

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 13 May 1981****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, G.B.E., K.C.M.G., K.C.V.O.

THE HONOURABLE THE CHIEF SECRETARY (*Acting*)
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR. DENIS CAMPBELL BRAY, C.M.G., C.V.O., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE DAVID AKERS-JONES, C.M.G., J.P.
SECRETARY FOR THE NEW TERRITORIES

THE HONOURABLE LEWIS MERVYN DAVIES, C.M.G., O.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE KENNETH WALLIS JOSEPH TOPLEY, C.M.G., J.P.
CHAIRMAN, COMMITTEE TO REVIEW POST-SECONDARY AND TECHNICAL
EDUCATION

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE ALAN JAMES SCOTT, J.P.
SECRETARY FOR INFORMATION

THE HONOURABLE DEREK JOHN CLAREMONT JONES, C.M.G., J.P.
SECRETARY FOR THE ENVIRONMENT

DR. THE HONOURABLE THONG KAH-LEONG, C.B.E., J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES

THE HONOURABLE ERIC PETER HO, J.P.
SECRETARY FOR SOCIAL SERVICES

THE HONOURABLE JOHN MARTIN ROWLANDS, C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

THE HONOURABLE JAMES NEIL HENDERSON, J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE GERALD PAUL NAZARETH, O.B.E., Q.C.
LAW DRAFTSMAN

THE HONOURABLE WILLIAM DORWARD, O.B.E., J.P.
DIRECTOR OF TRADE, INDUSTRY AND CUSTOMS

THE HONOURABLE JOHN MORRISON RIDDELL-SWAN, J.P.
DIRECTOR OF AGRICULTURE AND FISHERIES

THE HONOURABLE DONALD LIAO POON-HUAI, O.B.E., J.P.
SECRETARY FOR HOUSING

THE HONOURABLE GRAHAM BARNES, J.P.
DIRECTOR OF HOME AFFAIRS

THE HONOURABLE SELWYN EUGENE ALLEYNE, J.P.
DIRECTOR OF SOCIAL WELFARE

THE HONOURABLE COLVYN HUGH HAYE, J.P.
DIRECTOR OF EDUCATION

THE HONOURABLE JOHN GEORGE STEAN, O.B.E., J.P.
DIRECTOR OF PUBLIC WORKS (*Acting*)

THE HONOURABLE OSWALD VICTOR CHEUNG, C.B.E., Q.C., J.P.

THE HONOURABLE ROGERIO HYNDMAN LOBO, C.B.E., J.P.

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE LO TAK-SHING, O.B.E., J.P.

THE HONOURABLE ALEX WU SHU-CHIH, O.B.E., J.P.

THE REVD. THE HONOURABLE JOYCE MARY BENNETT, O.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, O.B.E., J.P.

THE HONOURABLE LYDIA DUNN, O.B.E., J.P.

DR. THE HONOURABLE HENRY HU HUNG-LICK, O.B.E., J.P.

THE REVD. THE HONOURABLE PATRICK TERENCE MCGOVERN, O.B.E., S.J., J.P.
THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE WONG LAM, O.B.E., J.P.

DR. THE HONOURABLE RAYSON LISUNG HUANG, C.B.E., J.P.

THE HONOURABLE CHARLES YEUNG SIU-CHO, O.B.E., J.P.

DR. THE HONOURABLE HO KAM-FAI, J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, J.P.

THE HONOURABLE DAVID KENNEDY NEWBIGGING, J.P.

THE HONOURABLE HU FA-KUANG, J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE CHAN KAM-CHUEN, J.P.

THE HONOURABLE JOHN JOSEPH SWAINE, O.B.E., Q.C., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN

ABSENT

THE HONOURABLE THE ATTORNEY GENERAL
MR. JOHN CALVERT GRIFFITHS, Q.C.

THE HONOURABLE LI FOOK-WO, C.B.E., J.P.

THE HONOURABLE FRANCIS YUAN-HAO TIEN, O.B.E., J.P.

THE HONOURABLE ANDREW SO KWOK-WING, J.P.

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MRS. LORNA LEUNG TSUI LAI-MAN

Papers

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

<i>Subject</i>	<i>L.N. No.</i>
Subsidiary Legislation:	
Criminal Procedure Ordinance. Legal Aid in Criminal Cases (Amendment) Rules 1981	136
Revised Edition of the Laws Ordinance 1965. Revised Edition of the Laws (Correction of Error) Order 1981	137
Land Registration Ordinance. Land Registration Regulations 1981	138
Land Registration Ordinance. Land Registration Fees (Amendment) Regulations 1981	139
Road Traffic Ordinance. Road Traffic (Parking and Waiting) (Amendment) (No. 2) Regulations 1981	140
Road Traffic Ordinance. Road Traffic (Temporary Car Parks) (Amendment) Regulations 1981	141
Royal Hong Kong Auxiliary Air Force Ordinance. Royal Hong Kong Auxiliary Air Force (Pensions) (Amendment) Regulations 1981	142
Royal Hong Kong Regiment Ordinance. Royal Hong Kong Regiment (Pensions) (Amendment) Regulations 1981 ...	143
Magistrates Ordinance. Magistrates (Forms) (Amendment) Rules 1981	144
Interpretation and General Clauses Ordinance. Specification of Public Office.....	145
Proclamation. No. 1 of 1981	146

Sessional Papers 1980-81:

No. 51—1980 Annual Report by the Commissioner of the Independent Commission Against Corruption.

No. 52—Hong Kong Examinations Authority Programme of Activities 1.9.78-31.8.79 and Statement of Accounts for the period 1 September 1978 to 31 August 1979 with Certificate of the Director of Audit.

No. 53—Supplementary Provisions approved by the Urban Council during first quarter for the fiscal year 1980/81.

Oral answers to questions

Registration and employment of illegal immigrants

1. DR. Huang asked:—*Will Government state:—*

(a) *how many illegal immigrants were given permission to remain in Hong Kong as a result of Government's call last year for illegal immigrants to register; and*

(b) *is there any information to show how many are now gainfully employed and, if not, would Government make a survey to establish the position?*

SECRETARY FOR SECURITY:—(a) Sir, during the 'grace period' of registration from 22.00 on 23 October to midnight on 26 October 1980 6,952 illegal immigrants who purported to have come from China came forward for registration. 4,086 of them, or 59% of the total have been allowed to remain.

(b) A complete record of their employment situation is not available, though we have statistics for some of them at the time of their registration.

I will discuss with the Commissioner of Police and Labour and others concerned the suggestion of a special survey and will write to Dr. HUANG about this.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY.)

No record of the employment of these illegal immigrants is kept anywhere. We had therefore to decide whether a special survey could produce such a record, whether the manpower required for such a survey would be justified by the usefulness of the resulting information and, if not, whether there were more modest studies which could achieve similar results. In considering this we took note of the views expressed by the Police that illegal immigrant involvement in serious crime is high.

Between January 1978 and 23 October 1980, when the new immigration policy was introduced, 155,549 illegal immigrants from China reached base and

were issued with identity cards. Most of them registered with the Immigration Department soon after their arrival and before obtaining employment. Consequently Immigration Department records do not help to answer your question, although they do show that about three quarters of these illegal immigrants were young men between 18 and 35, nearly all of whom were unskilled or semi-skilled workers.

As I say, the Administration holds no information as to where they are now working. To collect such information would require either a survey by Labour Department of all places of work which might be employing them, or detailed investigation by the Registration of Persons Division of Immigration Department following up the registration records to find out where they were now working. Either approach would make very heavy inroads on staff time.

A possible pointer might seem to lie in the fact a proportion of these illegal immigrants have sought the help of the Labour Department's Local Employment Service in finding work. Simple records of such approaches are kept but these were not sufficiently detailed to pin-point former illegal immigrants. However, since the start of this year, a note has been kept by the Employment Service of all applicants who have come from China since January 1979. The value of even this is lessened by the fact that these may be either legal or illegal entrants. Of a total of 49,246 cases dealt with in the first five months of this year 2,181 fell into the immigrant category. Of the 49,246 cases, 11,483 (23%) are known to have found jobs but the equivalent figure for the recent arrivals from China is only 231 (11%). These figures and interviews conducted by Labour Department confirm the general belief that immigrants from China do have greater difficulty in getting jobs. A few say that employers are prejudiced against recent arrivals from China. Other obviously have difficulty in adapting to the pace of life and work here and few have skills which would bring them work quickly.

Your question in the Legislative Council arose I believe partly from understandable public concern about the number of recent arrivals from China involved in crime. The view of the Police Operations and Criminal Investigation Departments is however that they would not gain much from knowing what all those who arrived from China illegally between 1978 and October 1980 are now doing. The majority are unskilled or semi-skilled workers employed on construction sites or in factories, shops and tea houses: they constitute no threat to law and order. The problem arises from the minority who see crime as an attractive shortcut to prosperity, a temptation which is increased if they have no legitimate livelihood. It is on this group that our attention is focussed and Police efforts of crime prevention and detection are directed. To spend a great deal of Government staff time gathering information about the law abiding majority would represent a diversion of resources from the main task which I should find hard to justify.

Our conclusion is there fore that no survey should be made. In reaching this decision please do not think that I do not share your concern about illegal

immigrant employment and involvement in crime. Given the very large number of vigorous but unskilled young men who have arrived from China over the last few years, it is not surprising that some have been drawn to crime. It is a development we must persevere in combatting by sustaining our efforts against crime generally through the community and the Police Force.

Illegal immigrants—crime involvement and removal policy

2. DR. HUANG asked:—*Will Government make a statement on:—*

(a) *the extent to which former illegal immigrants are involved in the present crime situation; and*

(b) *Government policy regarding the removal from Hong Kong of illegal immigrants and former illegal immigrants who have been convicted of serious offences?*

SECRETARY FOR SECURITY:—(a) Sir, for purposes of definition the Police regard ‘former illegal immigrants’ as those who have entered illegally from China and ‘reached base’ between 1 January 1978 and 23 October 1980—when the ‘reached base’ policy was ended. For the years 1978 and 1979, the number of former illegal immigrants prosecuted for crime represented a statistically insignificant percentage of the total prosecution figures. In the first half of 1980, the percentage of illegal immigrants prosecuted rose to just over 2% of total prosecutions, and for the final quarter of the year it had risen to 5½%. For April 1981 this figure stood at 7½%.

It is the view of the Police that this percentage does not reflect the actual degree of illegal immigrant involvement in serious crime, particularly that of robbery with violence. This view is of necessity derived not from an analysis of prosecution figures only, which cannot take account of crimes that go undetected, or, indeed, unreported. Relying upon an analysis of a number of recent robberies with violence, together with information derived from criminal intelligence sources, a recent Police assessment suggests that former illegal immigrants have been responsible for between 35% and 45% of the crime of robbery with violence committed in the past three years.

(b) Illegal immigrants who arrive from China and are arrested after 23 October 1980, irrespective of whether they have been convicted of serious offences or not, are, and will continue to be, repatriated to China.

Those who came before that date together with those who registered in the grace period 23-26 October and who after investigation were allowed to stay conditionally, will not be removed.

DR. HUANG:—*Sir, will Government agree that 35%-45% of the crime of robbery with violence as quoted by the Secretary for Security is a rather alarming figure?*

SECRETARY FOR SECURITY:—Yes, Sir, it is a high figure. As we know, those who have come illegally from China are 80% in the age group of 15 to 35 years of age and males. It is this group of course who are, both in Hong Kong in ordinary times and with the very large increase in population recently, those who commit the majority of crimes.

DR. HUANG:—*Sir, if the removal of illegal immigrants or former illegal immigrants is considered impracticable, would Government consider other means of combatting this serious form of crime generally?*

SECRETARY FOR SECURITY:—Yes, Sir, the Police, as I said in the last meeting, are engaged in identifying criminal elements in a variety of ways, in watching their activities, in disrupting their activities and wherever possible in effecting arrests.

Control of illegal factories in residential buildings

3. DR. HO asked:—*What measures are being taken by the Government to regulate the operation of illegal factories in multistorey residential buildings in order to protect the residents of these buildings from fire hazards and pollution?*

SECRETARY FOR THE ENVIRONMENT:—Sir, a programme of action was launched by the Government in 1976 to reduce the nuisance and hazards caused by factories in non-industrial buildings. The policy provides:

First, that no dangerous or obnoxious industrial processes should be permitted in a building restricted under the Crown lease conditions to non-industrial use.

Secondly, that no industrial undertaking of any kind should be permitted in a building restricted under the lease conditions to residential use only.

Third, that no industrial undertaking of any kind should be permitted in a building which was issued with an occupation permit on or after 1 March 1976 and restricted under the lease conditions to non-industrial use. However, service trades such as tailoring, baking and dry-cleaning can be permitted to operate on the ground floors provided they comply with safety requirements.

Fourth, that ground floor trades should be permitted on the ground floor of a building occupied prior to March 1976 and restricted under the lease to non-industrial use provided they comply with safety requirements.

Finally, and for the time being, industrial undertakings can be permitted in a building occupied before 1 March 1976 and restricted under the lease to non-industrial use, provided that they are not dangerous or obnoxious and that the building is not restricted to residential use under its lease.

This programme is enforced in two ways. First by the application of laws such as the Fire Services Ordinance, the Factories and Industrial Undertakings

Ordinance, the Buildings Ordinance and the Public Health and Urban Services Ordinance; and secondly, where possible, by lease enforcement.

DR. HO:—*Sir, how many officers are at present responsible for undertaking inspection work and is Government satisfied that the checks being carried out are adequate?*

SECRETARY FOR THE ENVIRONMENT:—*Sir, I have not got information on the exact number of officers and I will have to write to Dr. Ho about that. But certainly effective control of factories and domestic premises implies a very large staff commitment in terms of the inspectorates required by the various statutory authorities as well as the legal staff needed for lease enforcement work. There is a shortage of staff in terms of strength as well as establishment and this has reduced our ability to eradicate these undertakings. There is at present a review going on which will include an assessment of whether the present staffing establishment is sufficient. But even if we get the establishment right there will remain the problem of filling the posts.*

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY).

I am sorry that it has taken rather longer than I intended to produce these figures, partly because inspection activities, form only a part of the duties of some officers. The following table (APPENDIX), contains the best figures that can be produced at the present time and I hope that you will find it of some help.

APPENDIX

	<i>Establishment</i>	<i>Strength</i>
<i>Registrar General's Department</i>		
<i>Lease Enforcement Unit</i>		
Senior Asst. Registrar II	1 (part time)	1
Asst. Registrar I	1	1
Asst. Registrar II	10	8+2 Ag.
	<hr/>	<hr/>
	12	12
<i>Labour Department</i>		
<i>Factory Inspectorate Division</i>		
Chief Factory Inspector	1	1
Deputy Chief Factory Inspector	1	1
Superintendent of Factory Inspectors	7	5
Divisional Factory Inspectors	32	30
Factory Inspectors & Assistant	} 140	114
Factory Inspectors		
	<hr/>	<hr/>
	181	151

Fire Services Department

<i>Fire Protection Bureau</i>	(Establishment now under review)	
Divisional Officers		3
Asst. Divisional Officers		5
Senior Station Officers/Station Officers		42
Principal Fireman		1
Senior Firemen		33
		<u>84</u>

*Public Works Department**Buildings Ordinance Office*

District Building Surveyors	<u>72</u>	<u>45</u>
	<u>265</u>	<u>292</u>

Diversification of school curriculum

4. REVD. JOYCE M. BENNETT asked:—*What encouragement is being given to schools to diversify their curriculum to offer a wide range of subjects for the Hong Kong Certificate of Education?*

DIRECTOR OF EDUCATION:—Sir, a great deal of encouragement is being given to schools to diversify their curriculum to offer a wide range of subjects for the Hong Kong Certificate of Education Examination. 39 subjects are now offered and this number will be further increased over the next few years with the addition of such subjects as Computer Studies, Human Biology, Social Studies, and a range of new subjects to meet the needs of the prevocational schools. The teaching and examination syllabuses for these subjects are prepared, in consultation with the schools and their teachers, by the Curriculum Development Committee of the Education Department and by the Hong Kong Examinations Authority.

Further encouragement is given by my Advisory Inspectorate in seminars, workshops and in-service courses as required to assist the teaching of all these subjects. When new subjects are introduced this is normally through pilot schemes and special in-service courses to help the schools and their teachers. Schools are also given help in the construction of their time-tables.

Specific encouragement has been given to schools since 1976 to widen their curriculum to include practical and technical subjects. This has taken the form of extensions and conversions of facilities in existing schools, and in the planning of practical education centres for those schools unable to extend or convert their premises. Since 1977 all new standard plan secondary schools have included increased provision for practical subjects.

While it is Government policy to encourage a broader curriculum, it should be remembered that it is still Government policy to leave the actual decisions on the curriculum to the schools themselves.

As to staffing to cope with a wider range of subjects in the Hong Kong Certificate of Education Examination (which I think is really the point of Miss BENNETT'S question), I am aware that the range of optional subjects in any one school depends on the staff available. The present staffing arrangements and the facilities provided in the great majority of our secondary schools permit these schools to present their pupils for some eight major subjects in the Hong Kong Certificate in Form V. Schools are usually able to offer a range of about 15 subjects for the pupils to choose from and these include the four subjects taken by almost all pupils—English, Chinese Language, Chinese History and Mathematics. The rest are taken from the long list of subjects available to which I have already referred. Of these, 16 are from what might be termed the cultural/practical/technical group. Most people will agree that this is about as wide a range of subjects which might reasonably be offered pupils in senior secondary schools without placing too great a strain on them. As I reminded Miss BENNETT the last time I spoke in this Council, she and I share much common ground in our mutual concern that schools should be staffed adequately to meet the challenges of the 80s.

REVD. JOYCE M. BENNETT:—*Sir, will the Government consider providing a higher ratio of promotion posts S.G.M. to G.M. to encourage schools to offer more subjects for the Hong Kong Certificate of Education in view of the fact that some schools do not offer as many as 15 subjects for their students to choose from, as shown in the recent booklet issued by the Education Department in connection with the J.S.E.A. for promotion of students into Form IV?*

DIRECTOR OF EDUCATION:—Sir, I am not sure that increasing the ratio of S.G.M. posts is going to increase the number of options. This depends very much on the capacity of the schools and, indeed, of their physical facilities. Miss BENNETT'S school is fortunate in that it offers some 20 options but, as I have indicated, most schools can offer at least 15. The maximum number of subjects that may be permitted in any one year in this examination is of course nine, and most schools manage eight. As I said before, I don't think the actual ratio of senior posts is going to assist terribly much, it is the quality of instruction in these schools.

REVD. JOYCE M. BENNETT:—*Has the Government, Sir, provided centres for students from several schools to attend after school hours or at the weekends for certain subjects like music, which it is very difficult for one school to offer?*

DIRECTOR OF EDUCATION:—Sir, we have no such specific provision but, as I remarked, we are planning practical training centres for schools which lack the physical facilities for practical and technical subjects, and the first of these is planned for 1982.

REVD. JOYCE M. BENNETT:—*Sir, would the Government consider doing that for music?*

DIRECTOR OF EDUCATION:—*Sir, the Government is prepared to consider almost anything (laughter).*

Curriculum development

5. REVD. JOYCE M. BENNETT asked:—*Will the Government consider setting up a full-time professional team for curriculum development?*

DIRECTOR OF EDUCATION:—*Sir, I am not entirely sure what Miss BENNETT means by ‘a full-time professional team for curriculum development’ but there has been in the Advisory Inspectorate of the Education Department, since 1972, a Curriculum Development Section, staffed by full-time professionals who now include two Principal Curriculum Planning Officers (one for primary and one for secondary schools), one Graduate Inspector, one Graduate Assistant Inspector, one Non-graduate Inspector and two Non-graduate Assistant Inspectors. All staff are qualified and professionally trained teachers and experienced inspectors, and five of them have received additional training overseas in curriculum related work.*

The responsibilities of this full-time professional team for curriculum development include the co-ordination and necessary servicing of the Curriculum Development Committee, the main areas of which are syllabus production and revision, and textbook assessment. The main task of the team is to *facilitate* curriculum development. Curriculum development itself, that is the creation of new syllabuses and materials must be the business of practising teachers in the schools, which is why we place such emphasis on their role in the committees of the C.D.C.

I think I must underline the concept of curriculum development as an organic process which involves not only our Curriculum Planning Officers but practising teachers in the schools. Curriculum development is not an ivory tower exercise: it is a dynamic process involving theory *and* practice. In this sense then I can say that our full-time professionals spend all their time in curriculum development or related inspection work. And in this important sense I can also say that every one of my Inspectors has an interest in curriculum development.

The work of the Curriculum Development Section is expanding, particularly in the context of proposals for the reform of the Sixth Form Curriculum and the possible reform of the Curriculum Development Committee itself (subjects under discussion in the Board of Education). The functions of the Advisory Inspectorate are also growing and my Chief Inspector of Schools is formulating proposals for a strengthened and reorganized Inspectorate to cope not only with day to day work but also with the changing requirement of the curriculum.

REVD. JOYCE M. BENNETT:—*Sir, to explain my meaning, may I refer to the Schools Council in England, will the Government consider setting up an organization similar to the Schools Council in England?*

DIRECTOR OF EDUCATION:—*Sir, the valuable work of the Schools Council in England is one of the aspects of proposals that will shortly go to the Board of Education in the reform of the Curriculum Development Committee. But there is a difference of opinion here, and I hasten to add that this is in the light of our rather special experience. We feel that the committee system of which teachers in schools are an integral part is absolutely essential to this valuable type of work. The isolated work of the Schools Council has a role to play, but we feel that the local version is preferable to perhaps an import of this type.*

REVD. JOYCE M. BENNETT:—*Sir, will the Government then introduce a scheme by which teachers can be seconded to work on curriculum development on a full-time basis instead of only having the role of membership of a committee to which they can only given limited time, and have to miss lessons in order to attend?*

DIRECTOR OF EDUCATION:—*Sir, I have built into my five-year forecast estimate the funding of teams of teachers seconded from schools, but we do feel that this is perhaps not as important as the very vital and active role that practising teachers on a day to day basis have in the schools. I think I indicated in my formal reply that this concept of curriculum development is a dynamic and organic process combining what happens up at headquarters with what is actually happening in the schools and the role of teachers in the schools, which is an extremely valuable one, is something that we place very high store in.*

REVD. JOYCE M. BENNETT:—*Sir, then can we arrange for the teachers not to miss their lessons in order to attend these committees?*

DIRECTOR OF EDUCATION:—*Sir, I am sure that this can be arranged with common sense on both sides, but the work that they do when they come to see us in committee is, we feel, so important that some latitude ought to be given by school administrations to let them come to us.*

REVD. JOYCE M. BENNETT:—*Sir, then will we be given more teachers to allow us to do so (laughter)?*

DIRECTOR OF EDUCATION:—*I felt sure we were coming to this, Sir (laughter), and as Miss BENNETT knows proposals are in the pipeline to give her more teachers for specific purposes.*

REVD. JOYCE M. BENNETT:—*Sir, I have one final question. Does the present curriculum development team provide for the writing of text-books by non-civil servants?*

DIRECTOR OF EDUCATION:—No, Sir, at the moment we have left the writing of text-books entirely to the commercial field and we have tried not to get involved too directly. But we do keep a very close watch on standards in these text-books through our very active Text-books Committee.

REVD. JOYCE M. BENNETT:—*Sir, may I ask the Director of Education to look into this in greater detail?*

DIRECTOR OF EDUCATION:—Of course, Sir, I am prepared to look into this one too (*laughter*).

Provision and maintenance of street names and building numbers

6. MR. CHAN KAM-CHUEN asked:—*Will Government state what measures are being taken to ensure that the names of streets and numbering of buildings are properly displayed to avoid unnecessary inconvenience?*

DIRECTOR OF PUBLIC WORKS:—Sir, the Highways Office of the Public Works Department is responsible for ensuring that street names are properly displayed. When a new street is opened to the public, street name plates in English and Chinese are erected at appropriate locations. The detailed design of the plates and the positioning are in accordance with the standards adopted by the Highways Office. Street name plates are inspected and maintained as part of the routine maintenance programme for public highways.

As regards the numbering of buildings, the authority for Hong Kong Island, Kowloon and New Kowloon is the Commissioner of Rating and Valuation; the authority for the New Territories is the Secretary for the New Territories. The responsibility for the provision and maintenance of numbers on buildings rests with individual owners. I am advised that the authorities ensure that each new building is numbered on completion and that, as resources permit they endeavour to ensure that house numbers are maintained. Periodically, campaigns are mounted to encourage building owners to maintain the numbering of their buildings and I am advised that the next campaign will take place next year.

MR. CHAN KAM-CHUEN:—*Sir, will Government ensure that any missing and damaged street name plates, particularly those in the tourist areas, are promptly replaced or repaired? As an example, I notice that the street name plate outside the General Post Office has been missing since the last typhoon* (*laughter*).

DIRECTOR OF PUBLIC WORKS:—Sir, we will certainly look into that particular case and do our best to see that these prominent areas are maintained (*laughter*).

MR. CHAN KAM-CHUEN:—*Sir, as to house numbers, will Government consider for the convenience of the public setting standards regulating the display of house*

number plates by landlords, such as the size, lettering, inclusion of street name and the colour and location of plates, similar to those for vehicle licence plates?

DIRECTOR OF PUBLIC WORKS:—Sir, I will pass that suggestion to the appropriate authorities.

MR. LO:—*Sir, is the Government aware how many street name signs are not visible?*

DIRECTOR OF PUBLIC WORKS:—Sir, I did not bring the figure with me for that (*laughter*).

MR. OSWALD CHEUNG:—*How often is this routine inspection, mentioned at the end of the first paragraph of your answer, carried out for any particular locality?*

DIRECTOR OF PUBLIC WORKS:—Sir, as I said, it is part of the routine maintenance programme for public highways and is as often as staff resources permit, which is probably not as often as it should be.

Illegal car racing

7. MR. WONG LAM asked in Cantonese:—

政府有何措施以杜絕非法賽車活動？

(The following is the interpretation of what Mr. WONG Lam asked.)

What measures are being taken to put an end to illegal car racing?

SECRETARY FOR SECURITY:—Sir, the Police view this dangerous and anti-social behaviour seriously and are countering it. The action taken takes the form of special pre-planned operations in selected areas and responses to reports from members of the public.

Where there is sufficient evidence suspected drivers are prosecuted for illegal road racing, dangerous or careless driving, speeding, or making illegal modifications to vehicles. So far this year in special operations in Kowloon 480 vehicles were checked, 13 vehicles have been detained on suspicion of being modified for racing and seven drivers arrested. On Hong Kong Island ten motor cyclists have been summonsed in 1981.

The Police assessment is that following Police action illegal road racing has been reduced since last year. Nonetheless they are aware that areas remain in which illegal racing continues. They continue to combat this to maintain the control established in 1980. Their vigilance will not be relaxed.

MR. WONG LAM asked in Cantonese:—

閣下，警方認為現時法例是否足夠阻止非法賽車活動？

(The following is the interpretation of what Mr. WONG Lam asked.)

Sir, would the Police think the present legislation is adequate to deter illegal car racing?

SECRETARY FOR SECURITY:—Sir, the present legislation was frankly not designed to cope wholly with a situation in which one can move so fast around the roads of Hong Kong that road racing can take place. It does in fact comprise, as I have suggested, a wide range of offences; and the offence of road racing in itself is extraordinarily difficult to take action under, so the Police do rely upon the provisions of the Road Traffic Ordinance for dangerous driving, careless driving and speeding, rather than on the prohibition of road racing in itself.

MR. WONG LAM asked in Cantonese:—

閣下，警方會不會修改一部份法例，來專門應付這類非法賽車活動呢？

(The following is the interpretation of what Mr. WONG Lam asked.)

Sir, will the Police amend a part of the legislation to deter such illegal car racing?

SECRETARY FOR SECURITY:—Could I ask the honourable Member to repeat that question?

MR. WONG LAM asked in Cantonese:—

閣下，我的問題是警方會不會修改一部份法例，來專門應付這類非法賽車活動呢？

(The following is the interpretation of what Mr. WONG Lam asked.)

Sir, my question is whether the Police will amend part of the legislation to deter illegal car racing?

SECRETARY FOR SECURITY:—Yes, Sir, we shall certainly have a look at this as part of our general plans to try to deter this unpleasant development.

Airport Tunnel Road

8. REVD. JOYCE M. BENNETT asked:—*When will the tunnel under the airport and the roads across the Kowloon Bay reclamation open to give better access to and exit from the East Kowloon Way which was opened recently?*

DIRECTOR OF PUBLIC WORKS:—Sir, one tube of the tunnel under the airport will be opened to two way traffic at the beginning of 1982 together with the road

system on Kowloon Bay Reclamation; at this time the junctions with Wai Yip Street will be signal controlled. There should be a very definite improvement in the traffic flow to and from Kwun Tong with the opening of one tube of the tunnel. The second tube of the tunnel is expected to be opened to traffic at the end of 1982 when the underground slip road from the tunnel to Sung Wong Toi Road and the Airport will also be opened. One grade-separated interchange with Wai Yip Street will also be completed at about the same time.

The start of the construction of the roads on the reclamation and the fitting out of the tunnel has been delayed by staff shortages in P.W.D. but at present the supply and installation of the surveillance system in the tunnel is the most critical problem affecting the date when the tunnel can open.

REVD. JOYCE M. BENNETT:—*Sir, as these tubes will not be ready for some time, can anything be done to improve the traffic flow onto and off the East Kowloon Bay?*

DIRECTOR OF PUBLIC WORKS:—*Sir, I am not aware that anything can be done at this time, but I will certainly look into that.*

Sites underneath flyovers

9. MR. F. K. HU asked:—*Will Government advise this Council of:—*

- (a) the total number and area of sites underneath flyovers which can be utilized for public purposes;*
- (b) the total number and area of such sites which have already been so utilized; and*
- (c) when will the remaining sites be made use of?*

DIRECTOR OF PUBLIC WORKS:—*Sir, a survey was completed in February of this year which identifies 144 sites beneath both planned and existing flyovers which are, or may be used for public purposes having a total area of 72 hectares.*

Sixty-nine of these sites already exist having an area of 23 hectares and most of these sites are currently being used for such public purposes as roads, pedestrian ways, amenity areas, refuse collection points, vehicle parks, car parks, bus termini, U.S.D. storage, temporary markets, children's playgrounds, public toilets, nullahs, works areas, container storage, etc.

In general, sites beneath footbridges and flyovers become available for use as soon as the construction work has been completed. Major uses such as roads, or relocation of markets will normally have been planned in association with the flyover project. For minor areas, demands which arise on completion can be considered. Each request for allocation is treated on its individual merits and an assessment of whether the proposed use is acceptable, public safety being the paramount consideration.

MR. F. K. HU:—*Sir, are the minor areas included in the site already identified, and what is the total area of such minor areas?*

DIRECTOR OF PUBLIC WORKS:—Sir, the minor areas are included in the figure that I have given. I haven't got a separate figure for these areas, but I could give Mr. HU a figure later.

(THE FOLLOWING WRITTEN REPLY WAS PROVIDED SUBSEQUENTLY.)

The minor areas beneath the footbridges and flyovers constitute a relatively small percentage of the total area of 77 hectares. It is estimated that these will not occupy more than one per cent of the total land area beneath all the existing and proposed flyovers in the Territories.

Statement

1980 Annual Report by the Commissioner of the Independent Commission Against Corruption

MR. LOBO:—Sir, I refer to the Annual Report by the Commissioner of the Independent Commission Against Corruption for 1980 which is tabled in this Council.

The Commission has been in existence for seven years and the Report before us describes a very active year's work.

The activity can be measured by a number of factors: for example—in 1980, a record number of people were taken to court by the I.C.A.C. —a total of 333 prosecutions. And there were 233 convictions—the largest number since the establishment of the Commission.

The Commission's day-and-night reporting system was also very busy during 1980. Over 7,000 reports were received. A quarter of these reports alleged corruption—the rest were reports involving a wide range of complaints, and other matters many of which are passed on to the Government departments concerned.

It is gratifying that over half the number of people who reported corruption to the I.C.A.C. identified themselves.

The Annual Report also describes a steady progress made in 1980 in the field of Corruption Prevention. Perhaps the most important aspect of this work is the very close relationship which has been established over the past six years with most Government departments and public bodies—a basis of sound practices and procedures which will be built on and improved in the years ahead.

The 'continuing campaign' which the I.C.A.C. is engaged on is one of particular importance for the Community Relations Department.

The Report quite rightly emphasizes how vital it is to have the co-operation and goodwill of the people of Hong Kong in the fight against corruption. We are unique and indeed fortunate—in having a special unit entrusted with the task of impressing upon the people the evils of corruption and enlisting their support in the fight against it. This year's Report describes how active this function of the I.C.A.C. has been.

Sir, I am sure that my friends in this Council will wish to endorse the thanks expressed in the Report to the Unofficial Members of the various Advisory Committees of the I.C.A.C. One of these—a former Member of UMELCO—Joyce Symons, deserves special tribute. She stood down from the Operations Review Committee last December having served on it with distinction since its beginning, in April 1974.

Finally, I would like to pay tribute to Sir Donald Luddington, who retired as Commissioner Against Corruption in November 1980. His two and a half years in the I.C.A.C. marked the end of 32 years distinguished public service. He will be well remembered for his integrity, steadiness and leadership.

Government business

Motion

INLAND REVENUE ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:—That the Inland Revenue (Amendment) Rules 1981, made by the Board of Inland Revenue on 21 April 1981, be approved.

He said:—Sir, I move the motion standing in my name in the Order Paper.

At present, for the purpose of ascertaining the annual allowance to be made under the Inland Revenue Ordinance, the rates of depreciation, as prescribed in the third column of the First Part of the Table to Rule 2 of the Inland Revenue Rules, range between 5% and 30%. As a result of a new Table made in 1979 by the Board of Inland Revenue under the Inland Revenue Rules, the then 20% annual rate of depreciation allowance was absorbed into the 25% rate and this now applies to 15 out of 33 heads of plant and machinery, the other 18 heads attracting rates of 5%, 10%, 15% and 30%. In 1980, a ‘pooling’ system for capital expenditure on two or more assets ranking for the same rate of annual allowance was introduced.

In paragraph 243 of this year’s budget speech (printed version), I informed Members that I proposed to invite the Board of Inland Revenue to make a new First Part of the Table to Rule 2 of the Inland Revenue Rules grouping the 33 heads under three rates of annual allowance of 10%, 20% and 30%. I explained the effect would be that the existing rates of annual depreciation allowance of 5%, 15% and 25% for certain items of plant and equipment would be increased to 10%, 20% and 30% respectively. I further explained that the principal beneficiaries of this re-grouping exercise would be industries in the manufacturing sector.

On the 21st of April 1981, the Board of Inland Revenue made a revised Table introducing the amended rates, to be applicable to both final 1980-81

assessments and provisional 1981-82 assessments, as are the other amendments relating to personal and business taxation proposed in this year's budget speech.

In accordance with section 85(4) of the Inland Revenue Ordinance, the revised Table requires the approval of this Council.

Sir, I beg to move.

Question put and agreed to.

First reading of bills

BANKING (AMENDMENT) (NO. 2) BILL 1981

DEPOSIT-TAKING COMPANIES (AMENDMENT) (NO. 3) BILL 1981

ESTATE DUTY (AMENDMENT) BILL 1981

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1981

RATING (AMENDMENT) BILL 1981

STAMP (AMENDMENT) BILL 1981

IMMIGRATION (AMENDMENT) BILL 1981

THE PRINCE PHILIP DENTAL HOSPITAL BILL 1981

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order 41(3).

Second reading of bills

BANKING (AMENDMENT) (NO. 2) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Banking Ordinance’.

He said:—

Introduction

Sir, I move that the Banking (Amendment) (No. 2) Bill 1981 be read the second time.

The main purpose of this Bill, Sir, and of the Deposit-taking Companies (Amendment) (No. 3) Bill 1981, on which I will be speaking shortly, is to update and improve the quality of the prudential supervision applied to banks and deposit-taking companies in Hong Kong. In the preparation of both Bills, I have received very ready assistance and advice from the Banking Advisory Committee and the Deposit-taking Companies Advisory Committee.

At the outset, I should emphasize that these Bills do not spring from any immediate concern about the adequacy of the present system of prudential supervision, but rather from a recognition of the continuing need to keep the provisions of the two Ordinances in line with present day realities. The Bills thus complement the two earlier bills in this sequence which seek to implement a three-tier structure for the monetary sector, the second reading of which I moved on the 29th of April last.

International Activities

I should also mention that work will shortly start on drafting further amendments to these two Ordinances to take account of the growing activities outside Hong Kong of banks and deposit-taking companies which are incorporated in Hong Kong. It is a recognized part of the responsibility of banking authorities to oversee the activities worldwide of banks and other deposit-taking institutions incorporated in their countries: this approach is set out in the Concordat issued by the Committee on Banking Regulation and Supervisory Practices which meets under the supervision of the Bank for International Settlements. To enable Hong Kong, as a major international financial centre, to accept in full its international responsibilities, both the Banking and the Deposit-taking Companies Ordinance will need to be amended to enable the Commissioner of Banking and the Commissioner of Deposit-taking Companies to obtain more information than he now receives on the activities outside Hong Kong of locally incorporated banks and deposit-taking companies, and to enable him to play his full part in the increasingly important international network of banking supervision.

Paid-up Share Capital

Turning now to this Bill: clause 9 of the Bill seeks to increase from \$10 million to \$100 million the minimum paid-up share capital of a licensed bank which is incorporated in Hong Kong. The present minimum of \$10 million was set in 1967, and is now clearly much too low. A transitional period of 24 months, or longer at the discretion of the Governor in Council, for an individual bank, is set to allow the 23 locally incorporated banks with capital of less than \$100 million to attain this new minimum. Incidentally, of those 23 banks, nine could immediately meet the new minimum capital requirement by capitalization of their existing published reserves. Clause 4 of the Bill raises, again from \$10 million to \$100 million, the minimum paid-up share capital required by an applicant for a banking licence incorporated in Hong Kong.

The minimum capital requirement will no longer apply to those licensed banks which are incorporated outside Hong Kong. The reason for this is that it is the generally accepted responsibility, under the Concordat I have just mentioned, of the banking authorities in the countries of origin of those banks to ensure that they have an adequate capital structure for the scale of the business they are undertaking. Similarly, the Bill no longer applies the minimum capital requirement to an applicant for a banking licence which is incorporated outside Hong Kong. The reason for this is that the criteria under which banks incorporated outside Hong Kong are considered, when they apply for a licence, are determined by the Governor in Council from time to time. These criteria have been, and are always likely to be, much more restrictive than the minimum conditions laid down in the Banking Ordinance.

Shareholders' Funds and Payment of Dividends

Clause 8 seeks to raise from \$20 million to \$200 million the level of paid-up share capital and published reserves which a licensed bank incorporated in Hong Kong has to attain before it can pay out in dividends more than two-thirds of its annual published profits after tax. This increase reflects the proposed ten-fold increase in the minimum paid-up share capital. This provision will also now apply only to licensed banks which are incorporated in Hong Kong.

Paid-up Share Capital and Published Reserves and Distribution of Extraordinary Profits

Clause 10 of the Bill seeks to raise from \$20 million to \$200 million the level of paid-up share capital and published reserves which a licensed bank incorporated in Hong Kong has to attain before it can make any distribution of extraordinary profits. This increase again reflects the ten-fold increase in the minimum paid-up share capital set out in clause 9.

Unsecured Loans to Directors, etc.

Clause 12 of the Bill seeks to reduce from 25% of a bank's paid-up capital and reserves to 10% the limit on the total amount which a licensed bank may advance, by way of unsecured loans or other unsecured facilities, to all its directors, their relatives, and any private companies connected with its directors or their relatives; and it seeks to place an absolute ceiling of \$250,000 on each unsecured loan or facility granted to a director, or a relative of a director. The purpose of these amendments is to restrict the impact of the increase in the minimum paid-up share capital and reserves of licensed banks which are set out in other clauses of this Bill. The opportunity has been taken to widen the definition of a director to include, in this context, any person responsible for determining loan applications.

Loans to Individual Customers

Clause 11 eases the existing restrictions on loans and advances made by a licensed bank to a single customer. Section 23 of the principal Ordinance places a limit of 25% of a bank's paid-up capital and reserves on loans and other facilities granted to any one customer, subject to certain exceptions, which include transactions with another bank. It is proposed to add to this list of exemptions transactions with a deposit-taking company, following on from the extension to deposit-taking companies of a system of prudential supervisions broadly similar to that applied to banks.

Use of the Word 'Bank'

Clause 26 of the Bill seeks to tighten up the control on the use of the word 'bank' by anyone other than a licensed bank. The existing control, set out in section 67 of the principal Ordinance, covers the use of the word 'bank' or any of its derivatives in English; it is proposed to extend this control to cover the use of the four letters *bank*, in that order, when they form part of a word (*laughter*). It is not intended to use this provision to forbid entirely the use of these four letters (*laughter*), but it is desirable to have a greater degree of control over possible misrepresentations, and also to avoid lengthy academic arguments over the derivations of compound words.

Time Limit on Returns

Clause 15 of the Bill seeks to shorten from 21 days to 14 days the period within which licensed banks have to submit their monthly and quarterly returns to the Commissioner of Banking. This shorter reporting period is in line with the provisions of the Monetary Statistics Ordinance 1980; it is not expected to present any major problems to banks, many of which now keep their records by computer.

Specification of Liquid Assets

Clause 7 seeks to amend the provisions of the principal Ordinance relating to the maintenance of a minimum holding of liquid assets. I expressed the hope in paragraph 54 (of the printed version) of this year's budget speech that certificates of deposit could be specified as liquid assets before very long. The provisions of this clause will enable the Financial Secretary to specify these or other money market instruments as liquid assets up to a limit which might be expressed as a proportion of the deposit liabilities of each bank or deposit-taking company. This would, I believe, encourage the growth of the secondary market in these instruments.

Penalties

Clauses 19 to 27 set out revised penalties for different offences under the principal Ordinance. The purpose here is to update the penalties since they were

last revised—which, in many cases, was in 1969—and to bring them into line with the penalties for comparable offences under the Deposit-taking Companies Ordinance. I fully accept that a financial penalty, or a term of imprisonment, is not necessarily the best deterrent to a breach of the Ordinance—the very threat of prosecution is likely to be a more potent deterrent. But, nevertheless, it is important that the penalties are seen to be realistic.

Conclusion

The remaining clauses of the Bill set out a number of minor amendments to the principal Ordinance, and propose the repeal of certain spent provisions. Clause 1 states that this amendment Ordinance shall come into operation on a day to be appointed by the Governor; it is intended that this should be on the same day as that appointed for the commencement of the Banking (Amendment) Ordinance 1981.

Sir, I move that the debate on this motion be now adjourned.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE FINANCIAL SECRETARY.

Question put and agreed to.

DEPOSIT-TAKING COMPANIES (AMENDMENT) (NO. 3) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Deposit-taking Companies Ordinance’.

He said:—

Introduction

Sir, I move that the Deposit-taking Companies (Amendment) (No. 3) Bill 1981 be read the second time.

As I just mentioned, Sir, the main purpose of this Bill is to improve the quality of the prudential supervision applied to deposit-taking companies in Hong Kong. Like the Banking (Amendment) (No. 2) Bill, this Bill also incorporates a number of minor amendments to the principal Ordinance, including revisions to the penalties prescribed for various offences.

Minimum Paid-up Share Capital

Clause 5 of the Bill seeks to increase from \$2.5 million to \$10 million the minimum paid-up share capital required by a company applying to be registered

as a deposit-taking company, and it removes the present requirement for a minimum issued capital of \$5 million, since this requirement is no longer relevant. The minimum of \$2.5 million was set in 1976, when the Government's concern basically was to ensure the registration, without excessively onerous criteria, of companies engaged in the business of taking deposits. The thrust of the Ordinance has now changed towards the prudential supervision of those companies on the register and so the minimum paid-up capital requirement clearly needs to be increased.

Clause 6 seeks to raise the minimum paid-up capital of a company which is already on the register; and clause 7 provides a two-year transitional period, which can be extended by the Governor in Council in individual cases, during which those 171 deposit-taking companies registered at the commencement of this Ordinance, and which have paid-up share capital of less than \$10 million, can attain the new minimum level. Of those 171 companies, 23 companies could meet the new requirement by capitalizing part or all of their existing reserves.

Shareholders' Funds and Payment of Dividends

Clause 18 introduces a requirement, which is new for deposit-taking companies but familiar to licensed banks, namely, that a deposit-taking company which is incorporated in Hong Kong should build up its shareholders' funds—its paid-up capital and reserves—to an adequate level before it can pay out in dividends more than two-thirds of its after-tax profits, or before it can distribute any extraordinary profits. The suggested level of adequacy for shareholders' funds is \$20 million, or double the proposed minimum paid-up share capital requirement; this is the same ratio as is applied to banks.

Shareholdings and Interests in Land and Buildings

Clause 21 also introduces two restraints which are new to deposit-taking companies, but under which banks have worked since 1964. These are limitations on the shareholdings and on the interests in land and buildings which may be held by a deposit-taking company. So the proposed new section 23(b) restricts to not more than 25% of a deposit-taking company's paid-up capital and reserves its total holdings in the share capital of any other company or companies, whether incorporated in Hong Kong or elsewhere. A grace period of three months, or longer at the discretion of the Commissioner of Deposit-taking Companies, is proposed to permit the disposal of shares acquired under an underwriting or sub-underwriting contract.

The new section 23(c) again limits, again to not more than 25% of its paid-up capital and reserves, the total value of interests in land situated in or outside Hong Kong which may be purchased or held by a deposit-taking company. Excluded from this limit is land, the occupation of which is necessary for the conduct of the business of the deposit-taking company, or for providing housing or amenities for its staff. Also excluded from both these limits are

shareholdings or interests in land taken by a deposit-taking company in satisfaction of a debt to it; but such interests will have to be disposed of as soon as possible. A two-year transitional period, or longer at the discretion of the Governor in Council in any particular case, is allowed to companies which, when this Bill comes into force are above the limit.

Unsecured Loans to Directors, etc.

Clause 20 seeks to tighten the existing restraints on unsecured loans (or other unsecured facilities) made by a deposit-taking company to connected borrowers. It reduces from 25% to 10% of paid-up capital and reserves the limit, set by section 23 of the principal Ordinance, on all unsecured loans granted to firms or private companies connected with the deposit-taking company, or with any director of that deposit-taking company or any of his relatives: the purpose here is to reduce the potential impact of the proposed increase in the minimum paid-up capital of a deposit-taking company. The clause also seeks to prohibit entirely the granting by a deposit-taking company to any director, or any of his relatives, of an unsecured loan on a personal basis. In view of the relatively small paid-up capital requirement of a deposit-taking company, it is quite inappropriate for a company to grant unsecured loans. Such loans have hitherto been permitted, subject to a limit of \$250,000 or 1% of paid-up capital and reserves, whichever is the less.

Certain exemptions are set out in section 23 of the principal Ordinance to the restraints on unsecured loans to connected companies. Clause 20 adds to this list of exemptions any unsecured loan (or other unsecured facility) granted by a deposit-taking company to a licensed bank or a bank outside Hong Kong or another deposit-taking company. The purpose here is to permit a deposit-taking company to place with its parent bank, or with a deposit-taking company in the same group, on an unsecured basis a sum larger than 25% of its capital and reserves.

Other Restraints on Loans

Two further restraints are proposed on loans or advances made by a deposit-taking company. Clause 18 seeks to prohibit the making of any loan against the security of shares in the deposit-taking company concerned. This provision, which is already applied to banks, is particularly important in the light of the proposed increase in the minimum paid-up capital requirement, and the likelihood of a company seeking to raise funds by new share issues. Clause 21 provides that a deposit-taking company may not make an unsecured loan (or other unsecured facility) to an employee in an amount exceeding one year's salary. This restraint already applies to employees of licensed banks: it is appropriate that employees of deposit-taking companies should also be subject

Control of Branching

Clauses 5, 8 and 10 seek to apply to deposit-taking companies a control which already applies to licensed banks, namely, a control on the extent to which they can open branches, in Hong Kong or elsewhere. The purpose of this control is to enable the Commissioner of Deposit-taking Companies to ensure that a deposit-taking company does not, by an excessively fast programme of opening new branches, over-stretch the management resources available to the company, either at branch manager level or in the head office in Hong Kong. So clauses 5 and 8 apply this control to registered and licensed deposit-taking companies incorporated in Hong Kong which wish to establish any branch outside Hong Kong; and clause 10 states that a deposit-taking company, whether incorporated in Hong Kong or elsewhere, shall not open a branch in Hong Kong without the approval of the Commissioner. The clause also provides for an annual fee to be paid in respect of each branch maintained in Hong Kong by a deposit-taking company: the purpose of this is to cover, in part if not in full, the costs incurred by the Commissioner of Deposit-taking Companies in examining the business of such branches. Clause 32 sets the amount of this fee at \$5,000 per branch.

Management of Companies

Two new provisions are proposed as a result of certain difficulties the Commissioner of Deposit-taking Companies has experienced in administering the Ordinance since 1976. Clause 12 provides *first* that every deposit-taking company must at all times maintain a place of business in Hong Kong: this will prevent overseas companies registering as deposit-taking companies so as to obtain tax or other benefits in their countries of origin, whilst not carrying on any business in Hong Kong. Clause 12 *secondly* provides that every deposit-taking company shall appoint as its chief executive an individual who is normally resident in Hong Kong: this should eliminate the problems experienced by the Commissioner in dealing with companies without a resident chief executive.

Time Limit on Returns

Clause 16 seeks to shorten from 21 days to 14 days the period within which companies have to submit their monthly and quarterly returns to the Commissioner. This proposal is identical to that proposed for banks, and to the reporting period specified in the Monetary Statistics Ordinance 1980.

Specification of Liquid Assets

Clause 23 seeks to permit the Financial Secretary to make a limited specification of money market instruments as liquid assets for deposit-taking companies: this proposal is identical to that proposed for banks, to which I have just referred.

Penalties

Proposals are contained in 14 clauses of the Bill to revise the penalties for different offences. The intention is that the penalties for comparable offences committed by banks and by deposit-taking companies should be brought into line and, at the same time, revised to reflect the gravity of the different offences.

Conclusion

The remaining clauses of the Bill set out certain minor amendments to the principal Ordinance. Clause 1 states that this Ordinance shall come into operation on a day to be appointed by the Governor: it is intended that this day should be on the same day as is appointed for the commencement of the Deposit-taking Companies (Amendment) (No. 2) Ordinance 1981.

Sir, I move that the debate on this motion be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

ESTATE DUTY (AMENDMENT) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Estate Duty Ordinance’.

He said:—Sir, I move that the Estate Duty (Amendment) Bill 1981 be read the second time.

The ceiling at which duty on estates of deceased persons becomes payable was lifted to \$600,000 last year. Having regard in particular to prevailing property prices, I put forward a proposal, in paragraph 244 (of the printed version) of this year’s budget speech, to lift the ceiling again this year to \$1 million. *Clauses 2, 6, 7 and 8* of this Bill seek to implement that proposal. The cost to the revenue is estimated at \$13 million in 1981-82 and perhaps \$17 million in 1982-83. This is because in 1981-82 the increased exemption limit does not apply to estates of persons dying before the enactment of this Bill.

I am taking this opportunity, Sir, to introduce three relatively minor amendments to the Estate Duty Ordinance. The first of these concerns section 14A of the principal Ordinance, which simply provides for a simplified procedure for the processing of small estates whereby, subject to certain conditions, the Estate Duty Commissioner is empowered to exempt executors from the need to deliver sworn affidavits for all the property in respect of which estate duty is payable upon the death of the deceased. This enables the executors to receive certificates of exemption with a minimum of formalities. When this

procedure was first introduced in June 1972, the value of a small estate was set at an amount not exceeding \$100,000 in value, the exemption limit for estates liable to duty then being \$200,000. Having regard to the proposed estate duty exemption limit of \$1 million, the present level of \$100,000 up to which this simplified procedure is applicable is now too low. *Clause 5* of the Bill raises the level from \$100,000 to \$400,000.

Clause 4 ensures that there is no multiple charge to duty in cases where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others. The effect, for estate duty purposes only, would be that the property concerned would 'jump' from the deceased owner or owners—that is, over all those who were deemed to have died at the same instant—to the *living* person or persons next entitled after all of those deceased persons.

Clause 3 makes a minor textual amendment to section 6 of the Ordinance whereby certain dispositions are deemed to be gifts *inter vivos*. The effect of section 6 is not altered by this amendment.

Sir, I move that the debate on this motion be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—'A bill to amend the Inland Revenue Ordinance'.

He said:—Sir, I move that the Inland Revenue (Amendment) (No. 3) Bill 1981 be read the second time.

This Bill seeks to give legislative effect to the proposals made in paragraphs 233 to 243 of this year's budget speech (printed version) to reduce the liability of the bulk of personal taxpayers and to remove some existing taxpayers from, and to keep some potential taxpayers out of, the tax net by lifting tax thresholds; to remove a temporary loading on the surcharge on the standard rate of corporation profits tax; and to improve the initial allowance for depreciation in order to encourage manufacturers and others to re-equip and upgrade their plant and equipment. The total cost to the revenue of these three sets of proposals in a so-called 'full' or ordinary year is estimated at around \$675 million at present levels of incomes and profits.

Sir, I move that the debate on this motion be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

RATING (AMENDMENT) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Rating Ordinance’.

He said:—Sir, I move that the Rating (Amendment) Bill 1981 be read the second time.

A thorough review of the Rating Ordinance was begun in 1978 to identify areas where changes were desirable or necessary. The most urgent of these changes were implemented by the Rating (Amendment) Ordinance 1979. The present Bill seeks to implement further changes the need for which has been subsequently identified. I shall deal with the five most important changes in the Bill. Serious students of this rather esoteric subject can pick up the other, relatively minor, changes from the Explanatory Memorandum.

First, problems arise at present because the valuation lists have become so large that, following a direction by the Governor to make a valuation of tenements, the valuation work takes a considerable period of time to complete and, during this period, changes in rental values can occur. Provision is therefore made by *clause 8* of the Bill for the Governor to designate a date by reference to which the rateable values in a new valuation list are to be ascertained. Related to this, it is necessary to qualify the definition of rateable value in section 7(2) of the principal Ordinance by specifying the date at which the *physical* state of a tenement is to be taken in various circumstances. This is provided for in *clause 4*. Other changes are made by *clauses 7 and 8* to bring the procedure for the preparation of a new valuation list into line with actual practice.

Secondly, certain amendments are proposed which aim to improve the administration of the valuation lists. The one that will be of some public interest concerns inspection of the valuation lists. The current requirement under section 15 of the principal Ordinance for the valuation lists to be displayed for 21 days in March each year is no longer necessary, because very few people inspect the lists in years subsequent to the first year the lists come into force. *Clause 12* of the Bill, therefore, provides that new lists are to be displayed for the whole of the month of March immediately before the lists come into force. They will not be displayed in subsequent years, but information on tenements included in the lists, and on their rateable values, will readily be obtainable at any time from the Treasury or the Rating and Valuation Department. This will not affect, however, ratepayers’ right to object to an assessment each year.

Thirdly, under section 29 of the principal Ordinance, the maximum period that rates may be demanded on an interim valuation is 12 months. Normally, interim valuations are made within one year of a tenement becoming liable. When the Rating and Valuation Department is involved in other more urgent matters such as a general revaluation or rent controls, interim valuations could be delayed for more than 12 months. *Clause 19 (a)* of the Bill extends the back-

dating period to 24 months. In order that the change will not be too abrupt for those who may be immediately affected, a transitional provision is provided by *clause 19(b)* whereby back rates for more than 12 months will not start to be charged until after 1 January 1982.

Fourthly, section 30(4) of the principal Ordinance provides that the maximum period for claiming a refund of rates is 12 months. This occasionally causes hardship in cases where, for instance, there are legal problems over ownership or probate. *Clause 20* of the Bill accordingly extends this period to 24 months.

Fifthly, *clause 22* makes a number of amendments to section 36 which deals with exemptions. The main aim is to ensure, as far as possible, that tenements which by their nature are always likely to be exempt are exempted from *assessment* to rates, while those which are by their nature rateable, but are temporarily exempt due to the mode of their occupation, are exempted only from the *payment* of rates. These amendments are made in order to improve administration of the Ordinance and there is no intention that tenements currently exempted will become liable to rates.

Finally, there are a number of amendments proposed to ensure consistency in terminology, to clarify the law and to regularize current practice. I need only mention two: the first minor amendment is *clause 24* by which the time limit for issuing decisions on proposals is extended from three months to six months in the first year of a new valuation list, at which time there are likely to be a large number of proposals. The second minor amendment which I would like to mention is *clause 26* which extends the period for making an appeal by ratepayers from 21 days to 28 days from the date of service of the notice of decision from the Commissioner.

Sir, I move that the debate on this motion be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

STAMP (AMENDMENT) BILL 1981

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Stamp Ordinance’.

He said:—Sir, I move that the Stamp (Amendment) Bill 1981 be read the second time.

This Bill seeks to implement another revenue concession announced in this year’s budget speech and is in recognition of the much higher prices of domestic flats now prevailing.

Clause 2(a) of the Bill amends Head 19(1) (conveyances on sale) of the Schedule to the principal Ordinance by raising the limit for the fixed concessionary rate of duty of \$20 from \$100,000 to \$250,000 and the limit for the concessionary *ad valorem* rate of duty of 1% from \$250,000 to \$500,000. *Clause 2(b)* raises these limits to similar levels in respect of Head 53(1), voluntary dispositions.

The provisions of the Bill have been effective since 26 February 1981 as a result of an Order made by Your Excellency under the Public Revenue Protection Ordinance. The estimated cost to the revenue of this in 1981-82 is \$155 million.

Sir, I move that the debate on this motion be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

IMMIGRATION (AMENDMENT) BILL 1981

SECRETARY FOR SECURITY moved the second reading of:—‘A bill to amend the Immigration Ordinance’.

He said:—Sir, I move that the Immigration (Amendment) Bill 1981 be read a second time.

In moving the second reading I propose to give the background and reasons for the Bill, to go on and outline the main proposals and then to say something about the implementation and procedures which will be introduced if the Bill is passed.

Members will need no reminder of the massive influx of Vietnamese refugees in 1979. Hong Kong provided temporary asylum for them. And in immigration terms they have been allowed to remain in Hong Kong temporarily against an assurance from the United Nations High Commission for Refugees that it will use its best endeavours to arrange their resettlement overseas. Because of the very large numbers involved, the rate of inflow, the problems of accommodating them and other higher immigration priorities they were processed in family units on arrival. Apart from being given temporary asylum no conditions of stay were immediately applied.

Generally speaking these arrangements have worked well, though there have, from time to time, been difficulties about imposing discipline in refugee camps.

Throughout the latter part of 1979 and in 1980 56,000 refugees left to take up a new life overseas. The outflow of refugees proceeded apace and greatly exceeded the inflow. As a result the refugee population was reduced to 21,600 at

the beginning of this year. Many countries offered resettlement places but four in particular, the U.S., Canada, U.K. and Australia have retained a regular quota.

By the beginning of this year, however, we were beginning to experience difficulties. Refugees who satisfied the criteria of the U.K. or some countries other than U.S. became rather choosy. They thought they might like to hang on and get another offer of resettlement, or even stay here. This development has caused me to look at the conditions and circumstances under which refugees were landed as well as the operation of refugee centres, which as you know, Sir, have been so admirably run on behalf of the U.N.H.C.R. by voluntary agencies.

The conclusions which we reached are contained in the provisions of this Bill.

The main provisions are included in clause 3. They can be summarized as designed to provide statutory authority for conditions of stay and for proper control of Vietnamese refugees during their temporary stay here.

New clause 13A provides that Vietnamese refugees:

shall not without reasonable excuse fail or refuse to accept an offer of overseas resettlement;

must not, without reasonable excuse, and when required fail or refuse to surrender their Vietnamese refugee card, issued as part of the abandonment of the reached base policy in the autumn of last year;

must reside in specified refugee centres and comply with centre rules;

must abide by other conditions relating to employment etc.

These provisions will apply to all Vietnamese refugees now here or who may arrive in future.

Under subsection 6 of new clause 13A any contravention of these conditions renders the individual liable to detention for a period which has been fixed to offer a meaningful deterrent at 28 days. In addition a person who contravenes a condition of stay may find this and any other condition liable to cancellation.

New clause 13C gives powers to the Secretary for Security to designate places as refugee centres and to make rules. The rules will cover such matters as camp security, health and hygiene, behaviour and discipline and personal safety. A breach of these conditions renders a refugee liable to a penalty not exceeding \$100 and for separate confinement of a period not exceeding seven days.

Clauses 5, 6 and 7 deal with a situation which will arise should the Director of Immigration decide to withdraw the condition of stay under which an individual refugee, groups of refugees or refugees generally are able to work. The prohibition would be clearly endorsed on the refugee card. While he would no longer be lawfully employable his card would still be accepted as proof of identity. Any employer offering employment to a Vietnamese refugee who is not lawfully employable will risk a fine and imprisonment.

Clause 6 reproduces subsection 2 of section 171 of the principal Ordinance with an additional special defence to employers in cases where a Vietnamese refugee is not lawfully employable, subsequently after his employment commences, as a result of the imposition of a prohibition against employment.

The object of this legislation is to introduce deterrents to Vietnamese refugees to whom we have given asylum temporarily. We remain determined to endeavour to see all the 16,000 such persons now here resettled overseas and to provide a fair and effective arrangement for the quotas which are offered by overseas countries to be filled. It is our intention to use the power to make detention warrants with discretion but to ensure that it has the greatest impact and deterrent effect.

The Bill provides that since the power to issue a warrant is vested in officials, that is to say the Director of Immigration or his Deputy of Assistant Director, then there shall be a right of appeal to the Secretary for Security or his Deputy and the appeal will be final.

The proposals have been agreed with U.N.H.C.R. and have already been given some publicity. Generally they seem to have been well received. I believe that they are appropriate to the circumstances and I commend them and the Bill to Council.

I move that the debate on this motion be adjourned.

*Motion made. That the debate on the second reading of the Bill be adjourned—*THE SECRETARY FOR SECURITY.

Question put and agreed to.

THE PRINCE PHILIP DENTAL HOSPITAL BILL 1981

THE SECRETARY FOR SOCIAL SERVICES moved the second reading of:—‘A bill to provide for the establishment and incorporation of a Board of Governors of The Prince Philip Dental Hospital, to empower the Board to manage and administer the Hospital and to provide for matters incidental thereto or connected therewith’.

He said:—Sir, I move that The Prince Philip Dental Hospital Bill 1981 be read the second time.

The Prince Philip Dental Hospital is being developed to facilitate dental studies at the University of Hong Kong and is on part of the site of the old Government Civil Hospital, the training hospital of our doctors of an earlier generation. The Prince Philip Dental Hospital commenced partial operation in January of this year and was officially opened by His Royal Highness the Duke of Edinburgh himself on 24 March. With 241 dental chairs and supporting

clinical academic and research facilities, the Hospital will be one of the most modern and best equipped hospitals of its kind in the world.

Although this is not our first teaching hospital—the Queen Mary Hospital and its precursors have a long and distinguished record in this regard—The Prince Philip Dental Hospital is nevertheless *sui generis*. I say this because the Queen Mary Hospital will soon have a partner at Sha Tin when the Prince of Wales Hospital commences its training of clinical students from our second Medical School at the Chinese University of Hong Kong. Furthermore, both these medical teaching hospitals are also major regional hospitals in our scheme of medical services, where we have a number of other regional hospitals as well. The Prince Philip Dental Hospital, on the other hand, is being developed wholly and exclusively because of its teaching function. The service function it will perform, when it opens its doors to the public on a walk-in basis, is to ensure that sufficient patients are available for teaching purposes. And we have no other dental hospital. Accordingly, there is no other comparable institution to it in Hong Kong.

After careful consideration of the management and control implications for such a unique institution, and following consultation with and advice from the Medical Sub-Committee of the University and Polytechnic Grants Committee, it was agreed that an independent statutory authority should be established for the management of the Hospital. This Bill provides for the establishment and incorporation of a Board of Governors to assume that role.

Although this Hospital is primarily intended for the training of dental surgeons, the Hospital also needs para-dental staff for its operation. Indeed, in partnership with the Polytechnic this para-dental training commenced in 1978. Furthermore, the dentists on graduation will also need para-dental support. Accordingly, the objectives as spelt out in clause 3 of the Bill are to provide training for dentists and para-dental staff.

Clause 4 establishes a Board of Governors and constitutes it as a body corporate with the usual powers enjoyed by such bodies. Clause 6 defines the duties and powers of the Board, while clause 17 will enable Your Excellency in Council give directions to the Board on matters affecting the public interest. Provision is included here for honorary, academic or professional awards which may not be possible either through the University of Hong Kong or the Hong Kong Polytechnic.

Clause 5 provides for the membership of the Board which shall comprise the following persons appointed by Your Excellency:—

- (a) the Chairman;
- (b) three members who are not public officers;
- (c) four members of the University of Hong Kong;
- (d) two members who are not public officers but are registered dentists; and
- (e) four public officers.

In addition, the Director and the Comptroller of the Hospital shall be ex-officio members of the Board. The statutory Board of Governors when appointed will take over the duties of the present Provisional Board. The latter was appointed in May 1980 to be responsible for the commissioning and management of the Hospital pending the enactment of the necessary legislation, and I should like to take this opportunity to pay tribute to both Mr. T. S. Lo and Miss DUNN, and their colleagues, for the hard work they have put in to enable the present Bill to be introduced into this Council.

Members may have noted that apart from the Director of the Hospital, the University of Hong Kong's representation has been increased from three to four members as compared with the Provisional Board. This is at the University's request and is considered appropriate in order to provide a balanced input from the University into the management. Although this is not specifically provided in the Bill, it is Your Excellency's intention to invite the University to nominate for your consideration for appointment one member each from Dental Studies, Faculty of Medicine, another academic discipline and University Administration, respectively, to fill the four places.

As regards representation of the dental profession the Hong Kong Dental Association has been consulted, and I can also say that it is Your Excellency's intention to invite the Association to nominate candidates for your consideration for appointment to the two places reserved for registered dentists.

The Bill also provides for the appointment of a Director of the Hospital and a Comptroller. Clause 12 specifies the Director shall be a dentally qualified teacher nominated by the University and appointed by the Governor. He will be responsible to the Board for the management, conduct and administration of the Hospital. The Comptroller, who will be appointed by the Board, will assist the director in the day-to-day running of the Hospital. However, he will be directly responsible to the Board on budgetary and financial matters.

As regards the financing of the Hospital, the necessary funds for its operation (as distinct from its teaching function) will be provided from General Revenue in the form of a block grant. Funds for the provision of teaching within the Hospital will continue to be included in the budget of the University of Hong Kong and allocated through the University and Polytechnic Grants Committee.

Other standard provisions to enable the Board to appoint staff and to account for the public funds placed at its disposal are also included in the Bill.

Sir, this Bill, if enacted, will provide a sound basis for the management of an institution of which Hong Kong can be justly proud and which will provide our community with dental and para-dental personnel of the highest calibre it so rightly deserves.

Sir, I move that the debate on this motion be now adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned— THE SECRETARY FOR SOCIAL SERVICES.

Question put and agreed to.

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1981**Resumption of debate on second reading (11 March 1981)**

Question proposed.

MR. PETER C. WONG:—Sir, the legislation scrutiny group of the Unofficial Members of this Council met with the Commissioner and Deputy Commissioner of Inland Revenue and a representative of the Finance Branch on 15 April 1981 to discuss the legal and technical aspects of the Bill.

As a result of the discussion, Government has agreed to move certain amendments at the committee stage relating to clause 3(b)(k) and clause 5(a)(ii). These proposed amendments are either for the avoidance of doubt or for clarification, and I shall not burden Members with details.

In addition, Government is prepared to meet the objections that the Bill ought not be retrospective. Representations have been made to Unofficial Members that the effects of the Bill should be confined to certificates of deposit and bills of exchange issued after 1 April 1981. Alternatively, the impact of the Bill should be limited to gains accruing after 1 April 1981. Government has agreed to accept the latter suggestion and will move amendments at the committee stage to vest the Commissioner of Inland Revenue with the appropriate statutory authority to establish a base date value as at 1 April 1981 on a designated list of certificates of deposit and bills of exchange extant at that date.

Sir, with these remarks, I support the motion.

MR. NEWBIGGING:—Sir, the Inland Revenue (Amendment) (No. 2) Bill and the Stamp Duty Bill involve a number of common issues and what I have to say relates, in part at least, to both Bills. The proposed legislation is necessarily of a somewhat technical nature. However I intend to confine my remarks to a few relatively simple points.

Before doing so I must declare interests as the Chairman of a deposit-taking company which is associated with a number of unit trust management companies, and as a director of the parent company of Hong Kong's principal trustee company all of which *could* be affected by certain aspects of this legislation.

The first and very brief point I wish to make is that, with the amendments that are to be introduced in committee, I now feel able to support both Bills.

But this brings me straight onto my second point which concerns consultation. The Financial Secretary has correctly pointed out that the Unofficials should be the focal point for reviewing proposed legislation with interested sectors of the community. The ad hoc group of Unofficials set up to examine these Bills has indeed spent considerable time and effort receiving and

reviewing representations both from the financial community and from the Government. Having participated in this process I have little doubt that a significant saving of time—and possibly avoidance of damaging uncertainty as well—could have been achieved if the committee on unit trusts and mutual funds—a body set up under Government sponsorship—had been included in consultations prior to the publication of these proposals.

In this context, Sir, I would urge that this committee is consulted regarding the amending Bill (to the Stamp Duty Bill) which, the Financial Secretary has indicated, it is intended to introduce in the autumn.

My third point concerns the question of liability Of the trustees of unit trust funds to tax on trading profits. The problem here is the uncertainty regarding what is and is not a trading profit in the context of the operations of a unit trust. Unit trust managers however must buy and sell units at regular intervals (often fortnightly or monthly) at prices based on the net assets of the trust and it is obviously impractical to await the outcome of possible legal proceedings before deciding whether or not to include a tax liability in this calculation. The Financial Secretary may with justification point out that the position is not affected one way or the other by the proposed legislation. However the Inland Revenue (Amendment) (No. 2) Bill, coupled by unhappy coincidence with a number of recent assessments to tax being raised against unit trust trustees, has unquestionably heightened the concern of the industry—a legitimate concern when one considers that any tax trustees bear as a result is on other people's profits. If the Financial Secretary considers it inappropriate to match the U.K. legislation on this point (which in effect exempts unit trusts from tax on the U.K. equivalent of trading profits) he may nevertheless wish to take advantage of this debate to clarify the Government's policy on this end to provide the unit trust industry with some reassurance.

Sir, I support the motion.

MR. SWAINE:—Sir, in his speech on 11 March 1981 when moving the second reading of the Inland Revenue (Amendment) (No. 2) Bill 1981, the Acting Financial Secretary spoke of the need to place beyond doubt the liability to profits tax of trustees who carry on a trade, profession or business in Hong Kong. This followed from the comments at paragraphs 212 and 213 of the Report of the Third Inland Revenue Ordinance Review Committee concerning a possible ambiguity in section 14 of the Inland Revenue Ordinance.

The proposed amendment seeks to remove doubt by defining the word 'person' in section 2 of the Ordinance to include 'trustee'. No substantive change is intended. No question of double taxation will arise, as the beneficiaries of the trust fund will not again be taxed on such profits, in line with the principle established in the U.K. that the income from a business carried on by trustees is not the earned income of the beneficiaries.

This seemingly innocuous amendment has however had repercussions in the unit trust industry, although they have not been singled out for treatment in the present Bill.

The composition and functions of unit trusts are dealt with in paragraphs 214-219 of the abovementioned Report; and I quote from paragraph 219:

‘We find it difficult to see that people banding together in these circumstances with a common purpose of investing money could be held to be dealing in the market thereby stamping any surplus with the ‘badges of trade’. We should not think it right to write into the Ordinance any statutory presumption in favour of liability. As we see it, there is no implication of an intention to band together in order to indulge in collective dealing. . . Everything is consistent with a wish to hold (indirectly) the shares and bonus of the portfolio for the income they bring and for the hope that the equity part of the portfolio will give some protection against inflation. None of this points to dealing’.

I think that this stands as a statement of general principle, but it does not rule out the possibility of a unit trust in particular circumstances engaging in the business of trading, and, where this is so, it is caught by the general law. The position of such a unit trust is no better or worse under the Bill.

The other major provision of the amending Bill is the inclusion in section 15 of the profits derived from the sale, disposal or realization of certificates of deposit as part of the deemed trading receipts of the taxpayer.

This likewise stems from the Review Committee’s Report. At paragraph 94 the Committee drew attention to a possible lacuna in the wording of the Hong Kong Ordinance in that the statutory description of interest might be inadequate to render liable to tax the surplus thrown up on the redemption or realization of certificates of deposit and like entitlements to receive a stated sum of money. The Committee considered that such surpluses were undoubtedly the equivalent of interest in any ordinary usage of the word, a view which I share, and accordingly recommended remedial legislation.

In his speech moving the second reading, the Acting Financial Secretary stressed that the new provisions would in no way breach the territorial source criterion, and the traditional provision of credit test used in determining the assessability to tax of interest payments would be applied to those instruments.

This accords with the basic principle in section 15 that only profits arising in or derived from Hong Kong are taxable. In identifying such taxable profits, the Review Committee at paragraph 99 of the Report recognized that the preponderant factor was the place where the funds were provided by the lender to the borrower.

This test would bring within the tax net those certificates of deposit which originated in Hong Kong, whatever their currency of denomination, and would exclude those which originated outside Hong Kong.

Analysed, therefore, the result will be that:—

- (1) foreign currency certificates of deposit issued off-shore will continue to escape the tax net;
- (2) foreign currency certificates issued in Hong Kong will be taxable;
- (3) Hong Kong dollar certificates issued in Hong Kong will of course be taxable; but
- (4) Hong Kong dollar certificates issued off-shore will not be taxable.

There is however the prospect of relief for some Hong Kong issued certificates of deposit. Paragraphs 295 and 296 of this year's budget speech (printed version) hold out the possibility of exempting from interest tax a certain range of deposits denominated in foreign currency, and we have the assurance of the Financial Secretary that whatever decision is taken in respect of such deposits generally will apply equally to foreign currency certificates of deposit issued in Hong Kong

At the more immediate level, the Government has agreed, in the course of consultations, to an arrangement that will limit the impact of the Bill to gains accruing after 1 April 1981 by reference to the value of the certificates at that date. Thus in the case of a certificate purchased before 1 April 1981, the value to be taken for the purpose of computing profits tax will be the value of such certificate as at 1 April 1981. A committee stage amendment will be proposed by the Government to implement this arrangement, and it is one which I welcome.

Finally, some doubt has been expressed as to whether profits on disposal of certificates of deposit by corporations carrying on trade or business in Hong Kong will be exempt from interest tax under section 28 of the Ordinance. A committee stage amendment will therefore be proposed by the Government to deem such profits to be interest for the purpose of the section 28 provisos, thereby obviating any question of corporations being doubly taxed, under both interest and profits tax.

Sir, I support the motion.

*Motion made. That the debate on the second reading of the Bill be further adjourned—*THE FINANCIAL SECRETARY.

Question put and agreed to.

STAMP DUTY BILL 1981

Resumption of debate on second reading (11 March 1981)

Question proposed.

MR. PETER C. WONG:—Sir, in a speech in this Council on 22.10.1980, I spoke on the need to expedite the introduction of important legislation, referring in particular to the Law of Property and Stamp Duty.

I therefore welcome the Stamp Duty Bill 1981, which is a sensible and progressive measure designed to facilitate the collection of stamp revenue and the removal of anomalies. In England, the Stamp Duties Management Act, 1891 and the Stamp Act, 1891, as amended by various Finance and Revenue Acts, notably the Finance Acts, 1949, 1970 and 1971, constitute the present law on the subject of stamp duties. The Bill now before Council brings under one umbrella the existing Stamp Ordinance and the Stamp Duties Management Ordinance. In this respect, we are, for a change, ahead of English legislation.

The Bill reflects the reform introduced in 1978 and it applies only to instruments involving immovable property and stocks and shares. In addition, the Bill also removes a long-standing anomaly by expressly providing for unit trusts, depositary receipts and warrants entitling the holder to subscribe for shares. Accordingly, there are now four heads of charge—

Head 1: Immovable property in Hong Kong

Head 2: Hong Kong stock

Head 3: Hong Kong bearer instruments

Head 4: Duplicates and counterparts

Practitioners and law students will find the Comparative Table useful and informative. It is obvious that a great deal of thought, research and work must have gone into the preparation of this Bill, and it would be appropriate to record our appreciation of the concerted efforts of those concerned with this important legislation.

As the Acting Financial Secretary rightly pointed out, much of the Bill relates to matters of procedure, and a large part of it is, to a greater or lesser extent, of a technical nature. The legislation scrutiny group of the Unofficial Members of this Council have studied the Bill and considered comments by the Law Society of Hong Kong and other interested parties. The group also held a long meeting with the Commissioner and Deputy Commissioner of Inland Revenue and a representative of the Finance Branch. There were frank and useful exchanges and I am pleased to report that at the committee stage, Government will introduce a number of amendments, most of which are either for the avoidance of doubt or for clarification.

Members will be relieved that I do not intend to elaborate on the numerous agreed amendments, which are mainly of a technical nature. I shall, however, speak briefly on clause 15 of the Bill. This clause replaces section 7 of the Stamp Ordinance, which deals with the non-admissibility of instruments not duly stamped. Subsection 3 of section 7 of the existing Ordinance gives the Courts a discretion to admit instruments which are not duly stamped and provides safeguards to ensure proper stamping and payment of penalty in due course. This discretion of the Courts is not retained in clause 15 of the Bill. However, in response to views expressed by the legislation scrutiny group, Government has now agreed to amend clause 15 so that the Courts will retain this discretion.

This provision is important as it will facilitate Court proceedings. The retention of such discretion is in line with the current practice in English Courts.

Sir, with these remarks, I support the motion.

MR. NEWBIGGING:—Sir, I spoke on this Bill when I spoke earlier this afternoon on the Inland Revenue (Amendment) (No. 2) Bill 1981. And to avoid being repetitive, I would only say that with the proposed amendment, I support the motion.

MR. SWAINE:—Sir, I do not intend to be long on the Stamp Duty Bill 1981 and will attempt only to catalogue the main areas in which consultations with the Government have produced changes or at least clarification:—

The Government will propose a form of relief from stamp duty for fund managers of unit trusts who buy and sell units within a specified period of up to two months, if this period is shown to be appropriate for Hong Kong. Amending legislation will be introduced before Part IV of the present Bill comes into operation.

It is not intended that the cancellation of units in a unit trust shall attract duty, and the concept of ‘disposal’ in clause 19(11) and that of ‘cancellation’ are mutually exclusive.

If, as a result of the review now in progress, a decision is taken to exempt foreign currency deposits from interest tax, steps will be taken to ensure that Asian dollar bonds issued in Hong Kong are relieved from stamp duty.

Clause 24(3) of the Bill which is aimed at a particular stamp duty avoidance device would only be invoked where, as part of the transaction, the purchaser assumes the company’s liabilities to discharge the indebtedness to the vendor shareholders; it would not be applicable where the loan was not really part of the consideration for the purchase.

It is not the Government’s intention to levy stamp duty on mortgages and they will remain exempt: they will not be caught by the present definitions of immovable property, conveyance and lease.

Letter B land exchange entitlements issued by the New Territories Administration will remain exempt from duty as they are rights only and not immovable property within the definitions of ‘conveyance’ and ‘conveyance on sale’.

The Court is to have a discretion to receive unstamped documents in evidence on a solicitor’s undertaking to stamp the instrument and pay any penalties. This proposed committee stage amendment to clause 15(1) is particularly welcome as it will write into the Ordinance a discretionary power which the Courts might otherwise have to infer in the light of English case law.

Sir, I support the motion.

Motion made. That the debate on the second reading of the Bill be further adjourned—THE FINANCIAL SECRETARY.

Question put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT:—In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday, 27 May 1987.

Adjourned accordingly at eighteen minutes past four o'clock.