OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 12th December 1973

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, KCMG, MBE
THE HONOURABLE THE COLONIAL SECRETARY
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN WILLIAM DIXON HOBLEY, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DENIS CAMPBELL BRAY, JP
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, CBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE JAMES JEAVONS ROBSON, CBE, JP
SECRETARY FOR THE ENVIRONMENT
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE IAN MACDONALD LIGHTBODY, JP
SECRETARY FOR HOUSING
THE HONOURABLE LI FOOK-KOW, JP
SECRETARY FOR SOCIAL SERVICES
THE HONOURABLE GEORGE PETER LLOYD, CMG, JP
SECRETARY FOR SECURITY
THE HONOURABLE DAVID AKERS-JONES, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE ALEXANDER STUART ROBERTSON, JP
DIRECTOR OF PUBLIC WORKS (*Acting*)
THE HONOURABLE WOO PAK-CHUEN, CBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, OBE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE ROGERIO HYNDMAN LOBO, OBE, JP
THE HONOURABLE MRS CATHERINE JOYCE SYMONS, OBE, JP
THE HONOURABLE JAMES WU MAN-HON, JP
THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP
THE HONOURABLE GUY MOWBRAY SAYER, JP
THE HONOURABLE LI FOOK-WO, OBE, JP

ABSENT

THE HONOURABLE DAVID HAROLD JORDAN, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP
THE HONOURABLE PETER GORDON WILLIAMS, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR KENNETH HARRY WHEELER

Papers

The following papers were laid pursuant to Standing Order No 14(2): —

Subject	*LN No*
Subsidiary Legislation:	
Animals and Birds (Restriction of Importation and Possession) Ordinance. Animals and Birds (Restriction of Importation and Possession) Ordinance (Amendment of Schedule) Order 1973	224
Banking Ordinance. Specification of Specified Liquid Assets	225
Interpretation and General Clauses Ordinance. Specification of a Public Officer by His Excellency the Governor	226
Pilotage Ordinance. Pilotage (Dues) (Amendment) (No 2) Order 1973	227
Emergency Regulations Ordinance. Emergency (Control of Oil) Regulations 1973	228
Public Health and Urban Services Ordinance. Public Swimming Pools (New Territories) Regulations 1973	229
Public Health and Urban Services Ordinance. Urban Council Public Libraries Order 1973	230
Road Traffic (Roads and Signs) (Amendment) Regulations 1973—Corrigendum	231

Sessional Papers 1973-74:

No 31—Annual Report by the Director of Legal Aid for the year 1972-73 (published on 12.12.73).

No 32—Annual Report by the Director of the Royal Observatory for the year 1972-73 (published on 12.12.73).

No 33—Annual Report by the Director of Marine for the year 1971-72 (published on 12.12.73).

No 34—Accounts of the Lotteries Fund for 1972-73 (published on 12.12.73).

No 35—Annual Report by the Commissioner of Registration of Persons for the year 1972-73 (published on 12.12.73).

Government business

Motions

HONG KONG AND YAUMATI FERRY COMPANY (SERVICE) ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: —

Resolved, with the consent of the company, that the Schedule to the ordinance be amended—

(*a*) by inserting, after paragraph 2, the following new paragraph—

"Jubilee Street-Kwun Tong Passenger service.

2A. (1) The Company shall, during the continuance of the concession, con duct a ferry service for the conveyance of persons on the "ferry run" specified in Appendix I at item (*u*).

(2) The Company may withdraw the service referred to in sub-paragraph (1) on Saturday afternoons, Sundays or other public holidays.

(3) The Company shall not be obliged to issue any monthly or season ticket for travel on such service.";

Hong Kong and Yaumati Ferry Company (Service) Ordinance

(*b*) in paragraph 22(3), by deleting "on 31st December 1973" and substituting the following—

"on or before 31st December 1973";

(*c*) in Appendix I, under the heading "FERRY RUN.", by inserting, after item (*t*), the following new item—

"(*u*) Jubilee Street Ferry Pier—Kwun Tong Ferry Pier."; and

(*d*) in Appendix II, under the heading "I. ACROSS THE HARBOUR SERVICES."—

(i) by inserting, after that heading, the following—

"A. SERVICES OTHER THAN BETWEEN JUBILEE STREET FERRY PIER AND KWUN TONG FERRY PIER."; and

(ii) by adding, after item (*o*), the following—

"B. BETWEEN JUBILEE STREET FERRY PIER AND KWUN TONG FERRY PIER.

De Luxe Class Passenger	*per trip*
Adult or child	$1.00
Other Passengers	
Adult or child	50 cents".

He said: —Sir, the Hongkong and Yaumati Ferry Company Limited has been operating a passenger ferry service between Central district and Kwun Tong since May 1972 under a temporary licence granted by the Commissioner for Transport under regulation 60 of the Ferries Regulations. This experimental service has proved to be very popular with weekday commuters as indicated by the fact that approximately 360,000 passengers travel by it every month.

The Hongkong and Yaumati Ferry Company Limited has now formally applied for the inclusion of this ferry service in its franchise. This can be effected by a resolution of Council with the consent of the company under section 5 of the ordinance. The application has the support of the Transport Advisory Committee.

The opportunity has also been taken in the motion to include a minor amendment to paragraph 22(3) of the schedule to the ordinance.

This is to enable the company to submit its application for permission to continue its franchise for a third and final term of five years on or before 31st December 1973 rather than stipulate that such an application can only be made on 31st December 1973.

Question put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE ATTORNEY GENERAL moved the following motion: —

> Resolved, pursuant to section 109H of the Criminal Procedure Ordinance, that the duration of sections 109B, 109C, 109D, 109E, 109F, 109G and 109H of the ordinance be extended for the term of three years until the 31st day of December 1976.

He said: —Sir, the provisions of the Criminal Procedure Ordinance conferring on the courts power to suspend a prison sentence for a period up to three years were introduced in March 1971 amidst a measure of controversy. I do not think that I need enter again into the arguments for and against the provisions. Suffice it to say that, in the light of the controversy, this Council thought it right to place a limit on the period for which they would continue in operation in the first instance. This would ensure a careful review after a trial period.

The operation of these provisions has been reviewed. The position is that, since March 1971 when they came into operation, a prison sentence has been suspended in 1,362 cases. In 252 of those cases, the defendants have subsequently committed further offences and the suspended sentences have taken effect. Those figures give some ground for thinking that suspended sentences have been successful. However, they may be misleading for two main reasons. The first is that many of the sentences which have been suspended could still take effect, since the period for which a sentence may be suspended can be for up to three years. Honourable Members will appreciate that this means that a sentence suspended as long ago as March 1971, when the scheme first came into operation, could still take effect if the offender should commit a further offence between now and next March. The second reason is that it is not possible at this stage to discount the possibility that the apparently low rate of further convictions is attributable to the fact that further offences have not been detected.

[THE ATTORNEY GENERAL] **Criminal Procedure Ordinance**

Sir, the Chief Justice is strongly of the opinion that the provisions should continue in operation and he is supported in this by the magistrates in particular—by whom the power to suspend is most frequently used in practice. They consider that it provides them with a valuable alternative way of dealing with some offenders. It is, therefore, proposed that the provisions for the suspension of prison sentences should continue in operation for a further three years. It is believed that this will provide an adequate opportunity for a realistic assessment of their effectiveness and steps have been taken to ensure that as much information as possible will be available by the time the matter comes up for review again.

Question put and agreed to.

ILLEGAL STRIKES AND LOCK-OUTS ORDINANCE

MR LI moved the following motion: —

> It is hereby resolved, pursuant to section 8 of the Illegal Strikes and Lock-outs Ordinance, that the duration of the said ordinance be extended for the term of one year until the 31st December 1974.

He said: —Sir, I rise to move the resolution standing in my name in the Order Paper. The effect of this resolution will be to keep the Illegal Strikes and Lock-outs Ordinance in force until 31st December 1974.

Since the enactment of this ordinance in 1949, its duration has been extended annually by resolution of this Council. Six years ago, the Commissioner of Labour announced Government's intention to replace it by permanent legislation which, while protecting the public interest from strikes and lock-outs of a coercive nature in essential services, would at the same time protect the interest of those involved in genuine trade disputes. Considerable time has been spent in studying the problems involved and gauging the effect of similar legislation elsewhere in order to find the right formula for Hong Kong's special circumstances. As I reported, Sir, to honourable Members on 28th November, we are now well advanced with the preparation of a proposed new industrial relations bill. I hope therefore that this will

be the very last occasion on which it is necessary to move the further extension of the Illegal Strikes and Lock-outs Ordinance.

Question put and agreed to.

First reading of bills

SECURITIES BILL 1973

PROTECTION OF INVESTORS BILL 1973

TEMPORARY RESTRICTION OF BUILDING DEVELOPMENT (POK FU LAM AND MID-LEVELS) (AMENDMENT) BILL 1973

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

Second reading of bills

SECURITIES BILL 1973

THE FINANCIAL SECRETARY moved the second reading of: —"A bill to establish a Securities Commission and a Federation of Hong Kong Stock Exchanges, to make provision in relation to stock exchanges and dealers in securities, to control trading in securities and the business of advising on making investments, and to provide for the protection of investors and associated matters."

He said: —Sir, as honourable Members are aware this is the second of six bills which will give effect to the recommendations of the first report of the Companies Law Revision Committee and it is, by far, the most important. The first bill, the Companies (Amendment) Bill 1972 which was passed by this Council last December, established a better legal framework for the presentation of company prospectuses when shares are offered for sale to the public or are placed privately on a stock exchange. Apart from the Protection of Investors Bill, which honourable Members will consider later today, the remaining legislation will deal with take-over bids, unit trusts and mutual funds.

I should like to begin, Sir, by drawing attention to some of the more salient features of the securities industry in Hong Kong, thereby putting the provisions of this bill in perspective.

[THE FINANCIAL SECRETARY] **Securities Bill—second reading**

What must be remembered is its youth. Of the three stock exchanges in existence in the mid-1920's only one survived. The oldest stock exchange—the Hong Kong—has a long and worthy history but, until four years ago, the market was small and barely known overseas. Late in 1969 the Far East was established, followed by the Kam Ngan in 1971 and the Kowloon at the beginning of 1972. Until 1970 there was no statutory restraint of any kind relating to stock exchanges but, in that year, this Council passed section 2A of the Companies Ordinance whereby a stock exchange which wished to be recognized would have to comply with a list of simple conditions. Recognition did not bring any privilege; nor did it affect the day to day operations of an exchange. It was primarily a status symbol and was eagerly sought after. All the stock exchanges now in operation have been recognized.

In the autumn of 1972 it seemed quite likely that there would be a proliferation of stock exchanges unless a limitation on numbers was imposed. Accordingly, in this Council in November 1972, 1 announced such a limitation as a matter of Government policy, even though no statutory power then existed to back it up. However, I stated that it was the Government's intention to provide, in the proposed Securities Bill, that only those stock exchanges approved by the Financial Secretary would be allowed to operate in Hong Kong after the bill was enacted; and that I intended to approve only those exchanges which were recognized already for the purposes of section 2A of the Companies Ordinance. I further stated that any new stock exchange which might be established after the date of my statement, and before the enactment of the Securities Bill, would not be recognized.

In view of this declared statement of Government policy no one could have been under any illusion as to what would happen if more stock exchanges were formed. The clearest notice had been served that they would not be allowed to operate after the enactment of the Securities Bill. Nevertheless, it was announced in February this year that a fifth exchange was due to open. Consequently, the Stock Exchange Control Bill 1973 which statutorily banned the establishment of further exchanges was introduced into this Council and passed on 28th February. This ordinance was an interim measure and will be repealed upon the enactment of the bill under consideration now which incorporates it.

Within the relatively short period of three years the number of exchanges has grown then from one to four. What impact has this had on the market?

The growth of interest in the market was partly the cause and partly the effect of an increase in the number of exchanges. Reported turnover which, in 1965, amounted to $389 million, leapt to $5,989 million in 1970; to $14,793 million in 1971; and to $43,758 million last year. To the end of November this year, reported turnover was $46,892 million. I should add, however, that in the year ended 31st March 1973, over 90% of transactions in Hong Kong securities of all kinds was at least done through members of the four exchanges.

With the increase in the number of exchanges not unnaturally came an increase in the number of stock brokers. At present there are just over 1,000 members of the four exchanges though the number actively trading is less. Last month there were 831 stockbroking firms, nearly all sole traders, actively trading with a peak of 877 last August and about 120 in April 1970.

There are at present just under 300 shares listed on the four exchanges, but only 96 of these were listed prior to 9th March 1972. In the following year to 9th March 1973 the day on which the Hang Seng Index reached an all time high of 1775, a further 148 companies were added. The market value of the original 96 companies on 9th March 1973 was HK$455,241 million, whilst the value of the 148 new companies was HK$59,385 million. The total value of the 244 listed companies on that date, on the 9th March 1973, was HK$514,626 million, but some two months later, when the Hang Seng Index had fallen to 656, from the peak of 1775, their market value had fallen to $282,912 million and since then has fallen much lower.

Since April 1972 some $3,000 million has been raised in the market by means of private placements and offers for sale which illustrates the dynamism and growth of the market within a few short years.

But this growth has not been achieved without some cost. The boom on the exchanges which started last year was initiated through a healthy confidence in the growth possibilities of the Hong Kong economy, and the major influences in its development were the larger investors, both institutional and private, together with the banks which provided advances for share purchases. As the boom advanced there was a very rapid increase in the growth of bank credit: advances to stockbrokers and customers for share transactions more than doubled

in the year ending 31st March 1973 and as a proportion of total advances they rose by more than a third. These advances were, of course, well secured and the liquidity of the banking system as a whole was well in excess at all times of the statutory requirements.

The major investors were then joined by at least a quarter of a million small investors and a gambling fever pervaded the whole community. It resulted in a social phenomenon which I trust will never be repeated. A new game had been discovered which could be played endlessly, underlying economic realities notwithstanding, and at which no one could apparently lose. Perhaps I should say re-discovered for this game was played once before. May I ask, Sir, honourable Members to listen to the following question:

> "During the last few years there has been a large increase in speculative operations in the share market. This increase was mainly due to a great influx of . . . money which . . . was brought into the Colony for safety. Money became cheap and this encouraged speculation both on real and anticipated prosperity. There has been a great deal of real prosperity among local companies during the last few years, as an examination of their balance sheets will show, and consequently the value of their shares was bound to rise. In many cases, however, they have risen beyond the figure which the prosperity of the company justifies. With the increase of speculation many persons gave up their ordinary business and took up the work of share broking either as members of an exchange or as outside brokers or authorized clerks."

This, Sir, was not a commentary on the financial scene here in Hong Kong in 1972-73 written by, say, the Financial Editor of the South China Morning Post, but an excerpt from the report of the Stocks and Shares Commission which was laid before this Council on 22nd October 1925, nearly half a century ago.

To revert to the present day: thousands of investors thronged issuing banks responsible for new public offers first seeking prospectuses (though very rarely read them) and then application forms and subsequently depositing their applications, all of which put a severe strain on the normal work of the banks. New issues were fantastically over-subscribed, some by nearly 200 times, and went to an immediate premium, six to eight times the issue price being not uncommon. On the stock exchanges themselves the volume of transactions was so heavy that it was very difficult to reach a broker by telephone.

In November of last year the Government published a pamphlet entitled "Investigate before you Invest—Don't make it a gamble". It was free, attractively laid out, simply worded, and exhorted the public not to invest unless they could afford to lose but, like other warnings issued at that time and later, it went totally unnoticed by eager investors scrambling to join in on what they thought was a new game.

The chief features of the market at this stage were the number of transactions that were taking place, the velocity of circulation of paper and the number of new shares being listed. Daily turnover rose to unprecedented heights, the average reported daily turnover for January 1973 being HK$430 million, for February 1973 $530 million, and for March 1973 $424 million. The significance of these figures should not be overlooked: turnover on Hong Kong's four exchanges exceeded—exceeded—the turnover of ordinary shares on the London Stock Exchange—a figure which is roughly equivalent to the total value of transactions on all the European bourses combined.

Pending the finalization of the drafting of the bill now before honourable Members, the Government decided in January of this year to establish a Securities Advisory Council. The reasoning behind this decision was that, under prevailing conditions, it would not have been prudent to wait until the enactment of the bill before providing authoritative guidance and help to those responsible for managing the stock exchanges and other institutions concerned with trading in securities. The Securities Advisory Council and a post of Commissioner for Securities were both accordingly created on an administrative basis. The Council comprises seven members under the able chairmanship of Mr Y. H. KAN. It has met on some 22 occasions since its inception. It has been quietly persuasive in its work and has received the fullest co-operation of the stock exchanges and others concerned with trading in local securities. I firmly believe that a great deal of mutual trust has been built up, notwithstanding the exceptions taken to some of the clauses in this bill. Useful experience has been acquired, and the nucleus of a working organization created, prior to the enactment of the Securities Bill. This should enable the Securities Commission, the successor body, to become fully effective in the exercise of its powers almost as soon as the bill comes into force. The first task of the Council was to resolve the question of uniform trading hours. As a result of the tremendous increase in turnover, the administrative machinery of brokers and the exchanges and for that matter the banks was under considerable strain. It is to the credit of both the brokers and the exchanges that there was no

collapse, such as occurred, for example, in the mining boom in Australia. The machinery creaked and certain delays occurred, but there was no serious trouble. With effect from 12th February this year the exchanges agreed to restrict trading hours to mornings only and this helped to ensure that the necessary paper work was completed in an orderly manner and that the rule of settlement within 24 hours, traditional in Hong Kong, was maintained.

As a result of the very high turnover, coupled in some cases with inexperience, certain undesirable practices began to be manifest at this time. For example, the increasingly frequent use made of placements of securities on the exchanges instead of public offers, listing and trading procedures, undue influencing of prices and non-recording of transactions, these are just some examples. None of these practices could be held to be in the general public interest and the establishment of a properly constituted body, albeit without statutory powers for the time being, to deter such practices was welcomed.

I have endeavoured, Sir, to sketch briefly the short history of our securities market, indicating its strengths and its weaknesses, so that the bill now before Council can be assessed objectively and its role in the development of our market more precisely determined.

The Government, Sir, has not been immune from criticism from certain quarters for what it has done—and, for that matter, for what it has not done—and for what it proposes to do in the interests of securing a more properly regulated market. I believe, Sir, these criticisms to be based on a misconception of the rationale behind our thinking: in Hong Kong we pursue liberal economic principles and when proposals are made which impinge on such a vital sector of the economy as the stock exchanges it behoves the Government to ensure, as far as possible, that what is being proposed is in the broader public interest; and that the rules to be laid down will not only improve the working of the system, but enhance its prestige. The reluctance of the securities industry itself to accept wholeheartedly the concept behind the Securities Bill can be readily understood and, indeed, was only to be expected in view of the degree of freedom, perhaps the excessive degree of freedom, it has hitherto enjoyed.

The fact is there has been very little legislation in Hong Kong concerned with trading in securities. Isolated examples exist in the Companies Ordinance where there are provisions covering the transfer of shares; and in the Stamp Ordinance where there are provisions

dealing with stamp duty on contract notes and transfers. As I mentioned earlier, the first statutory requirement relating specifically to stock exchanges as such was introduced some three years ago by an amendment to section 2 of the Companies Ordinance which made provision for the recognition of stock exchanges, but this applied only to those exchanges which actually sought to be recognized.

The individual stock exchanges have, of course, their own rules and regulations. Those of the Hong Kong Stock Exchange have been evolved over a long period and, as the other exchanges were established, they adopted rules on the same broad lines, but with some variations. In general, however, the rules of the exchange are of a simple administrative kind and, although they may have been adequate for the small market that existed a few years ago, the exchanges will have to develop them to conform with various provisions of this bill and to cope with the ever increasing complexity of our market.

Honourable Members will appreciate that a great deal of time and thought has gone into the bill which, in effect, seeks to establish in one ordinance rules and standards which have been built up in older markets by statute, precedent and convention over many years. I think the law draftsman concerned and the Commissioner for Securities are to be congratulated on the results of their labours. Some provisions have drawn on legislation in the United Kingdom and Australia and elsewhere, but a large part of the bill has been specially drafted for Hong Kong. Of course, experience elsewhere has been studied and drawn upon, but not to the extent of forcing the Hong Kong market into a foreign mould. With a subject which is not only complex, but constantly evolving, it was unlikely that the bill as drafted would be without blemish, and I assured the chairmen of the four exchanges at a meeting in my office on 12th October last that, whilst the Government was totally committed to the general principles embodied in the bill, we would welcome constructive and practical suggestions for amendments. I stressed that we were very conscious of the complexity of the task of drafting such a comprehensive piece of legislation quickly for a relatively inexperienced market.

Turning now to the bill itself: despite its length, the bill provides little more than a general framework leaving much detail to be provided by statutory regulations for which authority is given to the Governor in Council in the bill, and by rules to be made by the Federation of the Stock Exchanges. It is not intended that the whole of the bill will be brought into force at once. The opportunity will be taken of the provisions of sub-clause (2) of clause 1 to introduce

different parts of the bill over a period of time as and when indicated by all relevant factors.

The reception afforded the bill by the stock exchanges cannot be described as wildly enthusiastic, but I think it would be fair to say that it has the warm support of informed opinion in most other quarters here in Hong Kong and overseas.

In addition to the detailed comments we have received on the bill from the exchanges themselves, representations have been received from the Hong Kong Society of Accountants, the Law Society of Hong Kong, the main underwriters and various other authoritative sources. In all nearly 300 comments, queries and recommendations have been received. After allowing for double counting and also for comments and questions which do not call for amendments, the number of suggestions for amendments was about 230. After careful and detailed study about half of these are acceptable to the Government and will be the subject of motions at the committee stage. I hasten to add there won't be 230 motions because one motion will cover a number of amendments. All representations were discussed by the commissioner with those concerned and the submission from the four exchanges was discussed with UMELCO at three very long meetings. I think those who attended these various meetings would readily testify to the thoroughness with which their proposals and comments have been considered.

If I may, Sir, I shall indicate, when dealing with specific clauses of the bill, the more important changes on which I shall be moving amendments at the committee stage. I should stress, however, that none of the proposed amendments involves any retreat on a point of principle, only of application and clarification.

The bill is divided into 13 parts having about 150 clauses and two schedules.

In Part I, Preliminary Matters, 'dealing in securities' has been defined so as to include underwriting, which means that an underwriter will have to be registered as a dealer. The definition of dealing has also been extended to cover the making of advances and loans against securities as collateral. Thus, as I predicted when answering a question by my honourable Friend Mr T. K. ANN on 18th July last, those finance companies, whose main role is the granting of loans and

advances against securities, will be brought within the scope of registration thus providing us with some indication of their activities.

An "investment adviser" is defined as any person who, for remuneration, carries on a business of advising others about securities. If he makes no charge for his services, he does not fall within the definition. There is, therefore, no impediment placed on the issue of brokers' circulars. Apart from licensed banks, solicitors and accountants, provision is made to exempt proprietors and publishers of newspapers and periodicals who give advice, some times very unsound advice, on securities.

Part II of the bill deals with the function and role of the Commissioner for Securities and the Securities Commission.

The Commissioner for Securities is to be the executive officer of the Securities Commission and elsewhere is charged with other duties as well: under Part VI he is charged with responsibility for the registration of dealers, investment advisers and representatives and for the investigation of malpractices; under Part IX, he is charged with the responsibility for the supervision of the accounting and auditing requirements in respect of registered dealers; and under Part XI he is charged with the responsibility for the inspection and investigation of registered dealers and investment advisers. The Commissioner will also have other powers arising from related legislation dealing with such matters as the protection of investors and take-overs.

In case too much is read into the use of the word "Commission" I should say that we had to substitute "Securities Commission" for "Securities Council", the title originally intended, because the word "Council" has been used for the body governing the Federation of Stock Exchanges. "Committee" is not available because each stock exchange has its own governing body which is already known as a committee.

The functions, rule making powers and general powers of the commission are described in clauses 11-13 and I commend these particular clauses to honourable Members for careful study. I shall be moving an amendment to the powers of the commission to make rules under clause 12 at the committee stage. The commission itself, which will in effect be a continuation of the Securities Advisory Council, is established and constituted by clauses 7-9. It will consist of the same seven people, that is to say, an independent chairman, the two official members (the Commissioner and the Registrar General) and the four members representing the legal and accounting professions

and banking and commercial interests. By clause 14 the commission may establish standing or special committees and may appoint to them suitable persons who are not members of the commission. It is intended that representatives of the federation shall serve on some or all, of these committees.

Part III of the bill deals with the stock exchanges. Clauses 18 and 20 to 22 incorporate the Stock Exchange Control Ordinance 1973—a fact I might add which appears to have been overlooked in several representations we have received—and this ordinance will now be repealed. The purpose of these clauses, as I made clear when introducing the bill in February last, is to prevent the establishment of any more stock exchanges, but without interfering with the normal business which is done through brokers' offices whether or not those brokers are members of a Hong Kong exchange. By clause 23 a stock exchange must be approved by the commission and the present four recognized exchanges will be deemed to be approved. Anyone who establishes an unauthorized market and any dealer who trades on such a market will be prosecuted, and provision is made for entry, search and closure of premises.

By clause 23, limited companies will be permitted to be members of stock exchanges if their sole business is that of dealing in securities. At present, one of the conditions of recognition prevents this. Representations were made by two of the exchanges in Hong Kong to be allowed to follow the London Stock Exchange which, a few years ago, dropped this restriction and now allows limited companies to become members. The main purpose is to permit broker firms to raise more capital from shareholders as in any limited company; and it also encourages brokers to group together into bigger units, which are usually more efficient and can give better service to customers. Many brokers in Hong Kong trade alone but this is usually not allowed on overseas exchanges. The new arrangements appear to have worked well in London and there is no reason to suppose that they will not do so in Hong Kong.

There appears to have been some misunderstanding of the provision in clause 23(3)(*d*) and I shall propose an amendment at the committee stage to make its purport entirely clear. It is not intended that all the directors of a corporate body registered as a member of a stock exchange should be required to be members of the exchange unless, of course, they are actively engaged in dealing. There is,

therefore, no obligation required of the non-dealing director—he will be obliged neither to register nor to make a deposit.

A director or employee of a licensed bank continues to be excluded from membership. Although practising solicitors and accountants are currently permitted to become members of an exchange—and members of these professions make a significant contribution to the running and administration of our exchanges—it is intended that no applications from members of either profession will be accepted and, in the course of time, therefore, there will be no practising members of either profession trading on the exchanges. I proposed to introduce an amendment to clause 23(3)(*c*)(iv) at the committee stage so that other professions can be excluded as well, but only by resolution of this Council.

Although there is provision that a member of an exchange must have been born in Hong Kong, or be a resident of Hong Kong for five out of the preceding seven years, the commission may dispense with it for suitable persons experienced in the business of dealing in securities.

By clause 24, the commission may revoke approval of a stock exchange on the grounds that it is not abiding by the provisions of the ordinance, or that it has ceased to operate a stock market; or it may take the lesser step of closing the exchange concerned until the shortcoming is made good. By clause 25, the commissioner will have power to close the stock exchanges for five days on a renewable basis in case of emergency. I propose to move an amendment at the committee stage to provide for prior consultation on this point with the Federation of Stock Exchanges.

By clause 28, any proposal to amend the constitution of a stock exchange is subject to the approval of the commission.

Part IV of the bill deals with the Federation of Stock Exchanges. Clause 29 provides that every approved stock exchange will be deemed to be a member of the federation. The federation will have a council consisting of two members from each exchange and the chairman of the council is to be elected annually and in rotation from each exchange but, if the council cannot agree on a chairman, the commissioner has power to appoint one.

The functions and powers of the federation are set out in clauses 34 and 35, and will be exercised by the council which must meet at least once a month.

[THE FINANCIAL SECRETARY] **Securities Bill—second reading**

Closer co-operation between the stock exchanges is needed to bring about greater uniformity of trading techniques, better business practices and a broader based market, but each exchange, I would like to stress this, each exchange will retain its identity and will be responsible for its operation within a general framework, and for all domestic matters. The Government hopes that the Council of the Federation will, in practice, handle most of the day to day problems arising between the exchanges, and I shall propose an amendment at the committee stage to clause 35 clarifying the council's authority.

I would also like to advise honourable Members that, at the committee stage, I intend to move amendments to this part of the bill to transfer certain powers at present retained either by the commission, or the commissioner, to the Federation. I also accept that, in the circumstances envisaged in the future, the Federation should become progressively more self-regulatory as it gains experience and maturity.

Part V of the bill deals with the Securities Commission Disciplinary Committee. This committee will consist of three to five persons under the chairmanship of the unofficial legal member of the commission. Its functions are to be first, the investigation of malpractices on the part of a stock exchange or a committee of stock exchange (but not of individual members, as these will be investigated by the commissioner in the first place as part of his supervisory power over a1l registered dealers) and to impose penalties. And, secondly, as provided in clause 57 of Part VI, the committee will be charged with the hearing of appeals against the refusal by the commissioner of applications for registration or renewal or suspension or revocation of registration by the Commissioner. I shall be moving an amendment at the committee stage which will enable two members of the Federation to be members of the Disciplinary Committee.

Part VI of the bill deals with the registration of dealers, investment advisers and representatives. It is an important part of the bill. All dealers (whether or not they are members of a stock exchange) and investment advisers, together with their representatives, must be registered by virtue of clauses 46, 47 and 48. But persons whose dealing is restricted to some particular forms, such as offering shares to the public by prospectus, need not register by virtue of clause 49.

At present the total number of brokers on the four exchanges is just over 1,000 and the number of representatives is over 2,000. Comparatively few brokers are full time. The number of brokers

would have been higher had the Securities Advisory Council not requested in January that no more seats should be created until further notice. At that time, all the exchanges had very long waiting lists. The total number of dealers who are not members of stock exchanges is not known, but it must be comparatively small. In the same way as non-dealing directors of a corporate body registered as a dealer need not register, so partners of a registered dealer need not register provided they are not actively dealing.

By clauses 50 and 51 the Commissioner may grant a certificate of registration to a dealer, investment adviser or representative valid for one year on three conditions: first, the application must be in the prescribed form; second, an annual fee must be paid; and third, for dealers other than stockbrokers, a deposit must be made with the Accountant General, but I shall propose an amendment later whereby this will be lodged with the commission, and the amount will be prescribed in regulations. These deposits will not be pooled. Each will be available to meet the claims of investors against the individual dealers. Each director of a corporate body which is a dealer will have to make the deposit, but not the corporate body itself. As regards the investment of these deposits I now feel it would be more appropriate for the commission to accept responsibility rather than the Accountant General and, therefore, I shall be moving an appropriate amendment at the committee stage.

Apart from the purchase of a seat on an exchange, there are at present no uniform requirements for persons wishing to become brokers. The bill does not impose any requirements, but I hope that the Council of the Federation, with the active support of the commission, will give early attention to this aspect. Attention will have to be concentrated on raising the standard of new entrants since I think it would be quite impracticable to judge those who are already brokers.

By clauses 52-55, the Commissioner may refuse an application for registration or renewal, or he may revoke or suspend registration with immediate effect but he must give reasons in writing, and also give the person concerned an opportunity of being heard. By clause 57, as I have just said, a person may appeal to the Disciplinary Committee against an adverse decision by the Commissioner.

Clause 59, states the conditions under which the Commissioner may declare a dealer to be exempted from registration. The wording here used is a simplified version of that used in the United Kingdom where it appears to have worked satisfactorily. I propose to introduce an amendment at the committee stage whereby the Commissioner in

specified circumstances may declare an investment adviser to be exempted from registration.

Part VII—which deals with records—applies to dealers, investment advisers and their representatives, but the Governor in Council may extend it to financial journalists. A person to whom this part applies is required to maintain a register, in the prescribed form, of the securities in which he has an interest, and to notify the Commissioner of the place where the register is retained. In order to keep to a minimum the amount of work involved it is intended that ordinary business records should be accepted for the purpose, if they are in suitable form. At the committee stage, I propose to move an amendment to empower the Commissioner to inspect the register only when he believes that an offence has been committed. Where he does inspect the register he may divulge the contents only to the Attorney General and to no other person. There appears, again, to have been a great deal of misunderstanding over this provision and I can only say that recourse to it can only be made in certain specified circumstances. It is not intended and never was intended to give the Commissioner *carte blanche* to inspect registers and, as has been suggested, reveal them to all and sundry.

Part VIII—trading in securities—is based on United Kingdom legislation. It does not apply to offers to the public accompanied by prospectuses (which are dealt with in Part II and Part XII of the Companies Ordinance). Nor does it apply to offers in connection with takeovers (which will be dealt with in a separate bill).

By clauses 70-71, a dealer must provide the information as set out in the first and second schedules when he offers, on his own initiative, to buy or sell securities other than on a stock exchange or is trading with another dealer unless either he is offering to sell shares to a client who already has some shares in that particular company; or he has done business with the client at least five times during the past two years. This is to allow brokers to make proposals to their *bona fide* clients in their ordinary course of business without having to give all the information required by the schedule, which would be a serious impediment to trade. I agree that it is rather arbitrary but there seems no alternative. Of course, if the client takes the initiative by asking the broker to buy or sell particular shares for him this section would not apply.

The aim of the first and second schedules is to provide sufficient information for a reasonable person to make a balanced judgement as to the worth of the shares he is being asked to buy or sell, but I shall propose an amendment at the committee stage to simplify the First Schedule by deleting paragraphs 4-8 which are primarily concerned with a situation which arises when a takeover is in view. Provision for such a contingency will be included in the separate bill concerned specifically with takeovers. I shall also propose extensive re-arrangement and re-wording of clauses 70 and 71 in order to make it quite clear what is required.

By clause 72, a dealer may not call on a person and sell or buy securities to or from him unless he provides specified information. This is intended to restrict the hawking of shares. Hawking, however, is not easy to define and if the definition were too wide in its application it would impede normal contracts so, at the committee stage, I shall propose an amendment whereby this provision will be spelled out at greater length.

All trading will continue to be on the basis of settlement within 24 hours. Option or forward trading is forbidden by clause 74 and so is short selling by clause 78. However, short selling and forward trading will be permitted by rules to be published so as not to hinder normal and proper activites such as jobbing, arbitrage, trading in odd lots and trading in overseas securities.

By clause 76, a dealer must not imply that registration denotes approval of his ability and qualifications by the Government or the Commissioner. If a dealer or investment adviser refers in any circular or other written communication to any securities, by clause 77, he must give a concise statement of his interest, if any, in the actual securities which are being bought or sold. So a dealer or investment adviser could recommend a share, but say nothing about his own holding of shares in the same company so long as he was not actually going to sell these shares. I feel this is not strong so I shall propose an amendment at the committee stage that a dealer or investment adviser, when making a recommendation will have to state whether he has an interest in the shares of that company or not, but without giving any details.

By clause 79, when a dealer holds a client's securities for safe keeping, provision is made for safe custody and he must not pledge them in any way or lend them for his own or anyone else's benefit without the client's prior authority in writing which has to be renewed annually. Extensive use is made in the market here of clients'

securities, often, it appears, without their consent or knowledge and, in the past I regret to say it was not customary for some banks to verify a dealer's title when granting advances against shares. The practice of using blank transfers so that certificates are practically bearer documents encourages their improper use, and a dangerous situation could develop. The whole procedure of transfer and registration calls for improvement: in particular greater uniformity of practice on the part of those who prepare, handle and register transfers. Several organizations have shown interest in this problem and the Government will lend its support to any attempt to improve matters.

Part IX—accounts and audit—applies to dealers, but the Governor in Council may extend it to investment advisers. It is based mostly on United Kingdom statutory requirements, and also those of the London Stock Exchange. Most of the provisions have already been accepted by the stock exchanges in order to comply with the conditions for recognition.

However, the provision in clause 86 for the compulsory audit and submission of an auditor's certificate by brokers and dealers who are not members of a stock exchange is a new departure.

In clause 81 the information is specified which the dealer must record when he transacts business as a principal, an agent or an underwriter. All records must be kept for seven years but, at the committee stage, I shall propose an amendment reducing this period to six years for dealers' records and two years for contract notes.

Clause 82 introduces an innovation based on a recommendation by the Companies Law Revision Committee, namely, that all money held on behalf of customers should be kept in a separate trust account.

Clause 85 deals with the appointment of an auditor by a dealer: I shall be proposing amendments at the committee stage deleting the penalty for contravention and extending the list of persons not eligible for appointment as auditors; and I shall propose also that the auditor’s report be lodged with the Commissioner instead of the committee of the stock exchange as provided for in clause 86.

By clause 87, if an auditor considers that something improper has occurred he must inform the Commissioner. In such a case, or if no report is forthcoming, or if a client complains that a dealer has failed to account for his money or securities the Commissioner may,

by clauses 88-91, appoint an auditor with wide powers to investigate and report. I shall propose an amendment at the committee stage deleting the penalty for divulging information by an auditor or his employee. The dealer must make his books and accounts available and answer relevant questions by clause 93, and there is a penalty in clause 94 for destroying or concealing records.

I now turn, Sir, to Part X, perhaps the most controversial part of the bill, dealing with the establishment of compensation funds.

The present proposals lay down that each stock exchange is to have its own compensation fund which is to be administered by a committee of each exchange. The commitee would decide on payments to be made out of the fund in accordance with clauses 106 and 107.

The fund would consist of two parts, a reserve account and a primary account. The reserve account would become operative on the enactment of the bill and would consist of a sum to be deposited by the stock exchange on behalf of each member. This initial sum of $50,000, to be followed by a similar sum not less than six months later, as determined by the commission, would be deposited in cash with the Accountant General. The second deposit of $50,000 would be made either in cash or securities or in the form of a bank guarantee.

By clauses 97 and 103, the assets of the fund would remain the property of the stock exchange, but their investment would be the responsibility of the Accountant General who would place the monies on deposit with a licensed bank, or invest them otherwise as determined by the Financial Secretary.

By clause 104, the primary account would be built up from zero by a monthly payment starting from the enactment of the bill. By clause 98, the primary account would remain under direct control of the stock exchange and by clause 108 the money in it may be put on deposit with a licensed bank or invested in securities authorized by the commission.

By clause 98 interest arising from both accounts would be credited to the primary account. By clause 106 any drawings are first to be made from the primary account and, if this is insufficient, the shortfall would be made good from the reserve account. By clause 107, if anything is taken from the reserve account there has to be an additional monthly payment per member until this is made good.

[THE FINANCIAL SECRETARY] **Securities Bill—second reading**

By clause 101, each stock exchange is to appoint a management sub-committee to look after its compensation fund. By clause 100, the fund is to be audited and the exchange must send a copy of the audited balance sheet to the commissioner each year and every year.

By clause 109, the fund is to be used to make good any losses which persons (other than members of that exchange) suffer from defalcation of any member or his clerks or from the bankruptcy of the member, up to an amount not exceeding $1 million per individual member, member of a partner firm or dealing director of a corporate member. For example, if a corporate member with five dealing directors went bankrupt, claims could be paid from the fund up to a total of $5 million.

I have spelled these somewhat complicated provisions out in some detail because they are in my view quite reasonable but I am aware that they have engendered, to put it mildly, a certain amount of controversy. Despite this I remain quite adamant on two points, namely, that a compensation fund of significant size must be established at once mostly in liquid form, and that the investment of this fund must be vested in an independent body, albeit one on which the Federation is represented. But in an attempt to meet the criticisms levelled at the present provisions, I am agreeable to proposing to honourable Members for their consideration at the committee stage certain amendments. Essentially I shall be proposing the establishment of one common compensation fund for all the exchanges within one month of this part of the bill coming into force. The principle of one common compensation fund has become possible as a result of the close co-operation which has developed recently between the exchanges and which I certainly regard as a most welcome development.

Each stock exchange would deposit with the Securities Commission an initial sum equivalent to $50,000 per member which would be divided equally into a cash deposit of $25,000 and an irrevocable bank guarantee in the sum of $25,000. With roughly 1,000 members these deposits would amount to $25 million in cash and $25 million in bank guarantees. Whether these deposits are provided directly from the funds which the exchanges themselves hold as a corporate body or by calls on their members would be entirely a matter for each exchange.

Where an exchange has, or is prepared to establish, a scheme whereby the transactions of each broker are guaranteed to a substantial

sum, the Commissioner would be empowered to dispense with the bank guarantee of $25,000.

I shall probably also be moving an amendment at the committee stage whereby a committee of the Federation, as opposed to the four committees of the stock exchanges, would have responsibility for assessing and approving claims against the fund. Claims paid from the fund would continue to be limited to a total of $1 million per member, but such payments would have to be made good by the individual stock exchange to whom the member incurring the liability belonged.

Control over the investment policy of the actual compensation fund itself would be vested in a Standing Committee of the commission on which the Federation though would have two representatives. The interest earned on this investment would be repaid to the individual stock exchanges annually.

I feel, Sir, that proposals along these lines have the merit of being practical and simple and yet should not prove to be burdensome to the stock exchanges or their members whatever they may argue to the contrary. However, it is abundantly clear that this is a field from which we can only learn by experience and I, therefore, undertake that, whatever arrangements are finally written into this bill, will be subject to review in two years' time.

Part XI relating to inspections and investigations is based on recent amendments to Australian legislation where experience has shown that the existing powers were quite insufficient to enable adequate information about malpractices to be acquired so that a prosecution could be instituted.

By clause 120, powers are given to the Commissioner to inspect and make any copies of records which a dealer is required to keep under this ordinance and bank documents concerning the dealers' business; and, by clause 121, the Commissioner may also request the names of persons with whom the dealer has done business.

By clause 125, the commission may appoint an inspector and give him terms of reference. The inspector may request a person to produce any documents he may have which are relevant to the investigation and to give the inspector all reasonable assistance and to appear before him for examination under oath.

By clause 127, the commission may publish the whole or part of an inspector's report if it considers that this would be in the public

interest and, at the committee stage, I shall propose an amendment to clause 127 providing for a copy of the report to be sent to the Attorney General.

Under clause 129 which deals with the cost of an investigation by an inspector I shall propose, at the committee stage, an additional sub-clause providing for costs to be paid to a person incurring expenditure in an investigation which was not justified.

Part XII deals with the prevention of improper trading practices. Clauses 132, 133 and 134 make it an offence to create a false market either as regards the price of securities or the volume of trading, or to influence prices with the intention of inducing other people to buy or sell shares. This would not, of course, include normal buying or selling, resulting in any movement in prices which may cause others to deal in the market. By clause 135 a person is prohibited from making any statement about securities which he knows to be false or misleading; and from omitting a material fact which thereby causes the rest of the statement to be misleading. I may be moving amendments to these clauses at the committee stage.

By clause 137, the opportunity has been taken to insert in the bill one of the main recommendations of the Second Report of the Companies Law Revision Committee on Company Law, which deals with insider trading. This clause covers all directors, officers and employees of a company, and all other persons who, in the course of their employment, business or profession, acquire confidential information which comes indirectly or directly, from within a company. Any such person who uses information to his material advantage will be guilty of a criminal offence. Such a person may also be sued for damages by an aggrieved party. The Commissioner for Securities may, if he considers it in the public interest, also bring a civil action.

Sir, I am only too well aware that the emotive phrase "insider trading" is fraught with difficulty as regards adequate definition. In principle, I am sure honourable Members will welcome the proposed restrictions, but it must be accepted that there is considerable difficulty in compiling an exact definition of what insider trading includes and in suggesting means of averting it. A representative of the American Securities Exchange Commission once remarked "we don't know how to define an insider, but we sure know one when we see him". It has always been easier to recognize insider trading than to define it. Thus there is a danger that, in attempting to deal with this problem,

the definition will be cast so wide as to hamper legitimate activities without preventing the objectionable abuses. This abviously we must avoid.

As honourable Members are aware the United Kingdom has not, as yet, formally defined insider trading in legislation, but proposals on the subject will be included in the new Companies Act which should shortly be published. In view of this, I intend to recommend that the implementation of this clause be deferred until such time as we have been able to assess the proposed United Kingdom legislation.

Part XIII deals with miscellaneous provisions. A person must not call himself a stockbroker or an underwriter unless he falls within the definition given in clause 2 of this bill. By clause 139, a member of an overseas exchange may call himself a stockbroker only if he adds the name and location of his exchange. By clause 140, an investment adviser's remuneration must not be based on a share of the capital gains of the clients' funds, as this may tend to encourage unwise risks to be taken. By clause 141, where it appears that a person has contravened, or is about to contravene, the ordinance, the court may, on application of the Commissioner, make orders restraining that person from taking various kinds of action involving securities.

Clause 143 gives the Governor in Council, after consultation with the commission, extensive powers to make regulations concerning trading in securities and the registration of dealers, investment advisers and their representatives. It is envisaged that considerable use will be made of these powers over time. The Governor in Council will also have power to amend the two schedules to the bill.

To conclude, Sir, the Government seeks only to lay down basic rules within which the market must work if it is to be fair to all participants—rules, I might add, which have been accepted and applied on all the principal stock exchanges in the world. We are not unmindful of the effects that severe and stringent controls have had on other securities markets but we believe that the provisions of this bill are not severe in a regulatory sense: all we seek to do through the bill is to create the conditions for an orderly working of market forces. And we have no wish, certainly, to create an organization described by Professor J. K. GALBRAITH, who is not renowned for concern about expanding state control, in the following terms: "Regulatory bodies, like people who comprise them, have a marked life cycle. In youth they are vigorous, aggressive, evangelistic and even intolerant. Later they mellow, and in old age—after a matter of 10 or 15 years—they

become, with some exceptions, either an arm of the industry they are regulating or senile".

The success of our economy essentially depends on the healthy working of the free enterprise system. Free enterprise has demonstrated in Hong Kong a unique and dynamic capacity for promoting innovation and growth—attributes which we, as a Government, have absolutely no intention of limiting or inhibiting. The Securities Bill does not in any way restrict the rights of responsible participants in the market. Rather, it provides the basic framework which will permit the securities industry in Hong Kong to evolve rationally, thereby assuming its rightful place as one of the leading stock markets in the world.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY (MR HADDON-CAVE).

Question put and agreed to.

Explanatory Memorandum

The bill seeks to regulate dealings in securities, whether they take place in stock exchanges or elsewhere in Hong Kong. The bill also seeks to regulate the activities of dealers in securities, investment advisers, and their representatives. Stock exchanges will under the bill become members of a new body to be known as the Federation of Hong Kong Stock Exchanges. The Federation and its member stock exchanges will be subject to the control of a body to be known as the Securities Commission, which will have authority to lay down requirements to be followed by stock exchanges. The bill also provides for the creation of a new public office, namely that of Commissioner for Securities. The Commissioner will have a wide range of administrative responsibilities in connexion with dealings in securities. In particular he will be responsible for the registration under Part VI of the bill of dealers in securities, dealers' representatives, investment advisers, and representatives of investment advisers. Detailed provisions are also included in the bill relating to dealers' accounts and records, and the establishment by stock exchanges of funds to compensate persons who suffer from defalcations by stockbrokers. Part VIII of the bill seeks to regulate certain aspects of trading in securities. Part

XI confers powers of inspection on the Commissioner for Securities and provides for investigations of prescribed persons by inspectors, while Part XII is designed to give special protection to investors by creating certain offences and torts in relation to improper practices connected with dealings in securities.

PART I

PRELIMINARY PROVISIONS

Clause 1 relates to the Short Title and commencement of the Bill.

Clause 2 defines the terms used in the bill.

Clause 3 relates to the circumstances in which a person is deemed to have an interest in securities for the purposes of clauses 17, 65 and 134.

PART II

COMMISSIONER FOR SECURITIES AND SECURITIES COMMISSION

Commissioner for Securities

Clause 4 provides for the appointment of the Commissioner for Securities.

Clause 5 provides for the powers, functions, and duties of the Commissioner, who will be the executive officer of the Securities Commission.

Clause 6 provides for the Commissioner to have an official seal.

Securities Commission

Clause 7 provides for the establishment of the Securities Commission, which is to be a body corporate with perpetual succession and a common seal.

Clause 8 provides for the membership of the Commission. The Commission is to consist of 7 members, one of whom is to be the Commissioner and the remainder of whom are to be persons appointed by the Governor. The clause also provides for resignation and removal from office as a member of the Commission and the filling of vacancies.

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[*Explanatory Memorandum*]

Clause 9 provides for the appointment of a chairman and deputy chairman of the Commission.

Clause 10 provides for the holding of meetings of the Commission and for the procedure to be followed at those meetings.

Clause 11 prescribes the Commission's functions. The Commission is to advise the Financial Secretary on all matters relating to securities, to ensure that the provisions of the bill and other legislation relating to securities are complied with, to supervise the activities of members of the Federation of Hong Kong Stock Exchanges, and to take all reasonable steps to safeguard the interests of investors. The Commission will also have wide rule making powers in relation to such matters as trading hours of stock exchanges, listing of securities, brokerage, and other detailed matters involving stock exchanges (clause 12).

Clause 13 prescribes the general powers of the Commission.

Clause 14 empowers the Commission to establish standing and special committees to which it may, subject to certain exceptions, delegate its functions.

Miscellaneous Matters relating to Commissioner and Commission

Clause 15 enables the Governor to give directions to both the Commissioner and the Commission.

Clause 16 relates to the income and expenditure of the Commissioner and the Commission. The expenses of the Commissioner, the Commission and any other person concerned in the administration of the bill are to be defrayed out of moneys provided by the Legislative Council. All sums received under the bill are to be paid into and form part of the general revenue of Hong Kong.

Clause 17 makes it an offence for a person appointed as a member of the Commission, or appointed or employed under the Bill, or authorized to discharge any function of the Commissioner or the Commission under the Bill to disclose any confidential or official information received in his official capacity,

except to the extent necessary to perform his official duties. The offence is punishable by a fine of up to $10,000 and imprisonment for up to 6 months.

PART III

STOCK EXCHANGES

Clause 18 relates to the establishment of stock markets. A person who establishes or operates, or assists in the operation of, a stock market that is not operated by a stock exchange approved or deemed to have been approved by the Commission under clause 23 is liable to a penalty of up to $500,000 and, in the case of a continuing offence, to a further penalty of $50,000 per day.

Clause 19 makes it an offence for a person, other than a person which is an approved stock exchange, to use the title "stock exchange". The offence is punishable with a fine of up to $100,000 and a daily penalty of $5,000.

Clause 20 makes it an offence, punishable by a fine not exceeding $50,000, for a dealer in securities to transact a dealing at any stock market other than one operated by an approved stock exchange.

Clause 21 confers on an authorized officer power to enter and search any premises in which he reasonably suspects that an offence against clause 18 or clause 20 is being or has been committed, and to remove and detain any equipment, book, records, accounts, or papers which he has reason to believe are evidence of the commission of the offence. An authorized officer includes the Commissioner for Securities and any police officer not below the rank of superintendent.

Clause 22 empowers a magistrate to order the closure of premises in which an offence against clause 18 is suspected to have been committed until the person charged with the offence has been tried. In the event of a conviction, the magistrate may order the closure of the premises for a period not exceeding 3 months. It is to be an offence to enter, without authority, premises in respect of which a closure order is for the time being in force. The offence is punishable by a fine of up to $50,000.

Clause 23 empowers the Commission to approve a company as a stock exchange. The clause sets out the prerequisites that

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[*Explanatory Memorandum*]

must be satisfied by such a company before approval will be given. Any stock exchange that is, at the commencement of the clause, a stock exchange recognized under section 3(1) of the Stock Exchanges Control Ordinance 1973 will be deemed to have been approved for the purposes of this clause. Any such stock exchange will however have to meet the prescribed requirements within a limited period after the clause comes into force.

Clause 24 empowers the Commission to revoke any approval given or deemed to have been given under clause 23 on any of the grounds specified in the clause. The Commission will also be empowered, instead of revoking a stock exchange's approval, to direct that the exchange's premises be closed for the transaction of dealings until such time as the exchange has removed the ground entitling the Commission to revoke the approval. Any person who attempts to enter the exchange's premises while such a direction is in force without authority will be liable to a fine of up to $50,000.

Clause 25 empowers the Commissioner to order the suspension of dealings on stock exchanges for a period not exceeding 5 bank trading days in cases of emergencies or financial crises. Such an order may be renewed for further periods of not more than 5 bank trading days. Any person who deals in securities at a stock exchange in contravention of an order suspending dealings on the exchange is liable to a penalty of up to $50,000.

Clause 27 provides a right of appeal to the Governor in Council against the revocation of approval of a stock exchange or against any direction given under clause 24 suspending dealings at a particular stock exchange.

Clause 28 requires a stock exchange to notify the Commission of proposed changes in its constitution and rules.

PART IV

FEDERATION OF HONG KONG STOCK EXCHANGES

Clause 29 provides for an association to be known as the Federation of Hong Kong Stock Exchanges. All stock exchanges

that are for the time being approved or are deemed to have been approved under clause 23 are deemed to be members of the Federation.

Clause 30 provides for the Federation to have a Council, which is to exercise on behalf of the Federation all of the functions and powers of the Federation prescribed by clause 34. The committee of each stock exchange is to appoint two of its members to the Council. The clause also provides for such matters as appointments, resignations, disqualifications and the filling of vacancies.

Clause 31 provides for the appointment of a chairman and deputy chairman of the Council.

Clause 34 prescribes the functions of the Federation. The main functions are to communicate the views of the members of the Federation to the Commission, and to communicate the decisions of the Commission to its members, to provide means for the amicable settlement of disputes arising between members of the Federation, to improve the methods and procedure of stock markets, and to be the sole representative of members of the Federation in respect of any matter not involving the internal affairs of member exchanges.

Clause 35 prescribes the powers of the Federation and the Federation's Council. The Federation may acquire and hold land and other property, impose levies on its members to finance the Federation's operations and appoint staff. The Council may appoint committees to which it may delegate all or any of its functions or powers.

PART V

SECURITIES COMMISSION DISCIPLINARY COMMITTEE

Clause 36 provides for the establishment of a Securities Commission Disciplinary Committee. The Committee is to be appointed by the Securities Commission and is to consist of not less than 3 nor more than 5 members.

Clause 37 provides that the Disciplinary Committee is to have power to inquire into any allegation that a stock exchange or committee has been guilty of any malpractice in relation to the activities of the exchange. The clause also sets out the penalties that may be imposed by the Committee in cases where

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[*Explanatory Memorandum*]

it finds an allegation to be proved. The Disciplinary Committee will also be empowered to hear appeals from decisions of the Commissioner for Securities revoking or suspending certificates of registration of dealers and others, or refusing to issue or to renew certificates of registration (clause 57).

Clause 38 provides for the making of orders for the payment of costs in relation to an inquiry under clause 37 or on an appeal under clause 57.

Clause 40 empowers the Disciplinary Committee to require persons to attend as witnesses at proceedings of the Committee. The Committee may receive such evidence as it thinks relevant to the inquiry or appeal. A person who, without lawful justification or excuse, fails to attend the proceedings of the Committee after being required to do so is liable on summary conviction to a fine of $5,000.

Clause 41 confers on the Disciplinary Committee, and on witnesses and solicitors and counsel attending proceedings of the Disciplinary Committee, the same privileges and immunities as if the proceedings were proceedings in a court.

Clause 43 empowers the Disciplinary Committee to make rules in relation to the hearing and determination of inquiries and appeals under the Bill.

PART VI

REGISTRATION OF DEALERS, INVESTMENT ADVISERS, AND REPRESENTATIVES

Clause 45 provides that Part VI is not to apply to an exempt dealer unless specifically provided. The clause gives existing dealers, investment advisers, and representatives who apply for registration within 3 months of the commencement of the Part a period of grace to carry on business notwithstanding that they do not hold certificates of registration.

Clause 46 provides that a person is not to carry on a business of dealing in securities or hold himself out as carrying on such a business unless he is registered. The maximum penalty for a breach of the clause is a fine of $50,000 and, in

the case of a continuing offence, an additional fine of $500 a day. It will also be an offence to carry on such a business in partnership with a person who is not so registered, the maximum penalty being in this case a fine of $20,000 and a daily fine of $200.

Clause 47 provides that a person is not to carry on business as an investment adviser unless he is registered. The maximum penalty for a breach of the clause is $20,000 and, in the case of a continuing offence, an additional fine of $200 a day. It is also an offence to carry on such a business in partnership with a person who is not so registered. In the latter case the maximum fine that may be imposed is $10,000 and, in the case of a continuing offence, $100 per day.

Clause 48 provides that no person is to act as a dealer's representative or as an investment adviser's representative unless registered as such. The maximum penalty for a breach of the clause is $10,000 and, in the case of a continuing offence, an additional fine of $100 a day.

Clause 49 provides that a person who effects transactions through the agency of a registered dealer, registered dealer's representative, or an exempt dealer, or issues a prospectus complying with the Companies Ordinance, does not commit an offence under clauses 46 to 48 by reason only of so doing.

Clause 50 provides for the issue of certificates of registration to successful applicants for registration as dealers, investment advisers, and representatives. A certificate of registration is valid for 12 months but may be renewed under clause 53.

Clause 51 requires an applicant for registration as a dealer to deposit the prescribed amount with the Accountant General. Members of stock exchanges which have established compensation funds under Part X of the Bill are to be exempt from this requirement however. If a non-exempt dealer becomes bankrupt or, being a company, is wound up, the deposit is to be paid to the dealer's trustee in bankruptcy or, as the case may be, to the liquidator of the company. If such a dealer has his certificate of registration revoked or he or any of his servants is guilty of defalcation of a client's money or securities, the deposit is, on the direction of the Commissioner, to be forfeited. A deposit paid to a trustee in bankruptcy or liquidator or forfeited to the Commissioner for Securities is to be disposed of in accordance with regulations to be made under the Bill.

Securities Bill—second reading

[*Explanatory Memorandum*]

Clause 52 enables the Commissioner for Securities to refuse an application for registration on any of the grounds specified in the clause. The principal ground for refusal is that the applicant is not a fit and proper person to carry on business as a dealer, investment adviser, or representative, as the case may be, or if the applicant is a company, any director of the company is not a fit and proper person to be a director.

Clause 53 provides for the renewal of certificates of registration. A certificate of registration can be renewed for a further period of 12 months.

Clauses 54 and 55 provide for the revocation and suspension of the registration of dealers, investment advisers and representatives. The Commissioner also has power to reprimand a registered person under clause 55.

Clause 56 sets out the effect of the revocation or suspension of a certificate of registration. A person whose registration is revoked or suspended is deemed not to be registered for the purposes of clauses 46, 47 and 48. The latter provision does not however protect that person from any liability he may have incurred before the revocation or suspension took effect.

Clause 57 affords a right of appeal to the Disciplinary Committee against a decision of the Commissioner for Securities to refuse registration or renewal of registration as a dealer, investment adviser, or representative or to revoke or suspend such registration under clause 54 or clause 55, or a direction of the Commissioner to forfeit a deposit under clause 51(2)(*c*).

Clause 58 provides an appeal to the Supreme Court from decisions of the Disciplinary Committee under clause 57.

Clause 59 enables the Commissioner to declare certain persons, such as licensed banks, to be exempt dealers for the purposes of the Bill. An exempt dealer does not have to be registered under Part VI.

Clause 60 makes it an offence for any person to make a false or misleading representation for the purposes of obtaining a certificate of registration under Part VI. The offence is punishable on indictment with a maximum period of imprisonment of 5 years.

Clause 61 requires a registered dealer and a registered investment adviser to notify the Commissioner for Securities of any change of address and, if he ceases to carry on business, to notify the Commissioner of that fact. The clause also requires certain other information to be notified to the Commissioner.

PART VII

RECORDS

Clause 64 provides that Part VII is to apply to dealers, investment advisers, and representatives. There is also power to extend the clause, by order, to financial journalists.

Clause 65 requires a person to whom the Part applies to maintain a register in prescribed form of the securities in which he has an interest. Where such a person acquires an interest in securities, he is to record that interest in the register within 14 days.

Clause 66 requires a person to whom the Part applies to notify the Commissioner of the place where he is keeping the register required to be kept under clause 65.

Clause 68 empowers the Commissioner to require a person to whom the Part applies to produce for inspection the register required to be kept under clause 65.

Clause 69 empowers the Commissioner to supply a copy of a register kept under clause 65 to any person who should in his opinion be informed of the contents of the register.

PART VIII

TRADING IN SECURITIES

Clause 70 provides that nothing in Part VIII is to apply to offers to acquire or dispose of securities under a take-over scheme as defined in section 168A of the Companies Ordinance or to any issue of shares made in accordance with Part II or Part XII of the Companies Ordinance. The clause also provides that clauses 71 and 72 are not to apply to offers of securities of a company to holders of existing securities of that company. Nor are those clauses to apply to regular clients of dealers or to transactions between dealers.

Securities Bill—second reading

[*Explanatory Memorandum*]

Clause 71 requires a dealer when dispatching an offer to acquire or dispose of securities to comply with the requirements set out in the clause and in the First and Second Schedules to the Bill. The offer is to be written in the English language, specify the name and address of the offeror, contain a description of the securities, and specify the terms of the offer together with certain other details relating to the securities. It is to be accompanied by a translation in the Chinese language. Breach of the clause is punishable by a fine of up to $10,000.

Clause 72 imposes restrictions on persons hawking securities. An offender is liable to a fine of up to $5,000. It is a defence for a person charged with the offence to prove that he was a registered dealer and called on a person as a result of an invitation and, before entering into a contract for the sale of securities or before making an offer to sell securities, provided the person with a document in the form of an offer as required by clause 71.

Clause 73 requires every dealer who enters into a contract for the sale or purchase of securities to issue a contract note which complies with the requirements set out in the clause. Breach of the clause renders a dealer liable to a fine of up to $5,000.

Clause 74 prohibits a dealer from engaging in option dealings and forward trading. A dealer contravening the clause is liable to a fine of up to $5,000.

Clause 75 requires a dealer to provide his clients with full particulars of transactions entered into on their behalf. A client is also to be entitled under the clause to inspect the records of a dealer so far as they relate to transactions entered into on his behalf.

Clause 76 prohibits persons who are registered under the Bill as dealers, investment advisers, or representatives from claiming that they are carrying on business under the authority of the Hong Kong Government, the Securities Commission, or the Commissioner for Securities. A contravention of the clause is punishable with a maximum fine of $2,000.

Clause 77 requires a dealer or an investment adviser in all communications relating to securities to disclose his interest (if any) in those securities. Contravention of the clause is punishable by a fine of up to $5,000.

Clause 78 is intended to prevent persons, whether as principal or agent, from engaging in the practice of short selling securities. An offence against the clause is punishable by a fine of up to $10,000 and imprisonment for 6 months.

Clause 79 relates to the disposition of security documents. A dealer who holds the securities of a client for safe custody is either to have them registered in the client's name as soon as practicable or deposit them with the dealer's banker. The clause also prohibits a dealer from depositing the securities of a client as security for any loan or advance made to the dealer without the authority of the client. Contravention of the clause is punishable by a fine of up to $20,000 and imprisonment for 2 years.

PART IX

Accounts and Audit

Clause 80 provides that Part IX is to apply to the business of a dealer in securities. The provisions of the Part may be extended by the Governor in Council to investment advisers.

Clause 81 requires dealers to keep proper accounts. Failure to comply with the clause is punishable by a fine not exceeding $10,000 and imprisonment for 6 months.

Clause 82 requires a dealer to establish and maintain at a licensed bank or banks one or more trust accounts. All money received on account of a client, with certain exceptions, is to be paid into such an account. The clause also specifies the purposes for which money may be withdrawn from a trust account. Offences against the clause are to be punishable with up to 5 years' imprisonment and a fine of $50,000.

Clause 83 provides that money in a trust account is not to be available for satisfying the debts of a dealer.

Clause 84 provides that nothing in Part IX of the Bill is to affect any lawful claim or lien which a person has in respect of money held in a trust account.

Clause 85 requires a dealer to appoint a qualified auditor to audit his accounts.

Securities Bill—second reading

[*Explanatory Memorandum*]

Clause 86 requires a dealer to prepare a profit and loss account each year and to lodge it with the relevant authority, together with an auditor's report within the period prescribed in the clause. The clause makes provision for extending the time in certain cases. The relevant authority for the purposes of the clause is, in the case of a dealer who is a member of a stock exchange or partner of a member firm or director of a corporate member, that stock exchange and, in the case of any other dealer, the Commissioner for Securities. Breach of the clause is punishable with a fine of up to $5,000.

Clause 87 requires an auditor to send his report on a dealer's accounts directly to the Commissioner for Securities if he finds that the dealer is in breach of any of the provisions of clauses 81 and 82.

Clause 88 empowers the Commissioner for Securities to appoint an independent auditor to audit the accounts of a dealer if the dealer has failed to lodge an auditor's report under clause 86 or an auditor has sent his report directly to the Commissioner under clause 87.

Clause 89 empowers the Commissioner for Securities, on the application of a person who alleges that a dealer has failed to account to him, to appoint an independent auditor to examine and report on the accounts of the dealer.

Clause 90 requires an auditor appointed under clause 88 or clause 89 to report to the Commissioner for Securities.

Clause 91 prescribes the powers of an auditor appointed by the Commissioner for Securities.

Clause 92 deals with the communication of information obtained by an auditor appointed under clause 88 or clause 89.

Clause 93 requires a dealer, on being requested to do so, to produce his books, accounts, and records to an auditor appointed under clause 88 or clause 89 or to a person who produces written authority given under clause 91(*c*). The clause also requires a dealer to answer certain questions put to him by the auditor in relation to his business. Failure to comply with a request under the clause is punishable with a fine of up to $10,000 and 2 years' imprisonment.

Clause 94 makes it an offence for a person, with intent to prevent, delay, or obstruct the carrying out of any examination and audit under Part IX, to destroy, conceal, or alter records, or to send records and other property outside Hong Kong, or to leave Hong Kong. The maximum penalty is a fine of $50,000 and imprisonment for 2 years.

Clause 95 makes it clear that none of the provisions of Part IX of the Bill is to affect the right of a committee of a stock exchange to impose further obligations on members of a stock exchange with respect to the audit of accounts, the information to be given to auditors, and the keeping of books, accounts, and records.

PART X

Compensation Funds

Clause 96 defines the term "stock exchange" as used in Part X of the Bill.

Clause 97 requires every stock exchange to establish and maintain a compensation fund.

Clause 98 prescribes the sources of money that are to comprise the compensation fund of a stock exchange. A compensation fund is to consist of two accounts, namely a primary account and a reserve account. The money in the reserve account is to be held by the Accountant General.

Clause 99 provides that moneys required to be kept in a compensation fund primary account shall be paid or transferred into a separate bank account.

Clause 100 requires a stock exchange to keep proper accounts in respect of its compensation fund.

Clause 101 empowers a stock exchange to appoint a management sub-committee to exercise, with certain exceptions, its functions under Part X of the Bill.

Clause 102 requires a stock exchange to deposit certain amounts in its compensation fund in respect of its members. An amount representing $100,000 is, by virtue of subclause (1), to be deposited in respect of each individual member of the exchange, each partner of a member firm, and each director of a corporate member. The amount is to consist of an initial sum of $50,000 paid into the fund's reserve account; and the balance is to be made up by a further payment of $50,000, or by depositing, with

Securities Bill—second reading

[*Explanatory Memorandum*]

the Accountant General, approved securities valued at not less than $50,000 or a banker's guarantee for $50,000. The initial payment is to be deposited within one month after the coming into force of the clause or, in the case of persons who become members of an exchange, or partners of member firms or directors of corporate members after the coming into force of the clause, before they become members, partners, or directors, as the case may be; and the balance is to be deposited 6 months later or after such longer period as may be allowed. Subclause (8) of the clause requires an exchange to deposit in its compensation fund primary account additional amounts of not less than $400 per month in respect of each such person.

Clause 103 requires the Accountant General to invest any sums received under clause 102(1) or clause 107 in such manner as may be directed by the Financial Secretary. The clause includes provision for the payment of interest on those sums at such rate as is declared by the Financial Secretary by notice in the *Gazette*.

Clause 104 enables a stock exchange to cease making further deposits under clause 102(8) when the total amount deposited reaches $100,000 in respect of each individual member, partner of a member firm, and director of a corporate member of the exchange. Provision is made for the resumption of deposits in the event of the amount held in the account falling below that figure.

Clause 105 makes provision for the repayment in certain cases of sums of money, securities or guarantees held in respect of its members in cases where the deposits made under clause 102 are the result of levies directly imposed on those members. Repayment may only be made in cases of death or retirement.

Clause 106 prescribes the payments that are to be made out of a stock exchange's compensation fund. These payments include all claims established against the fund or allowed by the committee of the stock exchange, legal expenses incurred in investigating and defending claims, and expenses incurred in the administration of the fund. In addition, if the fund is insufficient, any securities or guarantees may be dealt as may be prescribed in regulations.

Clause 107 requires the committee of a stock exchange to pay to the Accountant General for deposit in the exchange's compensation fund reserve account an additional amount in respect of each of its members of not less than $1,000 per month in the event of the amount in the reserve account having to be resorted to in order to meet claims and other liabilities against the fund. The payments are to continue until the amount held in the reserve account again reaches a figure representing the amount specified by or under clause 102(1) for each individual member, partner of a member firm, and director of a corporate member of the exchange.

Clause 108 provides for the investment of any money held in a stock exchange's compensation fund primary account that is not immediately required for the meeting of claims and the like. The money not so required may be invested on fixed deposit with a licensed bank or in any securities for the time being approved by the Securities Commission.

Clause 109 provides for the application of a stock exchange's compensation fund. In the main, the fund is to be applied in meeting claims in respect of defalcations by, and bankruptcies of, members of the exchange and their servants. The total amount that can be paid in respect of a claim is $1,000,000 in respect of each individual member, partner of a member firm, or director of a corporate member involved or connected with the defalcation or bankruptcy giving rise to the claim. This amount may however be increased in certain cases in accordance with the provisions set out in subclauses (4) to (6) of the clause.

Clause 110 provides that any person who suffers pecuniary loss in the circumstances prescribed in clause 109(1) is entitled to make a claim against the appropriate compensation fund.

Clause 111 confers certain rights on an innocent partner of a member firm or director of a corporate member in relation to a compensation fund.

Clause 112 enables the committee of a stock exchange to publish in the press notices calling for claims against the exchange's compensation fund.

Clause 113 empowers the committee of a stock exchange to settle claims made against the exchange's compensation fund.

Clause 114 provides for the making of court orders in respect of claims against a compensation fund.

Securities Bill—second reading

[*Explanatory Memorandum*]

Clause 115 empowers the committee of a stock exchange to require any person making a claim against the exchange's compensation fund to produce such securities, documents, or statements of evidence as may be necessary to substantiate the claim.

Clause 116 provides that a stock exchange which makes a payment from its compensation fund is to be subrogated to the rights of the person to whom the payment is made to the extent of the amount of the payment.

Clause 117 provides that only the stock exchange's compensation fund is to be available to meet claims against the exchange. No other money or property of the stock exchange is to be available to meet claims.

Clause 118 provides for the situation where a stock exchange's compensation fund is insufficient to meet claims or where claims exceed the total amount payable under Part X of the Bill. In general the amount available is to be apportioned amongst claimants in such manner as the committee of the exchange considers equitable.

Clause 119 provides for the disposal of a stock exchange’s compensation fund in the event of the exchange being wound up.

PART XI

INSPETIONS AND INVESTIGATIONS

Inspections

Clause 120 enables the Commissioner for Securities to inspect registers, books, records, and documents and bankers' books for the purpose of ascertaining whether a person registered under the Bill or an exempt dealer has complied with the provisions of the Bill that relate to him and any conditions or restrictions subject to which his certificate of registration, if any, was granted.

Clause 121 empowers the Commissioner to require a dealer, exempt dealer and certain other persons to disclose to him, in relation to any purchase or sale of securities, the name of any

person from, through, or to whom, or on whose behalf, the securities were bought or sold.

Clause 122 empowers the Commissioner for Securities to investigate any suspected breach of the Bill's provisions and any suspected fraud or offence relating to trading or dealing in securities.

Clause 123 empowers a magistrate to issue a warrant authorizing the Commissioner or any police officer to search for and seize any document or article found on premises specified in the warrant believed to relate to the commission of an offence against Part VIII or Part XII. The clause authorizes the retention of documents and articles seized under such a warrant, normally for a period of 6 months or, if proceedings for an offence are commenced within that period, until the conclusion of the proceedings. However in certain circumstances specified in the clause such documents and articles may be retained for a longer period. The clause also enables a court which is dealing with an offence to which the clause relates to make an order for the disposal or destruction of any document or articles adduced in the proceedings.

Investigations

Clause 124 defines terms used in clauses 125 to 131.

Clause 125 empowers the Commission to appoint an inspector to investigate any matters concerning dealings in securities and to report thereon in such manner as the Commission directs. The clause enables an inspector to examine prescribed persons and to require production of books, records, accounts, and papers for the purposes of the investigation and to question persons involved in the investigation.

Clause 126 empowers an inspector to cause notes of an examination made under clause 125 to be recorded in writing, and provides that notes signed by a person examined under the Part may be used in legal proceedings against that person.

Clause 127 relates to reports of investigations by an inspector. If, as a result of a report under the clause or of notes of examination recorded under clause 126, the Commission considers that an offence may have been committed by a person and that the case is one in which a prosecution ought to be instituted, the Commission is to refer the matter to the Attorney General.

Securities Bill—second reading

[*Explanatory Memorandum*]

Clause 128 provides that a legal practitioner is not to be required to disclose to an inspector any privileged communication, other than the name and address of his client.

Clause 129 provides that in general the expenses of and incidental to an investigation by an inspector appointed under clause 125 are to be met out of moneys provided by the Legislative Council.

Clause 130 makes it an offence for a person to conceal, destroy, mutilate or alter a document relating to a matter which is the subject of an investigation by an inspector appointed under clause 125, or to send, cause to be sent or to conspire with another person to send, out of Hong Kong any such document. The offence is punishable by a fine of up to $20,000 and imprisonment for up to 2 years.

Clause 131 empowers the Commission to make certain orders relating to investigations under the Part in cases where facts concerning securities cannot be ascertained because a prescribed person has failed or refused to comply with a requirement of an inspector made under clause 125. For instance, the Commission may make an order restraining a specified person from disposing of any interest in specified securities or from acquiring specified securities. Contravention of an order made under the clause is punishable by a fine of up to $5,000.

PART XII

PREVENTION OF IMPROPER TRADING PRACTICES

Offences

Clause 132 prohibits a person from creating a false market in securities.

Clause 133 prohibits market rigging transactions.

Clause 134 prohibits a person from affecting the market price of securities by means of fictions.

Clause 135 prohibits a person from making false or misleading statements about securities or about the activities of a company whose securities are listed on a stock exchange.

Clause 136 makes it an offence to contravene any of the provisions of clauses 132 to 135. The maximum penalty for such an offence is a fine of $50,000 and 2 years' imprisonment.

Clause 137 is designed to prevent insider trading. The clause makes it an offence for a person who, through his association with a company, has knowledge relating to the company's activities or securities which is not generally known to the public to make use of that information in order to deal in those securities, or to disclose the information to enable another person to deal in the securities. It is also an offence for a person who obtains information not generally known to the public through a person closely associated with a company to deal in the securities of the company. The clause also makes provision for the payment of compensation by persons who have gained an advantage by means of the use of insider information. An offence against the clause is punishable by a fine of up to $50,000 and imprisonment for up to 2 years.

Action in Tort

Clause 138 makes a person who contravenes any of the provisions of clauses 132 to 135 liable to pay compensation to any person who has sustained pecuniary loss as a result of the contravention.

PART XIII

MISCELLANEOUS PROVISIONS

Clause 139 prohibits the use of the title "stockbroker" by persons who are not stockbrokers within the meaning of the Bill. Persons who do not fall within the definition of underwriter as defined in clause 2 are prohibited from using that title. Any contravention of the clause is to be punishable with a maximum fine of $5,000.

Clause 140 prescribes conditions that are to be fulfilled by investment advisers when entering into, extending, or renewing investment advisory contracts.

Clause 141 empowers the Supreme Court to make miscellaneous orders against holders of certificates of registration who appear to the Court to have contravened the Bill or any condition of their certificates. Application to the Court is to be made by the Commissioner for Securities.

Securities Bill—second reading

[*Explanatory Memorandum*]

Clause 142 makes it an offence to obstruct or hinder the Commissioner in the exercise of his powers, authorities, duties, or functions under the Bill, or to obstruct or hinder any other person exercising those powers, authorities, duties, or functions. The clause also makes it an offence to fail to produce books and documents for inspection by the Commissioner or a person authorized by him when required to do so. An offence against the clause is punishable with a fine of up to $5,000 and imprisonment for up to 3 months.

Clause 143 empowers the Governor in Council, after consultation with the Commission, to make regulations for the purposes of the Bill. In particular regulations may be made under the clause—

(*a*) regulating the conduct of business of registered dealers, investment advisers, dealers' representatives, and investment representatives; and

(*b*) providing for matters incidental to the registration of dealers, investment advisers, dealers' representatives, and investment representatives.

Provision may be made in the regulations for a breach of the regulations to be punishable by a fine of up to $2,000 and imprisonment of up to 3 months.

Clause 144 provides that where a company commits an offence against the Bill, a director or officer of the company also commits the offence if it is proved that he consented to or connived at the commission of the offence by the company, or that the offence was attributable to his neglect.

Clause 145 enables the Commissioner for Securities to prosecute those offences against the Bill that are punishable on summary conviction.

Clause 146 enables the Governor in Council to amend the Schedules to the Bill and certain specified amounts.

Clause 147 repeals the Stock Exchanges Control Ordinance 1973 and makes various consequential amendments to the Companies Ordinance, Estate Duty Ordinance and Stamp Ordinance.

PROTECTION OF INVESTORS BILL 1973

THE FINANCIAL SECRETARY moved the second reading of: —"A bill to provide for the protection of investors in securities and other property-"

He said: —Sir, honourable Members, undoubtedly, will be relieved to learn that this speech will be as brief as the bill itself.

The bill implements the recommendations of chapter 4 of the First Report of the Companies Law Revision Committee. In the early stages of drafting, it was included as a part of the Securities Bill as it covers forms of property other than securities. But it was eventually decided to make it a separate bill. It is comparatively general and aims to protect investors by making it unlawful for anyone to induce investors by fraudulent and reckless means to buy and sell securities, or to invest in any profit making scheme based on securities or any other form of property. It also bans advertisements which invite the public to invest in any form of property. These provisions are based on sections 13 and 14 of the United Kingdom Prevention of Fraud (Investments) Act 1958 as amended by the Protection of Depositors Act 1963.

"Advertisement" is widely defined. Clause 4 makes it an offence to have in one's possession a document containing such an advertisement if it is intended to issue it. But there are a number of exemptions. Sub-clauses (2) and (3) of clause 4 exempt certain specified types of activity from the prohibition, the more important being as follows: prospectuses of companies, unit trusts and mutual funds, and advertisements containing offers made to the public by registered dealers in securities, or by persons who buy and sell property, other than securities, in the course of their business. The Securities Commission also has the power to exempt any advertisement. The penalties for infringement are heavy, under clause 3 a fine of $1 million and imprisonment for seven years for fraudulent or reckless inducement to invest and under clause 4 a fine of $500,000 and imprisonment for three years on conviction on an indictment for contravention of the provision regarding advertisement.

It is also an offence, under clause 5, to advertise that a person is prepared to give investment advice or manage a portfolio for payment, unless he is registered as an investment adviser under the Securities Ordinance. If there is no specific payment or remuneration for the services, no offence is committed. The penalty for contravention is a fine of $10,000.

[THE FINANCIAL SECRETARY] **Protection of Investors Bill—second reading**

If there is good reason to suppose that an offence has been committed, a magistrate may, pursuant to clause 6, grant a warrant empowering the Commissioner or any police officer to seize relevant documents and to retain them for a period of six months.

Clause 7 provides that if a company commits an offence with the consent of, or because of neglect by, any director or senior officer, that person is also guilty of an offence.

If anyone considers he has lost money by acting on a false or misleading statement or forecast, he has the right under clause 7 to claim damages against the person who made it, unless that person can prove that he had reasonable cause to believe that the statement was true or the forecast was justified.

Motion made. That the debate on the second reading of the bill be adjourned—THE FINANCIAL SECRETARY (MR HADDON-CAVE).

Question put and agreed to.

Explanatory Memorandum

This bill implements the proposals contained in chapter 4 of the First Report of the Companies Law Revision Committee, relating to the protection of investors.

Clause 2: Subclause (1) defines terms used in the Bill. Some of the more important terms defined are "issue", "investment arrangements", and "securities". Subclause (2) defines the terms "advertisement" and "document" for the purposes of the Bill. An advertisement which invites the public to invest money with a person specified in the advertisement is to be treated as having been issued by him.

Offences

Clause 3 makes it an offence, punishable by imprisonment for a term not exceeding 7 years or a fine of $1,000,000, or by both, for any person, by a fraudulent or reckless misrepresentation, to induce other persons to enter into agreements, or to take part in arrangements, involving the investment of money in securities and other property.

Clause 4 prohibits the issue, or possession for the purposes of issue, of any advertisement or invitation, or the issue, or possession for the purposes of issue, of any document, which is or contains an invitation to the public to enter into agreements or to take part in arrangements involving the investing of money in securities. Subclauses (2) and (3) of the clause exempt certain specified types of activity from the prohibition. For example, neither the issue of a prospectus which complies with the requirements of the Companies Ordinance nor the issue of a form of application for shares in a company accompanied by such a prospectus is prohibited by the clause. Subclause (4) provides that a person found guilty of an offence against the clause is liable on conviction on indictment to a fine not exceeding $500,000 or to imprisonment for a term not exceeding 3 years, or to both.

Clause 5 prohibits a person from issuing, or being in possession of, an advertisement, or document containing an advertisement, in which a person who is not registered as an investment adviser under the Securities Bill is held out as being prepared to give investment advice in return for remuneration or to undertake for remuneration the management of investors' portfolios of securities. The maximum penalty for a contravention of the clause is a fine of $10,000.

Clause 6 empowers a magistrate to issue a warrant authorizing the Commissioner for Securities or a police officer to search for and seize any document found on premises specified in the warrant believed to relate to the commission of an offence against the Bill. The clause also authorizes the retention of documents so seized for a period of 6 months or, if proceedings are commenced in respect of such an offence, until the conclusion of those proceedings. In certain circumstances however the period of 6 months may be extended. It further enables a court which is dealing with an offence against the Bill to make an order for the disposal or destruction of any document produced at the proceedings which has been used in the commission of the offence. It is an offence to obstruct the Commissioner or a police officer in the execution of a warrant issued under the clause. The offence is punishable with a fine of up to $5,000 and imprisonment for up to 6 months.

Clause 7 provides that where a company or other body corporate commits an offence against the Bill, an officer of the company also commits the offence if it is proved that he consented

Protection of Investors Bill—second reading

[*Explanatory Memorandum*]

to or connived at the commission of the offence by the company or other body corporate, or that the offence was attributable to his neglect.

Action in Tort

Clause 8 gives a person who has been induced by any false, misleading, or deceptive statement, forecast, or promise to invest money, a right to sue for damages if he has, by reason of his reliance on the statement, forecast, or promise, suffered financial loss. It is a defence to such an action for the defendant to prove that he had reasonable cause to believe and did believe that the statement was true or that the forecast or promise was justified.

Miscellaneous Provision

Clause 9 makes a consequential amendment to the Theft Ordinance.

TEMPORARY RESTRICTION OF BUILDING DEVELOPMENT (POK FU LAM AND MID-LEVELS) (AMENDMENT) BILL 1973

MR ROBERTSON moved the second reading of: —"A bill to amend the Temporary Restriction of Building Development (Pok Fu Lam and Mid-levels) Ordinance 1973."

He said: —Sir, I move the second reading of the Temporary Restriction of Building Development (Pok Fu Lam and Mid-levels) (Amendment) Bill 1973 the effect of which is to extend the period of restriction on approval of building plans in these areas to 31st December 1974.

When moving the second reading of the Temporary Restriction of Building Development (Pok Fu Lam and Mid-levels) Bill 1973, 1 spoke about the traffic problems in these areas and explained that the Public Works Department use the 6-month respite granted by that bill to make a detailed reappraisal and to quantify the extent of the problem and the possibilities of solution.

Subsequently the department engaged a firm of consulting engineers to carry out this task, and a report has been submitted by them. This report does not offer any hope of an easy solution to the problems. Such road improvements as are possible in the congested area of the Mid-levels will be more than offset by the increase in traffic caused by new development under construction or for which plans have been approved, and the only possibility of even keeping traffic moving as it does at present is to institute traffic management schemes. The Public Works Department is already discussing a number of these schemes with other interested departments, but it will inevitably be some time before such schemes can be implemented, and still longer before their effect can be assessed. It is clear that it is not yet possible to remove the restrictions and development in the Mid-levels and Pok Fu Lam areas and that we need more time to consider the consultant's report. It is for this reason that the extension of the period of restriction is required.

In closing, I feel I must repeat what I said when moving the second reading of the original bill—that in view of the size of the problem and the limitations of any feasible road system, we should not be too sanguine that a solution will be easy to find or quickly achieved.

Motion made. That the debate on the second reading of the bill be adjourned—MR ROBERTSON.

Question put and agreed to.

Explanatory Memorandum

The purpose of this bill is to extend the duration of the Temporary Restriction of Building Development (Pok Fu Lam and Mid-levels) Ordinance 1973 to 31st December 1974.

MISCELLANEOUS AMENDMENTS (POWERS OF THE GOVERNOR IN COUNCIL) BILL 1973

Resumption of debate on second reading (14th November 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

CROSS-HARBOUR TUNNEL (AMENDMENT) BILL 1973

Resumption of debate on second reading (28th November 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

RATING (AMENDMENT) BILL 1973

Resumption of debate on second reading (14th November 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

CROWN LEASES BILL 1973

Resumption of debate on second reading (25th April 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

LAW REVISION (MISCELLANEOUS AMENDMENTS) BILL 1973

Resumption of debate on second reading (28th November 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

PO LEUNG KUK BILL 1973

Resumption of debate on second reading (28th November 1973)

Question proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) (NO 2) BILL 1973

Resumption of debate on second reading (31st October 1973)

Question proposed.

MR WOO: —Sir, when the Domestic Premises (Tenure and Rent) (Temporary Provisions) Bill 1973 was passed by this Council on 6th June this year a freeze was temporarily imposed on domestic rents. In addition, security of tenure was given to tenants and sub-tenants of post-war domestic premises for an interim period until such time as permanent legislation could be prepared to give effect to the long-term measures announced by the Acting Colonial Secretary the same day in introducing the bill.

On that occasion I made clear the position of the great majority of the Unofficial Members. I said that we had been concerned to find the formula for rent increases which is best for Hong Kong, that is to say for all its citizens, not just for those who happen to own property. I went on to say that it had been necessary, on the one hand, to find a formula which would not inhibit future development in building. On the other hand, it was equally imperative to prevent the rents of existing

[MR WOO] **Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill—resumption of debate on second reading (31.10.73)**

tenancies from rising at an unreasonable rate. I said then and repeat again now that, if there is one class of person who will lose out more than all others because of this legislation, it is the landlords of those premises previously under control, the rentals of which are considerably lower than current day market values. The bill now before us does no more than allow those rentals to rise by one fifth of the difference between current rental and a fair market rent to be assessed by the Commissioner of Rating and Valuation. Furthermore, this is the only increase which is to be allowed over a 2-year period. A further safeguard from the point of view of poor and middle-class tenants—and it is their position which has weighed most heavily upon us during our deliberations—is that in no circumstances will the rise in rent be allowed to exceed 21% of the existing rent. Perhaps I should explain how this sum of 21% is arrived at. The original view of the Unofficial Members of this Council was that rent should not be allowed to rise by more than 10% a year so as to eliminate unnecessary hardship for the public. It will be appreciated that in relation to rentals at the base date a 10% rise in the first year would lead on to a 11% rise in the original rent in the second year. Hence the rise over a 2-year period works out at 21%. It was explained to the Unofficials that the amount of work involved for the Rating and Valuation Department in issuing annual certificates of increase in rent would be considerable. Hence the final proposal which emerged was that there should be only one increase allowed over a 2-year period, this being limited to 21%.

Since this bill was published the Unofficials have studied and deliberated upon a number of representations from various quarters. We have also met with the Secretary for Housing, the Acting Commissioner of Rating and Valuation and other Government officials to discuss the need for changes in the bill. As a result of these deliberations a number of amendments to the bill will be moved at the committee stage today, some by the Secretary for Housing and others by myself. It may be convenient if I mention now the nature of those amendments which I shall put forward on behalf of the Unofficial Members.

First, it has been pointed out to the Unofficials Members that whilst the new section 53(2)(*d*) enables the court to make an order for possession where the sub-tenant has caused unnecessary annoyance, there should be a similar proviso where it is the tenant who causes

unnecessary annoyance. This is considered logical, and I shall move an amendment accordingly.

Second, it has been suggested that an unscrupulous tenant could by sub-letting the premises forestall any impending action being taken by the landlord to recover the premises under the new section 53 of the bill. To prevent this a new sub-clause will be added to enable the court to make an order for possession of premises in favour of a landlord where the tenant has, without the consent in writing of the landlord, sub-let the whole or part of the premises of which he is the tenant, and a proviso will also be added by me at the committee stage an amendment to shift the onus of proof to the tenant if there were an apparent change in the occupancy of premises or part thereof, that is to say, the tenant in such a case should be deemed to have parted with the possession of such premises or such part unless he satisfied the court to the contrary.

I have not given the requisite days of notice of this further amendment, but I got Your Excellency's permission to move the same at the committee stage. Furthermore a new section will be added to the bill making it obligatory for tenants to notify the landlord after 14th December 1973 of any sub-letting.

Third, the Unofficial Members have been advised that it will be impracticable to enforce those provisions in the new section 54 which, as drafted, were intended to restrict the rentals of new tenants after existing tenants move out and a new tenancy entered into. We have been advised that it is impossible to police such a proviso. Whilst it would be unlawful under the terms of this section to charge a rental in excess of the fair market rent upon a change of tenant, there is no way of preventing landlord and tenant from entering into a side agreement and paying additional sums, for example by way of premium. In practice the only effect of the proviso would be to encourage a new form of key money. This being the case the Unofficials take the view that the legislation should be based upon reality. There is no point in putting onto the statute book legislation which is meaningless and not enforceable. In point of fact a person who takes up a tenancy of a flat which was previously controlled but the tenant of which has now moved out is in no different position from a person who enters into newly built accommodation. In both cases, the landlord will be able to charge market rents. Hence it is proposed to replace the existing section 54 by a new section which will require the landlord to do no more than notify the Commissioner of Rating and Valuation to the extent provided by this bill.

[MR WOO] **Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill—resumption of debate on second reading(31-10-73)**

I now come to the fourth matter, namely the proviso in section 58 of the bill limiting rental increases to 21%. It has been urged upon us that this proviso is not necessary in the case of what might, broadly speaking, be called luxury flats. These are defined as being flats the annual rateable value of which is in excess of $30,000. Since the original 21% limitation was imposed at the request of the Unofficial Members it is appropriate that I should now on their behalf propose a slight amendment of the provision to the extent of exempting such luxury flats from the effect of the proviso. I shall move a committee stage amendment to this end. The amendment will cover flats the annual rateable value of which is in excess of $30,000. The method of ascertaining the rateable value will be prescribed in a new sub-section. The effect will be that the landlords of such flats will be able to raise their rents by one-fifth of the difference between current rent now being paid and the fair market rent. The Unofficial Members understand that only about 1,500 tenants in the luxury bracket will be affected by this change. Another 1,500 such flats are owner-occupied and hence not at present affected.

Fifth, it had been pointed out that any future increase in rates, if passed onto a tenant, might be construed as an increase in rent under new section 65(6). Since this is not the intention I shall move an amendment to exclude rate increases from the operation of the section.

Among the points raised in representations made to the Unofficial Members of this Council two matters are outside the ambit of this bill. They are, however, intimately connected with the subject matter and I think I should properly raise them now. First, a proposal has been made for the setting up an advisory committee on rent control to which members of the public representing both tenants and landlords as well as developers would be appointed. This committee would keep under review the level of rents and the operation of rent control legislation. I think this proposal has much to commend it. The complexities of rent control have become very apparent during the course of enactment of legislation this year on the subject matter. Obviously there will have to be further legislation in the future since the control of rental increases cannot be abolished overnight. It may well be many years before market forces can be allowed to have uncontrolled sway in fixing rents. The prospect is therefore of a continuing need for legislative provisions, no doubt changing from

time to time and taking into account recent developments both in the practical sphere of building construction and estate management and also in the legal sphere based upon decisions of the courts in interpreting the complex law on this subject. It would be very useful to have a standing committee which could keep under review all these complexities and propose amendments which may be needed to suit the changing circumstances, or the needs of particular groups or categories of cases. The same committee would be consulted on the details of future draft legislation. This would be in accordance with Government's announced intention of taking responsible public opinion into account before making final decisions.

The second suggestion made to the Unofficial Members was that there should be a commission of inquiry into housing which in particular should report on the measures necessary to overcome the present shortage of accommodation and on related matters of land utilization. On this proposal I have rather more reservations since it is not clear that the additional inquiry would achieve any useful purpose on top of the work constantly being done in this sphere by the newly constituted housing authority and by government planning committees. But there is, I think, a case for greater unofficial representation at the planning stages. In particular unofficial representation on the Land Development Planning Committee and the various committees set up to co-ordinate the development of new towns seems highly desirable. I would be grateful if consideration could be given to this.

MR WONG: —Speaking in support of the bill to amend the Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill 1973, I would like to say that this bill serves the following purposes: firstly, to continue to provide security of tenure during the life of the legislation, permitting the landlord, however, to regain possession under certain circumstances; secondly, it rationalizes the rent increases as the sharp rise in the rental level of new lettings justifies such legislation; thirdly, it encourages new building by not limiting rents for them.

Rent is one of the four essential costs of living. In a successful and sustained economy, the four costs of living are balanced. In Hong Kong, except for those in government low cost housing, rent is out of proportion with the other costs of living and bears a disproportionately high percentage with that of salaries and wages.

[MR WONG] **Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill—resumption of debate on second reading (31.10.73)**

The recent level of rent is caused not so much by rising costs of construction as with speculation in real estate which is distinct from genuine developers.

The real estate developers have performed a service to the community and are entitled to earn their legitimate profit. The rent levels of 1972 allowed real estate developers to have their investment returned in approximately six years time and of course, at the same time, they would enjoy the benefit of capital appreciation of their real estate. However, the frenetic spirit which dominated the stock market at that time also permeated through the real estate market and many people who are not real estate developers engaged in buying flats in speculation and pushed the rent level up excessively.

High excessive rent will undermine long term development in industry and trade.

There have been representations made that while agreeing that low and medium class flats should be under control, high class flats should be exempt. To take this step would be to ignore the relativity of high class flats with medium class flats and make it harder for the higher income executives and owners of large families to live. However, to make it a little flexible for high class flats which were rented at below fair market rent, the basic formula now worked out is to allow an increase which shall be a sum to be ascertained after dividing the amount by which a fair market rent to be established by the Department of Rating and Valuation exceeds the current rent by the factor of five.

On the whole, there will be only a few cases which will exceed the 21 % increase since rents for high class flats have been free from control for more than ten years. We must remember there is no single formula which would suit every case. This bill rationalizes any increase to a maximum of 21 % over a period of two years for flats up to the rateable value of $30,000, and this is a fair increase over the present rent levels in cases where it is allowed. Finally, for the real estate developer, it will be reassuring to them that for any new building completed after the date of this legislation, they will be exempted from control and they can, in fact, charge what the traffic can bear. This bill rationalizes the present rent levels and simultaneously encourages the development and supply of new flats. I support this bill.

MR CHEONG-LEEN: —Sir, I rise to support this bill which is designed to give security of tenure at reasonable rentals to the vast majority of people living in private domestic accommodation.

Not everyone in Hong Kong will be pleased with the 21 % formula. Some tenants will argue that it is too high, some landlords will claim that it is too low.

However, it is a genuine attempt to stabilize domestic rentals, provide security of tenure, keep down inflation, and yet not to greatly inhibit private enterprise from investing in new building projects to provide even more domestic accommodation.

Admittedly, the real estate market is in a rather inactive state, and several thousands of recently completed small and medium-sized flats are still vacant. Most of the owners of these vacant flats prefer to sell rather than to rent, but the anomaly is that the middle income families who desperately need this type of accommodation cannot afford to put down the usual 25% down-payment.

One way to constructively stimulate the real estate market would be for Government to do something for its middle income civil servants who are neither entitled to allocation in public housing nor are given Government accommodation or housing allowances by reason of their higher income bracket.

I hope that Government will consider a loan scheme to this neglected middle income group in the Civil Service on the following lines:

Firstly, Government will lend two thirds of any down-payment on any flat purchased.

Secondly, Government will lend up to half of any monthly instalment payments on the flat purchase.

Thirdly, any funds advanced by Government will be charged, subject to the agreement of the Staff Associations, against the pension account of the Civil Servant concerned. The interest rate charged should vary between 5 % to 7½%.

Such a loan scheme using some of Government's surplus funds would not only bring direct benefit to local people it would also help to create more home-ownership and to that extent to reduce over-speculation in the buying and selling of small and medium-sized flats.

Sir, I commend this suggestion for consideration by Government.

Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill—resumption of debate on second reading (31.10.73)

MR LIGHTBODY: —Sir, I am grateful for the support for this bill expressed by my Unofficial colleagues and I am very conscious of the careful consideration they have given to the various representations made since the bill was published. Most of the points made by my honourable Friend Mr P. C. WOO are designed to meet comments made on the bill and I feel sure that they will command general support as being both realistic and equitable.

I would like now to comment on some other aspects of the bill in the light of recent discussions with my Unofficial colleagues. The first concerns the effective date of this enactment. As I said when I moved the second reading, this bill cannot come into force until the 15th December, instead of the 1st December as originally intended.

The next point concerns tenancy agreements existing before the enactment of this bill by which agreed rent increases would have already become payable but for the "freeze" ordinance passed in June this year, or will become payable on or after the enactment of this bill. In such cases, the tenant having contracted to pay an increased rent, it would be a reasonable concession to landlords to allow such agreed increases. Tenants in these cases would of course enjoy the security of tenure afforded by the bill.

We have also reconsidered the procedures set out in section 59 for a tribunal review of a certificate of permitted rent increase issued by the Commissioner of Rating and Valuation, and we have concluded that it would be desirable to provide for a refund of the $50 fee where the applicant withdraws his request for a review before the tribunal is appointed.

Finally, the bill should, but does not at present, include transitional provisions to permit the Rating and Valuation Department and the courts to dispose of outstanding cases under sections 57, 58(2), 64 and 65 of the present Part II of the Landlord and Tenant Ordinance in accordance with the terms of that part. These sections relate to applications for a rent increase or for a review of an approved increase, and to appeals to the court against approved rent increases.

Sir, I intend to move amendments to the bill at the committee stage to give effect to these proposals, and I believe that taken together with the amendments to be moved by my honourable Friend Mr P. C. WOO they go as far as this Council can reasonably go in today's

circumstances towards meeting the various objections recorded by or on behalf of property owners and developers. They will, I hope, recognize in the amendments a genuine attempt to give them a square deal without creating hardship for tenants. As I have said before, this bill provides for on-going rent increases, and should ensure property owners a reasonable return on their investment while leaving newly completed property free of control. At the same time, existing tenants are protected against unreasonable rent increases and will enjoy security of tenure.

Having now dealt with the specific contents of the bill, I would like to assure my honourable Friends Mr P. C. WOO and Mr CHEONG-LEEN that the other points which they have raised in their speeches will be given careful consideration.

Question Put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Committee stage of bills

Council went into Committee.

MISCELLANEOUS AMENDMENTS (POWERS OF THE GOVERNOR IN COUNCIL) BILL 1973

Clauses 1 and 2 were agreed to.

Schedule

THE COLONIAL SECRETARY: —Sir, I move that the Schedule be amended by deleting Item 9.

This item amends the Crown Lands Resumption Ordinance, so as to empower the Colonial Secretary to authorize the resumption of land for a public purpose, instead of the Governor in Council as at present. It also confers a right of appeal to the Governor in Council against an order for resumption made by the Colonial Secretary.

[THE COLONIAL SECRETARY] **Miscellaneous Amendments (Powers of the Governor in Council) Bill—committee stage**

However, it has been represented that this will almost inevitably lead to petitions to the Governor in Council in a large proportion of resumptions. This would be likely to be slower and less certain than the present system whereby the initial decision is taken by the Governor in Council.

In these circumstances, it seems preferable to retain the present procedure, which works well, even though it does burden the Governor in Council with a substantial quantity of work.

Proposed amendment

Schedule

That the Schedule be amended by deleting item 9.

The amendment was agreed to.

Schedule, as amended, was agreed to.

CROSS-HARBOUR TUNNEL (AMENDMENT) BILL 1973

Clauses 1 to 3 were agreed to.

RATING (AMENDMENT) BILL 1973

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in a group.

Clauses 1 to 5 were agreed to.

CROWN LEASES BILL 1973

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in groups.

Clause 1 was agreed to.

Clause 2

THE ATTORNEY GENERAL: —Sir, I move that clause 2 be amended as set out in the paper before honourable Members.

Proposed amendments

Clause

2 That clause 2 be amended by deleting the definition of "renewable Crown lease" and by inserting the following new definitions—

“"Commissioner" means the Commissioner of Rating and Valuation;";

“"relevant day" means 1st July 1973 or the day immediately following the day of expiration of the Crown lease, whichever is the later;";

“"renewable Crown lease" means a Crown lease to which the Ordinance applies by virtue of section 3;";

“"tenement" means any land (including land covered with water) or any building, structure, or part thereof which is held or occupied as a distinct or separate tenancy or holding.".

The amendments were agreed to.

Clause 2, as amended, was agreed to.

Clause 3

THE ATTORNEY GENERAL: —Sir, I move that clause 3 be amended as set out in the paper before honourable Members.

The changes which the proposed clause shows from the former clause 3 are necessary solely on account of the fact that the bill was not enacted before 30th June, as originally anticipated. There is no change of substance and the bill applies to the same Crown leases as before.

Proposed amendments

Clause

3 That clause 3 be deleted and the following be substituted—

"Application.

3. (1) Subject to subsection (2), this ordinance applies—

Crown Leases Bill—committee stage

(*a*) in the case of Crown leases which expired before the commencement of this Ordinance—

(i) to every such Crown lease under which land in New Kowloon or in any other part of the New Territories was demised for a term of seventy-five years and which contained a right of renewal for a further term; and

(ii) to the Crown lease of each lot specified in the Schedule; and

Schedule.

(*b*) in the case of Crown leases which expire after the commencement of this Ordinance—

(i) to every such Crown lease under which land in Hong Kong (other than the New Territories) is demised for a term of ninety-nine or seventy-five years and which contains a right of renewal for a further term; and

(ii) to every such Crown lease under which in New Kowloon or in any other part of the New Territories is demised for a term of twenty-one years and which contains a right of renewal for a further term.

(2) This Ordinance does not apply to any lease to which the New Territories (Renewable Crown Leases) Ordinance applies.

(Cap. 152.)

(3) The Governor may by order amend the Schedule.".

The amendments were agreed to.

Clause 3, as amended, was agreed to.

Clause 4

THE ATTORNEY GENERAL: —Sir, I move that clause 4 be amended as set out in the paper before honourable Members.

The proposed clause replaces clause 5. The changes which it shows are also necessary by reason of the fact that the bill was not enacted before 30th June and will give effect to the assurance I gave

in my statement to this Council on 20th June that Crown leases which were to expire at the end of that month would be treated as having been renewed with effect from 1st July. Accordingly, Sir, the new clause applies, in addition to the scheduled lots, to New Kowloon leases which have expired since 30th June.

Proposed amendments

Clause

4 That clause 4 be deleted and the following be substituted—

"Renewal of Crown leases which expired before commence-ment of Ordinance

4. (1) Where a renewable Crown lease of a lot expired before the commencement of this ordinance and the lot had not been divided into sections before the expiration of the lease, the right of renewal contained in the lease shall be deemed to have been exercised by the person or all the persons, if more than one, entitled to that right immediately before the expiration of the lease and there shall be deemed to have been granted to such person or persons on the day following the day on which the lease expired a new Crown lease of the lot.

(2) Where a renewable Crown lease of a lot expired before the commencement of this ordinance and the lot had been divided into sections before the expiration of the lease, the right of renewal contained in the lease shall be deemed to have been exercised by the persons entitled to that right immediately before the expiration of the lease, and there shall be deemed to have been granted to such persons on the day following the day on which the lease expired separate new Crown leases of the sections of the lot respectively held by them under the lease.".

The amendments were agreed to.

Clause 4, as amended, was agreed to.

Clause 5

THE ATTORNEY GENERAL: —Sir, I move that clause 5 be amended as set out in the paper before honourable Members.

This replaces the former clause 4, with drafting changes only.

Crown Leases Bill—committee stage

Proposed Amendments

Clause

5 That clause 5 be deleted and the following be substituted—

"Renewal of Crown leases expiring after commencement of Ordinance.

5. (1) Where a renewable Crown lease of a lot expires after the commencement of this ordinance and the lot has not been divided into sections before the expiration of the lease, the right of renewal contained in the lease shall, if the lease has not been renewed pursuant to the right of renewal contained therein before it expires, be deemed to have been exercised by the person or all the persons, if more than one, entitled to that right immediately before the expiration of the lease, and there shall be deemed to be granted to such person or persons on the day following the day on which the lease expired a new Crown lease of the lot.

(2) Where a renewable Crown lease of a lot expires after the commencement of this ordinance and the lot has been divided into sections before the expiration of the lease, the right of renewal contained in the lease shall, if the lease has not been renewed pursuant to the right of renewal contained therein, before it expires, be deemed to have been exercised by all the persons entitled to that right immediately before the expiration of the lease, and there shall be deemed to be granted to such persons on the day following the day on which the lease expired separate new Crown leases of the sections of the lot respectively held by them under the lease.".

The amendments were agreed to.

Clause 5, as amended, was agreed to.

Clause 6

THE ATTORNEY GENERAL: —Sir, I move that clause 6 be amended as set out in the paper before honourable Members.

Proposed Amendment

Clause

6 That clause 6 be amended by deleting the full stop at the end thereof and substituting the following—

"to which the lease relates.".

The amendment was agreed to.

Clause 6, as amended, was agreed to.

Clauses 7 and 8 were agreed to.

Clause 9

THE ATTORNEY GENERAL: —Sir, I move that clause 9 be amended as set out in the paper before honourable Members.

The proposed clause gives effect to the proposal which I announced in my statement in June that the Crown rent payable under the Crown leases to which the bill applies should be three per cent of the rateable value of the lot or section on the relevant day—that is, on 1st June 1973 or on the expiry of the Crown lease in the case of those which expire after 30th June. That apparently simple concept is provided for in the new sub-clause (1). The following six sub-Clauses provide for the determination of the rateable value of a lot or section and for the reassessment of Crown rent where the land is developed or redeveloped after the relevant day. They are complex and it will be clear to honourable Members that the concept of using rateable value as the basis for determining Crown rent is not as simple as might appear. There are particular complications where premises the rateable value of which forms the basis for the determination of Crown rent stand on more than one lot or section.

Finally the new sub-clause (9) enables Crown lessees whose leases were renewed before 1st July to pay Crown rent on the rateable value basis with effect from that day if it is to their advantage to do so.

Sir, it is this clause which seeks to give effect to the major change proposed to the bill since it was introduced into this Council. I think it right to acknowledge at this stage the contribution made by honourable Unofficial Members in reaching this acceptable and workable solution.

Crown Leases Bill—committee stage

Proposed Amendments

Clause

9 That clause 9 be deleted and the following be substituted—

"New Crown rent of a lot or section held under a new Crown lease.

9. (1) Subject to subsection (9) the new Crown rent payable under a new Crown lease shall be an amount equal to three *per cent* of the rateable value of the lot or section.

(2) Subject to the provisions of this section, the rateable value of a lot or section for the purposes of this section is—

(11 of 1973.)

(*a*) the rateable value, as set out on the relevant day in the list declared under section 13 of the Rating Ordinance 1973, of the tenement of which the land comprised in the lot or section (and no other land) forms part or the aggregate of the rateable values as so set out of every tenement which includes any interest in such land (but no other land); or

(*b*) the interim valuation, as ascertained by the Commissioner under the Rating Ordinance 1973, on the relevant day of the tenement of which the land comprised in the lot or section (and no other land) forms part or the aggregate of such interim valuations of every tenement which includes any interest in such land (but no other land); or

(*c*) where a building on the lot or section also stands on another lot or section—

(i) that proportion of the rateable value, as set out on the relevant day in the list declared under section 13 of the Rating Ordinance 1973, of the tenement of which such building forms part, or of the interim valuation, as ascertained by the Commissioner under the Rating Ordinance 1973, on the relevant day of such tenement, which the area of the lot or section bears to the area of all the lots or sections on which such building stands; or

(ii) that proportion of the aggregate of the rateable values, as so set out, or of the interim valuations on the relevant day as so ascertained, of each of the tenements of which a part of such building forms part, which the area of the lot or section bears to the area of all the lots or sections on which such building stands; or

(*d*) the aggregate of any two or more of the foregoing, as the case may be.

(3) Where after the relevant day there is an interim valuation of—

(*a*) the tenement of which the land comprised in a lot or section (and no other land) forms part;

(*b*) any tenement which includes any interest in such land (but no other land);

(*c*) any tenement of which a building on a lot or section and also on another lot or section forms part;

(*d*) any tenement of which a part of such a building forms part,

then, with effect from the first day of the month following that in which the tenement became liable to an interim valuation, the rateable value of that lot or section is: —

(i) such interim valuation as is mentioned in paragraph (*a*) or (*b*) or the aggregate of such interim valuations; or

(ii) that proportion of the interim valuation of the tenement referred to in paragraph (*c*) which the area of the lot or section bears to the area of all the lots or section on which the building stands; or

(iii) that proportion of the aggregate of the interim valuations of the tenements referred to in paragraph (*d*) which the area of the lot or section bears to the area of all the lots or sections on which the building stands; or

(iv) the aggregate of any two or more of the foregoing, as the case may be; and—

Crown Leases Bill—committee stage

(v) the rateable value, as set out on the relevant day in the list declared under section 13 of the Rating Ordinance 1973, of any tenement of which the land comprised in the lot or section (and no other land) forms part or the aggregate of the rateable values as so set out of every tenement which includes any interest in such land (and no other land); or

(vi) the interim valuation, as ascertained by the Commissioner under the Rating Ordinance 1973, on the relevant day of any tenement of which the land comprised in the lot or section (and no other land) forms parts or the aggregate of such interim valuations of every tenement which includes any interest in such land (but no other land); or

(vii) where a building on the lot or section also stands on another lot or section—

(*aa*) that proportion of the rateable value, as set out on the relevant day in the list declared under section 13 of the Rating Ordinance 1973, of any tenement of which such building forms part, or of the interim valuation, as ascertained by the Commissioner under the Rating Ordinance 1973, on the relevant day of any such tenement, which the area or the lot or section bears to the area of all the lots or sections on which such building stands; or

(*bb*) that proportion of the aggregate of the rateable values, as so set out, or of the interim valuations on the relevant day as so ascertained, of each of the tenements of which a part of such building forms part, which the area of the lot or section bears to the area of all the lots or sections on which such building stands; or

(viii) the aggregate of any two or more of the foregoing, as the case may be.

(4) The reference in this Ordinance to the rateable value of a tenement as set out on the relevant day in the list declared under section 13 of the Rating Ordinance 1973 includes a reference to the rateable value of any tenement ascertained pursuant to subsection (6) and the rateable value provided for by subsection (7).

(5) The reference in this Ordinance to the rateable value or the interim valuation of a tenement made by the Commissioner under the Rating Ordinance 1973 is, in a case where such rateable value or such interim valuation is varied on appeal under section 42 of that Ordinance, a reference to such rateable value or such interim valuation as so varied.

(6) Where no rateable value of a tenement has been ascertained under the Rating Ordinance 1973 whether by reason of the exemption of such tenement from assessment to rates or otherwise, the Commissioner shall if required by the Director ascertain the rateable value thereof as if the same were assessable to rates under that Ordinance.

(7) Where on the relevant day no rates are payable under the Rating Ordinance 1973 in relation to a tenement, otherwise than by reason of any exemption under section 36 of that Ordinance, the rateable value for the purposes of this section, of the lot or section forming such tenement shall be—

(*a*) the rateable value of the tenement of which the land comprised in such lot or section formed part as last ascertained by the Commissioner for rating purposes; or

(*b*) the aggregate of the rateable values of—

(i) such tenements; or

(ii) the tenements which included any interest in such land; or

(iii) both the tenements referred to in subparagraph (i) and those referred to in sub-paragraph (ii),

as last ascertained by the Commissioner for rating purposes.

(8) There shall be added to the new Crown rent determined in accordance with subsection (1) such amount as

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may be necessary to make the same an even number of dollars.

(9) Where the person or all of the persons, if more than one, entitled to exercise the right of renewal contained in a renewable Crown lease paid or agreed in writing with the Director to pay the new Crown rent of a lot or section in an amount exceeding that which is specified in subsection (1) the new Crown rent of the lot or section shall be—

(*a*) for the period from the expiration of the renewable Crown lease to the 30th June 1973 the amount so paid or agreed to be paid; and

(*b*) for the period from the 1st July 1973 to the expiration of the term of the new Crown lease the amount specified in subsection (1).".

The amendments were agreed to.

Clause 9, as amended, was agreed to.

Clause 10

THE ATTORNEY GENERAL: —Sir, I move that clause 10 be amended as set out in the paper before honourable Members.

The proposed clause contains only changes which are consequential on other amendments.

Proposed Amendment

Clause

10 That clause 10 be deleted and the following be substituted—

"Evidence of renewal.

10. The entry for the time being in the register in the Land Office of the amount of the new Crown rent payable in respect of a lot or section shall be conclusive evidence of the grant of the new Crown lease of the lot or section and of the new Crown rent thereof.".

The amendment was agreed to.

Clause 10, as amended, was agreed to.

Clauses 11 to 19 were agreed to.

Schedule

THE ATTORNEY GENERAL: —Sir, I move that the Schedule be amended as set out in the paper before honourable Members.

Proposed Amendments

Schedule

That the Schedule be amended—

(*a*) by deleting the following—

"H.H.I.L. 256";

(*b*) (i) by deleting "K.I.L. 953 s. B ss. 1" and substituting the following—

"K.I.L. 953 s. B ss. 1 R.P.";

(ii) by deleting "K.I.L. 961" and substituting the following—

"K.I.L. 961 R.P.";

(iii) by deleting "K.I.L. 962 s. A" and substituting the following—

"K.I.L. 962 s. A. R.P.";

(iv) by deleting "K.I.L. 1165 s. J" and substituting the following—

"K.I.L. 1165 s. J R.P."; and

(v) by deleting "K.I.L. 1165 s. K" and substituting the following—

"K.I.L. 1165 s. K R.P"

The amendments were agreed to.

Schedule, as amended, was agreed to.

New clause 9A "New Crown rent to be noted in register in Land Office".

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order No 46(6).

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THE ATTORNEY GENERAL: —Sir, in accordance with Standing Order No 46(6) I move that the new clause 9A as set out in the paper before honourable Members be read a second time.

The proposed clause replaces in substance the former clause 9(6). It provides, in addition, for the noting by the Land Officer of changes in Crown rent following development or redevelopment. It is, therefore, consequential on other amendments.

Question put and agreed to.

Clause read the second time.

THE ATTORNEY GENERAL: —Sir, I move that new clause 9A be added to the bill.

Proposed Addition

Clause

New — That the following new clauses be inserted immediately after 9—

"New Crown rent to be noted in register in Land Office.

9A. (1) As soon as practicable after a new Crown lease of a lot or section is deemed to be granted under this Ordinance—

(*a*) the Director shall notify the Land Officer of the amount of the new Crown rent payable in respect of the lot or section; and

(*b*) the Land Officer shall cause the amount of the new Crown rent payable in respect of the lot or section to be noted in the register of such lot or section kept in the Land Office.

(2) As soon as practicable after the making by the Commissioner after the relevant day of an interim valuation of any tenement which results in an increase in the new Crown rent payable in respect of a lot or section—

(*a*) the Director shall notify the Land Officer of the increased new Crown rent; and

(*b*) the Land Officer shall cause the amount of the new Crown rent noted in the register of such lot

or section kept in the Land Office to be deleted and shall cause the increased new Crown rent to be noted therein.".

The addition of the new clause was agreed to.

New clause 9B "Correction of clerical or arithmetical errors".

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order No 45(6).

THE ATTORNEY GENERAL: —Sir, in accordance with Standing Order No 46(6) I move that new clause 9B as set out in the paper before honourable Members be read the second time.

This clause provides for the correction of clerical and arithmetical errors in the determination of Crown rent.

Question put and agreed to.

Clause read the second time.

THE ATTORNEY GENERAL: —Sir, I move that new clause 9B be added to the bill.

Proposed Addition

Clause

"Correction of clerical or arithmetical errors.

9B. (1) The Director may at any time correct clerical or arithmetical errors in a determination of the new Crown rent payable in respect of a lot or section under section 9, and if he makes such a correction he shall notify the Land Officer thereof.

(2) The Land Officer on being notified by the Director of a correction under subsection (1) shall accordingly rectify the amount of the new Crown rent shown in the register of the lot or section kept in the Land Office.".

The addition of the new clause was agreed to.

New clause 10A "Collection of new Crown rent".

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order No 46(6).

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THE ATTORNEY GENERAL: —Sir, in accordance with Standing Order No 46(6) I move that the new clause 10A as set out in the paper before honourable Members be read a second time.

The proposed clause, Sir, will enable Crown rent to be collected directly from the person who pays the rates in respect of any premises. This may be the owner, his agent, or an occupier. But I must emphasize that an occupier will not, of course, have to pay more than three *per cent* of the rateable value of the particular premises which he occupies. The provisions of this clause follow in principle those in the Inland Revenue Ordinance relating to the recovery of property tax.

An occupier who is not an owner will be entitled to recover from the owner any sum which he has paid in respect of Crown rent by deducting the amount which he has paid from any rent or other monies due from him to the owner.

Question put and agreed to.

Clause read the second time.

THE ATTORNEY GENERAL: —Sir, I move that new clause 10A be added to the bill.

Proposed Addition

Clause

New That the following new clauses be inserted immediately after clause 10—

"Collection of new Crown rent.

10A. (1) Without prejudice to section 8(*b*) the Crown may in collecting the new Crown rent payable in respect of a lot or section demand from the person, whether owner, agent or occupier, who pays the rates in respect of any tenement of which land held under a new Crown lease forms part an amount equal to—

(*a*) three *per cent* of the rateable value of such tenement as set out on the relevant day in the list declared under section 13 of the Rating Ordinance 1973 and such sum as may be necessary to make the same an even number of dollars; or

(*b*) three *per cent* of the interim valuation of such tenement made by the Commissioner under the Rating Ordinance 1973 and such sum as may be necessary to make the same an even number of dollars.

(2) The person on whom a demand under subsection (1) is made shall pay the sum so demanded within the time specified in such demand.

(3) Where under this section any sum is paid by a person who is not an owner of the lot or section, then the amount so paid shall be a debt due to that person from the owner of the lot or section and shall be recoverable as such from any rent or other moneys for the time being due by that person to the owner.

(4) In this section "owner" in relation to a lot or section means the person whose name is registered in the Land Office as that of the owner of the lot or section or of any undivided share or other interest therein, and any person deriving title from such person by virtue of an underletting or otherwise.".

The addition of the new clause was agreed to.

New clause 10B "Recovery of new Crown rent".

Clause read the first time and ordered to be set down for second reading pursuant to Standing Order No 46(6).

THE ATTORNEY GENERAL: —In accordance with Standing Order No 46(6) I move that new clause 10B as set out in the paper before honourable Members be read the second time.

Sir, the new clause enables the Government to recover by civil action in the District Court any sum claimed under clause 10A which is not duly paid.

Question put and agreed to.

Clause read the second time.

THE ATTORNEY GENERAL: —Sir, I move that new clause 10B be added to the bill.

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Proposed Addition

Clause

"Recovery of new Crown rent.

10B. (1) Without prejudice to any other remedy of the Crown in respect of the default in payment of the new Crown rent any sum not paid in accordance with a demand under section 10A shall be recoverable as a debt due to the Crown.

(2) Whenever any person makes default in payment of any sum demanded under section 10A the same may be recovered by action in the District Court not-withstanding that the amount is in excess of the sum of twenty thousand dollars.

(3) In any proceedings under this section for the recovery of any sum demanded under section 10A the production of a certificate signed by the Director stating the name and last known postal address of the person who is liable to pay the same and particulars of the amount due shall be sufficient evidence of such amount and sufficient authority for the District Court to give judgment therefor.

(4) In any proceedings in the District Court under this section the Director may appear in person or may be represented either by a legal officer within the meaning of the Legal Officers Ordinance or by any other person authorized by him in writing.".

(Cap.87.)

The addition of the new clause was agreed to.

Preamble.

THE ATTORNEY GENERAL: —Sir, I move that the preamble be deleted as proposed in the paper before honourable Members.

It is no longer applicable in view of the amendments to the bill which have just been agreed.

Question put and agreed to.

LAW REVISION (MISCELLANEOUS AMENDMENTS) BILL 1973

Clauses 1 to 3 and the Schedule were agreed to.

PO LEUNG KUK BILL 1973

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in groups.

Clauses 1 to 11 were agreed to.

Schedule

THE SECRETARY FOR HOME AFFAIRS (MR BRAY): —Sir, I move that the Schedule be amended as set out in the paper before honourable Members.

Because the Secretary for Home Affairs is not now the head of the Home Affairs Department, it is desirable that the Director of Home Affairs should be a member of the Advisory Board and act as chairman in the absence of the Secretary for Home Affairs. These amendments provide accordingly.

Proposed Amendments

Schedule

That the Schedule be amended—

(*a*) in paragraph 18(2) by deleting "fourteen" and substituting the following—

"fifteen";

(*b*) by inserting after paragraph 18(2)(*a*) the following—

"(*aa*) the Director of Home Affairs;";

(*c*) in paragraph 18(7) by inserting after "absence" the following—

"the Director of Home Affairs shall be the chairman, and in the absence of both the Secretary for Home Affairs and the Director of Home Affairs"; and

(*d*) in paragraph 19(3) by inserting after "Affairs" the following—

"the Director of Home Affairs shall be the chairman, and in the absence of both the Secretary for Home Affairs and the Director of Home Affairs".

The amendments were agreed to.

Schedule, as amended, was agreed to.

LANDLORD AND TENANT (CONSOLIDATION) (AMENDMENT) (NO 2) BILL 1973

Clause 1

MR LIGHTBODY: —Sir, I move that clause 1 be amended as set out in the paper before honourable Members.

The purpose is to change the effective date of this legislation from the 1st to the 15th day of December 1973.

Proposed Amendment

Clause

1 That clause 1 be amended by deleting "1st" and substituting the following—

"15th".

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clause 2

MR WOO: —Sir, I move that clause 2 be amended as set out in the papers for the reasons I have stated when I addressed this Council on the resumption of the second reading of this bill.

Proposed Amendments

Clause

2 That clause 2 be amended—

(*a*) in the proposed new section 53(2)—

(i) by deleting, at the end of paragraph (*c*), the word "or";

(ii) by deleting paragraph (*d*) and substituting the following—

"(*d*) the tenant or the sub-tenant has caused unnecessary annoyance, inconvenience or disturbance to the landlord, principal tenant or to other occupants of the premises, as the case may be:

Provided that no order shall be made under this paragraph unless the court is satisfied that the annoyance, inconvenience or disturbance had continued after a warning given by the Commissioner to the tenant or subtenant causing the same; or";

(iii) by inserting, after paragraph (*d*), the following new paragraph—

"(*e*) the tenant has, at any time after the 14th day of December 1973, without the consent in writing of the landlord sublet the whole or any part of the premises of which he is the tenant." ;

(*b*) in the proposed new section 53(4) and (5) by deleting "(*b*) or (*c*)" wherever it appears;

(*c*) in the proposed heading appearing before the proposed new section 54 by deleting "*Rent Limits and*";

(*d*) by deleting the proposed new section 54 and substituting the following—

"Notification of new rents.

54. (1) Where a landlord and a tenant enter into a tenancy on or after the 15th day of December 1973, the landlord shall lodge with the Commissioner a notice in triplicate in the specified form stating the rent payable by the tenant, and such notice shall be signed by both the landlord and the tenant.

(2) Where a notice is lodged with the Commissioner under subsection (1), he shall record the rent payable by the tenant and shall endorse free of charge on two copies of the notice a statement to that effect and shall return one copy to the landlord and one copy to the tenant.

(3) Rent shall not be recoverable unless the landlord is in possession of a copy of a notice endorsed by the Commissioner under subsection (2).

(4) The security of tenure afforded to a tenant by section 52(4)(*b*) shall apply where a tenancy is created not more than two years before the expiration of this Part, notwithstanding the failure of the landlord to comply with subsection (1).";

Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill—committee stage

(*e*) in the proposed new section 58—

(i) by deleting the proviso to subsection (2) and substituting the following—

"Provided that, where the rateable value of the premises the subject matter of the tenancy does not exceed thirty thousand dollars, the amount by which the rent may be increased shall not exceed an amount equivalent to twenty-one *per cent* of the current rent."; and

(ii) by inserting, after subsection (4), the following new subsections—

"(5) The rateable value of any premises shall be ascertained for the purposes of the proviso to subsection (2) as follows—

(*a*) if the premises are a tenement which is included in the valuation list declared on the 9th day of March 1973, or subsequently included in that list following an interim valuation, the rateable value shall be that included in the list in respect of such tenement;

(*b*) if the premises are not such a tenement, the rateable value shall be determined by the Commissioner in accordance with section 7 of the Rating Ordinance 1973 and the decision of the Commissioner shall be final.

(11 of 1973.)

(6) In subsection (5), "interim valuation", "tenement" and "valuation list" have the meanings assigned to them in the Rating Ordinance 1973.";

(11 of 1973.)

(*f*) in the proposed new section 65(6) by inserting, after "payments" in the first place where it appears, the following—

", other than rates,";

(g) by adding, after the proposed new section 66, the following proposed new section—

"Obligation to notify subletting of premises.

66A. (1) If the tenant of premises sublets the whole or any part thereof after the 14th day of December 1973, the tenant shall within fourteen days after the subletting supply the landlord with a statement in writing of the subletting showing—

(*a*) the name of the sub-tenant;

(*b*) the part of the premises occupied by the subtenant;

(*c*) the rent payable by the sub-tenant; and

(*d*) the date of first occupation by the sub-tenant.

(2) a tenant who is required to supply a statement in accordance with subsection (1) and who, without reasonable excuse—

(*a*) fails to supply a statement; or

(*b*) supplies a statement which is false in any material particular,

shall be guilty of an offence and shall be liable on conviction to a fine of two thousand dollars.".

Clause

2 That clause 2 be amended in the proposed new section 53 by inserting, after subsection (2), the following new subsection—

"(2A) For the purposes of paragraph (*e*) of subsection (2), where a landlord establishes a *prima facie* case that there has been an apparent change in the occupancy of the premises or of any part thereof, the tenant shall be deemed to have sublet such premises or such part unless he satisfies the court to the contrary.".

MR LIGHTBODY: —Sir, I move that clause 2 be amended as set out in the paper before honourable Members.

I have already explained the reasons for the main body of amendments in my reply at the resumed second reading. The remaining amendments relate to the altered effective date for the bill or to changes in the text consequential to other amendments.

Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill—committee stage

Proposed Amendments

Clause

2 That clause 2 be amended—

(*a*) in the proposed new section 49—

(i) in the definition of "repealed Part II" by inserting, after "(Amendment)", the following—

“(No. 2)"; and

(ii) in the definition of "tenant" by deleting “1st" wherever it appears and substituting in each place the following—

“15th";

(*b*) in the proposed new section 50(6)(i) by deleting "30th day of November" and substituting the following—

"14th day of December";

(*c*) in the proposed new section 52(1) by deleting “1st" and substituting the following—

“15th";

(*d*) in the proposed new section 53(2) by deleting paragraph (*b*) and substituting the following—

"(*b*) the premises are required by the landlord or principal tenant for occupation as a residence for—

(i) himself;

(ii) his father or mother; or

(iii) any son or daughter of his over eighteen years of age, and the landlord or principal tenant did not become the landlord or principal tenant on or after the 15th day of December 1973:

Provided that a court shall not make an order for possession by reason only that the circumstances of the case fall within this paragraph if the court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord, the

tenant, the principal tenant or the sub-tenant, greater hardship would be caused by granting the order than by refusing to grant it;";

(*e*) in the proposed new section 55—

(i) by deleting subsection (1) and substituting the following—

" (1) Where an increase in rent is agreed between a landlord and tenant after the 14th day of December 1973 the landlord shall lodge with the Commissioner a notice thereof in triplicate in the specified form signed by both the landlord and tenant."; and

(ii) by inserting, after subsection (4), the following—

"(5) Where a landlord and tenant had, prior to the 15th day of December 1973, entered into a tenancy under which the rent payable by the tenant would be increased during the continuance of the tenancy by reference to fixed and ascertained periods of time, any increase in rent pursuant to that tenancy which—

(*a*) would, but for the Domestic Premises (Tenure and Rent) (Temporary Provisions) Ordinance 1973, have taken effect after the 8th day of June 1973 and before the 15th day of December 1973; or

(*b*) becomes due on or after the 15th day of December 1973,

shall take effect in accordance with the tenancy as if neither that Ordinance nor this section had been enacted, save that where the increase takes effect on or after the 15th day of December 1973 the security of tenure afforded to a tenant by section 52(4)(*a*) shall extend to such tenancy as if the rent had been increased under this Part.";

(*f*) by deleting the proposed new section 59 and substituting the following—

"Review. **59.** (1) Where the Commissioner issues a certificate under section 58, the landlord or the tenant may within fourteen days of service on him of the certificate apply to

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the Commissioner by notice in duplicate in the specified form for a review of the certificate.

(2) On receipt of an application under subsection (1) and on payment by the applicant to the Commissioner of the sum of fifty dollars, the Commissioner shall appoint a tribunal consisting of three members of the Panel to review the certificate referred to in the application and shall send a copy of the application to the landlord or to the tenant, as the case may be.

(3) At any time before the determination of a review, the applicant may withdraw his application for a review by notice in writing addressed to the Commissioner.

(4) Where an application for a review is withdrawn under subsection (3) before the appointment of a tribunal under subsection (2), the Commissioner may repay to the applicant the sum of fifty dollars paid by him under that subsection.

(5) Where the Commissioner has appointed a tribunal under subsection (2), he shall immediately serve on the landlord and on the tenant a notice in the specified form informing them that a tribunal has been appointed and inviting them to submit to him within fourteen days of service of the notice any written representation they wish to have considered by the tribunal.

(6) Not less than fourteen days from the date of service of a notice under subsection (5), the Commissioner shall refer the application made under subsection (1) to the tribunal and shall place before the tribunal any written representation submitted to him pursuant to subsection (5).

(7) The tribunal shall, after considering any written representations placed before it under subsection (6), review the certificate and may—

(*a*) in the case of a certificate issued under section 58(1)(*a*), confirm, vary or set aside the increase shown in the certificate; or

(*b*) in the case of a certificate issued under section 58(1)(*b*), confirm that certificate or, if satisfied

that the fair market rent exceeds the current rent, determine in accordance with section 58(2) the amount by which the rent may be increased,

and make such other order as it thinks proper.

(8) The tribunal shall immediately notify the Commissioner of its decision on a review of a certificate and the Commissioner shall thereupon issue free of charge and serve on the landlord and on the tenant certificates in the specified form stating the decision of the tribunal, and shall endorse on such certificates a statement that they are in substitution for the certificate the subject of the review.";

(*g*) in the proposed new section 60—

(i) in subsection (1)—

(A) by deleting "59(6)" and substituting the following—
"59(7)"; and

(B) by deleting "59(7)" and substituting the following—
"59(8)";

(ii) in subsection (3)—

(A) by deleting paragraph (*a*); and

(B) by deleting "59(7)" wherever it occurs and substituting in each place the following—
“59(8)”;

(*h*) in the proposed new section 61(1) by deleting "59(7)" and substituting the following—
“59(8)” ;

(*i*) by deleting the proposed new section 62;

(*j*) in the proposed new section 65—

(i) by deleting "1st" wherever it appears and substituting in each place the following—
“15th";

(ii) by deleting "30th day of November" wherever it appears and substituting in each place the following—
"14th day of December"; and

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(*k*) in the proposed new section 68—

(i) in subsection (1) by deleting "59(3)" and substituting the following—

"59(2)"; and

(ii) in subsection (2) by deleting "54(5)," and "62(1), ";

(*l*) in the proposed new section 74A(*c*) by deleting "1st" and substituting the following—

"15th";

(*m*) in the proposed new section 74B by deleting "30th day of November" and substituting the following—

"14th day of December".

The amendments were agreed to.

Clause 2, as amended, was agreed to.

Clause 3 was agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL (MR HOBLEY) reported that the

Cross-Harbour Tunnel (Amendment) Bill 1973

Rating (Amendment) Bill 1973

Law Revision (Miscellaneous Amendments) Bill 1973

had passed through Committee without amendment and that the

Miscellaneous Amendments (Powers of the Governor in Council) Bill 1973

Crown Leases Bill 1973

Po Leung Kuk Bill 1973

Landlord and Tenant (Consolidation) (Amendment) (No 2) Bill 1973

had passed through Committee with amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —Before I adjourn the Council, may I wish all Members the very best for Christmas and the New Year. Council will now adjourn until 2.30 p.m. on Wednesday the 9th of January 1974.

Adjourned accordingly at half past four o'clock.

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