



DAILY INFORMATION BULLETIN

ISSUED BY GOVERNMENT INFORMATION SERVICES
BEACONSFIELD HOUSE, HONG KONG. TEL.: 2842 8777

Thursday, July 27, 1995

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Passage of CFA Bill ensures continuity in legal system

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The passage of the Court of Final Appeal (CFA) Bill in the Legislative Council yesterday will ensure that the CFA would be closely modelled on the Privy Council so that there would be continuity in the system with which Hong Kong is familiar, the Solicitor General, Mr Daniel Fung QC, said today (Thursday).

Speaking at a luncheon meeting of the American Chamber of Commerce, Mr Fung said the court could also be established in such a way that there would be no damaging judicial vacuum i.e. a period when Hong Kong would have no ultimate court of appeal.

Mr Fung pointed out that subject to the provisions of the Basic Law, the court would have the same jurisdiction and powers as the Judicial Committee of the Privy Council, and that it would be established on July 1, 1997.

He said the importance of the ultimate appellate court at the apex of Hong Kong's judicial system could not be overestimated.

"In addition to providing the final avenue of appeal to litigants seeking justice, under Hong Kong's common law system, the court gives rulings that establish and clarify principles of law which are binding on the courts below.

"Questions of great constitutional importance, including issues arising under the Bill of Rights Ordinance and (in due course) the Basic Law, will be determined by the Court of Final Appeal," Mr Fung said.

He noted that the end of appeals to Judicial committee of the Privy Council in London and the establishment of a Court of Final Appeal not in Beijing but in Hong Kong, together with the preservation of the common law and the continued reference to case precedent from other common law jurisdictions, was by far the most momentous of all the manifestations of a high degree of autonomy for the future Special Administrative Region.

He added: "No other country in the world has ever experimented with such a decentralised system.

"Even such great federal states as the USA, India or Australia have all operated under a homogeneous legal system - the common law - and a single judicial mechanism for resolution of disputes between individual and state and between state and federation, namely, a Supreme Court.

"Of all countries, only China has been sufficiently imaginative as to allow for a fundamentally and jurisprudentially different system to function in a SAR within a self-contained system fully quarantined from that which operates in the rest of the country."

Earlier in his speech, Mr Fung also said in view of the extensive economic and commercial links between Hong Kong and China, he expected to see a growing system of law to regulate many aspects of cross-border commercial and business life.

"Legal exchanges between the Hong Kong SAR and the rest of China will become more frequent and complex such that it is crucial to put in place well before 1997, if all possible, mechanisms and procedures for mutual assistance between the two legal systems," he said.

End/Thursday, July 27, 1995

July issue of HK Monthly Digest of Statistics on sale

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A feature article entitled "Payroll Statistics in Selected Industries, 1990-1994" is published in the July 1995 issue of the Hong Kong Monthly Digest of Statistics.

This feature article presents statistics on average labour earnings, in both nominal and real terms, for persons engaged in different economic sectors over the past five years.

Detailed analyses of the movements of annual average payroll per person engaged in selected industries within the manufacturing sector and the wholesale, retail and import/export trades, restaurants and hotels sector are also included. The July 1995 issue of the Hong Kong Monthly Digest of Statistics is already on sale at \$50 a copy.

It contains all information about Hong Kong's latest situation regarding economic growth, the labour market, inflation and many other social and economic issues that have important impact on business and everyday life.

Purchase of this publication can be made at the Government Publication Centre, Ground Floor, Low Block, Queensway Government Offices, 66 Queensway, Hong Kong.

The publication is also available for sale at the Publications Unit of the Census and Statistics Department, 19th Floor, Wanchai Tower, 12 Harbour Road, Wan Chai, Hong Kong.

Regular subscription can also be arranged with the Publications (Sales) Office of the Information Services Department on tel 2598 8194.

End/Thursday, July 27, 1995

Public invited to serve as tribunal adjudicators

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Those who have lived in Hong Kong for seven years and is proficient in written Chinese or English may apply to join the Obscene Articles Tribunal (OAT) of the Judiciary as adjudicator.

Following the passage of the Control of Obscene and Indecent Articles (Amendment) Bill 1995 in the Legislative Council meeting on July 19, the number of adjudicators will be substantially enlarged to handle the anticipated increase in workload. The following changes to the OAT will be put into effect:

- * the minimum number of adjudicators will be increased from two to four at full hearings to review interim classifications as well as at hearings to reconsider articles classified more than three years ago; and
- * an adjudicator who has sat on the interim hearing of an article will not be allowed to be a member of the Tribunal to review the same article at a full hearing.

"This change in the operation of the OAT as well as our wish to enlarge the panel are the reasons behind the present exercise," a spokesman for the Recreation and Culture Branch said today (Thursday).

The Recreation and Culture Branch is in close consultation with the Judiciary in co-ordinating this exercise.

When enlarging the panel of adjudicators, both the Government and the Judiciary consider that there is a need to increase the number of female adjudicators. There are at present 77 adjudicators, of whom about one fifth are women.

Members of the public who are interested to serve as adjudicators should complete a standard application form which are available at all the 18 District Offices as from tomorrow (Friday).

Completed forms should be returned to the Recreation and Culture Branch, 41st floor, Revenue Tower, 5 Gloucester Road, Hong Kong, on or before August 28.

Concurrently, the RCB is also inviting the Home Affairs Department, Education Department, Social Welfare Department, Urban Services Department and Regional Services Department to nominate eligible persons to serve as adjudicators.

"The names of eligible applicants will be submitted to the Chief Justice for his consideration for appointment," the spokesman said.

"We hope that through open application, we can strengthen the panel of adjudicators not only in terms of number but also its representativeness," he added.

For enquiries, please contact the Assistant Secretary for Recreation and Culture, Mr Chris Sun, on 2594 6619.

End/Thursday, July 27, 1995

Proposed increase in fees at Public Cargo Working Areas

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In response to press enquiries about the proposed increase in fees for the services provided by the Marine Department at the public cargo working areas (PCWAs), a Government spokesman said today (Thursday):

The existing PCWA services provided by Marine Department include berthing, operation of equipment, the working of cargo and vehicle parking.

It is Government policy that fees should, in general, be set at levels sufficient to recover the full costs of providing the services.

The Government, through the gazette notice published on July 14, 1995, announced that the fees prescribed in the Port Control (Cargo Working Areas) Regulations will be increased by 20 per cent with effect from November 4, 1995.

As cargo handling operations are commercial in nature, there is no reason for public subsidy.

The operators should bear the running costs of the PCWAs

Taking into account the significant amount of capital resources that Government has provided in setting up, maintaining and operating the PCWAs, the Government therefore proposes that the PCWA fees should be determined on the basis of the Government utility approach.

This means the PCWA fees will seek to achieve full cost recovery plus a reasonable rate of return on the average assets value at historical cost.

Nevertheless, to minimise inconvenience to the operators and to avoid sharp increases in PCWAs fees, estimated at 50 per cent for 1995-96 if the target rate of 13 per cent were to be accomplished instantly, the Government has therefore proposed to achieve the target rate of return over three years ending 1997-98.

Against the above considerations, the Secretary for the Treasury has approved a fee increase of 20 per cent for PCWA fees for 1995-96.

The projected rate of return following this proposed increase is about 7.8 per cent only.

The fee increase at 20 per cent will represent an average increase of \$21 or 1.3 per cent in operating cost per day in the case of a lorry. As for a lighter, the average daily increase will be about \$60 or 1.6 per cent of the overall cost.

Regarding some trade associations and traders to stage a demonstration tomorrow (Friday) to express their dissatisfaction, the spokesman said the Government respected their rights to demonstrate and the Government would deploy adequate resources to ensure the smooth and safe operation of the port.

The spokesman appealed to trade associations and traders to conduct their demonstration in an orderly manner and to due consideration to other port users.

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Hong Kong Monetary Authority money market operations

| | <u>\$ million</u> | <u>Time (hours)</u> | <u>Cumulative change (\$million)</u> |
|--------------------------------|-------------------|---------------------|--------------------------------------|
| Opening balance in the account | 2,240 | 0930 | +60 |
| Closing balance in the account | 1,805 | 1000 | +60 |
| Change attributable to : | | 1100 | +65 |
| Money market activity | +65 | 1200 | +65 |
| LAF today | -500 | 1500 | +65 |
| | | 1600 | +65 |

LAF rate 4.25% bid/6.25% offer TWI 119.0 *-0.2* 27.7.95

Hong Kong Monetary Authority

| EF bills | | EF notes | | | | |
|-----------|-------|----------|-------|--------|--------|-------|
| Terms | Yield | Term | Issue | Coupon | Price | Yield |
| 1 week | 5.30 | 2 years | 2705 | 6.40 | 100.64 | 6.10 |
| 1 month | 5.40 | 3 years | 3807 | 6.16 | 99.28 | 6.53 |
| 3 months | 5.46 | 5 years | 5006 | 6.60 | 98.08 | 7.19 |
| 6 months | 5.57 | 5 years | M501 | 7.90 | 101.55 | 7.65 |
| 12 months | 5.67 | | | | | |

Total turnover of EF bills and notes - \$11,694 million

Closed July 27, 1995

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SUPPLEMENT

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Government welcomes the passage of the MPF Schemes Bill

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The Administration is delighted that the Legislative Council has passed by a clear majority, the Mandatory Provident Fund (MPF) Schemes Bill which is a sound, pragmatic means of providing the workforce with a system of retirement protection, the Secretary for Education and Manpower, Mr Michael Leung, said today (Thursday).

"Our next step is to commence work on the subsidiary legislation so that the community may benefit from the MPF as soon as possible," said Mr Leung after the MPF Schemes Bill was passed by 31 votes to 22 after an eight-hour debate.

Mr Leung said the Administration was looking forward to discussing details of the subsidiary legislation with members of the Legislative Council and interested sectors of the community.

He pointed out that the Administration had worked very hard over the past few weeks to reach general agreement on the provisions of the Bill and where possible, tried to accommodate many of the suggestions that had been put forward.

"We have considered very carefully the view of members of the Bills Committee chaired by the Hon Henry Tang, as well as the helpful submissions received from various employers' and employees' groups, professional organisations and deputations received by the Bills Committee. The committee stage amendments reflect the outcome of that consideration," he said.

He said the enactment of the legislation provided for the establishment of the Mandatory Provident Fund Schemes Authority; a Compensation Fund and the basis for a Residual Provident Fund Scheme.

"Employers, employees and self-employed will now know what their obligations are. The Bill makes it clear who will be covered by the MPF, and who will be exempt.

"The workforce of Hong Kong deserves the certainty of financial security upon retirement. Enactment of the Bill gives the workforce what they have been seeking for so long, and so richly deserve," Mr Leung concluded.

End/Thursday, July 27, 1995

MPF Bill: motion to adjourn second reading

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Following is the speech by the Secretary for Education and Manpower, Mr Michael Leung, on a motion to adjourn the second reading debate of the Mandatory Provident Fund Schemes Bill in the Legislative Council today (Thursday):

Mr President,

Today should be a joyous occasion for the workforce of Hong Kong. It should be the day when employees and the self-employed receive what they have seeking for so long - the certainty of financial security upon retirement. Instead, they are facing the last minute uncertainty of not knowing whether debate on this Bill will be able to continue. If this is frustrating for them, and it is certainly frustrating for us and all those who have the genuine welfare of workers at heart. If they can't understand the reasons for some Members to propose adjourning this debate, they are not alone in Hong Kong.

Members of this Council are fully aware that this Bill is essentially an enabling one. That is not to say it is a hollow shell, as claimed by some. What it does is to provide a framework for the subsidiary legislation, which will set out the details of how the system will be regulated. Members will be by now quite familiar with the main provisions of this Bill. These have been described on a number of occasions since the motion debate on 8 March this year. It is fair to say that there are no surprises in the Bill. The subsidiary law will be the subject of further detailed consultation with Members of this Council and all sectors of the community over a longer time-frame.

In their perhaps misguided enthusiasm to bring a debate on this Bill to a premature stop, at least for the current session, some Members may well have overlooked the reasons why we are here today with this particular piece of legislation. This is not simply a case, as perceived by some, of the Administration pushing forward a Bill on its own volition and for no other reason. Let me refresh Members' memories on the history of this subject. Perhaps as far as I can briefly.

Providing retirement protection

The question of how best to provide retirement protection for the workforce has been the subject of intense debate for more than a generation. The discussion has been especially concentrated in the last three years. While we have all been in agreement that employees and the self-employed deserve to be able to live in dignity and financial security during their retirement years, the best way of providing for such retirement protection has always eluded us until now. The MPF provides a good, pragmatic answer to this question, and has wide support within the community. It also addresses many of the points of criticism that arose during the public consultation exercise on the Old Age Pension Scheme (OPS).

Wishes of the community

It is not true to say, as claimed by some Members, that the community has had inadequate time to consider the MPF. It was the community that supported the MPF in the first place. Submissions on the OPS indicated that :

- (a) there was now likely to be greater public acceptance of a mandatory, privately managed provident fund system; and
- (b) such a system should be set up as soon as possible.

The community, Mr President, wanted reality, in the shape of a real retirement protection system, not a further round of inconclusive consultation.

Intensive consultation with those most directly affected by the MPF, i.e. employers' and employees' representatives, both before and after the Motion Debate on 8 March, reinforced our view that we are moving in accordance with the community's wishes. The two-stage approach which we are now taking in drawing up the necessary legislation is a positive response to public demands for the Bill to be enacted as soon as possible. This response has met with public approval.

An ageing population

Some Members have indicated that they would prefer to consider the MPF Bill at a more sedate pace. Some other Members have said that the Bill should be considered together with the subsidiary legislation. They believe therefore that discussion should be deferred until the next legislative session. Let me remind them that time is not on our side. As in many other parts of the world, the elderly in Hong Kong are living longer and forming an increasingly larger percentage of the population. For example, in 1991, life expectancy at birth was 74.9 years for males and 80.5 years for females, while life expectancy at 65 is 15.4 years for males and 19.0 years for females. The estimated number of persons aged 65 or above will increase from the present 560,000 to 1 million in the year 2016, and 1.9 million twenty years after that. Expenditure on CSSA payments to the elderly aged 60 or above continues to increase : from \$1,564 million in 1993/94 to \$2,193 million in 1994/95, and a projected level of \$2,778 million in 1995/96. Unless we make sensible advance provision, now, for these people, we will be faced with a considerable and ever-growing welfare burden. We cannot afford to wait any longer.

The MPF will ensure that the workforce will have financial security in their old age, and thus reduce the numbers who may potentially fall into the welfare net. Members will realise that by the year 2036, when nearly 20% of the HK SAR population will be 65 or over, the first batch of the youngest group of MPF contributors will be reaching retirement age.

Support from LegCo

One last point on the need for early enactment of the Bill. May I remind this Council that just four and a half months ago, on 8 March debate, Members voted in favour of the motion "That this Council urges Government to introduce as expeditiously as possible a mandatory, privately managed occupational retirement protection system with provision for the preservation and portability of benefits." In our efforts to enact the MPF Schemes Bill during the current legislative session, we are acting in accordance with Members' wishes.

Reconsideration of other schemes

Some Members believe that adjourning the debate, and thus allowing the Bill to lapse, will provide a further chance for reconsideration of the Old Age Pension Scheme (OPS), a Central Provident Fund (CPF), or some hapless hybrid of the two. They are wrong. If this Bill lapses, there is the real possibility that the community will not have any retirement protection system at all. We do not intend to revisit the OPS, which found little support within the community. As for a CPF, our views remain unchanged. It is not an option for Hong Kong. It offers no freedom of choice, tends to produce low returns on investment, and would result in an over-concentration of funds under one authority. We hold this view both in respect of a CPF on its own and a CPF artificially put together in an uneasy relationship with any other form of retirement protection.

Those Members who yearn for a CPF must know that it cannot work without Government funding, which most definitely will not be forthcoming.

I would urge any Member who feels inclined to support the motion to adjourn in the hope that it may lead to a revival of the defunct OPS, or even a CPF, to think again. It will not happen.

The MPF Schemes Bill

Mr President, I am surprised to hear some Members claim that the Bill is hollow, lacks substance, and should not be discussed further, while others say that the debate should not proceed as the Bill is complicated, and they have had inadequate time to examine it. I disagree with both opinions, and wonder whether in fact Members are talking about the same piece of legislation!

From the outset of our consideration of the MPF, it has been our stated intention to deal with the primary legislation first, then the secondary legislation later. This is in keeping with the community's wish to see a mandatory retirement protection system established as soon as possible. As I said in this Council during the debate on 8 March and I quote, "We will also start drafting legislation and come back to this Council with the primary legislation. The timeframe : we will try to get the initial report from the consultants by the end of April and to come to this Council with a primary law before the end of this session if Council endorses my motion this afternoon." Early enactment of the primary legislation would also provide adequate time for trustees and the insurance and fund management industries to introduce the necessary products, and for employers and the self-employed to arrange for retirement schemes to meet their obligations.

We have always made it very clear that there would be certain necessary provisions in the primary legislation. These are reflected in the contents of the Bill to be discussed today. Far from being an empty shell, the Bill does what it is intended to do. It provides a framework on which we can build. It establishes the Mandatory Provident Fund Schemes Authority. It provides for a Compensation Fund, and for the establishment of a Residual Provident Fund Scheme. The MPF Schemes Bill tells employers, employees and the self-employed how much they need to contribute, and what their future obligations will be. It is clear from the Bill - and it will be clearer still after we move a number of CSAs later on - who is covered, and who is exempt.

This is no empty shell, and there is definitely no reason to defer debate on such spurious grounds.

On the other hand, it is equally unreasonable to demand that debate be adjourned because the Bill appears to be too complicated, and that there has been inadequate time to consider it in detail. The main points of the primary legislation have been known for some months now. We have made it very clear that the specific components of the MPF will be dealt with in the context of discussing the subsidiary legislation. There have been many rounds of discussion, both with Members of this Council and with concerned groups and individuals, on the principles and main points of the legislation. It is patently absurd to claim, as some have done, that the Bills Committee to study the MPF Schemes Bill had inadequate time and opportunity to carry out its deliberations. The Bills Committee met on ten occasions. Some clauses were debated ad nauseam. In addition, there was a session to go through the Administration's Committee Stage Amendments, and a meeting of a sub-group to examine the Bill clause by clause. The fact that the meetings were held within a short time-frame does not detract from the fact that the Bill was discussed in great detail and with great care, a reflection of course of the due responsibility of Members of this Council to study it in great detail and care. In fact, the only area of the Bill that was not put under the microscope were the CSAs proposed by Members of this Bills Committee!

It is clear to me, Mr President, and I hope it is clear to most Members of this Council, that this attempt to derail discussion of this most important subject on the grounds of "over-complexity" is nothing more than a smokescreen by those who are against the MPF, and who clearly do not want the Hong Kong workforce to have a retirement protection system anytime in the near future.

I would like to take issue with Mr Tam Yiu-chung on some of the points he made at the beginning of his address yesterday night. He challenged me on the points which he made on the debate concerning the MPF as to why such points were not answered and whether my letter addressed to Members of this Council were in fact not giving enough reasons for today going ahead with this Bill. Let me take these points one by one.

First he said this Bill is only a shell, a framework; there is nothing to vote on. I totally disagree. The Bill is certainly a framework but it is far from empty. It reflects the necessary provisions for setting up the MPF system. The community agrees with our approach of dealing with primary legislation first. As I said earlier on the Bill establishes the MPF Schemes Authority, provides for Compensation Fund, and setting up the Residual Provident Fund Scheme system. These are important and basic points to vote on. It is definitely not an empty shell with nothing to hold on.

On the second point, Mr Tam advocated that we should first study both legislation, primary and subsidiary, before voting. But, as I said earlier on, the history of this subject has gone on for over 30 years. The community is aging. The community cannot wait any longer. The community agrees with our approach of dealing with the primary legislation first, as this is the most effective way of starting the MPF, as endorsed by this Council on 8 March, as soon as possible. Time is not on our side or on the community's side if we delay this debate any longer. As I said the elderly in Hong Kong are growing in numbers and are living longer and we must not forget this important fact.

Mr Tam made a third point about there are far too many technical problems. These are difficult to change unless the primary legislation, the subsidiary legislation were voted on later on and looked at together.

This is not the case. We have always made it very clear that subsidiary legislation will be made in wide consultation, especially with Members of this Council. Members will be able to approve all subsidiary legislation up to the date of coming into force of Section 6 of this primary Bill in its entirety. If we discover problems later and of course we do not deny there could be technical problems of details of one kind or another, then there will be no reason why we cannot change them later on. And there's no reason whatsoever for this particular problem later on to defer a debate on this motion, on this Bill today.

Mr Tam also said that it would be misleading to say that delay would decrease benefits. This is certainly not the case. It is clearly necessary for an employee to start contributing sooner, now, rather than later. As it means that by the time that he or she retires, he or she will have accrued more benefits. It is obvious the benefit will start as an early start the better.

Final point made by Mr Tam that early passage is in conflict with the previous points made. I do not see why. Early passage of the Bill will give us time to set up the MPF Schemes Authority and begin discussions on subsidiary legislation. In other words, we just cannot start anything on the MPF without the primary Bill being established as soon as possible. Insurance and the fund managing industries are not likely to develop new products without the existence of the primary legislation and this is why we must and we must proceed with the debate on the primary Bill as soon as possible.

Conclusion

In conclusion, Mr President, I should like to call upon those who support deferring debate on this Bill to consider where their actions may lead. They will go down in history I am sure if they were successful in deferring this Bill indefinitely. They will be held accountable by Hong Kong's community and the elderly in Hong Kong for what they have done today. So think again.

The reality of a retirement protection system, the real system in the form of the MPF, is clearly what the community needs. If the motion to defer the debate is carried, we will need to consider very carefully where to go next.

Mr President, the MPF Schemes Bill is a good, practical and workable means of providing our workforce with the retirement protection system which it deserves. Members of the Bills Committee have worked hard together with the Administration to produce what we believe is an effective and workable enabling Bill. To adjourn the debate at this stage would deny Members and the community in Hong Kong the chance to discuss the Bill on its merits, and to vote accordingly. Mr President, I call upon Members of this Council to vote against the motion to adjourn.

End/Thursday, July 27, 1995

MPF Bill: second reading

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Following is the speech by the Secretary for Education and Manpower, Mr Michael Leung, at the resumption of the second reading of the Mandatory Provident Fund Schemes Bill in the Legislative Council today (Thursday):

Mr President,

The debate today marks the culmination of discussions that have gone on for more than a generation about how best to provide financial security for members of our workforce when they retire. I am grateful to Members who voted against an earlier motion to adjourn discussion of this most important issue until the next session. The community needs to know now where it stands on the subject of retirement protection, and Members deserve the opportunity to vote for the Mandatory Provident Fund Schemes Bill on its merits.

Retirement protection is an issue which both Government and the community have taken seriously. In 1992 we proposed a community-wide retirement protection system. In 1994 we proposed an old age pension scheme. Neither met with full community support. From submissions on the old age pension scheme, though, it became clear to us that what the community wanted was the early introduction of a mandatory, privately managed provident fund system. Such support was underlined by many rounds of consultation within the community earlier this year. On 8 March this year, Members indicated their clear support for the concept of what we now call the Mandatory Provident Fund (MPF) Schemes by passing the motion.

After seeking independent advice as to the feasibility of our approach, we announced in May this year the main points that would be covered in the MPF legislation. The Mandatory Provident Fund Schemes Bill was introduced into this Council on 14 June.

I am most grateful to the Honourable Henry Tang, Chairman of the Bills Committee to study the Mandatory Provident Fund Schemes Bill, and other Members of the Bills Committee for the time and effort they have put into scrutinising this Bill.

Over the past few weeks, we have worked hard to reach general agreement on the provisions of the Bill. We have considered very carefully the views of Members of the Bills Committee, as well as the helpful submissions received from various employers' and employees' groups, professional organisations and the deputations received by the Bills Committee. Where possible, we have tried to accommodate many of the suggestions that have been put forward. The Committee Stage amendments which I shall move later on reflect the outcome of that consideration.

I should now like to turn to the key changes we propose to make to the Bill during the Committee Stage as well as to comment on those areas where we believe the Bill should remain unchanged.

Coverage and exemption

It is our stated aim for the Bill to cover as many persons in the workforce as possible. At the same time, we do not want to upset participants in existing schemes, whether these are statutory in nature or schemes registered under the Occupational Retirement Schemes Ordinance (ORSO). Under Schedule 1 of the Bill, therefore, any employers and employees who are contributing to an occupational retirement scheme a sum not less than the statutory minimum MPF contribution, of which the employer's contribution must not be less than half the statutory minimum will be exempt from the MPF. This provision has been the cause of much debate among employer organisations. Although we believed it to be a simple solution to the question of interface, since the publication of the Bill many employers have said that they have invested a great deal of time and resources in complying with ORSO requirements. They have asked for more flexibility in the exemption arrangements. In particular, they have expressed concern about the need for ORSO schemes to have to use the MPF definition of relevant income before they qualify for exemption, and about our requirement that such exempt schemes would be closed to new members.

After listening to the views expressed by Members of this Council and by the various deputations, we are now prepared to take a second look at whether the exemption should be widened to meet the requirements of the genuinely generous employers. However, in taking this second look, I must make it clear that further exemption would only be considered on condition that the fundamentals of the MPF Systems would not be compromised. Our policy intention is that both defined contribution and defined benefit schemes are acceptable as MPF Schemes. Indeed, this Bill does not restrict the choice of the employers and employees on the types of schemes. It is acceptable for an employer to set up, for the purpose of meeting his MPF obligation, a defined benefit scheme for his employees, provided that the contribution in respect of each member in the scheme works out to be 10% equivalent of the relevant income of the relevant employee. Accordingly, we will be moving an amendment to the effect that persons who are members of relevant ORSO schemes, whether defined benefit or defined contribution, can be exempt from the provisions of the MPF legislation and provided that they satisfy requirements specified in regulations to be made under the Bill. We shall then be able to discuss further with the organisations concerned the details of the exemption arrangements, and consider further the conditions under which new members may be admitted to such schemes. Obviously, there are regulatory issues which are specific to defined benefit schemes, such as those relating to solvency. Again, the provisions in the Bill are adequate to enable detailed regulations and rules to be made for defined benefit schemes as well.

The definition of relevant income has also given rise to much discussion. Under existing ORSO schemes, contributions are usually a percentage of basic salary, and there have been proposals for the same usage to be applied to MPF schemes. However, we believe that to make such a change would not be in the best interests of the workforce. It would mean that persons whose income consisted of a low basic salary, and the rest in commissions, would lose out in terms of contributions, and eventual retirement benefits. There would also be the risk that some less scrupulous employers might redefine the employment terms of their employees so as to reduce their liability for MPF scheme contributions. This is not an area where we intend to make any changes.

Another area of exemption deals with those persons who are assigned to work in Hong Kong intermittently, but who are never really part of the Hong Kong workforce. There is no good reason for bringing such persons under the scope of the MPF. Accordingly, the Bill provides that persons from outside Hong Kong who come here to work shall be exempt from the provisions of the MPF if they leave Hong Kong permanently before the expiry of a period of 180 days. Also excluded, in a separate provision, are those persons who come here from overseas to work and who are already covered by a retirement scheme outside Hong Kong. This is because it might cause a person financial difficulties if he had to contribute to two schemes, one in his own country and one in Hong Kong.

We have been told, however, by some Members of this Council, that these provisions do not make it sufficiently clear as to who is exempt and on which occasions. Accordingly, to place the matter beyond doubt, we are replacing the sub-clauses which deal with this, as well as the item in Schedule 1, with a more general provision, which would exempt persons coming to Hong Kong from overseas for the purpose of limited duration employment or self-employment, or those who come here from abroad and who are already members of a retirement scheme outside Hong Kong, from the MPF, subject to rules to be made by the Authority. The rules would deal with such issues as the definition of "limited duration", and whether there should be a limit on the number of days or times each year when such an exemption could be applied.

Schedule 1 of the Bill also exempts a relevant employee who has been employed under a contract of employment for a continuous period of less than 30 days. This is in recognition of the fact that if an employee is going to resign, he is more likely to do so in the period immediately after he starts a job, so there is no point in incurring the administrative work of setting up a scheme for him. Some Members have asked whether it would be possible to extend the 30-day exemption period to 90 days, on the grounds that many employees give notice during that period. We have considered this, but do not think that such a long exemption period would be appropriate. To extend this period to 90 days would lead to contribution and benefit gaps where employees had a history of moving from job to job before the three month period was over. We do appreciate, however, that there may well be employees who give notice at the end of the first month of employment, and thus leave at the end of the second month. We shall therefore move an amendment to change the 30-day exemption period to 60 days. In the event that the employee remained in employment longer than that, then the employer would have to backdate both months' MPF contributions, while the employee would need to contribute only in respect of the second month's relevant income.

A final amendment on exemptions and coverage. We have always been aware that there will be particular classes of employees or self-employed persons whom it will be administratively difficult to bring into the MPF, at least in the early years. The Bill provides for such persons to be specified in Part II of Schedule 1, and there is provision for such specification to be varied, altered or repealed, i.e. when the administrative difficulty had been overcome, the classes of persons could then be brought under the MPF. We believe even at this stage that it will be administratively difficult, problematic for two particular groups to be brought into the MPF at an early stage. These are:

- (a) self-employed hawkers; and
- (b) domestic helpers, domestic employees, irrespective of their place of origin.

We shall therefore be moving an amendment to include both categories of worker as exempt persons under Part II of Schedule 1.

Coming into operation of the Ordinance

Clause 1(2) provides for the Ordinance to come into operation on a day to be appointed by the Governor by notice in the Gazette. This is a traditional legislative provision. It is all the more surprising, therefore, that some Members are asking for the appointment of this day to be subject to a resolution of this Council. I must say I do not see any necessity for such an unusual provision - which I understand would be without precedent in Hong Kong.

Let me explain why. In practice, we would not want to, nor would we, bring the Ordinance into effect until the relevant items of subsidiary legislation were in place. As part of this process, we wish to see the early establishment of the MPF Schemes Authority so that it could be involved fully in the preparation of the necessary subsidiary legislation, as well as in the process of approving trustees and registering schemes. Nor would we be advising the Governor to introduce clause 6 of the legislation, requiring employers to arrange schemes for their employees, and the self-employed to make parallel arrangements, until the necessary legislation was in place. The provision in clause 6 are unenforceable in isolation. They require subsidiary legislation to be in place. Given that Members would need to be satisfied with the specific provisions of subsidiary legislation - on which they would have been consulted in any case - before these could be enacted by a positive resolution of this Council - and on this I shall speak further in a moment - I cannot understand the reasoning behind their demand.

Some Members have pointed out that there is a precedent in the United Kingdom for the date of coming into operation of a piece of legislation to be subject to the prior approval of the legislature. That is so. The Easter Act 1928 does indeed make such a provision. I shall not speculate in this Council on the reasons for such a provision. What I shall point out, however, is that the legislation itself has never been brought into effect.

I cannot understand, Mr President, how it can be in the best interests of those who will benefit from this Bill to introduce such a provision. It seems to me that it could be used to delay its coming into operation indefinitely. I have no intention of changing the existing clause 1(2) of the Bill, and I urge Members not to support any amendments to do otherwise.

Even more disturbing is the suggestion that there should be a statutory provision linking the bringing into operation of the Ordinance with the implementation of related regulations and rules. This is objectionable. It introduces the element of uncertainty to the statutory power to commence that is contained in clause 1(2). If it was necessary to consider, on each occasion that it was proposed to use the power in clause 1(2), whether the related rules and regulations provided in clauses 44 and 45 had been made, we would be faced with a number of problems :

- (a) it may not be easy to determine whether or not clauses 44 and 45 actually provide for the making of regulations or rules in respect of a particular provision. For example, it would be difficult to relate the general powers in clauses 44(1)(b) and (h) to individual provisions;
- (b) even if this issue could be resolved, the question would remain of whether the requirement to make all necessary regulations and rules had been satisfied. For example, what the position would be if some, but apparently not all, regulations and rules had been made in relation to a particular provision? What would happen if a legal challenge was made on these grounds to the very essence of the MPF - i.e. clause 6? Allowing for decisions based on opinion leads only to uncertainty. Our workforce deserves better than that. It is clearly unacceptable that the power to apply statutory provisions of public importance should be subject to such inherent uncertainty, and I urge Members to oppose any CSA that might be moved to that effect.

Portability or transferability of accrued benefits

I turn now to portability or transferability of accrued benefits. It has been our policy intention to allow persons changing jobs the choice of leaving their accrued benefits in the form of individual accounts with the trustee who runs the master trust scheme of their former employer, or to transfer their accrued benefits to the scheme run by the trustee for the new employer. No one would therefore be compelled to leave a master trust scheme, run for his former employer, which has been doing well and may produce a higher rate of return. Similarly, no one would be forced to move to a scheme, operated on behalf of the new employer, which might not be doing so well. We think that this would reduce the frequency of transfers of accrued benefits.

We believe that Clause 13 of the Bill, as drafted, provides for that choice already. Some Members, however, have contended that the clause does not reflect our policy intention. To put the matter beyond doubt, I shall move a CSA later on.

Some Members have expressed concern that transfer costs might be significant. Now, the process of transfer is straightforward and should not incur any significant cost. However, for the better protection of accrued benefits, we can make sure that the subsidiary legislation will provide that, except for the incidental costs and expenses of remitting the money involved, no deductions shall be made against the accrued benefits under transfer.

Withdrawal of benefits

I now turn to withdrawal of benefits. One of the provisions in clause 14 of the Bill deals with circumstances for the early withdrawal of accrued benefits from a registered scheme. These include provision for the purpose of set-off, as prescribed in the Employment Ordinance, in respect of that part of the accrued benefits which are derived from a current employer's contributions (quantified in accordance with rules made by the Authority under clause 45), at such time as the relevant employee becomes entitled to severance payments or long service payments. This is in line with our policy intent to enable the long established set-off procedure under the Employment Ordinance in respect of schemes under ORSO to continue for MPF schemes. We have made it very clear that employers are not expected to pay twice under the new system.

Long Service Payment/Severance Payment

Some Members I know are not in favour of retaining this policy for the MPF, and I understand that one Member will move a CSA later on with the aim of delinking contributions to MPF schemes from statutory obligations in respect of long service or severance payments. We do of course realise in the longer term the interface of LSP and SP with MPF need to be examined. It will take time to consider this important issue given its widespread implications for both employers and employees. The Labour Advisory Board, which provides the best forum for employer and employee representatives to discuss labour matters of mutual concern, will be consulted. It would be preferable, therefore, to await the advice of the LAB before taking our next step.

The MPF Authority

I now turn to the MPF Authority. We envisage that the MPF system will be both efficient and streamlined. The trustees, who will have primary responsibility for the operation of the MPF Schemes, will be providing their services under consistent and transparent operational rules to be provided by the Mandatory Provident Fund Schemes Authority (MPFA). Thus neither will the service providers in the MPF system become gigantic bureaucracies nor will the MPFA grow into a monstrous regulatory body. The monitoring of schemes and trustees will be carried out by teams of professional staff having intimate knowledge of how the market operates. We expect the MPFA to be a stream-lined body. It would carry out random inspections and monitor the schemes' books and accounts.

The MPFA will be establishing guidelines on investments. These guidelines will lay down broad investment principles such as avoiding over-concentration of risk and restrictions on the use of derivatives for hedging purposes only. We need to strike the right balance so that we do not over-regulate and stifle the ability of the industry to maximise investment returns. But at the same time, we need to protect the interests of scheme members by ensuring that their retirement benefits are secured adequately.

Residual Provident Fund Scheme

I now turn to the Residual Provident Fund Scheme. Members would recall that the consultants have advised that there would be sufficient individuals and companies in the market interested in becoming approved trustees, and that as such it would probably not be necessary to provide a Residual Provident Fund Scheme. The industry also agrees with the consultants. We have, nevertheless, included in the Bill a provision for these scheme to be established. However, some Members are concerned that Clause 22, as drafted, would not require the Authority to provide for such a scheme before the coming into operation of Section 6 of the Ordinance, and as such, may not provide sufficient comfort to individuals who are unable to find a scheme in the market.

To meet these legitimate concerns, even though we believe that the market will provide schemes for all who need them, we will be amending clause 22 of the Bill to require the Authority, prior to the commencement of any of the provisions of section 6, to take all necessary steps to cause to be established the Residual Provident Fund Scheme. The principal purpose of that Scheme would be to provide membership, as a scheme of last resort, to those persons who had been unable to find a scheme themselves, and where the Authority had also been unable to obtain access to a registered scheme for them. I shall move a CSA to this effect later on.

Approval of subsidiary legislation

I turn now to the important issue of approval of subsidiary legislation. We have always been committed to full consultation with Members of this Council and other interested parties in the community when drawing up the subsidiary legislation. In order to reflect this spirit of consultation, we are happy to agree that until such time as clause 6 of the Bill is brought into operation, all subsidiary legislation made under clauses 44 and 45 and notices made under clause 46, should be made by positive resolution of this Council in accordance with s. 35 of Cap. 1.

In the light of this amendment, which I shall be moving later on, I must stress once again that I cannot see any reason whatsoever for the additional requirements for approval proposed by some Members, about which I spoke earlier.

Schedules

Some Members have expressed concern that the exemptions in Schedule 1 Part I as drafted exempt those persons listed from all provisions of the MPF under all circumstances. This is not our intention, and we shall be amending as necessary to reflect the fact that the persons described are only exempt in respect of relevant income derived from employment which is the subject of these provisions.

Conclusion

Mr President, some Members have called this Bill hollow, and have claimed that it is without substance. I must disagree. Even though the Bill is enabling, and although it is our intention to provide the details in the subsidiary legislation that will be the focus of wide public consultation in the months to come, the Bill itself is far from empty. On the contrary, it provides a sound framework on which we can continue to build. It provides for the establishment of the Mandatory Provident Fund Schemes Authority. It provides for a Compensation Fund, and the basis for a Residual Provident Fund Scheme. Employers, employees and the self-employed will know what their obligations are. It is already clear who will be covered by the MPF, and who will be exempt. Mr President, the workforce of Hong Kong deserves the certainty of financial security upon retirement. Enactment of this Bill will give to the workforce what they have been seeking for so long, and so richly deserve.

With these remarks, Mr President, I commend the Bill to Members.

End/Thursday, July 27, 1995

MPF Bill: amendment of clauses

* * * * *

Following is the speech by the Secretary for Education and Manpower, Mr Michael Leung, in moving the amendments of various clauses of the Mandatory Provident Fund Schemes Bill in the Legislative Council today (Thursday):

Clauses 2, 4, 9, 11, 12, 13, 16, 18, 19, 21, 22, 25, 26, 28 to 31, 39, 40 and 41

Mr Chairman,

I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The definition of "accrued benefits" as drafted in the Bill refers to the "proceeds of" investments. As investment returns may be negative at times, I propose to amend the definition to the effect that the benefits will include "income or profits arising from any investments thereof, but taking into account any losses in respect thereof". The same amendment is proposed to clause 11(2).

The amendment to the definition of "self-employed person" makes it clear that only those self-employed person whose relevant income derives in Hong Kong will be covered by the Bill.

The amendments to the definitions of "exempt person", "master trust scheme", "relevant employee" and "relevant income" in clause 2 are for the purposes of clarifying the meaning of those terms. The amendment to clause 4(1) is a technical one.

Some Members have expressed concern that clauses 4(3) and 4(4) as drafted in the Bill may not reflect adequately our policy intention to exclude from the MPF persons who come here from overseas to work intermittently, and those who come here from abroad to work and are already members of retirement scheme outside Hong Kong. The amended sub-clauses (3) and (4), should put this beyond doubt, while the new sub clause (4) would allow the Authority to make rules to specify the circumstances in which this exemption would apply, the new sub clause (5) would specify the meaning of "limited period".

The amendments to clauses 9, 12, 18, 19, 21, 25, 26, 28, 29, 30 and 31 are technical in nature, being mainly for the clarification of the relevant provisions in the Bill.

Clause 13 as drafted in the Bill provides for the transfer of accrued benefits from scheme to scheme when a relevant employee changes employment. Our policy intention is to cater for all possibilities, but some concern has been expressed that the clause fails to provide for all situations of changes in employment status. To clarify our policy intention beyond doubt, I propose to amend this clause by replacing sub-clause (1), amending sub-clause (2) and adding a new sub-clause (3) to make it clear that employment includes self-employment, and that the clause not only requires the expeditious transfer of accrued benefits, but also provides flexibility for relevant persons to retain their benefits in master trust schemes upon change of employment should they wish to do so.

Clause 16 of the Bill deals with the compensation fund which would deal with losses arising from fraud or misfeasance. The amendment to clause 16(1) and the addition of a clause 16(1A) will provide for the MPF Schemes Authority to apply to the Court for a determination in respect of lost benefits. The Court would be able to rule whether or not the losses have occurred in the circumstances described.

In response to suggestions from Members of this Council, I am deleting clause 16(7), and instead will move amendments to Schedule 9, sections 1 and 2, to make consequential amendments to the Bankruptcy Ordinance and the Companies Ordinance, so that this particular debt becomes a preferential one.

At present, clause 22 of the Bill allows the MPF Schemes Authority to authorise a corporate trustee to be the trustee of a Residual Provident Fund Scheme if the Authority thinks it is desirable, among other things, to effect access to a registered scheme for persons who are otherwise unable to obtain such membership. Some Members have expressed concern that, as drafted, clause 22 would not require the Authority to set up such schemes until after section 6 was in operation, and this might not provide sufficient comfort to individuals who are not able to find a scheme in the market. To allay these fears, I am now amending clause 22 so that the Authority may take all necessary steps to cause a Residual Provident Fund Scheme to be established prior to the commencement of any of the provisions of section 6. The purpose of the Scheme would be to provide membership, as a scheme of last resort, to those persons who had been unable to find a scheme themselves, and where the Authority is otherwise unable to find one for them.

In response to Members suggestion to enhance the secrecy provisions in the Bill in respect of reports made to the MPF Authority by self-employed persons under clause 6, I am making two amendments to clause 39 and one amendment to clause 40.

Amendments to clause 41(1) are in line with Members' helpful suggestion that the offences should refer back to the relevant requirement in the Bill. I am also taking this opportunity to include a new clause 41(1A) which says that any statement or declaration made to the MPF Schemes Authority for the purpose of clause 22, i.e. the clause that deals with the Residual Provident Fund Scheme, shall not be evidence against the person making that declaration or statement.

Finally, Mr Chairman, I am moving a technical amendment to clause 41(3) by substituting the words "scheme member" and "scheme members" for "relevant employee" and "relevant employees", and adding a new clause 41(4) to provide for an offence where a trustee fails to comply with a limitation or prohibition made under section 28.

CSA to sub-clause 2 of clause 1, to be moved by the Hon Henry Tang

Mr Chairman,

The Bills Committee CSA is based on the fallacious assumption that the Administration does not know what it is doing, and would act in an arbitrary manner in bringing into operation the provisions of the Bill. Such doubts or fears are totally unfounded, and are unworthy of Members. It is unthinkable that the Administration would act in a way which is contrary to the public interest. Furthermore, it would not be possible in practice for the Ordinance to be brought into effect until relevant items of subsidiary legislation are in place. As part of this process, we would wish to see the early establishment of the MPF Scheme Authority so that it can be fully involved in the preparation of the necessary subsidiary legislation.

Some Members have suggested that this additional resolution requirement is necessary as they do not know the shape of the subsidiary legislation to come, and they have no confidence that the MPF system in its entirety will actually work. May I remind them that we received detailed expert advice from consultants on the technical aspects of the MPF Scheme. May I also remind them that there are similar retirement protection systems operating abroad successful. Furthermore, as I said in my earlier speech, the Governor would not exercise his powers under section 6 of the Ordinance until everything is in place. Subsidiary legislation would be enacted only by resolution of this Council. Given that Members would need to be fully satisfied with the subsidiary legislation before it could be enacted, I see neither logic nor purpose in requiring the effective date of operation to be subject to an additional resolution of this Council, unless it is an attempt to undermine the executive-led nature of this Government.

Mr Chairman, the Official Members will oppose this amendment, and I urge Members to do likewise.

Mr Chairman,

I move the amendment to sub-clause (1) of clause 6, the addition of sub-clause (1A) to clause 6, the amendments to sub-clause (2), (3) and (6) of clause 6 as set out under my name in the paper circulated to Members.

To clarify our policy intention that it shall be a requirement for all employers and self-employed persons to secure a retirement scheme for their employees or themselves respectively both on and after the appointed day, I am moving an amendment to clause 6(1), and consequential amendments to clauses 6(2) and 6(3).

In response to Members' views that the word "irrevocable" was too restrictive in clause 6(1), I am moving an amendment to delete it.

Members will be aware that Schedule 1 of the Bill as drafted now exempts from the MPF a relevant employee who has been employed under a contract of employment for a continuous period of 30 days. Some Members have suggested that this period should be extended, because the probation period of many jobs often exceeds the first 30 days, or employees may work for 30 days, then give 30 days notice. I agree that the 30 day exemption period can be changed to 60 days. An appropriate amendment will be moved later on to Schedule 1. New clause 6(1A) will provide that if the employee remains in the job longer than 60 days, the employer will have to backdate contributions for the entire period, whereas the employee would only pay in respect of the last 30 days. I am also moving related consequential amendments to clauses 6(1) and 6(6).

Three other technical amendments are also being moved in respect of clauses 6(2) and 6(3) to link the contribution amount to the minimum and/or maximum income levels as stated in the Schedules.

Mr Chairman,

I move the amendment to sub clause (7) of clause 6 be amended as set out under my name in the paper circulated to Members.

Subsequent to the amendments made to clauses 6(1), 6(2), and 6(3), which have brought into effect that the MPF is a requirement for all employers and self-employed persons, both on and after the appointed day, sub-clause (7) becomes superfluous. Furthermore, there is already reference to the day the Ordinance comes into operation in clause 1(2). I therefore propose to delete this sub-clause.

Amendment to clause 14, to be moved by the Hon Lee Cheuk-yan

Mr Chairman,

Members will be aware that the set-off practice dealt with in this clause is a long established arrangement, understood fully by employers and employees alike. At present, the employers' contributions to a retirement scheme may be set off against any amount paid out for severance payments or long service payments. It is not appropriate to expect employers to pay twice. Severance payments and long service payments are designed as alternatives rather than supplements to retirement schemes. I totally refute the allegation made by a few members that we have made an immoral deal with the Liberal Party. This is certainly not the case and I demand that member to withdraw that statement unless he can prove that this deal in fact did happen. Having said that, the policy does require review.

We appreciate that the provisions for both long service payments and severance payments need to be examined in the light of the MPF. We have therefore invited the Labour Advisory Board to conduct such a review as early as possible.

Until the review is complete, Mr Chairman, it would be premature to introduce any changes. The Official Members will therefore vote against the amendment, and I urge Members to do likewise.

New Clause 4A

Exemption in respect of occupational retirement schemes

Mr Chairman,

I move that new clause 4A as set out under my name in the paper circulated to Members be read the second time.

The interface with the existing schemes registered under the Occupational Retirement Schemes Ordinance is a subject of major concern. As I have said in the main speech, our policy intent is very clear. While it has always been our aim for the MPF to cover as many persons in the workforce as possible, we do not want to interfere with existing contractual obligations between employers and their employees who are covered under existing registered schemes. Some have said that this is not stated clearly in the Bill as drafted. Some have expressed doubts as to whether defined benefit schemes could be covered by the exemption arrangements, while others have urged us to consider whether exempt schemes should be open to new employees.

After carefully considering the depositions from a number of organisations, and the views of the Bills Committee, we are prepared to move an amendment to the effect that persons who are members of relevant ORSO schemes, whether they are defined benefit or defined contribution, can be exempt from the provisions of the MPF legislation provided the fundamentals of the MPF system are not compromised. The new clause 4A will provide for this, as long as the schemes to be exempt can satisfy requirements to be specified in regulations. We look forward to discussing the details of the exemption regulations with all concerned parties.

Clauses 44(1) and 44(1A)

Regulations

Mr Chairman, I move the amendment as set out in para (a) of my amendments to clause 44(1) and the addition of sub-clause (1A) to clause 44 indicated under my name in the paper circulated to Members.

Government has always agreed that there will be full consultation with Members of this Council when drawing up subsidiary legislation on the MPF. To reflect this, I am moving the amendment as set out in para (a) of my amendments to clause 44(1) and shall add clause 44(1A) to the Bill to the effect that all subsidiary legislation made under clause 44 should be made by positive resolution in the Legislative Council in accordance with clause 35 of the Interpretation and General Clauses Ordinance until such time as clause 6 of this Bill, which requires employers to arrange registered schemes for their employees, and the self-employed to make parallel arrangements, is brought into operation in its entirety.

It is our every intention to have all the subsidiary Legislation in place before triggering off the commencement of Clause 6. Furthermore, I should like to emphasise that not only would it be impossible for the Bill to be brought into effect until the relevant items of subsidiary legislation were in place, but also we would not want to take such a step in any case.

Mr Chairman,

As I have already indicated when moving the amendment to this clause indicated under my name, we are happy to submit all regulations made under clause 44, prior to the commencement of clause 6 in its entirety, for the approval of this Council by resolution. We believe it would be superfluous to extend that power beyond that time. The Official Members will therefore vote against the Bills Committee's amendment, and I urge Members to do likewise.

Clauses 44(1) and 44(2)

Regulations

Mr Chairman, I move the amendments as set out in paras. (b), (c) and (d) of my amendments to sub-clause (1) of clause 44 and the amendment to sub-clause (2) of clause 44 indicated under my name in the paper circulated to Members.

Two technical amendments are proposed to clause 44(1)(c) to extend its coverage to all kinds of withdrawal of accrued benefits. Another technical amendment to sub-clause (1)(g) is made so that regulations may be made to provide for the approval of a trustee as an approved trustee.

The amendment to clause 44(2) is to remove a typing error.

A previous amendment to add a new clause 4A makes it necessary to move a consequential amendment to clause 44(1)(j). Another amendment to clause 44(1)(j) is made to make good the omission of reference to clause 26 in the Bill as drafted.

Clauses 45(1) and 45(1A)

Rules

Mr Chairman, I move the amendment as set out in para. (a) of my amendments to clause 45(1) and the addition of sub-clause (1A) to clause 45 indicated under my name in the paper circulated to Members.

Similar to my previous amendments to clause 44, I propose to make amendment as set out in para. (a) of my amendments to 45(1) and add clause 45(1A) to the Bill to the effect that all subsidiary legislation made under clause 45 should be made by positive resolution of the Legislative Council in accordance with clause 35 of the Interpretation and General Clauses Ordinance until such time as clause 6 of this Bill, which requires employers to arrange registered schemes for their employees and the self-employed to make parallel arrangements, is brought into operation in its entirety. I repeat, it would not be possible for the Ordinance to be brought into effect until relevant items of subsidiary legislation, after being approved by the Legislative Council, are in place nor would we choose to do so.

Mr President,

As I have already indicated when moving the amendment to this clause indicated under my name, we are happy to submit all rules made under clause 45, prior to the commencement of clause 6 in its entirety, for the approval of this Council by resolution. I believe it would be superfluous to extend that power beyond that time. The Official Members will therefore vote against the amendment proposed by Mr Henry Tang.

Clause 45(1)(oa)

Regulations

Mr Chairman, I move the amendment as set out in para. (b) of my amendments to clause 45(1) indicated under my name in the paper circulated to Members.

The amendment will provide for a new sub-clause (oa) be added under clause 45(1) to the effect that rules may be made for the transfer or withdrawal of unclaimed benefits.

Clause 46

Amendment of Schedules

Mr Chairman,

I move that clause 46 be amended as set out under my name in the paper circulated to Members.

This amendment is related to my previous amendments to clauses 44 and 45. Government has always agreed that there shall be full consultation with Members of this Council when drawing up subsidiary legislation. To reflect this, I propose that clause 46 be amended to the effect that all notices made thereunder should be approved by positive resolution of the Legislative Council in accordance with clause 35 of the Interpretation and General Clauses Ordinance until such time as clause 6 of this Bill, which requires employers to arrange registered schemes for their employees and the self-employed to make parallel arrangements, is brought into operation in its entirety. We believe that it would not be possible for the Ordinance to be brought into effect until relevant items of subsidiary legislation, after being approved by this Council, are in place.

Amendment to clause 46 to be moved by the Hon Henry Tang

Mr President,

As mentioned earlier on several occasions we believe that we are happy to submit all notices made under clause 46, prior to the commencement of clause 6 in its entirety, for the approval of this Council by resolution. We believe it would be superfluous to extend that power beyond that time. The Official Members will vote against the Hon. Henry Tang's amendment.

New Clause 29A

Information and documents

Mr Chairman,

I move that new clause 29A as set out under my name in the paper circulated to Members be read the second time.

A technical amendment is proposed by adding a new clause 29A - Information and documents, to empower the MPF Authority to serve written notice on an approved trustee to require him to provide information or documents as required. An approved trustee who fails to comply with such a notice commits an offence.

Schedule 1, Part I

Exempt Persons

Mr Chairman, I move that Part I of Schedule 1 be amended as set out under my name in the paper circulated to Members.

The amendment to change 30 days to 60 days to Item 7 is a consequence of a previous amendment to clause 6 of the Bill. The proposed deletion of Items 8 and 10 is also made necessary by previous amendments to clause 4 of the Bill. The amendment to Item 9 is consequential to the amendment made to Item 8.

A new class of exempt persons is added as Item 11. This exempts any person employed in the European Union Office of the European Commission in Hong Kong.

The three notes proposed to be added at the end of Schedule 1, Part I are to clarify the extent to which the exemption is applied to the persons concerned.

Schedule 1, Part II

Exempt Persons

Mr Chairman,

I move that Part II of Schedule 1 be amended as set out under my name in the paper circulated to Members.

We have always been aware that certain classes of employee or self-employed persons will be difficult administratively to bring into the MPF, at least initially. Even at this stage, we believe that two classes of people, namely domestic employees, irrespective of their place of origin; and self-employed hawkers, should be provided exemption under Part II of Schedule 1 of the Bill. The amendment I propose to this Part will bring this into effect.

Schedules 2, 3 and 9

Mr Chairman, I move that the Schedules 2,3 and 9 be amended as set out under my name in the paper circulated to Members.

The amendments to Schedules 2 and 3 are technical amendments to make it clear what the amounts are per month.

A paragraph is added to section 1 of Schedule 9 to include any sum and interest thereon payable to the MPF Authority in clause 38 of the Bankruptcy Ordinance (Cap. 6) as a consequential amendment to that Ordinance. A similar addition is made to clause 265 of the Companies Ordinance (Cap. 32) in section 2 of Schedule 9.

As drafted, the content of the Companies Ordinance (Cap. 32) in section 2 of Schedule 9 of the Chinese text of the Bill is still in English. An amendment is proposed to provide an authentic Chinese text to this.

End/Thursday, July 27, 1995

Personal Data (Privacy) Bill completes passage through LegCo

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The Personal Data (Privacy) Bill completed its passage through the Legislative Council today (Thursday).

"We very much welcome the passage of this Bill through the Legislative Council," a Government spokesman said.

"This will give Hong Kong comprehensive statutory protection for privacy with respect to personal data and safeguard the free-flow of personal data to Hong Kong from the imposition of restrictions by places that already have such laws.

"We will now move quickly to set up the office of the Privacy Commissioner for Personal Data so that the legislation can be brought into force in early 1996," the spokesman said.

End/Thursday, July 27, 1995

Personal Data (Privacy) Bill

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Following is the speech by the Secretary for Home Affairs, Mr Michael M Y Suen, in the resumption of second reading debate on the Personal Data (Privacy) Bill in the Legislative Council today (Wednesday):

Mr President,

I would like to open by paying tribute to the commitment and hard work of the Bills Committee that studied the Personal Data (Privacy) Bill under the dedicated leadership of the Committee's convenor, the Hon Emily Lau. The Committee's painstaking clause by clause examination of the Bill has resulted in some thirty substantive amendments, which I will move during the Committee Stage.

As I stated when I introduced the Bill into this Council on 19 April 1995, its purpose is to protect the privacy interests of individuals in relation to personal data. It should also safeguard the free flow of personal data to Hong Kong from the imposition of restrictions by the increasing number of countries that already have data protection laws.

The Bill implements the majority of the recommendations of the Law Reform Commission, which were based on more than four years of work, including a thorough public consultation exercise. In common with such legislation elsewhere, the Bill gives statutory effect to internationally accepted data protection principles. These are set out in Schedule 1 to the Bill and provide for matters such as the fair collection of personal data and for data subjects to have rights of access and correction with respect to their personal data. In the main body of the Bill there are detailed provisions to enable individuals to obtain access to and seek correction of their personal data held by data users.

The Bill establishes an independent statutory body, the Privacy Commissioner for Personal Data, to promote and enforce compliance with the legislation. The Privacy Commissioner is given powers to approve and issue codes of practice giving guidance on compliance with the Bill and to specify classes of data users required to submit annual returns on the kinds of personal data they hold and the purposes to which the data are put for compilation on a public register. The Privacy Commissioner also has suitable powers to inspect personal data systems and investigate suspected breaches of the Bill's requirements.

In order to strike an appropriate balance between the right of privacy and certain public and social interests, there are provisions for narrowly-defined exemptions from the Bill's requirements on providing access to personal data by the individual concerned and limits on the use of personal data to the purposes for which they were collected. The exemptions are linked to specific interests, such as security and defence in respect of Hong Kong, the prevention and detection of crime, the assessment or collection of taxes, financial regulation and news reporting.

The offences provided for in the Bill include an offence of non-compliance with an enforcement notice issued by the Privacy Commissioner. Provision is made for an individual who suffers damage as a result of a contravention of a requirement of the Bill to be entitled to compensation.

As I have mentioned, we agreed around thirty Committee Stage amendments with the Bills Committee. This clearly demonstrates the constructive and flexible attitude we have adopted in finalising the Bill. Many of the amendments have been put forward to meet specific concerns of outside parties who made submissions to the Bills Committee. For example, service providers in the information technology industry were concerned that they could be made liable for breaches of the Bill by their customers. To allay this concern, I will move an amendment that will make it clear that a person who holds, processes or uses personal data solely on behalf of someone else is not a data user in respect of that data. Hence, such a person would not be liable for contraventions of the Ordinance by the person who has ultimate control over the data concerned.

The Bills Committee made a determined effort to reach a consensus on all aspects of the Bill. The amendments I have tabled bear witness to the hard work the Committee devoted to that end. However, there were a number of proposals for changes to the Bill from individual Members that the Committee as a whole did not endorse but which have nevertheless been tabled for debate during the Committee Stage. In particular, the amendments tabled by Dr the Hon. Huang Chen-ya. We explained to the Bills Committee why the Administration does not accept the proposals embodied in Dr Huang's amendments. I would like to rehearse a few general points concerning them. Firstly, they would place an unnecessary additional administrative burden on the Government. For example, the proposed amendment to clause 14 requires all Government departments and branches to submit returns to the regulatory authority, the Privacy Commissioner. The Bill currently gives the Privacy Commissioner the discretion to decide which bodies should do this and he or she may decide that certain Government data users do not need to be required to submit such returns.

Secondly, Dr Huang's amendments to clause 57 would remove necessary safeguards for the protection of material held by the Government relating to security, defence and international relations. Members of the Bills Committee were concerned at the sweeping nature of the provisions of clause 57. We have already responded positively by proposing Committee Stage amendments to this clause that address Members' concerns. Dr Huang's amendments go much further than those I will move and do not give due recognition to the need to protect highly sensitive material relating to these areas.

Thirdly, Dr Huang's amendments would make the appointment of the Privacy Commissioner subject to the approval of the Legislative Council. This would politicise the choice of this authority, which may adversely affect the Privacy Commissioner's independent standing. The amendments would also introduce undue rigidity into the composition of the committee established by the Bill to advise the Privacy Commissioner by specifying that it must include members nominated by LegCo, business interests and journalists. In practice, the Administration will of course ensure that affected interests will be broadly represented on the committee. I urge Hon Members to consider these points very carefully and to vote against Dr Huang's amendments.

One aspect of the Bill that received close attention from Members of the Bills Committee was its impact on the media. This was also something that the Law Reform Commission took a great deal of trouble over. A whole chapter of the relevant Law Reform Commission report was devoted to this subject and in preparing the Bill we closely followed the Commission's recommendations on this. Nevertheless, Members of the Bills Committee felt there was a need for additional safeguards for the media with regard to the powers of the Privacy Commissioner to carry out investigations. The Bill already provides that the Privacy Commissioner may only carry out an investigation in relation to personal data held for a news activity where there has been a complaint of a suspected breach of the Bill's requirements. As a positive response to Members' concerns, our Committee Stage amendments go further than this by providing that such an investigation may only be carried out in relation to such data that have already been published or broadcast. I will also be moving an amendment to the definition of news activity to ensure that it includes all journalistic activities.

In addition, we originally proposed amendments to clause 44 that provided for restrictions on the Privacy Commissioner's power to require the furnishing of information or production of a document that would reveal the identity of a journalistic source. The Hon James To will move a Committee Stage amendment that provides for a variation on our proposals by involving the High Court in making a decision on whether or not the identity of a journalistic source should be revealed to the Commissioner. We have given careful consideration to this proposed amendment and have decided that the involvement of the High Court as an independent adjudicator in this matter is acceptable. Accordingly, I have withdrawn my amendments to clause 44 and recommend that Hon. Members vote in favour of those to be proposed by the Hon James To.

With this, Mr President, I recommend the Personal Data (Privacy) Bill to Members for Second Reading.

End/Thursday, July 27, 1995

Disability Discrimination Bill

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Following is the speech by the acting Secretary for Health and Welfare, Mrs Shelley Lau, in the resumption of the second reading debate on the Disability Discrimination Bill in the Legislative Council yesterday (Thursday):

Mr President,

Three years ago, the Green Paper entitled "Equal Opportunities and Full Participation: A Better Tomorrow for All", suggested that "legislative changes could be proposed to bring about equalization of opportunities and full participation for people with a disability." Since then, as we expanded our rehabilitation facilities, in particular those for ex-mentally ill people, we met with strong opposition from some local residents. Some of our Honourable Members here to the obviously met with some of the experience. It certainly helped convince the Administration that to achieve our goal of integrating people with a disability into our community, we would need more than public education and persuasion. Today, with Members' support, we will put into Hong Kong's statute books legislation to ensure equal opportunities and full participation for people with a disability, so that they would never again need to feel, as Members fear, and to quote Dr C H Leong, "children of a lesser God". It is a major step towards creating "a better tomorrow for all".

In October 1993, we made a commitment in this Council that we would decide on the kind of anti-discrimination legislation which would best suit local needs and circumstances. Having looked at such legislation elsewhere in the world, we announced in July 1994 our proposals for a comprehensive Disability Discrimination Bill. Mr President, in May this year, we introduced the Bill into this Council. Mr President, in three years, we have turned the suggestion made in the 1992 Green Paper into a reality. It has taken us some time to reach this point because of the need to consult widely, both locally and overseas. This remains, after all, a relatively new area for legislation the world over. The UK, as we have heard from the Honourable Anna Wu, is only now processing its own legislation. We have proceeded, therefore, with all due care.

I would, at this point, thank Dr the Honourable C H Leong, Chairman of the Bills Committee, and Members of that Committee, in particular the Hon Anna Wu, for the thought and effort that they have put into studying the Bill and for their kind words this evening. As a result of all the contributions, the many useful discussions we have had with disability groups, and the deputations we have heard, the Administration will be introducing a number of amendments. I will explain these during the Committee Stage, but I would like briefly to highlight the main changes we will be proposing.

Chinese translation of the term disability

As regards Chinese translation of the term disability, throughout the process of developing our initial ideas and then the legislation itself, we have been in close touch with disability groups. The Bill has benefited a great deal from this dialogue. A point which was, nevertheless, raised only relatively recently is the Chinese term for "disability". It is felt that the term " " is not appropriate in that it implies weakness. The last thing we would wish to do is to use a word with which those who have a disability are uncomfortable. So we will amend it to " ".

Government activities

As regards Government activities, the Government is already bound by the Bill of Rights not to discriminate in the discharge of its duties generally and by Clause 5 of the Bill to its specific provisions. We have accepted the proposal of the Bills Committee that the Disability Discrimination Bill should, nevertheless, make it explicit that it would be unlawful for the Government to discriminate against a person with a disability in the performance of any of its functions. The amendment we will propose to achieve this is the same as that passed by Members of this Council to the Sex Discrimination Bill.

Requests for Information

As regards requests for information, both the Coalition of AIDS Organisations Against Discrimination and the Advisory Council on AIDS expressed concern that the clause relating to Requests for Information would allow an employer to require all applicants for a job to take an AIDS test regardless of whether it was reasonably necessary having regard to the nature of the job. Although other clauses of the Bill would make it unlawful for the employer to use the information from such a test to discriminate against a particular person with AIDS, by refusing to employ him or her, to allay the concern raised we have taken on board an amendment suggested by Dr Conrad Lam. It will mean, in the example I have quoted, that the request for information of a medical nature would itself be unlawful unless it is necessary to determine whether the job applicant can carry out the requirements of the job. We are gratified that the proposed amendment is so much appreciated by all concerned.

Bills Committee Amendments

Turning now to the 12 amendments proposed by the Bills Committee. Members will be familiar with the amendments to be proposed because similar amendments were proposed recently to the Sex Discrimination Bill. We propose to respect the decision made by Members by voting for two of these amendments, but we will be opposing the others. I will explain our reasons for again proposing these ten amendments at the Committee Stage, but at this point I would like to say a few words about those which we feel we cannot accept on grounds of policy and principle.

Commission to Bring Proceedings in its Own Name etc.

The Bills Committee has proposed that the Equal Opportunities Commission be able to bring proceedings in its own name, intervene in proceedings, as well as take over proceedings where the claimant withdraws from them. We agree that it should be empowered to bring proceedings in its own name. But we aim to do this through subsidiary legislation which will set out how exactly this may be done. As proposed by the Bills Committee, the provisions would permit the Commission to bring proceedings where the claimants do not wish to do so for whatever reason. We believe the Commission should respect rather than interfere in an individual's decision in this regard.

Where the Equal Opportunities Commission wished to establish a point of principle, this would be better done through a formal investigation or a test case where the individual was content to be involved.

We would, therefore, urge Members to accept our amendment to give the Equal Opportunities Commission the power to institute proceedings in its own name and require the Administration to set out in regulations (which would have to come to this Council for approval), the legal framework in which this power would be exercised. And we would, of course, consult the Commission fully in the process of drafting such regulations.

Formal investigations

As presently drafted, the Bill requires the Commission to draw up terms of reference for a formal investigation. This is an investigation into, for example, a sector-wide or company-wide discriminatory practice. Where the terms of reference are confined to activities of persons named in them and the Commission proposes to investigate any act made unlawful by the Bill, it has to inform the person of its belief that such an act has occurred and of its proposal to investigate. The person then has the chance to make representations and to be represented by counsel or a solicitor in this process.

The Bills Committee amendment to this clause would mean that:

- * one, the Commission would not have to inform the person of its belief that his or her act may have been unlawful ;
- * two, the act would not be restricted to those made unlawful by the Ordinance ; and
- * three, it would place a time limit of 28 days on the persons being investigated to make their representations.

We believe it would be better to require the Commission to state its belief as to what unlawful act has been perpetrated since this would be the reason for its investigation. And as bad publicity could be generated for those being investigated, it is all the more important that the belief or reason for the Commission's action be stated. It is also reasonable that the Commission should only investigate acts unlawful under the Disability Discrimination Ordinance and the Sex Discrimination Ordinance. The problem with a set time limit is that it is inflexible and it does not allow for particular circumstances to be taken into account including the complexity of the case and the availability of the person being investigated. The Bill as drafted would allow the Commission to set its own time limit as appropriate.

International Obligations and Instruments

The Bills Committee has proposed that the Equal Opportunities Commission, which is to be set up under the Sex Discrimination Ordinance and which will also play a key role in giving effect to this Bill, should have two new powers. The first is the power to promote the understanding, acceptance and public discussion of relevant international obligations and standards. The second is to examine any proposed legislation it considers may affect the equality of opportunity between those with and without a disability or affect the understanding and acceptance of the same international obligations and standards. It should then report the results of its examination to the person putting forward the legislation and to this Council.

Mr President, we feel that the Disability Discrimination Bill is a self-contained and comprehensive Bill. We are setting out in our own domestic legislation the standards we believe are appropriate for Hong Kong. It could be confusing for the public to link this concrete expression of what is or is not lawful with more general international statements or rules, for example, with the UN Declarations on the Rights of Mentally Retarded Persons and on the Rights of Disabled Persons, or the standard Rules on Equalization of Opportunities for Persons with Disabilities.

That said, if the Commission felt that public discussion of international instruments would be helpful or that it needed to examine proposed legislation against norms established in an international setting, it could do so under its powers to "work towards the elimination of discrimination" and to "promote equality of opportunity between persons with a disability and persons without a disability". We will therefore oppose the amendment on the ground that is unnecessary and potentially confusing.

The Hon Li Wah-ming's Amendment: Grace Period for Small Firms

In addition to the amendments proposed by the Bills Committee, the Honourable Li Wah-ming has proposed an amendment to delete the "grace period" of five years for firms employing no more than five people. We will propose our own amendment to this clause to reduce the period from five to three years. We believe this is a reasonable period to allow small firms to adjust to the new requirements and to learn from the experience of larger firms. Such an amendment was also passed by this Council in respect of the Sex Discrimination Bill. Members should be reassured by the fact that 80 per cent of employees in Hong Kong are not employed by small firms. Moreover, most people with a disability are employed by larger firms. This means that the vast majority of employees will, from the date these provisions are brought into effect, already enjoy the full protection of this law. We will, therefore, not support the Hon Li Wah-ming's amendment.

Mr President, I would like to say that by supporting the Disability Discrimination Bill, as I am confident Members will, we as a community, are adding Hong Kong to the small but growing list of countries in the world where people with a disability will be able to turn to the law to fight for equal opportunities at the same time the community as a whole can rest assured that its interests have been fully taken into account. We will also be gaining a powerful public education tool to help the community understand that those with a disability have a right to be treated fairly, and that we all have a part to play in achieving the goal of integration. With Members' support, let us take this positive step, and many more steps together and Hong Kong an even more caring society.

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Public Bus Services (Amendment) Bill 1995: second reading

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Following is the speech by the Secretary for Transport, Mr Haider Barma, in the resumption of second reading debate of the Public Bus Services (Amendment) Bill in the Legislative Council today (Thursday):

Mr President,

May I begin by expressing the Administration's gratitude to the Hon Zachary Wong Wai-yin, Chairman of the Bills Committee, and also to all other Honourable Members who have served on this Committee, for their advice on and support of the Public Bus Services (Amendment) Bill.

Introduction

Franchised bus services are the backbone of our public transport network system. This is illustrated by the fact that three and a half million passenger trips are made on franchised buses every day. It is therefore imperative that bus services need to be maintained at all times. No one will dispute this.

The Bill before Honourable Members today enshrines a concerted effort, first and foremost, to protect the interests of the travelling public whilst, equally important, seeks to ensure that any bus company, whose property may need to be leased or purchased, is fairly and fully compensated.

At this point, I should say that I cannot accept the Honourable Miriam Lau's and the Honourable Lee Wing-tat's contention that this Bill has been designed to strengthen the Government's hand in our franchise negotiations with the CMB. Let me reiterate that our basic aim is to protect the public interest. We are not here this evening to debate CMB or any other bus company's performance, and I do not therefore propose to argue this aspect. But let me say that franchise negotiations can often be difficult and time-consuming. In response to the Honourable Lee Wing-tat's philosophy on how to conduct negotiations, I can assure the Honourable Member that the Administrations accept the needs to commence negotiations early and in respect to the Honourable Members' comments, I shall be moving an amendment later on on this particular point.

Shortcomings of the Ordinance

Mr President, the present Public Bus Services Ordinance was enacted in 1975. Much has changed over the past 20 years. In particular, bus companies have grown substantially. The existing legislation simply does not provide adequate safeguards to allow the Administration to cope with situations in which a major bus company may cease to operate.

Power to take temporary possession of property

When a franchised bus company fails to maintain a proper and efficient service, there are provisions in the existing Ordinance for the Governor in Council to revoke its franchise and to take temporary possession of its property for a period not exceeding one year. However, this period of time and other existing provisions are out of date. Let me briefly explain why. The Government has no intention whatsoever of operating bus services on a permanent basis. The Government will need to find a replacement operator and ensure that the replacement operator has sufficient time to gear up for operations. What does this involve? Acquiring buses, spare parts and depots to say the least. Given the size of the fleet of major bus companies, there is no way the replacement operator can acquire all these within a year. In practice the new operator may well have no option but to lease buses from the outgoing operator.

Accordingly, clause 4 of the Bill seeks to extend the one-year period to two years, with a provision for the Administration to seek the Executive Council's approval to extend the period for a further year. Although this means that the maximum period for taking temporary possession will be three years, I can assure Hon Members that the Administration will make every effort to ensure that the period of time during which a bus company's property is leased is kept to the minimum.

The existing Ordinance is silent on the situation where, for some reason, a bus company may choose not to renew its franchise which is due to expire shortly. Clause 4 also covers such an eventuality with the arrangements for temporary possession also being applicable.

The Honourable Zachary Wong and the Honourable Lee Wing-tat have argued for additional parts for the Administration to lease a purchase property used or kept by bus companies even only when some of the bus routes are revoked. As I have explained to the Bills Committee, there are other considerations and logistical aspects which need to be taken into account. For example, bus depots cannot be divided and shared among different operators. Furthermore, with the downside consequences be greater since this may well limit the existing operators' ability to maintain and improve its services. This is a complex issue and given the Honourable Members' concerns, the Administration is prepared to assess this particular suggestion very carefully in the coming months.

Power to purchase property

I have explained the present and proposed measures for "temporary possession" but there is no provision, under the existing Ordinance, to allow the Government to purchase property used or kept by a franchisee for maintaining a bus service.

Powers to purchase an incumbent franchisee's buses and spare parts would help to reduce the gearing-up time and the capital outlay of the replacement operator. Moreover, the use of part of the existing fleet would also enable the replacement operator to maintain bus services at reasonable and acceptable fares. For these reasons, we propose, under clause 5 of the Bill, to give the Administration the power to purchase buses and spare parts which are considered essential for bus operations.

Compensation

Some critics may argue that taking temporary possession of, let alone purchasing, a bus company's property are drastic measures. I wish to assure the Council that such powers would only be used as a last resort under very special circumstances. In order to safeguard the legitimate interests of the bus company concerned and its shareholders, we have gone to great lengths to set out the compensation provisions in the Bill. Furthermore, we have limited, quite deliberately, the power of purchase to buses and spare parts and we have excluded specifically the purchase of lands and buildings.

We recognise that the bus company affected should be given fair and reasonable compensation based on open market values. We certainly support the principle that bus companies should not be put in a situation which results in their losing out financially because their property is leased initially by the Government. To reiterate, we accept the principle that the total rent payable to a bus company together with the disposal value of the property after the lease expires should not be less than what the bus companies would have realised had it been able to dispose of the property in question at the time when it ceases to operate. I can assure Honourable Members that all these factors will be taken into consideration in the arbitration process in the event that the Government and the bus company concerned cannot agree on the compensation amount.

Some concern has also been expressed that should the Government take possession of a fleet of buses, the Government can pick and choose the newest vehicles. This indeed is an option but newer buses would command a higher rental and thus the bus companies would not lose out in this regard.

Committee stage amendments

Mr President, I shall be proposing a number of amendments to the Bill at the Committee Stage. Most of these amendments have been made in response to views expressed by Members during meetings of the Bills Committee.

Conclusion

With these remarks I commend the Bill to Honourable Members.

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Public Bus Services (Amendment) Bill 1995: Clause 1A

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Following is the speech by the Secretary for Transport, Mr Haider Barma, in moving new Clause 1A at the Committee Stage of the Public Bus Services (Amendment) Bill 1995 in the Legislative Council today (Thursday):

Mr Chairman,

I move that the new clause 1A as set out in the paper circulated to Members be read the second time.

During discussion in the Bills Committee, Hon Members repeatedly stressed that future franchise negotiations should be concluded in good time and argued, in particular, that the Administration should ensure that, if the existing franchise is not renewed, there should be sufficient lead time to award a new franchise by tender. Accordingly, I propose that a new clause 1A be added to the Bill to require a franchisee who seeks a franchise extension, to give at least 15-month's notice to the Government, instead of the current requirement of one year. This new clause also requires the Secretary for Transport to recommend to the Executive Council whether a franchise should be extended, at least nine months before its expiry. If franchise negotiations are not completed by then, the Secretary for Transport will have to seek permission from the Executive Council to carry on the negotiations.

This approach has been agreed by Honourable Members. Mr Chairman, I beg to move.

Mr Chairman, I move that new clause 1A be added to the Bill.

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Public Bus Services (Amendment) Bill 1995: Clauses 2 to 5

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Following is the speech by the Secretary for Transport, Mr Haider Barma, in moving Clauses 2 to 5 at the Committee Stage amendments of the Public Bus Services (Amendment) Bill 1995 in the Legislative Council today (Thursday):

Mr Chairman,

I move that the clauses specified be amended as set out in the paper circulated to Members.

As suggested by the Bills Committee, a new section 25(1A) has been added which enables the Government to serve advance notice to a bus company regarding the Government's intention to lease its property. This provides more flexibility and ensures that the Administration will have sufficient lead time to prepare for taking possession of such property.

Under the existing Bill, there are no provisions for compensation to be paid on any improvements made to land and buildings within a period of one year before the expiry of the franchise. The Bills Committee considered that the franchisee should be compensated for legitimate and necessary improvements which have been made. This is very reasonable and the amendment to section 25(5)(b) accordingly provides for compensation to be payable when these improvements which have been made are with the written permission of the Commissioner for Transport.

The other amendments which have been proposed are either technical or textual in nature. The amendments to sections 23(7)(b), 25(1), 25(6)(b), 25E(1)(b) and 25F(3) have all been agreed by the Bills Committee.

Mr Chairman, I beg to move.

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Companies (Amendment) Bill 1995: committee stage amendment

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Following are the speeches by the Secretary for Financial Services, Mr Michael Cartland, in moving the committee stage amendment of the Companies (Amendment) Bill 1995 in the Legislative Council today (Thursday):

Clauses 1 to 23

Mr Chairman,

I move that the clauses specified be amended as in the paper circulated to Members.

Firstly, amendments are moved to introduce a Chinese text of all of the 23 clauses in the Bill. Following gazettal of the authentic Chinese text of the Companies Ordinance on 14 July 1995, it is now also necessary to provide an authentic Chinese text for the present Bill.

Secondly, clause 15(e) is amended to clarify the exclusion of term deposits fixed for more than five years from the preferential payment. When a term deposit is renewed, the new term agreed by the depositor and the banks will be considered for the purpose of this section.

It is intended that clause 15 will be brought into effect upon gazettal of the legislation and that the remaining clauses, which provide for the use of either Chinese or English under various provisions of the Ordinance, will be implemented towards the end of the year, following completion of the changes required to systems and procedures in the Companies Registry to accommodate the new arrangements. These include, having appropriately designed forms, in both English and Chinese.

Mr Chairman, I should like to thank Members, who scrutinised the Bill very carefully although no Bills Committee was formed. In particular, the Honourable Marvin Cheung has made constructive comments with regard to clause 15.

Mr Chairman, I beg to move.

New Clause 13A

Mr Chairman,

I move that the new clause 13A as set out in the paper circulated to Members be read the second time.

The new clause amends the short title of Chapter 420 appearing in the Chinese text of the Companies Ordinance. The amendment is necessary because the short title was recently amended in the English text of the Companies Ordinance following passage of the Securities (Clearing Houses)(Amendment) Ordinance 1995.

Mr Chairman, I beg to move.

Amendment to the Long Title

Mr Chairman,

I move that the long title be amended as set out in the paper circulated to Members.

The amendment is to add the Chinese text of the long title and enactment formula to the Bill.

Mr Chairman, I beg to move.

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