that provision should be made for the Lands Tribunal to direct the trustees appointed under an order for sale to set aside parts of the proceeds of sale in view of any pending action, or *lis pendens*, affecting the lot registered under the Land Registration Ordinance for payment to persons concerned upon the settlement of such disputes.

Finally, the Bill gives the purchaser of a lot ordered for sale the right to terminate tenancies in respect of any premises on the lot. In this regard, we accept the Bills Committee's advice that complications which may be involved in terminating contractual tenancies and vacating tenants will be a deterrent to potential purchasers of the lot. I will, therefore, move amendments to the effect that all tenancies are terminated upon the purchaser becoming the owner of the lot, that the purchaser must serve notice to the tenants in a specified form and that the tenants must deliver up vacant possession within six months.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Land (Compulsory Sale for Redevelopment) Bill 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): Land (Compulsory Sale for Redevelopment) Bill.

Council went into Committee.

Committee Stage

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

LAND (COMPULSORY SALE FOR REDEVELOPMENT) BILL

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): 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): Clauses 2, 5, 6, 7 and 9 to 15.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I move that clauses 2, 5, 6, 7 and 9 to 15 be amended as set out in the paper circularized to Members.

Clause 2 is amended to refine the definition of certain terms to better reflect our policy intention. The major changes are, for example, extending the definition of "majority owner" and "minority owner" to include their successors in title and mortgagees in possession, simplifying the definition of "redevelopment", and adding a definition of "*lis pendens*".

In response to the Bills Committee's suggestion, clause 5(1) is amended to also allow the lot to be sold by a means other than public auction, with provisions to ensure that the interests of the minority owners are adequately safeguarded. Such safeguards provide that if the whereabouts of each minority owner is known, the means of sale will have to be agreed in writing by each minority owner and majority owner, approved by the Tribunal in its absolute discretion and in accordance with such conditions as specified by the Tribunal.

Subclauses (ii) to (v) provide guidance to the trustees regarding the sale or otherwise of the lot.

Clause 6 is deleted and replaced by provisions regarding the amount to be paid to the trustees where the majority owner or any minority owner is the successful purchaser of the lot.

Clause 7 is amended to require the trustees to register the order for sale under the Land Registration Ordinance and to vest in the trustees a power to assign all the estate, rights and interest in the lot held by the majority owner and the minority owner for the purposes of selling the lot, discharging duties imposed under the Bill and executing any documents required.

Clause 9 is amended to state clearly that each condition under schedule 3 shall be deemed to be a condition of the Government lease of the lot and that breach of such a condition shall entitle the Government to re-enter the lot.

Clause 10 is amended to provide detailed guidance to the trustees in the application of the proceeds of sale, including deducting expenses and legal costs, discharging liabilities and incumbrances and paying compensation to tenants before paying the residue to the majority and minority owners. Provisions are also made on a payment into the Tribunal any amount held by the trustees pursuant to any directions given by the Tribunal in respect of *lis pendens* and any amount which is due to an owner who cannot be found.

Clause 11 is deleted.

Clause 12 is amended to make the power of the Secretary for Planning, Environment and Lands to make regulations in respect of justifications in clause 4 for the redevelopment of the lot narrower than originally provided. However, a power is added for making regulations to specify matters to be taken into account in the nomination or appointment of trustees in view of the heavy responsibilities which are placed on the trustees.

Clause 13 is deleted, but I will move a new clause 15(A) later regarding rules to be made by the Chief Justice under the Lands Tribunal Ordinance.

The amendments to clauses 14 and 15 are minor and technical.

The above amendments have been supported by the Bills Committee. Madam Chairman, I beg to move.

Proposed amendments

Clause 2 (see Annex VI)

Clause 5 (see Annex VI)

Clause 6 (see Annex VI)

Clause 7 (see Annex VI)

Clause 9 (see Annex VI)

Clause 10 (see Annex VI)

Clause 11 (see Annex VI)

Clause 12 (see Annex VI)

Clause 13 (see Annex VI)

Clause 14 (see Annex VI)

Clause 15 (see Annex VI)

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 Planning, Environment and Lands 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): Clauses 2, 5, 6, 7 and 9 to 15 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 3.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam Chairman, I move that clause 3 be amended as set out in the paper circularized to Members.

Subclause (1A) specifies that if the majority owner makes an application covering two or more lots, he must own not less than 90% of the undivided shares in each lot. It also provides for the average to be taken for the purpose of calculating the percentage of the undivided shares of two or more lots on which there are two buildings joined by a common staircase.

Subclause (2) is amended to ensure that adequate notice is served by the applicant on all relevant parties.

Minor technical amendments are made to subclauses (3) and (4).

Subclause (6) is amended in relation to the making of an application to exclude from the calculation of the percentage of undivided shares of an owner any undivided shares in respect of common parts of the lot.

The above amendments have been supported by the Bills Committee. Madam Chairman, I beg to move.

Proposed amendment

Clause 3 (see Annex VI)

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 Planning, Environment and Lands 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 3 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 4.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam Chairman, I move that clause 4 be amended as set out in the paper circularized to Members.

Subclause (1)(a) is amended to provide the right for a minority owner to dispute not only the assessed value of his property, but also that of any property as assessed in the application. This is important because any variation of those values will have a direct effect on the apportionment of the proceeds of sale. Furthermore, to safeguard the interests of any minority owners who cannot be

found, the majority owner is required to satisfy the Lands Tribunal that the assessed values of the properties of such owners are not less than fair and reasonable when compared with that of the majority owner.

Subclause (1)(c) provides for the appointment of trustees satisfactory to a Lands Tribunal nominated by the majority owner to discharge the duties imposed on trustees under the Bill.

Subclause (2)(b) is amended to make it clear that whether or not the majority owner is capable of undertaking redevelopment should not be a factor to be considered by the Lands Tribunal in determining an application as a person other than the majority owner may purchase and redevelop the lot.

Recognizing the difficulty in proving that all reasonable steps have been taken to acquire all the undivided shares, subclause (2)(c) is amended to require the majority owner to have taken reasonable steps to acquire such properties before he applies to the Lands Tribunal.

Subclause (2A) specifies that in determining an application, the Lands Tribunal shall not take into account any provision of the Landlord and Tenant (Consolidation) Ordinance relating to the right of a tenant whose tenancy is terminated or is sought to be terminated.

Subclause (5) empowers the Tribunal to order compensation to be paid to tenants as well as to give such directions relating to the holding of part of the proceeds of sale to cover any *lis pendens* affecting the lot, and the payment of the process so held to persons concerned upon settlement of the disputes.

The Tribunal may also direct the trustees to pay into the Tribunal the proceeds of sale to be released in accordance with subclause (6) to persons who are entitled to payment.

Subclause (7) stipulates that any proceeds not released upon the expiration of three years shall be paid into the general revenue.

The Bills Committee has supported the above amendments. Madam Chairman, I beg to move.

Proposed amendment

Clause 4 (see Annex VI)

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 Planning, Environment and Lands 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 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 8.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam Chairman, I move that clause 8 be amended as set out in the paper circularized to Members.

To enable the purchaser to clear the lot for redevelopment, subclause (1) is amended to provide for the immediate termination of tenancies on the day on which the purchaser becomes the legal owner of the lot, notwithstanding the terms of any lease or the provisions of the Landlord and Tenant (Consolidation) Ordinance. Tenants are required to deliver up vacant possession of the premises after the expiration of six months.

Subclause (2) requires the purchaser to serve notice on tenants not later than 14 days after he becomes the owner of the lot.

Subclause (3) provides for the Tribunal to order compensation to be paid to tenants and makes it clear that the policy intention is for each owner to be responsible for compensating his own tenants.

Subclause (5) empowers the Tribunal to take into account any representations of the tenants relating to claims or compensation, and any benefit, afforded the tenants by virtue of the provision in subclause (1) that they are not required to deliver up vacant possession until six months after the termination of tenancies.

Subclause (7) is amended to define a "prior owner" more clearly as a person who formerly owned an undivided share in the lot. Read with clause 8(1)(a), the effect is that all rights which were exercisable by the prior owner by virtue of his ownership of an undivided share in a lot shall cease except to the extent, if any, as specified in the order.

The Bills Committee has supported the above amendments. Madam Chairman, I beg to move.

Proposed amendment

Clause 8 (see Annex VI)

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 Planning, Environment and Lands 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 8 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) : New clause 9A.

Basis of apportionment of expenses and proceeds.

New clause 15A.

Section added.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I move that clause 9(A) and 15(A) as set out in the paper circularized to Members be read the Second time.

New clause 9A specifies the basis of apportionment of the expenses of the auction or other means of sale and the proceeds of sale among the majority owner and minority owners.

New clause 15A amends the Lands Tribunal Ordinance to empower the Chief Justice to make rules dealing generally with all matters of practice and procedure arising from the Bill, including the transfer of business between members of the Tribunal.

The above amendments have been supported by the Bills Committee. Madam Chairman, I beg to move.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 9A and 15A be read the Second time.

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 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 clauses 9A and 15A.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I move that clauses 9A and 15A be added to the Bill.

Proposed additions

New clause 9A (see Annex VI)

New clause 15A (see Annex VI)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clauses 9A and 15A be added to the Bill.

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): Schedules 1,2 and 3.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam Chairman, I move that schedules 1, 2 and 3 be amended as set out in the paper circularized to Members.

At the request of the Bills Committee, Part 1 in schedule 1 is deleted to remove any uncertainty regarding conditions with which an application under clause 3(1) shall apply.

Part 2 is amended to require that the valuation report be prepared not earlier than three months before the date of application and to set out more clearly the basis of valuation.

Part 2A specifies a notice which the applicant shall affix on the building of the lot.

Part 3 is amended to make it clear that the proceeds of sale shall be apportioned on a *pro rata* basis in accordance with the values of the properties of each majority owner and minority owner.

Minor technical amendments are made to schedule 2.

Schedule 3 is amended to empower the Tribunal to extend the redevelopment period upon application by the purchaser.

The Bills Committee has supported the above amendments. Madam Chairman, I beg to move.

Proposed amendments

Schedule 1 (see Annex VI)

Schedule 2 (see Annex VI)

Schedule 3 (see Annex VI)

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 Planning, Environment and Lands 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): Schedules 1, 2 and 3 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): New schedule 4 Notice that Tenancies of
lot have been Terminated.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I move that new schedule 4 as set out in the paper circularized to Members be read the Second time.

The notice which the purchaser of the lot shall serve on tenants under clause 8(2) is as specified in schedule 4.

Madam Chairman, I beg to move.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new Schedule 4 be read the Second time.

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 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 schedule 4.

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I move that new Schedule 4 be added to the Bill.

Proposed addition

New schedule 4 (see Annex VI)

CHAIRMAN (in Cantonese): I now propose the question to you and that is : That new schedule 4 be added to the Bill.

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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading. Secretary for Planning, Environment and Lands.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Madam President, the

LAND (COMPULSORY SALE FOR REDEVELOPMENT) BILL

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 Land (Compulsory Sale for Redevelopment) Bill 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): Land (Compulsory Sale For Redevelopment) Bill.

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Inland Revenue (Amendment) Bill 1998.

INLAND REVENUE (AMENDMENT) BILL 1998

Resumption of debate on Second Reading which was moved on 4 March 1998

PRESIDENT (in Cantonese): Does any Member wish to speak? Dr LEONG Che-hung.

DR LEONG CHE-HUNG: I rise to speak on the Inland Revenue (Amendment) Bill 1998. In doing so, I am not objecting to the Bill but merely to point out an area of tax concession which could be improved to tally with the spirit behind the Mandatory Provident Fund (MPF) and to give a fairer treatment to self-employed personnel.

Madam President, section 16AA(2)(b) seeks to cap the tax deduction at \$1,200 per year for self-employed person, irrespective of his or her contribution either in the form of a voluntary or a mandatory contribution. Such a move will not stimulate but will deter those who could contribute more on a voluntary basis for saving or retiring purposes. It thus goes contrary to the spirit behind the MPF which should be to encourage people to save, and to save more.

At my request to remove this cap or to increase the ceiling, and I must apologize to Honourable Members of this Council for making this request after the Bills Committee has finished its deliberations, the Administration responded by saying that there could be much abuses. Yes, like a lot of laws, there could be abuses. The best way to prevent abuses is to plug possible loopholes and not to prevent abuses by methods that are contrary to the spirit of a parallel law.

The cap so established is also most unfair to self-employed persons who have difficulties in their own profession in forming body corporates, like the medical profession who can claim from a very limited parameter of tax concession benefits.

On this basis, Madam President, I made an attempt to introduce a possible amendment to remove the cap. Regrettably, such is now water under the bridge as it has shown to have a charging effect. Be that as it may, the issues have to be addressed or should be addressed, like perhaps other issues that could come up in relation to the MPF, and I seek the Government's assurance that it will give all these due consideration in the future.

Thank you, Madam President.

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

MR IP KWOK-HIM (in Cantonese): Madam President, I shall speak briefly on behalf of the Democratic Alliance for Betterment of Hong Kong (DAB).

At various meetings of the Bills Committee, of which I was the Chairman, the DAB expressed our views on this issue, many of which were accepted by the Administration. Now I just reiterate DAB's views which were not accepted by the Administration.

After the Asian financial turmoil has broken out, Hong Kong could not avoid being hit by the adverse effect of the crisis. High interest rates and the plummeting stock market have seriously undermined our economic strengths. It is not easy for the people to weather the economic winter on their own. Facing a worsening economic situation, the DAB has proposed a number of tax concessions including to raise the personal allowance for salaries taxpayers to \$120,000 and to

revise the marginal tax rates. In the Budget, the basic allowance is increased by \$8,000 only, but the tax bands are widened and marginal tax rates improved. For the Hong Kong people, particularly the middle-income group who are the resources of our vibrant economy, these deductions are a piece of good news as exciting as if one receives charcoal in a snowy winter.

The DAB also understands the burden of high interest rate on the home buyers. So we were the first to ask for a tax concession for mortgage interest payment for owner-occupiers. We proposed to grant a deduction of \$100,000 per year for a maximum of 10 years because the interest burden for the first 10 years of a newly mortgaged property is rather heavy. A 10-year mortgage relief will genuinely help alleviate the burden of the home buyers. In this year's Budget, the Government did make a response to the community's appeal and accepted part of DAB's suggestions.

Regrettably, the mortgage relief is granted for five years and the deduction is based on the property. While a sole owner can fully enjoy \$100,000 deduction, each of the joint owners is entitled to a yearly deduction on the basis of his share of ownership. Joint ownership is particularly common in Hong Kong as many husbands and wives own their properties in joint tenancy. The DAB reckons that such an arrangement is unfair to joint owners, particularly the couples. We reckon that the Government should adhere to the principle of fairness and allow only one of the joint owners to claim the deduction in one year so that he can maximize the benefit of \$100,000 deduction. By so doing, the sole owners and joint owners can receive equal treatment. Secondly, the deduction period can be extended at least to 10 years; and thirdly, in any fiscal year, the revenue would not fall substantially because of excessive applications for such a deduction. This proposal can achieve three ends with one means. I hope the Government can give further consideration to this.

Although Mr KWONG Ki-chi will no longer be the Secretary for Treasury, I hope he can convey our views to the Administration. The DAB will keep urging the Government to accept our views.

I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): Secretary for the Treasury. Do you wish to reply?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, I would first like to thank the Bills Committee, of which the Honourable IP Kwok-him is the Chairman, for finalizing the deliberations of the Inland Revenue (Amendment) Bill 1998 very efficiently and offering valuable opinions. I would also like to thank the Hong Kong Society of Accountants for their suggestions on the Bill.

Having discussed with the Bills Committee and considered the opinions of the Hong Kong Society of Accountants, we propose to make a series of Committee stage amendments to improve the provisions of the Bill. We also propose to delete some clauses in the Bill about retirement plan contribution to avoid a repetition of provisions in the newly enacted Provident Fund Schemes Legislation (Amendment) Ordinance 1998. I am grateful that the Bills Committee supports our suggestion, and I will explain the details of the amendment at the Committee stage.

I understand that the public and the tax circle wish to be fully aware of how the deductions for home mortgage interest payments are made under different circumstances. To enhance the clear operation of the tax system, the Inland Revenue Department will issue practical guidelines or leaflets on how the clauses are enforced for the tax circle's or the public's reference.

After hearing his suggestions, I find Mr IP may have misunderstood our practice in home mortgage interest tax concessions. I hope that he can take a look at our practical guidelines and leaflets if he has time later.

Moreover, I also wish to take this opportunity to respond to Dr the Honourable LEONG Che-hung's comments on section 16AA(2)(b). Dr LEONG may have misunderstood the intention of the Government's Budget proposal for a deduction of the retirement plan contributions. The deduction mainly matches with the Mandatory Provident Fund (MPF) Scheme to relieve the burden of the contributors under the scheme. As the maximum statutory and mandatory contribution under the MPF Scheme is \$12,000 per year, we propose to set up a Salaries Tax deduction of up to \$12,000 a year for mandatory contributions. For

fairness' sake, in addition to employees who can enjoy the proposed deduction, self-employed persons who also make mandatory contributions to the MPF scheme may also be eligible for an equivalent deduction for Profits Tax.

Dr LEONG thinks that there should be a cap on the deductions enjoyed the self-employed persons. However, the Government disagrees with Dr LEONG's opinion. The original idea of our proposal to set down the deduction is the mandatory nature of contributions. Taxpayers making voluntary contributions is not different at all from citizens making savings or other kinds of investment, so there should not be any tax deductions. On the other hand, if we extend the deductions for the self-employed persons' contributions, it will be unfair as the employees and the self-employed persons are treated differently. The extension of deductions or removing the cap will greatly increase the loss of tax revenue incurred. If the self-employed persons make 10% of their gross profits as contribution, and are granted tax deduction for the full amount, the additional loss of revenue to the Government will amount to \$400 million per annum. Moreover, the above arrangement will create a loophole, for example, the taxpayers may intentionally make a large sum of voluntary contributions to obtain the benefits of tax deduction, and withdraw the contribution later.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Inland Revenue (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): Inland Revenue (Amendment) Bill 1998.

Council went into Committee.

Committee Stage

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

INLAND REVENUE (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, 4 to 10, 13 to 17 and 19 to 24.

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): Clauses 2, 3 and 11.

CHAIRMAN (in Cantonese) : Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clauses 2, 3 and 11 be amended as set out in the paper circularized to Members.

The amendment to clause 2(2) seeks to clearly state that all the provisions relating to the proposed deductions for retirement plan contributions will take effect from the fiscal year as specified by the Secretary for the Treasury and as published in the Gazette.

Clause 3 is amended to delete the Bill's provisions identical to those in the recently passed Provident Fund Scheme Legislation (Amendment) Ordinance 1998 to avoid duplication.

The amendment to clause 11 is a consequential amendment upon the passage of the Provident Fund Scheme Legislation (Amendment) Ordinance 1998.

Madam President, I so submit.

Proposed amendments

Clause 2 (see Annex VII)

Clause 3 (see Annex VII)

Clause 11 (see Annex VII)

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 the Treasury 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): Clauses 2, 3 and 11 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 12.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clause 12 be amended as set out in the paper circularized to Members.

The proposed amendment seeks to amend the proposed new sections 26E and 26F and it includes:

- (a) to delete the reference "in the opinion of the Commissioner" in related provisions to make them more objective. In view of the above amendment, for circumstances which have not been specified in the

Bill, the deduction granted to the taxpayers for home loan interest shall be calculated to the amount deemed reasonable under the circumstances of individual cases;

- (b) to add "an employer of the person" in the definition of "home loan interest" in section 26E(9) to state clearly that an employee is regarded as complying with the relevant provisions if he pays home loan interest to his employer, and he is thus eligible for the deduction for home loan interest;
- (c) to provide that notice should be made in writing to the Commissioner of Inland Revenue if a taxpayer revokes the application for tax deduction for home loan interest expenses under section 26E(6)(a), or if he nominates his spouse to claim the deduction after the revocation made under section 26F(4)(a).
- (d) to make other technical amendments.

Proposed amendment

Clause 12 (see Annex VII)

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 the Treasury 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 12 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 18.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clause 18 be amended as set out in the paper circularized to Members."

We proposed to amend section 42 of the Inland Revenue Ordinance:

- (a) to ensure consistent arrangements of three deductions proposed in the 1998-99 Budget after they are implemented in respect of personal income tax or salaries tax; and

- (b) to allow business losses which have not been set off to be carried forward for set off against tax payable income for future years of assessment under personal income assessment, and after deductions including the new deduction items.

Madam President, I so submit.

Proposed amendment

Clause 18 (see Annex VII)

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 the Treasury 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 18 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):	Heading before new clause 25.	Consequential Amendments Provident Fund Schemes Legislation (Amendment) Ordinance 1998.
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New clause 25.	Amendment of Inland Revenue Ordinance.
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CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that the Heading before new clause 25 and new clause 25 as set out in the paper circularized to Members be read the Second time.

The proposed amendment seeks to amend the provisions in the Bill about the deduction for retirement scheme contributions and to make consequential amendment upon the recent enactment of the Provident Fund Schemes Legislation (Amendment) Ordinance 1998.

Madam President, I so submit.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the Heading before new clause 25 and new clause 25 be read the Second time.

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 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): Heading before new clause 25 and new clause 25.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that the Heading before new clause 25 and new clause 25 be added to the Bill.

Proposed addition

New clause 25 (see Annex VII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the Heading before new clause 25 and new clause 25 be added to the Bill.

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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading of Bill. Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the

INLAND REVENUE (AMENDMENT) BILL 1998

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 Inland Revenue (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): Inland Revenue (Amendment) Bill 1998.

Second Reading of Bill

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Inland Revenue (Amendment) (No. 2) Bill 1998.

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1998

Resumption of debate on Second Reading which was moved on 4 March 1998

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

(No Member indicated a wish to speak)

PRESIDENT: I now put the question to you and that is: That the Inland Revenue (Amendment) (No. 2) 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): Inland Revenue (Amendment) (No. 2) Bill 1998.

Council went into Committee.

Committee Stage

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

INLAND REVENUE (AMENDMENT) (NO. 2) 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 6, 10, 12 to 18, 20, 24, 26 to 29 and 31.

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): Clauses 7, 9, 21, 22, 23 and 25.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clauses 7, 9, 21, 22, 23 and 25 be amended as set out in the paper circularized to Members.

Clause 7 is amended to provide that:

- (a) in the case of capital expenditure incurred by the purchase of plant and machinery for scientific research, if the expenditure is deducted, and when such facilities are disposed of without paying the profits tax for the proceeds under other provisions, only the proceeds to the extent of the deduction allowed would be treated as trading receipts; and
- (b) in the case of the rights of scientific research or the rights caused by scientific research, if expenditure on scientific research is deducted, and when the rights are disposed of, without paying the profits tax for the proceeds under other provisions, only the proceeds to the extent of the deduction allowed would be treated as trading receipts. The related trading receipt provision will only apply in respect of deduction allowed on or after 1 April 1998.

Clause 9 is amended to provide that:

- (a) in the case of the plant and machinery and computer hardware or software related to the manufacturing industry, if the expenditure receives 100% immediate deduction under clause 9, and when such facilities are disposed of without paying the profits tax for the proceeds under other provisions, only the proceeds to the extent of the deduction allowed would be treated as trading receipts; and

- (b) if the above facilities were purchased before 1 April 1998, the scrap value can receive 100% immediate deduction, and the taxpayers can choose to decide if the immediate deduction provisions apply to the facilities. Changes cannot be made after they have decided.

Technical amendment is made to clauses 21, 22, 23 and 25 to make the relevant provisions consistent with other provisions under the Inland Revenue Ordinance.

Madam President, I so submit.

Proposed amendments

Clause 7 (see Annex VIII)

Clause 9 (see Annex VIII)

Clause 21 (see Annex VIII)

Clause 22 (see Annex VIII)

Clause 23 (see Annex VIII)

Clause 25 (see Annex VIII)

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 the Treasury 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): Clauses 7, 9, 21, 22, 23 and 25 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 8.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clause 8 be amended as set out in the paper circularized to Members.

The proposed amendment seeks to state clearly that any person who makes capital expenditure, incurred for a building or structure to be first used substantially by the person for the production of profits, or incurred to enable a building or structure to be used for a purpose different from that for which it was used

immediately before the capital expenditure was incurred, will not be counted as capital expenditure on refurbishment and re-decoration, and will not be qualified for the five-year write-off accordingly.

Madam President, I so submit.

Proposed amendment

Clause 8 (see Annex VIII)

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 the Treasury 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 8 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.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clause 11 be amended as set out in the paper circularized to Members.

The proposed amendment seeks to make a technical amendment to clause 11.

Madam Chairman, I beg to move.

Proposed amendment

Clause 11 (see Annex VIII)

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 the Treasury 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 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 19.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clause 19 be amended as set out in the paper circularized to Members.

After careful consideration, we find that the amendment proposed under clause 19 is unnecessary and could, therefore, be deleted.

Madam Chairman, I beg to move.

Proposed amendment

Clause 19 (see Annex VIII)

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 the Treasury 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 19 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): Clauses 30 and 32.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that clauses 30 and 32 be amended as set out in the paper circularized to Members.

The amendment to clause 30 seeks to add a protection clause for the Government in the provision of advance ruling service. The relevant protection clause also applies to similar situations.

The amendment to clause 32 seeks:

- (a) to provide that the Commissioner of Inland Revenue has to give a notice in writing to explain the reason in declining an application for ruling, or in withdrawing a ruling made;
- (b) to clarify on the scope of application in respect of the Commissioner of Inland Revenue's advance ruling;
- (c) to make other technical amendments.

Madam Chairman, I so submit.

Proposed amendments

Clause 30 (see Annex VIII)

Clause 32 (see Annex VIII)

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 the Treasury 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): Clauses 30 and 32 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): New clause 7A.

Payments for technical
education.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 7A as set out in the paper circularized to Members be read the Second time.

The addition of the new clause seeks to introduce technical amendments to section 16C(1) and (2) of the Inland Revenue Ordinance to bring them in line with other provisions of the Inland Revenue Ordinance.

Madam Chairman, I so submit.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 7A be read the Second time.

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 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 7A.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam Chairman, I move that new clause 7A be added to the Bill.

Proposed addition

New clause 7A (see Annex VIII)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 7A be added to the Bill.

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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading. Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1998

has passed through Committee with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Inland Revenue (Amendment) (No. 2) 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): the Inland Revenue (Amendment) (No. 2) Bill 1998.

Second Reading of Bill**Resumption of Second Reading Debate on Bill**

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Stamp Duty (Amendment) (No. 2) Bill 1998.

STAMP DUTY (AMENDMENT) (NO. 2) BILL 1998**Resumption of debate on Second Reading which was moved on 4 March 1998**

PRESIDENT (in Cantonese): Does any Member wish to speak? Mr Henry WU.

MR HENRY WU (in Cantonese): Madam President, during the course of scrutiny of the Stamp Duty (Amendment) (No. 2) Bill 1998, I had written to six organizations, seeking their comments. They are the Stock Exchange of Hong Kong, the Hong Kong Securities Clearing Company Limited, the Hong Kong Futures Exchange Limited, the Hong Kong Stockbrokers Association Limited, the Hong Kong Securities Professional Association and the Institute of Securities Dealers Limited. I have received response from four of these organizations.

Industry associations have reservations about the development of derivatives when the review report on the Asian financial turmoil which occurred last year has yet to be released. However, the Administration has agreed to give an undertaking on that it would continue the monitoring of the development of the regional derivatives market; that it should include industry associations in future consultation relating to the development of the derivatives market; and that it would brief the First Legislature Council of the Special Administrative Region on the development of the regional derivative market after the implementation of the proposals in the Bill. The industry reckons that the Administration's undertaking is acceptable and therefore supports the Bill.

With these remarks, I support the Bill.

PRESIDENT (in Cantonese): Mr CHIM Pui-chung.

MR CHIM PUI-CHUNG (in Cantonese): I speak in support of the opposition to the increase in fees and charges proposed by the Securities and Futures Commission.

PRESIDENT (in Cantonese): Mr CHIM, we are now debating the Stamp Duty (Amendment) (No. 2) Bill 1998. You should speak on that motion later. Secretary for the Treasury, do you wish to reply?

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, first of all, I would like to thank the Bills Committee, of which the Honourable Eric LI is the Chairman, for scrutinizing the Stamp Duty (Amendment) (No. 2) Bill 1998 with great efficiency and for its valuable opinions. I also wish to thank the Stock Exchange of Hong Kong Limited, the Hong Kong Securities Clearing Company Limited, the Hong Kong Securities Institute, the Hong Kong Stock Brokers Association and the Hong Kong Society of Accountants for their submissions.

After discussions with the Bills Committee and considering the views of various organizations, we proposed to make a number of minor technical amendments to enhance the clarity of the provisions, and to clarify on how the proposed arrangements will be implemented. I am grateful to the Bills Committee for supporting our proposed amendments. I will explain in greater details when I move the amendments at the Committee stage.

In our discussions with the Bills Committee, we noted that Members were concerned about the development of derivative options. And this issue has also become the focus of the stock market after the recent financial turmoil. In this regard, the Secretary for Financial Services has already undertaken:

- (a) to continue to keep an eye on the development of the derivatives market; and
- (b) to report to the First Legislative Council of the Special Administrative Region on the development of the regional derivatives market after the implementation of the Bill.

I believe that the above undertaking can allay the worries of Members. Moreover, with regard to Members' wish that the Administration should consult the organizations in the industry on the development of the regional derivatives market, the Secretary for Financial Services has taken note of this wish.

Madam President, I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Stamp Duty (Amendment) (No. 2) 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): Stamp Duty (Amendment) (No. 2) Bill 1998.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Bill: Committee Stage. Council is now on Committee.

STAMP DUTY (AMENDMENT) (NO. 2) 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, 2, 4, 5, 7, 8, 9, 11 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): Clauses 3, 6 and 10.

CHAIRMAN (in Cantonese): Secretary for the Treasury.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that clauses 3, 6 and 10 be amended as set out in the paper circularized to Members.

Clause 3 provides for the arrangements in respect of the postponement in payment of stamp duty pending an appeal to the court by the taxpayer on the assessment of stamp duty. The proposed technical amendment seeks to enhance the clarity of such arrangements.

The amendment to clause 6 ensures that transactions exempted from stamp duty by virtue of section 27(5) of the existing Stamp Duty Ordinance will not be affected and become liable to stamp duty as a result of the new provision.

The amendment to clause 10 seeks to make both the Chinese and English texts of the Bill consistent.

Madam Chairman, I so submit.

Proposed amendments

Clause 3 (see Annex IX)

Clause 6 (see Annex IX)

Clause 10 (see Annex IX)

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 the Treasury 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): Clauses 3, 6 and 10 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.

CHAIRMAN (in Cantonese): Council will now resume.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading. Secretary for the Treasury.

SECRETARY FOR THE TREASURY (in Cantonese): Madam President, the

STAMP DUTY (AMENDMENT) (NO. 2) BILL 1998

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 Stamp Duty (Amendment) (No. 2) Bill 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): Stamp Duty (Amendment) (No. 2) Bill 1998.

MOTION

PRESIDENT (in Cantonese): Motion. Motion under the Interpretation and General Clauses Ordinance. Secretary for Broadcasting, Culture and Sport.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR BROADCASTING, CULTURE AND SPORT (in Cantonese): Madam President, I move the motion as set out on the Agenda.

The Government has announced earlier that the Broadcasting, Culture and Sport Bureau (BCSB) will be re-organized as the Information Technology and Broadcasting Bureau (ITBB). While retaining the broadcasting portfolio, the ITBB will assume policy responsibility for the co-ordination and development of Information Technology (IT) applications and telecommunications in the public and private sectors.

Under the re-organization plan, the Secretary for Information Technology and Broadcasting (SITB), while retaining the policy making function in respect of broadcasting and related matters, will be responsible for formulating policies and overseeing the development of IT throughout the Government and promoting the wider use of IT in the community to maintain Hong Kong's position as a leading business and financial centre. He will take over from the Secretary for Economic Services and Secretary for the Treasury those responsibilities related to telecommunications policies and the co-ordination of IT applications in

government bureaux and departments. The policy responsibility for arts, culture, sports, recreation and entertainment licensing will be transferred from BCSB to the Secretary for Home Affairs.

To implement the organizational changes and to effect the changes in the exercise of statutory functions and responsibilities, amendments to all relevant ordinances and subsidiary legislation are required. Under section 54A(1) of the Interpretation and General Clauses Ordinance (Cap. 1), the Provisional Legislative Council may, by regulation, provide for the transfer to any public officer of any functions exercised by virtue of any ordinance by another public officer. The proposed resolution seeks to effect the transfer of functions exercisable by the concerned Bureau Secretaries and amend references to titles in certain enactments affected by the transfer with effect from 9 April 1998.

With these remarks, I beg to move. Thank you, Madam President.

The Secretary for Broadcasting, Culture and Sport moved the following motion:

"That with effect from 9 April 1998 -

- (a) the functions exercisable by the Secretary for Broadcasting, Culture and Sport (title to be changed to Secretary for Information Technology and Broadcasting on the date this Resolution takes effect) by virtue of -
 - (i) section 2, in the definition of "Authority", of the Antiquities and Monuments Ordinance (Cap. 53);
 - (ii) section 3(1)(i) of the Miscellaneous Licences Ordinance (Cap. 114);
 - (iii) section 2, in the definition of "Secretary", of the Books Registration Ordinance (Cap. 142);
 - (iv) section 3A(1) and 7(1), (1)(g) and (4) of the Places of Public Entertainment Ordinance (Cap. 172);

- (v) section 2(1), in the definition of "Secretary", of the Amusement Game Centres Ordinance (Cap. 435);
- (vi) sections 2(1) (in the definition of "Secretary") and 51A of the Amusement Rides (Safety) Ordinance (Cap. 449); and
- (vii) section 3(3)(d) of the Hong Kong Arts Development Council Ordinance (Cap. 472),

be transferred to the Secretary for Home Affairs;

- (b) section 2, in the definition of "Authority", of the Antiquities and Monuments Ordinance (Cap. 53) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";
- (c) section 3(1)(i) of the Miscellaneous Licences Ordinance (Cap. 114) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";
- (d) section 2, in the definition of "Secretary", of the Books Registration Ordinance (Cap. 142) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";
- (e) sections 3A(1) and 7(1), (1)(g) and (4) of the Places of Public Entertainment Ordinance (Cap. 172) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";
- (f) section 2(1), in the definition of "Secretary", of the Amusement Game Centres Ordinance (Cap. 435) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";

- (g) sections 2(1) (in the definition of "Secretary") and 51A of the Amusement Rides (Safety) Ordinance (Cap. 449) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";
- (h) section 3(3)(d) of the Hong Kong Arts Development Council Ordinance (Cap. 472) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs";
- (i) the functions exercisable by the Deputy Secretary (Culture and Sport) by virtue of section 7(2)(b) of the Lord Wilson Heritage Trust Ordinance (Cap. 425) be transferred to the Deputy Secretary for Home Affairs (Culture and Sport);
- (j) section 7(2)(b) of the Lord Wilson Heritage Trust Ordinance (Cap. 425) be amended by repealing "Deputy Secretary (Culture and Sport)" and substituting "Deputy Secretary for Home Affairs (Culture and Sport)";
- (k) the functions exercisable by the Secretary for Broadcasting, Culture and Sport (title to be changed to Secretary for Information Technology and Broadcasting on the date this Resolution takes effect) by virtue of -
 - (i) regulation 184 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.); and
 - (ii) the Second Schedule, in the entry relating to regulation 59, to the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.),

be transferred to the Secretary for Home Affairs and the Commissioner for Television and Entertainment Licensing;

- (l) regulation 184 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs, the Commissioner for Television and Entertainment Licensing";
- (m) the Second Schedule, in the entry relating to regulation 59, to the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.) be amended by repealing "Secretary for Broadcasting, Culture and Sport" and substituting "Secretary for Home Affairs and the Commissioner for Television and Entertainment Licensing";
- (n) the functions exercisable by the officer of the Secretariat for Broadcasting, Culture and Sport by virtue of regulation 184 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.) be transferred to the officer of Home Affairs Bureau and the officer of Television and Entertainment Licensing Authority;
- (o) regulation 184 of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg.) be amended by repealing "officer of the Secretariat for Broadcasting, Culture and Sport" and substituting "officer of Home Affairs Bureau, officer of Television and Entertainment Licensing Authority";
- (p) the functions exercisable by the Secretary for Economic Services by virtue of -
 - (i) sections 3(3)(c) and (5) and 4 of the Telephone Ordinance (Cap. 269); and
 - (ii) item 1(p) in Schedule 1 to the Officer of the Telecommunications Authority Trading Fund (Cap. 430 sub. leg.),

be transferred to the Secretary for Broadcasting, Culture and Sport (title to be changed to Secretary for Information Technology and Broadcasting on the date this Resolution takes effect);

- (q) sections 3(3)(c) and (5) and 4 of the Telephone Ordinance (Cap. 269) be amended by repealing "Secretary for Economic Services" and substituting "Secretary for Information Technology and Broadcasting"; and
- (r) item 1(p) in Schedule 1 to the Office of the Telecommunications Authority Trading Fund (Cap. 430 sub. leg.) be amended by repealing "Secretary for Economic Services" and substituting "Secretary for Information Technology and Broadcasting".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Broadcasting, Culture and Sport, as set out in the Appendix to the Agenda, be approved. 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.

MEMBERS' MOTION

PRESIDENT (in Cantonese): Members' Motion. Motion under the Interpretation and General Clauses Ordinance. Mr Henry WU.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR HENRY WU (in Cantonese): Madam President, I move the motion standing in my name on the Agenda.

At the House Committee meeting held on 20 March 1998, Members agreed to form a Subcommittee to study the Securities and Futures Commission (Fees) (Amendment) Rules 1998 (the Amendment Rules) gazetted on 6 March 1998. The Subcommittee held one meeting with the Administration.

The Amendment Rules seek to increase and re-structure various fees payable under the Securities and Futures Commission (Fees) Rules and to introduce two new fee items. The various proposals in the Amendment Rules are the same as those set out in the Securities and Futures Commission (Fees) (Amendment) Rules 1997 (1997 Rules) which were repealed by the Provisional Legislative Council in October last year.

The Administration has pointed out that the justification put forward in support of the proposal under the 1997 Rules continues to apply to the present proposal. In addition, the Administration considers that the proposed increase in fees and charges for financial intermediaries, in conjunction with the recent initiatives taken to reduce the stamp duty rate on stock transactions from 0.3% to 0.25% and the transaction levy rate from 0.013% to 0.011%, will together reduce the share of the investing public in financing the SFC's operations. In the Administration's view, any further postponement in the adjustments will be against the interests of the general investing public as it would only lead to further erosion of the cost recovery level of SFC's services and increase in cross-subsidization by the general investing public for the operation of the financial intermediaries and issuers.

Having considered the explanations given by the Administration, the majority of members of the Subcommittee have reservations about supporting the various proposals set out in the Amendment Rules on the following grounds:

- (a) the Administration should not seek to increase fees and charges at a time of an economic downturn;
- (b) the SFC's operation would not be affected if the fees and charges are frozen at the existing level given the large revenue from transaction levy and the reserves of the SFC; and
- (c) the fee increase proposal by the SFC runs counter to the Financial Secretary's stated commitment of freezing most government fees and charges at their current levels for one year.

The Subcommittee has concluded that the Amendment Rules should be repealed.

With these remarks, Madam President, I move that the Amendment Rules be repealed as set out on the Agenda.

Mr Henry WU moved the following motion:

"That the Securities and Futures Commission (Fees) (Amendment) Rules 1998, published as Legal Notice No. 166 of 1998 and laid on the table of the Provisional Legislative Council on 11 March 1998, be repealed."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Securities and Futures Commission (Fees) (Amendment) Rules 1998, published as Legal Notice No. 166 of 1998 and laid on the table of the Provisional Legislative Council on 11 March 1998, be repealed. Does any Member wish to speak? Mr CHIM Pui-chung.

MR CHIM PUI-CHUNG (in Cantonese): A moment ago, I was too nervous when I rushed into the Chamber and rose to speak before I knew what was going on. I hope there is no misunderstanding on the part of the media that we Members are so incompetent. (*Laughter*).

Madam President, Members have proposed to repeal the Fees Rules of the Securities and Futures Commission (SFC), what are the reasons? Just now, the Honourable Henry WU has elaborated on his points. In the past, the fees charged by the SFC should be subject to the monitoring of the former Legislative Council and the incumbent Provisional Legislative Council. But since the SFC is able to derive substantial revenue from the fees charged every year, its annual budget needs not be endorsed by the legislature at all. So the situation is not as simple as to have the legislature served as a rubber stamp, but rather the legislature is not qualified to be the rubber stamp. I hope that our move to veto its fee increase proposal can make it realize that the investing public, particularly the stock sector, are dissatisfied with their conduct. Take the financial turmoil as an example. In the Provisional Legislative Council, I had rectified some of their faults. I am not trying to aggravate our confrontational relationship. I only wish to highlight to the SFC that its service is inadequate. I also hope that the Financial Secretary and the Secretary for Financial Services would understand that the Chief Executive of the Special Administrative Region (SAR) has taken over the position of the former Governor. The SAR Government should monitor the operation of the SFC. This is to strike a balance so that the SFC would come to realize that it is not holding supreme authority. We should understand that the Hong Kong SAR is a financial centre, and the SFC plays a very important role. We hope that our veto against its fee increase proposal could serve as a warning to the SFC that its service is inadequate and it has not taken good care of the investors. It should review its functions more frequently. According to newspaper reports, the Chairman of the SFC revealed that he had to serve for three more months because the SFC had not yet recruited the right person to fill his post and not because the SFC's service was not satisfactory. But this may imply that the protection afforded to investors is inadequate. I hope these incidents would prompt the public or the Government to step up the monitoring on the SFC.

From the newspapers, we knew that in the past, two executive directors of the SFC had joined an organization which had previously been investigated by the SFC. Where is the credibility of the SFC? I am not challenging them but this is a fact. The SAR Government should take heed of its conduct and operation. Of

course, people outside this sector may not understand what I am talking about. But for the Secretary for Financial Services and the Financial Secretary, they should fully understand what I am talking about. Otherwise, they might have failed their supervisory functions, let alone monitoring the SFC. I am digressing, but the fee issue does involve matters of interests of the industry and the investing public as well.

Madam President, with these remarks, I hope my comments will be recorded in the proceedings.

PRESIDENT (in Cantonese): Mr Henry WU, do you wish to reply?

MR HENRY WU (in Cantonese): I am grateful to the Honourable CHIM Pui-chung. He spoke almost as long as I did. Here, I urge Members to support the Subcommittee's conclusion. 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.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 9.00 am tomorrow.

Suspended accordingly at five minutes to Nine o'clock.

Annex I

ADAPTATION OF LAWS (COURTS AND TRIBUNALS) BILL

COMMITTEE STAGE

Amendments to be moved by the Chief Secretary for AdministrationClauseAmendment Proposed

Schedule, In paragraph (c)(i), by adding "72," before "73, 75,".
item 2

Schedule, (a) By adding before paragraph (h) -
item 9

"(ga) In section 13, repeal "(which shall incorporate a device and impression of the Royal Arms)".".

(b) By deleting paragraph (j) and substituting -

"(j) In the First Schedule, in the Form of Charge Sheet
-

(i) repeal "**The Queen**" and substitute "**HKSAR**";

(ii) repeal "*Crown*" where it twice appears and substitute "*Government*".".

(c) By deleting paragraph (r).

Schedule, By deleting paragraph (h) and substituting -
item 19

"(h) In section 55, repeal "Governor in Council" and substitute "Chief Executive in Council".".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule, item 23	In paragraph (e), by deleting "10(2), (3) and (4)" and substituting "10(2), (3), (4) and (5)".
Schedule, item 28	(a) In paragraph (a), by deleting "2(2)". (b) In paragraph (b), by deleting "2(1)" and substituting "2(1) and (2)". (c) In paragraph (f), by adding "9(5)," before "10".
Schedule, item 41	In paragraph (d), by adding before subparagraph (ii) - "(ia) in paragraphs (a) and (r), repeal "立法局" wherever it appears and substitute "立法會".
Schedule, item 53	By adding - "(c) In sections 5(2) and (3)(a), 6 and 7(3), repeal "大法官" wherever it appears and substitute "法官". (d) In sections 72(1) and (1A) and 73, repeal "首席大法官" and substitute "終審法院首席法官".
Schedule, item 69	(a) By renumbering the paragraph as paragraph (a). (b) By adding - "(b) In section 8(5)(a) and (6), repeal "大法官" and substitute "法官".

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule, item 98	In column 2, by deleting "《司法人員敘用委員會條例》" and substituting "《司法人員推薦委員會條例》".
Schedule, item 99	In paragraph (a), in the proposed definition of "司法職位", by deleting "《司法人員敘用委員會條例》" and substituting "《司法人員推薦委員會條例》".
Schedule, item 136	By adding - "(d) In rule 9(2), repeal "大法官" and substitute "法官".

Annex II**ADAPTATION OF LAWS (INTERPRETATIVE PROVISIONS) BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for JusticeClauseAmendment Proposed

- 4(b)
- (a) In the definition of "High Court", by deleting "under section 3 of the Supreme Court Ordinance" and substituting "by section 3 of the High Court Ordinance".
- (b) By deleting the definition of "State" and substituting -
- ""State" ("國家") includes only -
- (a) the President of the People's Republic of China;
 - (b) the Central People's Government;
 - (c) the Government of the Hong Kong Special Administrative Region;
 - (d) the Central Authorities of the People's Republic of China that exercise functions for which the Central People's Government has responsibility under the Basic Law;
 - (e) subordinate organs of the Central People's Government that -

ClauseAmendment Proposed

(i) on its behalf, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and

(ii) do not exercise commercial functions,

when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned; and

(f) subordinate organs of the Central Authorities of the People's Republic of China referred to in paragraph (d), that -

(i) on behalf of those Central Authorities, exercise executive functions of the Central People's Government or functions for which the Central People's Government has responsibility under the Basic Law; and

(ii) do not exercise commercial functions,

when acting within the scope of the delegated authority and the delegated functions of the subordinate organ concerned;".

Annex III**LEGAL PRACTITIONERS (AMENDMENT) BILL 1998****COMMITTEE STAGE**Amendments to be moved by the Secretary for JusticeClauseAmendment Proposed

3

(a) In proposed section 40A(1)(a) -

(i) by adding -

"(ia) he has practised as a solicitor for a period or periods in aggregate of not less than 7 years;"

(ii) in subparagraph (ii), by deleting "having been so on the roll of solicitors,".

(b) In proposed section 40E(8), by deleting "receiving order in bankruptcy is in force against him" and substituting "notary public becomes bankrupt".

(c) In proposed section 40F(1), by deleting paragraph (d) and substituting -

"(d) he has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).".

(d) In proposed section 40J(3), by deleting "of Hong Kong".

ClauseAmendment Proposed

5(1) By adding -

"(ca) in the definition of "Society", by repealing "(律師會) means" and substituting "and "Law Society" (律師會) mean";".

7 By deleting the clause and substituting -

**"7. Amendments consequent on amendments
to the Bankruptcy Ordinance (Cap. 6)**

(1) Section 6(7) is amended by repealing "receiving order in bankruptcy is in force against him" and substituting "solicitor becomes bankrupt".

(2) Section 23 is amended by repealing "or executes a trust deed for the benefit of his creditors under any law relating to bankruptcy".

(3) Section 26A(1)(d) is amended by repealing "been adjudged bankrupt or has made a composition or arrangement with his creditors" and substituting -

"become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6)".

(4) Section 39A(3) is amended by repealing "receiving order in bankruptcy under the Bankruptcy Ordinance (Cap. 6) is in force against a foreign lawyer" and substituting "foreign lawyer becomes bankrupt".

(5) Section 53(1)(a) is amended by repealing "a receiving order in bankruptcy being in force against him" and substituting "having become bankrupt".

ClauseAmendment Proposed

(6) Section 64(1)(c) is amended by repealing "composition" and substituting "voluntary arrangement with creditors within the meaning of the Bankruptcy Ordinance (Cap. 6)".

(7) Section 66(1) is amended in the proviso by repealing "compound with his creditors" and substituting "enter into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6)".

Long title By deleting everything after "Ordinance" and substituting a full stop.

Annex IV**ADAPTATION OF LAWS (NATIONALITY RELATED MATTERS) BILL****COMMITTEE STAGE**Amendments to be moved by the Secretary for SecurityClauseAmendment Proposed

- Schedule 1 (a) In item 3, by deleting "or other residents in China".
- (b) In paragraph (b) of item 8, by deleting "兩" and substituting "三".
- (c) By adding -
- | | | |
|-------|-------------------------------------|---|
| "10A. | Adoption
Ordinance
(Cap. 290) | In column 9 of the Form of Entry in Adopted Children Register of the Schedule, repeal "Hong Kong permanent resident status under paragraph 2(a) of the First Schedule to" and substitute "Status of permanent resident of the Hong Kong Special Administrative Region under". |
|-------|-------------------------------------|---|
- Schedule 2 In items 2(b), 4, 7 and 8, by deleting "或並" and substituting "而亦".

Annex V**ADAPTATION OF LAWS (CROWN LAND) BILL****COMMITTEE STAGE****Amendments to be moved by the Secretary for Planning,
Environment and Lands****Clause****Amendment Proposed**

6 By deleting "政府批予" and substituting "政府批地書".

New By adding -

"Solicitors' Practice Rules**48A. Representation in conveyancing
transactions**

Rule 5C(2) of the Solicitors' Practice Rules (Cap. 159 sub. leg.) is amended by adding "or Government grant" after "Crown Grant".

53 By deleting the clause.

54 By adding "of the Conveyancing and Property Ordinance (Cap. 219)" after "58(12)".

Schedule,
item 46 By deleting the item.

Schedule,
item 55 By adding "paragraph (a) of Part B and" after "First Schedule,".

Annex VI

LAND (COMPULSORY SALE FOR REDEVELOPMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Planning,
Environment and LandsClauseAmendment Proposed

2

(a) In subclause (1) -

- (i) in the definition of "auction", by deleting "section 5(1)" and substituting "section 5(1)(a)";
- (ii) by deleting the definitions of "majority owner" and "minority owner" and substituting -

""majority owner" (多數份數擁有人), in
relation to a lot -

- (a) means the person or persons who has or have made an application under section 3(1) in respect of the lot; and
- (b) includes any person who becomes a successor in title to any such person or persons at any time before a purchaser of the lot becomes the owner of the lot where the lot is the subject of an order for sale;

ClauseAmendment Proposed

"minority owner" (少數份數擁有人), in relation to a lot which is the subject of an application under section 3(1) -

(a) means the person or persons who -

(i) owns or own undivided shares in the lot otherwise than as a mortgagee; but

(ii) is or are not the person or persons who has or have made the application; and

(b) includes any person who becomes a successor in title to any such person or persons at any time before a purchaser of the lot becomes the owner of the lot where the lot is the subject of an order for sale;"

(iii) in the definition of "mortgagee", by adding "but does not include a mortgagee in possession" after "a mortgagee";

(iv) by deleting the definition of "redevelopment" and substituting -

ClauseAmendment Proposed

""redevelopment" (重新發展), in relation to a lot, means the replacement of a building on (or formerly on) the lot;"

(v) by adding -

""lis pendens" (待決案件) means a lis pendens -

(a) within the meaning of section 1A of the Land Registration Ordinance (Cap. 128); and

(b) which is registered under that Ordinance;

"purchaser" (購買者), in relation to a lot the subject of an order for sale, means the purchaser of the lot at an auction (or, where section 5(1)(b) is applicable, the purchaser of the lot by the other means referred to in that section);

"tenant" (租客) includes a sub-tenant;

"trustees" (受託人), in relation to an order for sale, mean the trustees appointed under the order.";

(vi) in the definition of "property", by deleting "(財產)" and substituting "(物業)".

(b) By deleting subclause (3) and substituting -

"(3) It is hereby declared that -

ClauseAmendment Proposed

(a) for the purposes of -

(i) the definition of "minority owner"; and

(ii) the definition of "majority owner" as read with section 3(1),

a mortgagee in possession of any property on a lot shall be deemed to be the owner of the undivided shares in the lot which relate to that property;

(b) where there is any inconsistency between the provisions of this Ordinance and the provisions of the Trustee Ordinance (Cap. 29) in relation to the trustees under an order for sale, the provisions of this Ordinance shall prevail over the provisions of the Trustee Ordinance (Cap. 29) to the extent of that inconsistency;

(c) for the purposes of this Ordinance, the purchaser of a lot the subject of an order for sale does not become the owner of the lot until the purchaser of the lot is the legal owner of all the undivided shares in the lot."

3

(a) In subclause (1), by deleting paragraph (a).

(b) by adding -

"(1A) Without prejudice to the operation of subsection (4), an application under subsection (1) may cover -

ClauseAmendment Proposed

- (a) 2 or more lots where the majority owner owns not less than the percentage specified in subsection (1) of the undivided shares in each lot; or
- (b) 2 or more lots -
 - (i) on which one building is connected to another building by a staircase intended for common use by the occupiers of the buildings; and
 - (ii) where the average of -
 - (A) the percentage of the undivided shares owned by the majority owner in the lot or lots on which one of the buildings stands; and
 - (B) the percentage of the undivided shares owned by the majority owner in the lot or lots on which the other of the buildings stands,is not less than the percentage specified in subsection (1)."
- (c) By deleting subclause (2) and substituting -

ClauseAmendment Proposed

"(2) The majority owner of a lot who has made an application under subsection (1) shall -

- (a) subject to subsection (3), serve a copy of the application on each minority owner of the lot;
- (b) cause a copy of the application to be registered under the Land Registration Ordinance (Cap. 128) against the lot; and
- (c) cause a notice, as specified in Part 2A of Schedule 1 and in the Chinese and English languages -
 - (i) to be affixed -
 - (A) upon a conspicuous part of the building on the lot (or, if there is more than one building on the lot, upon a conspicuous part of each building); or
 - (B) where there is no building on the lot, upon a conspicuous part of the lot (or, if the application relates to 2 or more lots, upon a conspicuous part of each lot); and

ClauseAmendment Proposed

- (ii) to be published in not less than 1 Chinese language newspaper (and in the Chinese language), and in not less than 1 English language newspaper (and in the English language), circulating generally in Hong Kong."
- (d) In subclause (3), by deleting "subsection (2)" where it twice appears and substituting "subsection (2)(a)".
- (e) In subclause (4), by deleting "other" where it first appears and substituting "lower".
- (f) By deleting subclause (6) and substituting -
 - "(6) It is hereby declared that -
 - (a) without prejudice to the generality of the definition of "minority owner" or the operation of subsection (1)(c) or section 4(1)(b)(i), for the purposes of this section, in the calculation of any percentage of undivided shares in a lot owned by a person or persons (and whether or not he is or they are the person or persons referred to in subsection (1)), there shall be disregarded any undivided shares which are undivided shares in respect solely of any common parts of the lot;
 - (b) a notice under subsection (4) is subsidiary legislation."

ClauseAmendment Proposed

4

(a) In subclause (1) -

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

"(a) first -

(i) if any minority owner of the lot the subject of the application disputes the value of any property as assessed in the application, hearing and determining the dispute;

(ii) in the case of any minority owner of the lot who cannot be found, requiring the majority owner of the lot to satisfy the Tribunal that the value of the minority owner's property as assessed in the application is -

(A) not less than fair and reasonable; and

(B) not less than fair and reasonable when compared with the value of the majority owner's property as assessed in the application;";

ClauseAmendment Proposed

(ii) in paragraph (b)(ii), by deleting "order." and substituting "order; and";

(iii) by adding -

"(c) third, where paragraph (b)(i) is applicable -

(i) appointing in the order for sale trustees satisfactory to the Tribunal nominated by the majority owner to discharge the duties imposed on trustees under this Ordinance in relation to the lot; and

(ii) authorizing the trustees to charge such remuneration for their services as trustees as the Tribunal thinks fit and specified in the order.".

(b) In subclause (2) -

(i) by deleting ", subject to section 12,";

(ii) by deleting paragraph (a);

(iii) in paragraph (b), by adding "(and whether or not the majority owner proposes to or is capable of undertaking the redevelopment)" after "justified";

ClauseAmendment Proposed

- (iv) in paragraph (c), by deleting everything after "taken" and substituting "reasonable steps to acquire all the undivided shares in the lot (including, in the case of a minority owner whose whereabouts are known, negotiating for the purchase of such of those shares as are owned by that minority owner on terms that are fair and reasonable).".

- (c) By adding -

"(2A) Subject to section 8(3) and (5), the Tribunal shall not, in determining an application under section 3(1), take into account any provision of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) relating to the right of a tenant whose tenancy is terminated or is sought to be terminated.".

- (d) By deleting subclause (3) and substituting -

"(3) The majority owner of the lot the subject of an order for sale shall cause -

- (a) subject to subsection (4), a copy of the order to be served on each minority owner of the lot;
- (b) a copy of the order to be served on the Director of Lands; and
- (c) a notice to be published -

ClauseAmendment Proposed

- (i) in not less than 1 Chinese language newspaper (and in the Chinese language), and in not less than 1 English language newspaper (and in the English language), circulating generally in Hong Kong; and
- (ii) stating -
 - (A) sufficient particulars of the lot to identify the lot;
 - (B) that the Tribunal has made an order that all the undivided shares in the lot be sold for the purposes of the redevelopment of the lot; and
 - (C) that the lot will be sold by auction (or, where section 5(1)(b) is applicable, the other means referred to in that section by which the lot will be sold).".

ClauseAmendment Proposed

(e) In subclause (4), by deleting "subsection (3)" and substituting "subsection (3)(a)".

(f) By deleting subclause (5) and substituting -

"(5) Where the Tribunal makes an order for sale, it may order, subject to section 8(3), (5) and (6), that compensation be paid to a tenant for termination of his tenancy under section 8(1)(c) and it may also give such directions as it thinks fit -

(a) relating to -

(i) the sale and purchase of the lot the subject of the order, including (but without limiting the generality of the foregoing) settling the particulars and conditions of sale of the lot;

(ii) the termination of tenancies of any tenants of any property on the lot;

(iii) subject to section 10(5), the application of the proceeds of the sale including -

ClauseAmendment Proposed

- (A) the holding by the trustees of such part of those proceeds as is specified by the Tribunal in view of any lis pendens affecting the lot; and
 - (B) the payment of that part of those proceeds, upon the occurrence of an event specified by the Tribunal, to such person or persons as is or are specified by the Tribunal;
- (b) requiring the trustees under the order for sale to pay into the Tribunal the proceeds of sale of the lot the subject of the order (after deduction, if any, pursuant to sections 9A(2), 10(1) or (2)(a) and (b)), which includes but is not limited to -
 - (i) any deposit money for the purchase of the lot;

ClauseAmendment Proposed

- (ii) any other part of the proceeds of sale that is required under this Ordinance to be held by or paid to the trustees; and

- (c) which are not inconsistent with the other provisions of this Ordinance,

and, in any such case, subsections (3)(a) and (4) shall, with all necessary modifications, apply to those directions as they apply to an order for sale.

(6) Where proceeds of sale are paid into the Tribunal pursuant to a direction given under subsection (5)(b), the Tribunal shall, in accordance with rules made under section 10A(1) of the Lands Tribunal Ordinance (Cap. 17), release such proceeds or any part of it to the respective persons who would have been entitled to payment of the proceeds under the provisions of this Ordinance if the proceeds of sale had remained with the trustees.

- (7) Any proceeds of sale -

- (a) paid into the Tribunal pursuant to a direction given under subsection (5)(b); and
- (b) not yet released pursuant to subsection (6) on the expiration of 3 years beginning with the date on which such proceeds were paid into the Tribunal,

ClauseAmendment Proposed

shall be paid into the general revenue, and, in any such case, section 10(7)(b) and (c) shall apply in relation to the proceeds with all necessary modifications.

(8) In any case of doubt or difficulty or in any matter not provided for under this Ordinance, the trustees under an order for sale, or the majority owner or any minority owner of the lot the subject of the order, may apply to the Tribunal for directions.

(9) The Tribunal may make an order amending an order for sale by appointing a new trustee or trustees either in substitution for or in addition to any existing trustee or trustees under the order for sale (even though there is no existing trustee) -

- (a) upon the application of the trustees under the order for sale or the majority owner or minority owner of the lot; and
- (b) if the Tribunal is of the opinion that it is expedient to do so.

(10) The remuneration referred to in subsection (1)(c)(ii) to be paid to the trustees under an order for sale shall be paid by the majority owner of the lot the subject of the order.

(11) Where -

- (a) an application under section 3(1) is made by a majority owner consisting of 2 or more persons; and

ClauseAmendment Proposed

- (b) any of those persons (or if the undivided share in the lot owned by any such person has been assigned, his successor in title) informs the Tribunal, at any time before an order for sale, if any, is made on the application, that he no longer wishes to be a party to the application,

then the application shall thereupon be deemed to be withdrawn irrespective of the percentage of undivided shares in the lot the subject of the application owned by the other persons or their successors in title (if applicable) who wish to remain as parties to the application.

(12) Where the Tribunal refuses to make an order for sale, the majority owner in the application made under section 3(1) shall, as soon as practicable thereafter, cause the registration referred to in section 3(2)(b) of the application to be vacated under section 20 of the Land Registration Ordinance (Cap. 128).".

5, 6 and 7 By deleting the clauses and substituting -

"5. Lot to be sold by auction or other means and default on payment by the purchaser of the lot

(1) Where an order for sale is granted and the trustees under the order have complied with section 7(1) in respect of the lot the subject of the order -

ClauseAmendment Proposed

- (a) subject to paragraph (b), the lot shall be sold by public auction in accordance with the conditions specified in Schedule 2; or
 - (b) if the whereabouts of each minority owner of the lot is known, the lot may be sold by any other means -
 - (i) agreed in writing by each minority owner and majority owner of the lot;
 - (ii) approved by the Tribunal in its absolute discretion; and
 - (iii) in accordance with such conditions, if any, as the Tribunal specifies in directions.
- (2) Where the trustees under an order for sale receive -
- (a) at any time before there is a purchaser of the lot the subject of the order; and
 - (b) if the whereabouts of each minority owner of the lot is known, notices in writing -
 - (i) from each majority owner and minority owner of the lot the subject of the order; and
 - (ii) expressly stating that they each do not want the lot to be sold,

ClauseAmendment Proposed

then that order shall immediately be deemed to be of no effect as if it had been cancelled by the Tribunal.

(3) Where the purchaser of a lot the subject of an order for sale defaults on a payment for the lot -

(a) the trustees under the order shall, with the agreement in writing of the majority owner and minority owner of the lot, institute legal proceedings to seek -

(i) relief for the loss and damages caused to the owners by reason of the purchaser's default;

(ii) specific performance of the purchaser's agreement to purchase the lot,

as may be applicable; and

(b) subject to paragraph (a), the deposit money paid by the purchaser of the lot shall be forfeited to the trustees for the benefit of the majority owner and minority owner of the lot.

(4) Where the lot the subject of an order for sale is not sold -

(a) subject to paragraph (b), within the 3 months immediately following the date on which the order is made; or

ClauseAmendment Proposed

- (b) within such further period of 3 months as the Tribunal may specify in directions given on application made to it by the trustees under the order or the majority owner or any minority owner of the lot,

then that order shall immediately be deemed to be of no effect as if it had been cancelled by the Tribunal.

- (5) It is hereby declared that -

- (a) if the lot the subject of an order for sale is to be sold by auction, it shall be sold to the highest bidder at the auction;
- (b) nothing in this Ordinance shall operate to prevent the majority owner or any minority owner of the lot the subject of an order for sale from being the purchaser of the lot.

**6. Amount to be paid to trustees
where majority owner or
minority owner is successful
purchaser**

- (1) The majority owner of a lot the subject of an order for sale who is the purchaser of the lot -

- (a) subject to paragraph (b), is not required to pay to the trustees under the order the full purchase price; but
- (b) is required to pay to the trustees not less than that proportion of that amount that the trustees calculate is necessary -

ClauseAmendment Proposed

- (i) for the majority owner to purchase all the undivided shares in the lot not already owned by the majority owner; and
- (ii) to enable the trustees to comply with section 10(2) to the extent that any liability due to the Government in respect of the lot, or compensation payable to any tenant, referred to in that section is attributable to the majority owner.

(2) Subsection (1) shall apply to any minority owner of a lot the subject of an order for sale who is the purchaser of the lot as it applies to the majority owner of a lot the subject of an order for sale who is the purchaser of the lot.

7. Registration of order for sale, etc.

(1) The trustees under an order for sale shall cause a copy of -

(a) the order; and

(b) Schedule 3,

to be registered under the Land Registration Ordinance (Cap. 128) against the lot to which the order relates and, immediately upon that registration -

ClauseAmendment Proposed

(i) notwithstanding any other law, there shall by virtue of this section vest in the trustees the power to assign all the estate, right and interest in the lot held by the majority owner and the minority owner of the lot for -

(A) the purposes of selling the lot only to the purchaser of the lot (or, if the purchaser is the majority owner or any minority owner, selling such part of the lot which is not already owned by the purchaser);

(B) the purposes of discharging the duties imposed on trustees under this Ordinance in relation to the lot; and

(C) the purposes of executing any documents required for any of the purposes referred to in subparagraph (A) or (B); and

(ii) the conditions specified in Schedule 3 shall be binding on and enforceable against the purchaser and the purchaser's successors in title.

(2) A new trustee or trustees appointed by virtue of section 4(9) shall cause a copy of the order appointing him or them to be registered under the Land Registration Ordinance (Cap. 128) against the lot to which the order relates and, immediately upon that registration -

ClauseAmendment Proposed

- (a) the order for sale concerned shall be read and have effect to take into account the effect of that first-mentioned order; and
- (b) the references to "trustees" in subsection (1)(i), and the other provisions of this Ordinance, shall be construed accordingly.

(3) Where an order for sale is of no effect by virtue of section 5(2) or (4), the trustees under the order shall as soon as practicable thereafter cause -

- (a) the registration referred to in subsection (1) of the order and of Schedule 3 (insofar as it relates to the lot); and
- (b) the registration, if any, referred to in subsection (2) of the order first-mentioned in subsection (2),

to be vacated under section 20 of the Land Registration Ordinance (Cap. 128).

(4) Where the purchaser of the lot the subject of an order for sale is the majority owner or any minority owner of the lot, the power vested under subsection (1)(i) in the trustees under the order to assign all the estate, right and interest in the lot shall cease immediately upon the purchaser becoming the owner of that part of the lot which is not already owned by the purchaser.

(5) It is hereby declared that -

ClauseAmendment Proposed

- (a) subsection (1)(i) shall not operate to prevent the majority owner or any minority owner of the lot the subject of an order for sale from assigning all or any part of the estate, right and interest in the lot respectively held by them -

- (i) at any time before there is a purchaser of the lot; and

- (ii) that they have the power to assign;

- (b) where the trustees exercise the power vested under subsection (1)(i) to assign all the estate, right and interest in the lot, then for all purposes the assignment shall be as valid and effectual as if it had been made by the majority owner and minority owner of the lot.

(6) The purchaser of the lot shall, not later than 14 days after the day on which he became the owner of the lot, notify the Director of Lands in writing that he became such owner."

8

- (a) In subclause (1) -

- (i) by deleting "at the auction in accordance with the conditions specified in Schedule 2";

- (ii) by deleting paragraphs (b) and (c) and substituting -

ClauseAmendment Proposed

"(c) notwithstanding the terms of any lease or the provisions of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7) but in accordance with such conditions, if any, as the Tribunal specifies in directions -

(i) immediately upon the day on which the purchaser of the lot becomes the owner of the lot it shall be deemed, by virtue of this section and for all purposes, that there has on that day been terminated the tenancy of any tenant of any property on the lot who is such a tenant by virtue of any lease entered into at any time before the purchaser became such owner; and

(ii) immediately upon the expiration of 6 months immediately following that day, the purchaser is entitled to, and the tenant is required to deliver up, vacant possession of the property.".

ClauseAmendment Proposed

- (b) By deleting subclauses (2), (3) and (4) and substituting -

"(2) Where there is any tenancy terminated by virtue of subsection (1)(c)(i), the purchaser of the lot to which the tenancy relates shall, not later than 14 days after the day on which he became the owner of the lot, cause a notice, as specified in Schedule 4 and in the Chinese and English languages, to be served on the tenant of the tenancy by leaving the notice with an adult occupier of the property in which the tenant resides and to which the tenancy relates.

(3) Subject to subsections (5) and (6), the order for compensation referred to in section 4(5) may relate to compensation -

- (a) payable by -

- (i) the majority owner of the lot concerned to the tenant under a lease referred to in subsection (1)(c) which relates to property on the lot which was owned by the majority owner immediately before the purchaser of the lot became the owner of the lot (and whether or not the majority owner is the purchaser);

ClauseAmendment Proposed

- (ii) the minority owner of the lot concerned to the tenant under a lease referred to in subsection (1)(c) which relates to property on the lot which was owned by the minority owner immediately before the purchaser of the lot became the owner of the lot (and whether or not the minority owner is the purchaser);
- (b) determined by reference to any of the provisions of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), and whether with or without modifications thereto specified in the order."
- (c) By deleting subclause (5) and substituting -
 - "(5) Without prejudice to the generality of subsection (3), the Tribunal may take into account -
 - (a) the representations, if any, of the tenant as to whether compensation should be payable and, if so, the amount of the compensation;

ClauseAmendment Proposed

- (b) for the purposes of determining any such compensation, the benefit, if any, afforded the tenant by virtue of the operation of subsection (1)(c)(ii).".
- (d) In subclause (6), by adding "under this Ordinance" after "payable".
- (e) In subclause (7), by deleting the definition of "prior owner" and substituting -

"prior owner" (前擁有人), in relation to a lot -

- (a) means a person who formerly owned an undivided share in the lot;
- (b) does not include the purchaser of the lot;

"rights" (權利), in relation to a prior owner of a lot, means all rights which -

- (a) were exercisable by virtue of the prior owner's ownership of an undivided share in the lot; and
- (b) affect the lot."

9 By deleting the clause and substituting -

"9. Conditions deemed to be conditions of Government lease, etc.

ClauseAmendment Proposed

Each condition specified in Schedule 3 shall be deemed to be a condition of the Government lease of the lot the subject of an order for sale and, accordingly, a breach of such a condition shall entitle the Government to re-enter the lot under and in accordance with the provisions of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126).".

New

By adding -

**"9A. Basis of apportionment of expenses
and proceeds**

(1) The expenses of the auction or of the other means referred to in section 5(1)(b) by which the lot is sold incurred by the trustees under an order for sale shall be borne -

- (a) where there is no purchaser of the lot, solely by the majority owner of the lot; and
- (b) where there is a purchaser of the lot, by the majority owner and minority owner of the lot as apportioned amongst them on the basis specified in Part 3 of Schedule 1.

(2) The trustees may deduct the expenses required to be borne by the majority owner or any minority owner of the lot pursuant to subsection (1) from any deposit money of the purchase price of the lot that is apportioned to such owner.

(3) The apportionment between the majority owner and minority owner of the lot the subject of an order for sale of -

ClauseAmendment Proposed

- (a) the proceeds of sale of the lot; and
- (b) any deposit money forfeited as referred to in section 5(3)(b),

shall be on the basis specified in Part 3 of Schedule 1."

10 and 11 By deleting the clauses and substituting -

"10. Application of proceeds of sale

(1) The proceeds of sale for the lot the subject of an order for sale shall, after deduction of -

- (a) the expenses referred to in section 9A(1) (unless such expenses have already been deducted in accordance with section 9A(2) or otherwise paid); and
- (b) the legal costs on the assignment of the lot incurred by the trustees under the order as assignor to the assignment,

be paid to the trustees.

(2) The trustees under an order for sale shall apply the proceeds of sale paid to them in respect of the lot the subject of the order in the following order -

- (a) first, in the discharge of any liability due to the Government in respect of the lot;
- (b) second, subject to subsection (3), in the discharge of any incumbrance affecting the lot;

ClauseAmendment Proposed

- (c) third, subject to any directions given by virtue of section 4(5)(a)(iii)(A) and (B) and to subsection (4), in payment of the residue to -

(i) the majority owner of the lot in accordance with directions but only after any compensation payable by the majority owner under section 8(3) to the tenant concerned has been deducted by the trustees out of the residue payable to the majority owner; and

(ii) the minority owner of the lot in accordance with directions but only after any compensation payable by the minority owner under section 8(3) to the tenant concerned has been deducted by the trustees out of the residue payable to the minority owner.

(3) The trustees under an order for sale do not have to comply with subsection (2)(b) -

- (a) where the purchaser of the lot the subject of the order is the majority owner or any minority owner of the lot; and

ClauseAmendment Proposed

(b) to the extent that -

- (i) any incumbrance affecting the lot is attributable to the purchaser; and
- (ii) the purchaser agrees in writing that the incumbrance is not to be discharged.

(4) Where compensation is payable under section 8(3) to a tenant of any property on a lot the subject of an order for sale, the trustees under the order shall not pay more than half of the compensation to the tenant before the trustees are satisfied that the tenant has delivered up vacant possession of the property to the purchaser of the lot.

(5) The trustees under an order for sale shall pay into the Tribunal -

- (a) any amount held by the trustees pursuant to any directions given by virtue of section 4(5)(a)(iii)(A) and (B) where the event referred to that section has not occurred before the trustees have started to discharge their duty under subsection (2)(c) in respect of the proceeds of sale of the lot the subject of the order; and
- (b) any residue referred to in subsection (2)(c) in respect of which the majority owner or minority owner cannot be found.

(6) Any amount or residue paid into the Tribunal under subsection (5) shall -

ClauseAmendment Proposed

- (a) where subsection (5)(a) is applicable, be paid to such person or persons as is or are specified in the directions concerned under section 4(5)(a)(iii)(A) and (B) upon the occurrence of the event referred to in that section;
 - (b) where subsection (5)(b) is applicable -
 - (i) be paid to the majority owner or minority owner, as the case may be, if and when the owner is found;
 - (ii) be paid into the general revenue if, upon the expiration of 3 years beginning with the date on which the Tribunal was paid the residue, that owner has still not been found.
- (7) It is hereby declared that -
- (a) the application of the proceeds of sale to discharge any liability or incumbrance referred to in subsection (2)(a) or (b) shall be on the basis that the majority owner or minority owner of the lot shall pay for the discharge to the extent that the liability or incumbrance, as the case may be, is attributable to that majority owner or minority owner, as the case may be;

ClauseAmendment Proposed

(b) subsection (6)(b)(ii) shall not operate to prevent any claim being made against the Government -

(i) in relation to any residue referred to in that subsection; and

(ii) by a person who would have been entitled, or who appears would have been entitled, to be paid the residue if the residue had remained with the Tribunal;

(c) where a person claims to have had an interest in the lot sold pursuant to an order for sale, nothing in this section or in section 8(1)(a) shall prevent the person from taking any action or commencing any proceedings in relation to any proceeds of sale arising from the sale of that part of the lot to which the interest relates.

(8) Without prejudice to the operation of subsection (3), in this section "incumbrance" (產權負擔), in relation to a lot, does not include, unless otherwise specified in directions -

(a) if Part II of the New Territories Ordinance (Cap. 97) applies to the lot, any Chinese custom or customary right affecting the land;

ClauseAmendment Proposed

- (b) any easements, rights of way or rights of water; or
- (c) any covenants which run with the lot."

12 and 13 By deleting the clauses and substituting -

"12. Regulations

(1) The Secretary for Planning, Environment and Lands may make regulations -

- (a) specifying grounds for the purposes of section 4(2)(b)(ii);
- (b) specifying matters to be taken into account for the purposes of section 4(2)(c);
- (c) specifying matters to be taken into account in the nomination or appointment of trustees to discharge the duties imposed on trustees under this Ordinance in relation to the lot the subject of an order for sale; and
- (d) generally, providing for the better carrying into effect of the provisions and purposes of this Ordinance.

(2) A regulation made under subsection (1)(a) or (b) shall not apply to any proceedings arising out of an application made under section 3(1) before the commencement of the regulation."

ClauseAmendment Proposed

14 By deleting "or 3" and substituting ", 3 or 4".

New By adding before clause 15 -

"15A. Section added

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

"10A. Rules in relation to jurisdiction under Land (Compulsory Sale for Redevelopment) Ordinance

(1) The Chief Justice after consultation with the President may make rules dealing generally with all matters of practice and procedure arising out of the Land (Compulsory Sale for Redevelopment) Ordinance (of 1998).

(2) In any proceedings for determining an application for an order for sale under the Land (Compulsory Sale for Redevelopment) Ordinance (of 1998), a member of the Tribunal shall have power to order, where he is satisfied that no injustice would be caused, that any question or issue arising from the application be heard before another member of the Tribunal for determination or inquiry, and without prejudice to the generality of subsection (1), the rules made under that subsection may regulate the exercise of the power conferred by this subsection.

ClauseAmendment Proposed

(3) In subsection (2), "member of the Tribunal" (審裁處成員) means a member or members of the Tribunal exercising the jurisdiction of the Tribunal."

15 By deleting "to the Lands Tribunal Ordinance (Cap. 17)".

Schedule 1 (a) In the square bracket, by deleting "3(1), 11" and substituting "3, 9A".

(b) In the heading -

(i) by deleting "CONDITIONS TO WHICH APPLICATION IS SUBJECT,";

(ii) by adding ", NOTICE THAT APPLICATION HAS BEEN MADE" after "REPORT".

(c) By deleting Part 1.

(d) By deleting Part 2 and substituting -

"PART 2

VALUATION REPORT

A valuation report, prepared not earlier than 3 months before the date on which the application under section 3(1) of the Ordinance is made, setting out the assessed market value of each property on the lot -

(a) on a vacant possession basis;

ClauseAmendment Proposed

- (b) assessed as if the lot could not be made the subject of an application for an order for sale; and
- (c) not taking into account the redevelopment potential of the property or the lot."
- (e) By adding -

"PART 2A

NOTICE THAT APPLICATION HAS BEEN MADE
 UNDER THE LAND (COMPULSORY SALE FOR
 REDEVELOPMENT) ORDINANCE (OF
 1998) FOR THE SALE OF LOT NO.
/LOT NOS.* LOCATED
 AT

Persons occupying any part of the above lot/lots* are hereby notified that an application has been made under section 3(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (of 1998) to the Lands Tribunal for an order to sell the lot/lots* for the purposes of the redevelopment of the lot/lots*.

It should be noted that if such an order for sale is made, the Lands Tribunal -

- (a) may order compensation to be paid to a tenant (including any sub-tenant) of any property on such lot/lots* whose tenancy is terminated by the operation of the Land (Compulsory Sale for Redevelopment) Ordinance (of 1998); and

ClauseAmendment Proposed

- (b) may take into account the representations, if any, of the tenant as to whether compensation should be payable to the tenant and, if so, the amount of the compensation.

*Delete whichever is inapplicable.".

- (f) In Part 3 -

- (i) in paragraph (a) -

- (A) by deleting "the majority owner and minority owners" and substituting "each majority owner and each minority owner";

- (B) by deleting "財產" and substituting "物業";

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

- "(b) where -

- (i) there has been a dispute referred to in section 4(1)(a)(i) of the Ordinance which has resulted in a variation of those values; or

ClauseAmendment Proposed

- (ii) in consequence of the requirement under section 4(1)(a)(ii) on the majority owner to satisfy the Tribunal as to the matter referred to in that section, there has been a variation of those values,

those values as so varied."

- Schedule 2
- (a) In the square bracket, by deleting ", 8(1)".
 - (b) By deleting section 1(b)(ii).
 - (c) In section 2(a), by adding "on its own (or, where 2 or more lots are the subject of the auction, on their own)" after "the lot".

- Schedule 3
- (a) In the square bracket, by deleting "6,".

- (b) By deleting section 1 and substituting -

"1. There shall be redevelopment of the lot and the redevelopment shall be completed and made fit for occupation -

ClauseAmendment Proposed

- (a) subject to paragraph (b), within such period, not being a period which expires after 6 years after the date on which the purchaser of the lot became the owner of the lot, as specified by the Tribunal in the order for sale to which the lot is subject;
- (b) such further period, if any, as the Tribunal may allow on the application of the purchaser of the lot or his successor in title."

Schedule By adding -
added

"SCHEDULE 4

[ss. 8(2) & 14]

NOTICE THAT TENANCIES OF LOT HAVE
BEEN TERMINATED

Tenants (including sub-tenants) under any tenancies of any properties on this lot which were entered into any time before [insert date on which purchaser of lot became owner of lot] are hereby notified that pursuant to section 8(1)(c) of the Land (Compulsory Sale for Redevelopment) Ordinance (of 1998) -

- (a) all those tenancies were terminated on that date; and

ClauseAmendment Proposed

- (b) the purchaser is entitled to, and those tenants are required to deliver up, vacant possession of those properties immediately upon the expiration of 6 months immediately following that date."

Annex VII**INLAND REVENUE (AMENDMENT) BILL 1998****COMMITTEE STAGE**Amendments to be moved by the Secretary for the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2(2)	(a) By deleting "9" and substituting "8, 9, 11". (b) By deleting "and 22" and substituting ", 22". (c) By adding "and 25" before "apply".
3	By deleting paragraph (a).
3(b)	By deleting the proposed definitions of "mandatory contributions" and "mandatory provident fund scheme".
11	By deleting everything after "Section 17" and substituting "(1)(b) is amended by adding "subject to section 16AA," before "any disbursements".".
12	(a) In the proposed section 26E - (i) in subsections (2)(a)(i)(B) and (3)(a) and (b), by deleting ", in the opinion of the Commissioner,"; (ii) in subsection (5) - (A) in paragraph (b), by deleting "the net chargeable income of the person or" and substituting "the aggregated net chargeable income of the person and";

ClauseAmendment Proposed

(B) in paragraph (c), by deleting "the total income of the person" and substituting "the amount of the assessment made under section 42A(1) in respect of the person or the person and his or her spouse";

(iii) in subsection (6)(a), by adding "by the person by notice in writing to the Commissioner" after "revoked";

(iv) in subsection (9), in the definition of "home loan interest" -

(A) in paragraph (e), by deleting "or";

(B) by adding -

"(ea) an employer of the person; or".

(b) In the proposed section 26F(4)(a), by adding "by the person by notice in writing to the Commissioner" after "revoked".

18

By deleting paragraph (c) and substituting -

"(c) by repealing subsection (5) and substituting -

"(5) (a) Where in any year of assessment the aggregate amount of the deductions under subsection (2)(a) and the loss under subsection (2)(b) for an individual exceeds the total income of the individual -

ClauseAmendment Proposed

- (i) subject to subparagraph (ii), that part of the amount of such excess not exceeding the amount of the loss under subsection (2)(b) for the individual for that year of assessment shall be carried forward to be set off against the total income of the individual for future years of assessment;
- (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess not exceeding the amount of the loss under subsection (2)(b) for the individual for that year of assessment which is not so reduced shall be carried forward to be set off against the total income of the individual for future years of assessment.

ClauseAmendment Proposed

- (b) Where paragraph (a) does not apply and in any year of assessment the amount of the loss under subsection (2)(b) for an individual exceeds the total income of the individual -
- (i) subject to subparagraph (ii), the amount of such excess shall be carried forward to be set off against the total income of the individual for future years of assessment;
 - (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess which is not so reduced shall be carried forward to be set off against the total income of the individual for future years of assessment.

ClauseAmendment Proposed

- (c) Where paragraphs (a) and (b) do not apply and in any year of assessment the amount of the deductions under subsection (2)(a) for an individual exceeds the total income of the individual -
 - (i) subject to subparagraph (ii), the amount of such excess shall not be carried forward to be set off against the total income of the individual for future years of assessment;
 - (ii) where the total incomes of the individual and his or her spouse are required to be aggregated under section 42A(1), the amount of such excess shall be reduced as far as can be done by being set off against the total income of his or her spouse for that year of assessment as reduced under subsection (2), and that part of the amount of such excess which is not so reduced shall not be carried forward to be set off against the total income of the individual for future years of assessment.";

ClauseAmendment Proposed

- (d) in subsection (6), by repealing "The proviso to subsection (5)" and substituting "Subsection (5)(a)(ii) and (b)(ii)".

New

By adding -

"Consequential Amendments**Provident Fund Schemes Legislation
(Amendment) Ordinance 1998****25. Amendment of Inland
Revenue Ordinance**

Schedule 5 to the Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (4 of 1998) is amended -

- (a) in item 12(a), in the new paragraph (a)(ii), by adding "subject to section 16AA," before "contributions";
- (b) in item 13, in the new subsection (2)(d)(iii), by adding "subject to section 16AA," before "a contribution".

Annex VIII**INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1998****COMMITTEE STAGE**Amendments to be moved by the Secretary for the TreasuryClauseAmendment Proposed

7

(a) By adding -

"(aa) in subsection (3)(a), by repealing "be treated as a trading receipt" and substituting ", to the extent that they are not otherwise chargeable to tax under this Part and do not exceed the amount of the deduction, be treated as a trading receipt arising in or derived from Hong Kong";".

(b) In paragraph (b), in the proposed section 16B(3A)(a) -

(i) by adding "for the year of assessment commencing on 1 April 1998 or any subsequent year of assessment" before "are thereafter sold";

(ii) by deleting "in so far as" and substituting "to the extent that";

(iii) by adding "and does not exceed the amount of the deduction" before ", be treated".

New

By adding -

"7A. Payments for technical education

Section 16C(1) and (2) is amended by repealing "trade or business" wherever it appears and substituting "trade, profession or business".

ClauseAmendment Proposed

8

(a) By deleting paragraph (c) and substituting -

" (c) by repealing subsection (4) and substituting -

" (4) This section does not apply to -

(a) capital expenditure incurred for a building or structure which is used or intended to be used as a domestic building or structure;

(b) capital expenditure incurred by a person to enable a building or structure to be first used substantially by the person for the production of profits in respect of which the person is chargeable to tax under this Part;

(c) capital expenditure incurred by a person to enable a building or structure to be used for a purpose different from that for which it was used immediately before the capital expenditure was incurred." ;".

(b) In paragraph (d), in the proposed section 16F(5) -

(i) in the definition of "domestic building or structure" -

ClauseAmendment Proposed

(A) by deleting "or any part of a building or structure" where it twice appears;

(B) by deleting "constructed or intended to be";

(ii) by adding -

""building or structure" (建築物或構築物)
includes part of a building or
structure;"

9 In the proposed section 16G -

(a) in subsection (3)(a) -

(i) by deleting "in so far as" and substituting
"to the extent that";

(ii) by deleting ", be treated as a trading receipt"
and substituting "and does not exceed the
amount of the deduction, be treated as a
trading receipt arising in or derived from
Hong Kong";

(b) in subsection (4) -

(i) in paragraph (a), by deleting "Where" and
substituting "Subject to paragraph (c),
where";

(ii) by adding -

ClauseAmendment Proposed

- "(c) (i) Paragraph (a) shall only apply to a person where the person has elected in writing that the paragraph shall so apply to him, at any time before the expiration of one month after the date on which a notice of the assessment made in respect of the person for the year of assessment commencing on 1 April 1998 under section 59 is given under section 62.
- (ii) An election under subparagraph (i), once made, is irrevocable."

11 By deleting paragraph (c) and substituting -

"(c) by adding -

"(3A) For the purposes of Part VII, where the loss or the share of the loss referred to in subsection (3) consists solely of the balance of an unabsorbed loss calculated in accordance with section 19CA(2)(b), the amount of the loss or the share of the loss shall be deemed to be the amount arrived at by dividing such balance by the adjustment factor within the meaning of section 19CA."."

<u>Clause</u>	<u>Amendment Proposed</u>
19	By deleting the clause.
21(c)	By adding before subparagraph (i) - "(ia) by repealing "trade or business" where it twice appears and substituting "trade, profession or business";".
22	By deleting everything after "37A" and substituting "(4) is amended by repealing "trade or business" where it twice appears and substituting "trade, profession or business".".
23	In paragraph (b), by adding before subparagraph (i) - "(ia) by repealing "trade or business" where it twice appears and substituting "trade, profession or business";".
25	(a) By adding before paragraph (a) - "(aa) in the definition of "capital expenditure", in paragraph (b), by repealing "trade or business" and substituting "trade, profession or business";". (b) By adding before paragraph (b) - "(ba) in the definition of "industrial building or structure", in paragraph (f), by repealing "trade or business" and substituting "trade, profession or business";".

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30 In the proposed section 88A, by adding -

"(7A) No liability shall rest upon the Government, the Commissioner or any other public officer in respect of the bona fide exercise of any power or performance of any duty under and in accordance with Schedule 10."

32 In the proposed Schedule 10, in Part I -

(a) in section 3(c) -

(i) by deleting "and" and substituting ", or to";

(ii) by deleting "during any period to" and substituting ", during any period for";

(b) by adding -

"3A. The Commissioner shall, where he has declined to make a ruling under section 2 or has not made a ruling by virtue of section 3, notify the applicant in writing of his decision and the reasons therefor.";

(c) in section 4, by deleting everything after "an arrangement" and substituting -

", and -

(a) the ruling applies in relation to the arrangement during the whole or any part of the period specified in the ruling; and

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- (b) the person has under section 14 disclosed in the return provided under this Ordinance that he has relied on the ruling in preparing and providing the return,

the Commissioner shall apply the provision in relation to the person and the arrangement in respect of the whole of the period or the part of the period, as the case may be, in accordance with the ruling.";

- (d) in section 12, by deleting "that the ruling has been withdrawn" and substituting "of the withdrawal and the reasons therefor";

- (e) by deleting section 13(b) and substituting -

"(b) if the arrangement has been entered into or effected on or before the date of the withdrawal -

- (i) where the person to whom the ruling applies has under section 14 disclosed in the return provided under this Ordinance that he has relied on the ruling in preparing and providing the return, the ruling shall after the date of the withdrawal continue to apply in relation to the arrangement for the remainder of the period specified in the ruling;

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- (ii) in any other case, the ruling shall cease to apply in relation to the arrangement."

Annex IX**STAMP DUTY (AMENDMENT) (NO. 2) BILL 1998****COMMITTEE STAGE**Amendments to be moved by the Secretary for the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3(b)	<p>(a) In the proposed section 14(1B)(b), by deleting "then been due for payment" and substituting "to be paid before the appeal can be brought under subsection (1)".</p> <p>(b) In the proposed section 14(1C)(c) -</p> <p>(i) by deleting "such" and substituting "the";</p> <p>(ii) by deleting "as is then due for payment" and substituting "that still has to be paid before the appeal can be brought under subsection (1)".</p>
6(b)	<p>In the proposed section 19(1E) -</p> <p>(a) in paragraph (a) -</p> <p>(i) by deleting "In" and substituting "Subject to paragraph (c), in";</p> <p>(ii) in subparagraph (i), by deleting "an instrument of transfer" and substituting "a transfer chargeable with stamp duty under head 2(3) in the First Schedule";</p>

ClauseAmendment Proposed

(b) by adding -

"(c) Paragraph (a) shall not apply to a transaction of the kind referred to in that paragraph where the transaction would, if it were effectuated by way of a transfer chargeable with stamp duty under head 2(3) in the First Schedule, be a transfer of the kind referred to in section 27(5).".

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By deleting "或" and substituting "及".