

**OFFICIAL REPORT OF PROCEEDINGS****Wednesday, 25 January 1984****The Council met at half past two o'clock****PRESENT**

HIS HONOUR THE DEPUTY TO THE GOVERNOR (*PRESIDENT*)  
THE HONOURABLE THE CHIEF SECRETARY  
SIR CHARLES PHILIP HADDON-CAVE, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY  
SIR JOHN HENRY BREMRIDGE, K.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL  
MR. MICHAEL DAVID THOMAS, Q.C.

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

THE HONOURABLE DENIS CAMPBELL BRAY, C.M.G., C.V.O., J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE DAVID AKERS-JONES, C.M.G., J.P.  
SECRETARY FOR DISTRICT ADMINISTRATION

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

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

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

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

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

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

THE REVD. THE HONOURABLE PATRICK TERENCE McGOVERN, O.B.E., S.J., J.P.

THE HONOURABLE ALAN JAMES SCOTT, C.B.E., J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

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

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

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.  
SECRETARY FOR TRADE AND INDUSTRY

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

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

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, O.B.E., J.P.

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

THE HONOURABLE HU FA-KUAN, J.P.

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

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

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, O.B.E., J.P.

THE HONOURABLE CHAN KAM-CHUEN, J.P.

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

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, J.P.

THE HONOURABLE CHEUNG YAN-LUNG, M.B.E., J.P.

THE HONOURABLE MRS. SELINA CHOW LIANG SHUK-YEE, J.P.

THE HONOURABLE MARIA TAM WAI-CHU, J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE PIERS JACOBS, O.B.E., J.P.  
SECRETARY FOR ECONOMIC SERVICES

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

THE HONOURABLE HENRY CHING, C.B.E., J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE CHAN NAI-KEONG, J.P.  
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, J.P.  
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

#### **ABSENT**

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

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

#### **IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MRS. JENNIE CHOK PANG YUEN-YEE

**Papers**

The following papers were laid pursuant to Standing Order 14(2):—

*Subject* *L.N. No.*

**Subsidiary Legislation:**

Evidence Ordinance.	
Evidence (Authorized Persons) Order 1984 .....	20
Prisons Ordinance.	
Prisons (Shek Pik Prison) Order 1984 .....	21
Public Health and Urban Services Ordinance.	
Public Health and Urban Services (Designation of Libraries) Order 1984 ...	22
Rating Ordinance.	
Rating (Specified Date) Notice 1984 .....	23
University of Hong Kong Ordinance.	
Statutes of the University of Hong Kong (Amendment) Statutes 1984 .....	24
Inland Revenue Ordinance.	
Inland Revenue (Interest Tax) (Exemption) (Amendment) Notice 1984 .....	27

**Sessional Papers 1983-84:**

- No. 35—Vocational Training Council Annual Report 1982-83.
- No. 36—Change to the approved Estimates of Expenditure during the quarter ending 30 June 1983.
- No. 37—Supplementary provision approved by the Urban Council during the third quarter of the financial year 1983-84.

**Oral answers to questions****Objectionable publications**

1. MR. PETER C. WONG asked:—*In controlling the sale of objectionable articles which are considered to be obscene, indecent and of a revolting nature under the Objectionable Publications Ordinance, will Government inform this Council—*

- (a) *the criteria in determining what is considered an acceptable standard of decency, and*
- (b) *how such criteria reconcile the different religious and cultural standards in this multi-racial city?*

THE ATTORNEY GENERAL:—Sir, the starting-point for the judge in these cases is to decide whether or not the article is indecent, obscene or of a revolting nature. These statutory words have a definite meaning in the English language. Although many other countries have tried to find more elaborate definitions there has never been any successful attempt in this direction. The matter must inevitably be a subjective one reflecting personal judgments as indicated by a Court of Appeal ruling in 1977 which endorses the view that ‘the magistrate must exercise the community’s conscience and treat himself as representing the community’s feelings in the matter. If, with these feelings in mind the publication appears to him to be offensive, then he should treat it as such’.

So, Sir, it would be quite impossible to satisfy the requirements of every member of a cosmopolitan community which has many different religious and cultural standards. However, the judges and magistrates in these cases must make the effort to come to a conclusion as to the community’s feelings in the matter and to represent the community as a whole.

Consistency in approach is of paramount importance and measures that are legitimately within the framework of the system are used to achieve this so far as possible. At the decision to prosecute stage, the expert advice of a small group of experienced prosecutors in my Chambers is sought and in the event of a prosecution, such cases are either heard in Western or San Po Kong Magistracies, again to ensure that so far as possible experienced magistrates knowledgeable in these matters can consider them consistently.

MR. PETER C. WONG:—*Sir, I am most heartened by the Attorney General’s statement that the expert advice of a small group of experienced prosecutors is available in his Chambers to give advice as and when it is necessary. Will the Attorney General assure this Chamber that this small elite group knows the community’s conscience and also represents the community’s feelings?*

THE ATTORNEY GENERAL:—Sir, I am glad that my friend is heartened by the news that we have in the Chambers experienced and able members who can advise on these matters. (*laughter*) Of course, they do their best to determine the standard because their task is to see whether a particular case is fit for prosecution and could fairly be brought forward with a reasonable prospect of success. Sir, I am confident that they do their best to satisfy MR. WONG’s criteria.

MR. ALEX WU:—*Can the Attorney General inform this Council what is the age range of this group?*

THE ATTORNEY GENERAL:—Sir, many of my Chambers look so young these days (*laughter*) and I might mislead the Council if I were to make a guess. But if a separate question could be put down I will see that accurate information is available.

(The following written reply was provided subsequently.)

Until his retirement in mid-1982 David BOY, Q.C., (d.o.b. 27.4.33) the Crown Prosecutor dealt with all cases of difficulty assisted by J. M. DUFFY (d.o.b. 6.12.36) one of the two Deputy Crown Prosecutors to whom all cases were referred. This was a very experienced team and after David's retirement, J. M. DUFFY became the consultant while all matters were handled on a day to day basis by G. J. PLOWMAN (d.o.b. 14.7.45) a Senior Assistant Crown Proecutor of considerable experience. Younger lawyers were part of this team but no final decisions were taken by them in this period. The arrangements changed again at the beginning of 1984 and G. J. PLOWMAN has now joined J. M. DUFFY as a consultant on these matters while the day to day team is headed by I. G. CROSS (d.o.b. 15.6.51) an Acting Assistant Crown Prosecutor. The members of his team presently are—

A. HOWARD, Senior Crown Counsel	(d.o.b. 21.4.49)
John LEUNG, Crown Counsel	(d.o.b. 22.8.46)
Michael HARTMANN, Crown Counsel	(d.o.b. 24.7.44)

No final decisions are taken at a level below Mr. CROSS and all difficult or marginal decisions are referred to Mr. DUFFY or Mr. PLOWMAN.

### **Water supply to squatter areas**

2. MR. CHAN YING-LUN asked:—*Water supply being a major concern of residents in squatter areas, particularly on hilly terrains,*

- (a) *is Government aware of the unreliability of water supply from standpipes, and residents' hardship in obtaining fresh water to the extent that many have to resort to obtaining water from streams; and*
- (b) *will Government inform this Council what plans it has taken to alleviate residents' hardship?*

SECRETARY FOR LANDS AND WORKS:—Sir, the Government is certainly aware of the problems that exist, particularly in areas which are situated high up and where the water pressure is bad.

The pressure of the water in the tap depends upon the water level in the reservoir feeding it, the length and size of the pipe, and the quantity of water being drawn off. These factors are of course known when standpipes are installed, but, to try and satisfy residents, standpipes have occasionally been provided under marginal conditions where it was considered that low pressure in the tap was better than having no water at all. Conditions are of course not improved by illegal tapping of the supply pipe, which in extreme cases can cut off the supply to the standpipe altogether. The Water Supplies Department regularly inspects all standpipe installations to try and stop illegal tapping but this nevertheless remains an on-going problem.

Apart from this question of weak pressure, Sir, I have been informed by the Director of Water Supplies that the supply of water from standpipes in squatter areas is generally as reliable as can be expected. Taps need to be repaired or replaced from time to time, and such maintenance is carried out as a matter of routine.

With regard to Government's plans to alleviate the situation which still prevails in many squatter areas, Members may already be aware that the Water Authority is still committed to a programme of installing standpipes, in accordance with a policy laid down by the Executive Council in 1968. In addition, the Water Supplies Department is nearing completion of schemes (P.W.P. Item No. W.G. 27) to provide metered water supply to 15 squatter areas, and proposals for a further 15 high-level areas which will require local pumping stations are in the Public Works Programme (Item No. W.G. 40). Subject to the availability of funds, it is hoped to implement these proposals shortly.

As well as the projects being carried out by Water Supplies Department the Housing Department is also carrying out a \$300 million five-year programme of squatter area improvements, which include, amongst other things, the provisioning of metered water supplies to individual house-holds. Three pilot projects in North Point, Sau Mau Ping, and Kwun Tong have been successfully completed, and in the current year's programme of improvements six more areas, housing over 9 000 people, are being dealt with at a cost of about \$2,500 per head. (Item 53H). A further 18 areas are included in the programme for 1984-85 at an estimated cost of \$55 million and the Housing Department are already working on the plans for these.

MR. CHAN YING-LUN:—*Sir, will the Secretary for Lands and Works explain the standpipe policy as mentioned in his reply?*

SECRETARY FOR LANDS AND WORKS:—The policy agreed by Executive Council in 1968 allows for the provision at the scale of not more than one standpipe per 500 persons without metered water supply. But the number of people required for a standpipe to be installed may be varied downwards—(a) where the area to be served exceeds a radius of 500 feet or a difference in elevation of 200 feet; or (b) where the Health Authority certifies that there are overriding health considerations due to inadequacy or gross pollution of existing supplies, that is, from wells or from stream courses. The installation of any standpipe is, of course, subject to the Director of Water Supplies' advice on the feasibility of the proposal in question.

MISS DUNN:—*Sir, what is the alternative if standpipes cannot be installed for technical reasons?*

SECRETARY FOR LANDS AND WORKS:—Sir, the alternative would be for residents to go a longer distance to the nearest standpipe and/or take water from stream courses or from wells.

MR. CHAN YING-LUN:—*Sir, the provision of one standpipe for every 500 persons as laid down in the policy is out of date and is a major cause of hardship to residents. Will Government revise the provision to a more acceptable level?*

SECRETARY FOR LANDS AND WORKS:—The recent schemes that I mentioned in my main reply are to provide *metered* water supply to village and squatter areas. This is the trend we are going towards nowadays—that wherever the area can be supplied by a regular metered supply we will try and do so. Of course if the squatter area is due for clearance within a short period of time, obviously we would not consider that.

### **Chai Wan Health Centre**

3. DR. FANG asked:—*In the light of operational experience gained at the Accident and Emergency Section of the Chai Wan Health Centre, since its inception in April 1983, will the Government state:*

- (a) *what consideration has been given to extending its operating hours; and,*
- (b) *what additional facilities are to be provided*

*so that the section can operate as a full fledged accident and emergency unit for residents in the Eastern District pending the completion of the Shau Kei Wan Hospital?*

DIRECTOR OF MEDICAL AND HEALTH SERVICES:—Sir, in answer to the first part of Dr. FANG's question, active consideration is being given to extending the present hours of operation which is from 8 a.m. to 9:30 p.m. everyday. Subject to the availability of resources, it is intended to extend the operation hours further from 9:30 p.m. to midnight. It is envisaged that the extended hours of operation will be implemented by about the middle of this year.

As to the second part of my friend's question, in addition to the present provisions of physical accommodation, diagnostic and resuscitation equipment, as well as an operation theatre, an X-ray unit will also be established by April this year, thus making this a properly equipped accident and emergency centre serving this area.

### **'Caged men'**

4. DR. HO asked:—*What action has been taken to meet the housing needs of the 'caged men' since I raised the subject in this Council in October 1980?*

SECRETARY FOR HOUSING:—Sir, many of the so-called ‘caged men’ are elderly single persons living in private boarding houses. Like other senior citizens of our community, they can, if they choose to apply, get public housing through various priority schemes.

The Housing Authority allocates a special quota each year for elderly persons applying in groups of three for public housing. The annual quota has been increased from 300 flats in 1980 to 800 in 1983.

Many elderly persons have also obtained public housing through the compassionate rehousing quota, which is currently set at 800 flats a year.

Furthermore, hostel accommodation for the elderly has been increased very substantially over the last three years. Since 1980, one standard hostel with 150 places has been set up in every new large estate. At present, there are 26 hostels in public housing estates run by voluntary agencies providing a total of more than 3 000 places for the elderly. A further 19 hostels of this kind with a total of 2 800 places will be provided over the next five years.

Hostels for the elderly are also available in the Temporary Housing Areas. There are currently seven such hostels run by Helping Hand with a total capacity of 600 places. Two additional hostels with 200 places will be provided in T.H.A.s within the next year or so.

In addition to Housing Authority’s contribution, as part of an overall programme for the care of the elderly, the Government last year introduced a trial scheme of purchasing flats in private housing developments for the elderly. Over 100 flats have been purchased to provide some 600 places.

DR. HO:—*Sir, in spite of the measures outlined in the answer of the Secretary for Housing, I understand that there are still a large number of elderly single persons living in overcrowded and insanitary tenement flats. Is the Secretary for Housing taking more aggressive steps to reach out to this group of elderly single people in an attempt to improve their unsatisfactory housing conditions?*

SECRETARY FOR HOUSING:—Sir, housing for the elderly, particularly the single elderly, is among many of the categories competing for the limited resources. As I mentioned in my reply, the actual quota has been increased from 300 in 1980 to 800 in 1983, amongst other solutions.

MR. STEPHEN CHEONG:—*Sir, given the various measures to be taken, in five years’ time I have calculated that we would have 7 000 places available. Does the Secretary for Housing have any estimate whatsoever of the shortfall?*

SECRETARY FOR HOUSING:—I think, Sir, there are bound to be people still living in such conditions, mainly out of their own volition. The Social Welfare Department carried out a survey recently and has found that the people living



in the condition described—the so-called ‘caged men’—number something like 3 900 people; so at the rate we are progressing I think that in five years’ time we should have made some inroad.

MRS. CHOW:—*May I ask the Secretary for Housing whether it is true that there are still existing vacancies in the hostels for singletons, and may I ask him why then that the outstanding number of ‘caged men’ have not applied for these hostels or whether there are other reasons which could perhaps be remedied in terms of encouraging them to go into the singleton hostels?*

SECRETARY FOR HOUSING:—Sir, the vacancies in hostels for the singletons are also to be used for clearance purposes and the so-called ‘caged men’ are just one of the many categories applying for such places.

### **Nuclear power plant at Guangdong**

5. MR. SO asked in Cantonese:—

政府可否說明，在監察和預防廣東擬建核電廠可能產生影響健康的危險方面，本港已作出甚麼安排？

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

*Will Government make a statement on the arrangements it has made in Hong Kong to monitor and guard against potential health hazards arising from the proposed nuclear power plant in Guangdong?*

SECRETARY FOR ECONOMIC SERVICES:—Yes, Sir. The Director of the Royal Observatory has made proposals for a radiation monitoring programme. This programme is designed in the first instance to establish data on existing background radiation levels in Hong Kong. The data will then serve as a point of reference against which future changes in levels of radiation can be measured. It is intended that the programme will commence later this year. A request for financial provision and the necessary staff is currently under consideration.

Members of this Council will recognize that the earlier this programme commences the better. The more data we have the more effective will be the measurement and analysis of the significance of any change in radiation levels in Hong Kong.

The Chinese authorities responsible for the proposed nuclear power plant in Guangdong at Daya Bay have willingly agreed that there should be cooperation in relation to radiation monitoring. That co-operation has commenced and discussions have taken place between the Director of the Royal Observatory and the Chinese authorities.

Mr. SO has asked what arrangements we have made to guard against potential health hazards arising from the proposed plant. In this regard, the site of the station is, of course, of paramount importance. The Daya Bay site is at a distance from Hong Kong significantly greater than the distance separating many similar power stations elsewhere in the world from the major population centres that they serve. Thus, the best protection against potential health hazards rests in the distance between the proposed station and Hong Kong.

Apart from the reassurance that is provided by the location of the station, Members will, of course, appreciate that further protection for Hong Kong's population will be found in safeguards that are built into the power station itself. The contract for the preliminary design has been awarded to Electricite de France, a company with considerable experience in the design and construction of nuclear power stations. There is no reason to suppose that the station will be built otherwise than to the highest safety standards. And the involvement of Hong Kong interests in the joint venture will ensure that we can play an active role in the planning and development.

Lastly, Sir, when contracts with suppliers have been awarded by the joint venture company, it is our intention to engage in consultation with the designers in order to see what safety measures have been implemented in relation to similar reactors elsewhere, and what measures are appropriate in relation to the station at Daya Bay.

MR. STEPHEN CHEONG:—*Sir, because of our own involvement in the project, would the Secretary for Economic Services assure us that the safety features designed into the plant will not be short-changed for economic reasons?*

SECRETARY FOR ECONOMIC SERVICES:—Certainly, Sir, I have no reason to believe that there will be any question of short-changing at all. I believe that this station will be built to the highest safety standards.

### **Performance of the police in dealing with disturbances on 13 January 1984**

6. MRS. FAN asked:—*Will the Government make a statement on the performance of the Royal Hong Kong Police Force in controlling the disturbances in Kowloon on the evening of 13 January with particular respect to:—*

- (i) the restraint and efficiency demonstrated by the Force; and*
- (ii) the Force's ability to act in support of the community against any threat to the stability of this territory?*

SECRETARY FOR SECURITY:—Sir, I am pleased to have this opportunity publically to thank the Royal Hong Kong Police Force on behalf of the community, for the masterly way in which they dealt with the disturbances that broke out in Kowloon on the evening of 13 January. Putting these disturbances in context, I

would also like to express the community's appreciation of the way in which the police skilfully dealt with the protest action taken by taxi drivers between 11 and 14 January, a protest which called for a carefully controlled low-key response in order to avoid provoking confrontation at a time when emotions were running high.

Briefly, Sir, altogether there were three phases.

There was, *first*, the need for uniformed officers to keep traffic moving in spite of the severe traffic congestion caused by taxi drivers illegally parking their taxis in large numbers in Tsim Sha Tsui, Tai Po and the Central District. This exercise contained a high risk of conflict between the two. It was to the credit of both, but in particular to the police, that there was no serious confrontation during this phase. The police tactic was to keep their presence low-key, dealing explicitly only with flagrant breaches of the law.

Then, *second*, there was a phase in which large, hostile but not violent crowds began to gather in South Kowloon. During this period, in order not to provoke any escalation of the situation, the Force deployed increased numbers of uniformed officers in their normal dress rather than in emergency gear.

It was only in the *third* phase when the crowds amounted to about 10 000 of which about 1 000 began to turn violent and blatantly to breach the law that the police decided openly to deploy their emergency units. They then restored law and order in a short period of time as a result of a sweep carried out through West Kowloon. The objective of this action was to force the unruly crowds northwards, with the intention of dispersing them to their homes.

Turning now, Sir, to the specific attributes Mrs. FAN includes in her question, these three phases clearly illustrate the restraint and efficiency of our Police Force. I would add, Sir, that they also show its ability correctly to assess what is going on and to devise appropriate tactics. They also show how the Force's high level of training designed specifically to deal with internal security situations, enables it to carry out these tactics effectively. And, I might add, the Force was acting well within its emergency capacity on the night of 13 January. Only about five percent of this capacity was actually deployed to disperse the unruly crowds in Kowloon.

Thus, Sir, the ability of the Force to support the community against any threat to the stability of Hong Kong has been fully confirmed.

MRS. FAN:—*Sir, would the Secretary for Security agree that it is also important for the community to back the police in countering threats to the stability of this territory?*

SECRETARY FOR SECURITY:—Yes, Sir, I do indeed. Perhaps I could make in this context three points. To start with, there is the point that the Attorney General made in this Council on 18 January that when the law is challenged the community is put at risk. As members of this community, the taxi drivers should

not have put the community as a whole at risk by pursuing illegal means to make their case against the proposals. There are perfectly good legal means for them to have made their case, and these means are those they should have used. Then second, the public, also as members of this community, should have moved on in Tsim Sha Tsui on the evening of 13 January rather than hanging around to see what was happening. It was thus that the crowds formed and gave unruly elements a chance to exploit the situation. But third, there has been the reaction of the community at large to these events. In the particular instance we are considering, their reaction has been good. The public generally appears to have been very satisfied with the way the police carried out their anti-trouble measures.

### **Construction of Cha Kwo Ling Road**

7. MR. WONG LAM asked in Cantonese:—

請政府說明與建茶果嶺道的目前情況？

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

*Will Government inform this Council of the present position regarding the construction of the Cha Kwo Ling Road?*

SECRETARY LANDS AND WORKS:—Sir, the scheme to construct the remaining section of Cha Kwo Ling Road between the Shell Oil Depot and Cha Kwo Ling Quarry was gazetted under the Roads (Works, Use and Compensation) Ordinance in January last year.

Two letters in connection with the published scheme were received suggesting amendments to the scheme to minimize the extent of clearance required as well as requesting assistance for those who have to be cleared. Arrangements are still under discussion through the District Lands Office and the Kwun Tong District Office but phased clearance is expected to commence in June/July this year to enable the Highways Office to start work on site.

This project has already received the agreement of the Public Works Sub-Committee for implementation in the financial year 1984-85.

### **Action against illegal hawking**

8. MR. WONG LAM asked in Cantonese:—

政府可否說明，現時有何行動去對付本港的非法小販，特別是在觀塘市中心和旺角區擺賣的小販？

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

*Will Government inform this Council what action is being taken against illegal hawking generally and in Kwun Tong Town Centre and Mong Kok in particular?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, generally, illegal hawkers are arrested and prosecuted, if caught. This is the responsibility of the General Duties Teams of the Urban Services Department assisted by the Police. The General Duties Teams have a total strength of nearly 3 000 of which nearly 2 000 are deployed in the urban area and the remainder in the New Territories.

Last year, over 73 000 arrests for illegal hawking were made in the urban area and over 7 000 in the New Territories, the majority of which resulted in successful prosecution. Despite enforcement action, however, there are still about 17 000 habitual illegal hawkers in the urban area and 2 000 in the New Territories. These numbers do, of course, change from day to day. Plans have been made to strengthen the General Duties Teams to enable enforcement action to be stepped up.

Turning to the specific part of the question, it is estimated that there are approximately 3 200 hawkers trading illegally in Mong Kok and about 950 in the Kwun Tong Town Centre. In accordance with the Urban Council's policy the General Duties Teams regularly carry out operations in these districts. Last month, 527 arrests for illegal hawking were made in the Kwun Tong Town Centre, while 896 arrests were made in Mong Kok.

MR. WONG LAM asked in Cantonese:—

閣下，政府認為一般事務隊的人員是否足夠？

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

*Sir, does Government consider the strength of the General Duties Teams to be adequate?*

SECRETARY FOR HEALTH AND WELFARE:—No, Sir. As I said in my main reply, plans have been made to strengthen these Teams to enable enforcement action to be stepped up.

MRS. CHOW:—*May I ask the Secretary for Health and Welfare whether the sentences handed down in the Courts are considered adequate as a deterrent to illegal hawking?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, I would hesitate to express a view on the adequacy of sentences handed down by the Judiciary. Perhaps all I can say is that to the extent that illegal hawking continues, and to the extent that the people are persistent offenders, then it would appear that the penalties handed down are not as much a deterrent as they might be.

MR. STEPHEN CHEONG:—*Sir, there is no doubt that there is need for a strengthening of the enforcement action but surely the objective is to try and have a long-term solution to this problem. The Secretary for Health and Welfare hasn't touched upon this particular facet; could he briefly outline any long-term plans, if any?*

HIS HONOUR THE PRESIDENT:—The Secretary for Health and Welfare may answer if he wishes but that supplementary question really is rather a long way away from the original question.

SECRETARY FOR HEALTH AND WELFARE:—Sir, the original question was concerned with *illegal* hawking. The only way I know of dealing with offenders against the law is to arrest and prosecute. But if Mr. CHEONG's question relates to long-term plans in respect of *legal* hawking, the answer is that the policy is to provide adequate off-street hawker facilities as quickly as possible.

### **Cooked-food stalls**

9. MR. WONG LAM asked in Cantonese:—

請問政府現正採取何種措施，去處理觀塘私人街道和後巷熟食檔所引起的環境衛生問題？

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

*What measures are being taken to tackle the environmental and hygiene problems caused by cooked-food stalls in private streets and back lanes of Kwun Tong?*

SECRETARY FOR HEALTH AND WELFARE:—Sir, the only effective measure that can be taken is the clearance of these undesirable cooked-food stalls, and their replacement by properly designed purpose-built cooked-food markets. The Urban Council has a programme to provide such markets in Kwun Tong, and three of them with a total of 93 stalls will be completed this year.

I am informed that following a major operation to clear illegal structures in the district, which was completed last year, there are now no illegal cooked-food stalls in the industrial areas of Kwun Tong. A small number of illegal operators may, of course, occasionally attempt to trade at the risk of being arrested and prosecuted. A similar clearance operation was begun last month in the non-industrial areas of Kwun Tong, where there are 23 illegal cooked-food stalls.

### **Public works contracts**

10. MR. SO asked in Cantonese:—

公共工程合約承建商如果不遵守有關建築地盤噪音、安全、以及其他方面的規例時，除受到票控外，根據他們與政府簽訂的合約條款，是否會受到處分？政府在考慮批出新合約時，對這些違例承建商採取甚麼態度？

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

*In cases where contractors under public works contracts fail to observe noise, safety and other regulations applicable to construction work sites, are they, in addition to summons action, liable to penalties under the terms of their contracts with the Government; and what is Government's attitude towards such offenders when considering the grant of new contracts?*

SECRETARY FOR LANDS AND WORKS:—Sir, the General Conditions of Contract used by the Lands and Works group of departments require the Contractor to comply with all enactments and regulations and to carry out the works in strict accordance with the Contract. Failure to observe regulations would therefore technically be a breach of contract. The only remedy provided under the terms of the Contract in respect of such a breach, however, is re-entry. Unless, Sir, the recalcitrance of a Contractor in failing to observe regulations had been extreme, therefore, it is unlikely that the severe, costly and time-consuming remedy of reentry would be invoked.

Administratively, however, it is possible to penalize an offending contractor by suspending him from tendering. With regard to breaches of the legislation on construction noise, therefore, all contractors on Lands and Works Branch approved lists have been warned that if they or their employees or subcontractors are convicted of an offence more than once in any period of twelve months, whether on public works contracts or on contracts for the private sector, they will be suspended from tendering for a term to be decided in the light of the circumstances and that persistent offences may merit more severe sanctions.

Finally, Sir, a Contractor's past performance, including any known offences of the type which I have mentioned, is reflected in his records, which are maintained by my Branch, and which are consulted when the award of new contracts is being considered.

MR. SO asked in Cantonese:—

閣下，請問公共工程合約承建商不遵守問題所指的規條的情況是否普遍？

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

*Sir, is it common that contractors under public works contracts fail to observe the regulations mentioned?*

SECRETARY FOR LANDS AND WORKS:—The breach of such regulations is not prevalent in connection with construction noise. During 1983 summonses were issued for the prosecution of 22 persons. In connection with the construction site *safety* regulations, the statistics for 1983 show that there was 737 prosecutions. This relates to *all* contractors, whether public or private.

### Commemorative postage stamps

11. MR. BROWN asked:—*Would Government state what is its policy in regard to the issuance of commemorative postage stamps bearing in mind—*

- (a) such stamps can be used to reflect many aspects of the life, traditions and achievements of the community;*
- (b) such stamps provide a useful source of revenue from philatelists; and*
- (c) only three or four issues per annum have taken place in recent years against much more frequent issues in the United Kingdom and adjacent countries?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, commemorative postage stamps have proved to be popular with collectors both locally and overseas. The Government's policy on commemorative postage stamps is to ensure that the themes chosen are relevant to Hong Kong; to maintain a high standard for both the design and the printing these issues; and to relate the denominations used to postal needs rather than to seek to maximize revenue for its own sake.

I believe that this policy has resulted in Hong Kong deservedly earning the esteem, support and long-term interest of serious philatelists.

Mr. BROWN has drawn attention to the fact that in Hong Kong we have less frequent issues of commemorative postage stamps than in the United Kingdom. It has been and remains our policy to issue no more than five sets and, in practice, no more than four, each year, whereas I understand that the British Post Office normally produces annually up to eight special issues. Experience elsewhere suggests that increasing the number of commemorative or special issues can be a self-defeating exercise. The increased cost of collecting borne by the individual and the possible resentment felt by some philatelists, who are, of course, interested in preserving the value of their collections, can lead to less sales. So, we aim to optimise revenue in the longer term rather than adopting a short-term policy of maximizing profits, which in the end could be counter-productive.

Sir, the Postmaster General fully recognizes the revenue potential of philatelic sales. Although, in the financial year ended 31 March 1983, almost 40% of the Post Office's profit came from this source, he considers that there is undoubted scope for improving the *marketing* of philatelic products. Accordingly, he is about to engage a former Manager of the British Post Office Philatelic Bureau with a view to boosting sales even further.

MR. BROWN:—*Sir, although the practice is to issue no more than four sets a year I believe that over the past six years four sets have only been issued. In fact, once and that was in 1983—three sets being issued in the other five years. Can we assume that the appointment of a Marketing Manager will result in at least four issues a year in the future for many of us believe the revenue implications are not unimportant?*



SECRETARY FOR ECONOMIC SERVICES:—Much depends, Sir, on the advice that we get from this gentleman when he is appointed. I can say no more than that.

## **Government business**

### **Statement**

#### **The First Annual Report of the Vocational Training Council**

MR. TIEN:—Sir, laid before this Council is the first annual report of the Vocational Training Council covering the year 1982-83.

The period under review was a milestone for technical education and industrial training in Hong Kong. It saw the enactment of the Vocational Training Council Ordinance in February 1982 which led to the establishment of the Vocational Training Council and the formation of the Department of Technical Education and Industrial Training.

The Council has been fortunate in that it was able to build on firm foundations already laid by the former Hong Kong Training Council, the Labour Department, and the Education Department. Various important projects within its scope had already been approved in principle by Government and were only awaiting implementation when it took over.

In February 1983, the Council introduced the Engineering Graduates Training Scheme with the aim of assisting engineering graduates of the Universities and Hong Kong Polytechnic in obtaining the practical training needed for advancement to professional status. As the success of this scheme depends largely on the support of employers, I take this opportunity to urge those employers who have the capability to train to continue to co-operate with us by making available the training places required.

Work on the construction of two Training Centre Complexes at Kowloon Bay and Kwai Chung started with the appointment of the project architects in December 1982. The Complexes, when completed next year, will accommodate nine Training Centres with a capacity of some 9 000 full-time training places at all skill levels.

The work of establishing a Seamen's Training Temporary Centre in Little Sai Wan is at an advanced stage. The Centre will offer serving seamen training in fire-fighting, first aid, personal safety and survival, and watchkeeping to enable them to meet the mandatory requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers. The Centre will be operational next month and will have a capacity for training 1 920 seamen per year.

On the technical education front a number of development projects have been undertaken or planned to expand and improve the provision of technical education in Technical Institutes. These relate to the expansion of two existing Technical Institutes and the planning of three new Technical Institutes at Tuen Mun, Sha Tin and Chai Wan.

The current enrolment in the existing five Technical Institutes is about 3 700 full-time, 11 000 part-time-day and 20 000 part-time evening students. When two of the three New Technical Institutes become operational in late 1985, the projected student numbers will increase to about 8 500 full-time, 23 000 part-time-day, and 34 000 part-time evening students.

With the resources which the Council has been given—and I am sure the Financial Secretary will support the giving of more resources—I am confident that the Council will be able to complete expediently all the projects it has undertaken. These projects, once completed, will supply industry and commerce with the trained manpower they need to maintain their competitiveness in the world markets.

### **First reading of bills**

#### **PUBLIC FINANCE (AMENDMENT) BILL 1984**

#### **RATING (AMENDMENT) BILL 1984**

#### **MAGISTRATES (AMENDMENT) BILL 1984**

#### **MEDICAL REGISTRAION (AMENDMENT) BILL 1984**

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

### **Second reading of bills**

#### **PUBLIC FINANCE (AMENDMENT) BILL 1984**

THE FINANCIAL SECRETARY moved the second reading of:—‘A bill to amend the Public Finance Ordinance 1983’.

He said:—Sir, I move the second reading of the Public Finance (Amendment) Bill 1984. This Bill serves two purposes. The first is to enable refunds or drawbacks of certain types of revenue, which are specified in administrative regulations issued by me, to be made direct from the general revenue without appropriation, irrespective of the year of collection. Examples of refunds are

import and other duties collected by the Commissioner of Customs and Excise and tax collected by the Commissioner of Inland Revenue. This will avoid artificial inflation of expenditure figures and accords with practice in previous years.

The second is to enable a Controlling Officer, who is responsible for expenditure from a Head or Subhead in the Estimates, to delegate to a subordinate officer the power to sign allocation warrants. These warrants authorize another controlling officer to incur expenditure against a subhead under the control of the authorizing officer. Because of the large number of allocation warrants used for relatively minor services, it is proposed that the Controlling Officer should not be required to sign personally in every case.

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 1984**

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 1984 be read a second time.

In order to provide no element of surprise at an overdue measure the Government has made it widely known that an exercise is under way to determine new rateable values for 1984-85. The periodic comprehensive updating of rateable values, which have not been reviewed since 1977, is designed to ensure that the burden of rate charges is distributed equitably between ratepayers according to the market rental values of the premises they occupy. Members will all appreciate that an equitable base on which to assess rates is essential. The base in itself does not determine what the ratepayer must pay; this depends solely on the percentage rate charge or poundage applied to the valuation.

It is obvious that the new rateable values which will come into effect on 1 April 1984 must be significantly higher than the values set out in the current valuation lists. There has been a great improvement in property values in the last seven years. The percentage rate charge to be applied to these new values will therefore generally be adjusted downwards. Nevertheless there is also a need to review and revise other arrangements whereby any other sharp impact of the increased rateable values may be softened and limited. This is the main

purpose of the present Bill, which describes the appropriate mechanisms and proposes that the limits should be determined by resolution of this Council.

One measure which will serve to keep the increase within commonsense bounds is a revision and extension of the present scheme for limiting the increase in annual rate payments as compared to the previous year. Members will recall that when the current valuation lists came into effect in 1977, Government introduced a rates relief scheme which limited the increase in rate payments to a maximum of 33 1/3rd% of that payable the year before. That was applicable to all tenements for two years and continued to apply thereafter to rent-controlled tenements under Part 1 of the Landlord and Tenant (Consolidation) Ordinance. It is now proposed to extend the scheme of relief for all tenements with effect from 1 April 1984, which is achieved by clause 6 of the Bill. This Clause also provides that the rate relief percentage point to be applied shall be determined subsequently also by resolution of this Council. It will not necessarily be 33 1/3rd% in future.

Concessions are currently provided for ratepayers occupying tenements, which have no supply of potable water or which have a supply of unfiltered water only. This is generally speaking, a historical relic. The Ordinance presently provides that the general percentage rate charge may be reduced by two percentage points where no supply exists, and by one percentage point where the supply is from a unfiltered source. Given that I hope to propose downward adjustments of the percentage rate charge for 1984-85, the concessions as provided in their present form would then have too great an effect. Clause 5 of the Bill therefore provides that the concessions, while remaining available, will in future be effected by applying percentage reductions to the total rates payable. Again they will be determined by resolution of this Council.

Clause 7 of the Bill provides that tenements having an estimated rateable value below a level determined by resolution of this Council may be exempt from assessment to rates altogether. The existing minimum rateable values is \$200. It is sensible that this figure should be revised upwards with effect from 1 April 1984.

Tenants of domestic units in Housing Authority estates represent over 40% of the total population of Hong Kong. They do not pay rates direct, and will not be affected immediately at all by the general revaluation. Their rents, which include an element for rates, are only reviewed every two years, and these reviews take into account the tenants' income level.

The opportunity has also been taken in this Bill to propose some minor amendments to clarify the law. Clause 3 provides that all rateable values shall be ascertained by reference to a common reference date. Clause 4 provides that notices of rateable values may be served on ratepayers at any time up to and including the day when the valuation list is made available for public inspection.

If this Bill is enacted, proposals regarding the percentage rate charge, the percentage point at which relief will apply, the percentage deductions relating to the supply of potable and filtered water and the level of the minimum rateable value will be put before this Council on 29 February in the context of my Budget for 1984-85.

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.*

### **MAGISTRATES (AMENDMENT) BILL 1984**

THE ATTORNEY GENERAL moved the second reading of:—‘A bill to amend the Magistrates Ordinance’.

He said:—Sir, I beg to move that the Magistrates (Amendment) Bill 1984 be read a second time.

One of the inevitable features of modern sophisticated life is the ever increasing numbers of laws to regulate the behaviour of individuals in the interests of the community as a whole. Members of this Council will not be reminded about that. But one consequence is the developing trend in many Commonwealth countries and also in the United States, to enable the Courts of Justice to deal with as many minor offences as possible in the absence of the parties in order to save time and expense. This trend has taken a number of forms, standard fines, fixed penalties or special summary procedures.

So, in 1981 the Chief Justice set up a small working party with representatives from the Judiciary, from my Chambers, from the Police and the Transport Department, to consider the possibility of introducing suitable procedures for dealing with minor offences in Hong Kong. The Working Party recommended the procedures now set out in this Bill. I need hardly say that it has been borne in mind throughout by the Working Party and by the draftsman of this Bill, that the procedures must be fair to those accused of offences and must contain safeguards to protect them from the consequences of administrative slip-ups and errors.

For the purpose of the procedures proposed, minor offences are defined as those where the maximum penalty is a fine of \$10,000 and imprisonment for six months, whether or not orders relating to compensation or licence disqualification may also be imposed. In such cases, a defendant will generally speaking not be issued with a summons to appear in court as is presently the case. Instead a notice of prosecution will be filed in a Magistrates Court by the prosecuting

officer setting out details of the offence, the maximum penalty which could be imposed or the orders which could be made on conviction, and a statement of any previous convictions that may be taken into account. This notice will then be served by post upon the defendant. If the defendant wishes to be heard, he must inform the court within a specified time and state whether he intends to plead guilty or not guilty. In this case, a summons will be issued and the proceedings will continue in the ordinary way in the presence of the parties.

However, if no reply is received or at least if there is no request for a hearing, then the magistrate will deal with the matter in the absence of the parties as if the defendant had pleaded guilty. He will take into account the matters set out in the notice, together with any representations made to him in writing by the defendant in response to the notice of prosecution. A further notice will then be served by post upon the defendant informing him of the conviction and calling upon him to pay the fine and costs imposed. If he fails to do so, a third notice will be served, this time by personal service, calling upon him to pay the fine and costs within 14 days failing which a summons or warrant of arrest for nonpayment will issue.

There is, however, one important safeguard built in to the procedures. If the magistrate on reading the papers thinks that a fine may not be an adequate remedy, the summons must be issued and the matter will thereafter proceed in the ordinary way in open court, so that the defendant may be heard to answer the suggestion that he might face imprisonment.

It is of course possible that notices served by post may not reach defendants. That being so the Bill provides that a defendant at any time may apply to a magistrate to make the case that the notice of prosecution did not come to his personal attention and that he wants to exercise his right to be heard. If the magistrate is satisfied that the notice went astray, he may review his determination and order a summons to issue. It is thought necessary to provide that a summons may in such cases issue more than six months after the date of the offence otherwise defendants might deliberately delay an application for a review of the determination to escape the chance of conviction altogether.

Sir, I believe that the provisions of this Bill provide a convenient way of dealing with the vast number of minor offences which in practice defendants want to have disposed of with the least personal inconvenience. But at the same time the Bill preserves their right to be heard should they so wish. It is hoped that about three-quarters of the one million cases presently dealt with each year by way of summons will be disposed of under the proposed procedures with consequent saving of time and expense to defendants, prosecuting officers and to the Courts as well. The need to achieve these savings by the measures proposed has been recognized by the legal professions who have been consulted upon the proposals and they have expressed support in principle.

Sir, I move that the debate be now adjourned.

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

*Question put and agree to.*

## **MEDICAL REGISTRATION (AMENDMENT) BILL 1984**

SECRETARY FOR HEALTH AND WELFARE moved the second reading of:—‘A bill to amend the Medical Registration Ordinance’.

He said:—Sir, I move the second reading of the Medical Registration (Amendment) Bill 1984.

The main purpose of this Bill is to make it easier for doctors holding overseas medical qualifications to become Licentiates of the Medical Council of Hong Kong, and thereby to be registered as medical practitioners.

Doctors holding overseas medical qualifications, other than United Kingdom, Irish or recognized Commonwealth diplomas, must first become Licentiates before they can seek registration as medical practitioners. And they have to pass the Medical Council’s examinations and complete a period of assessment to the Council’s satisfaction before becoming eligible for a licence. These arrangements will not be changed, but having regard to the continuing need for more medical practitioners, the removal of unnecessary conditions which serve to discourage qualified doctors from applying for licences will generally be accepted as being in the public interest.

The Bill seeks to make it easier for such doctors to become Licentiates by removing the existing requirement for applicants to have resided continuously in Hong Kong for at least 180 days, or to possess a right to land in Hong Kong, before they may take part in the examinations. The Bill also empowers the Medical Council to grant exemption from any of the other requirements for becoming a Licentiate, subject to such conditions as the Council may think fit.

It will not normally be the intention of the Medical Council to provide exemption from those parts of the examinations which are concerned with basic medical knowledge or clinical acumen. Reasonable professional standards must be maintained. Exemption may, however, be granted from the English language test where a candidate is able in other ways to demonstrate his proficiency in this language, and depending on the candidate’s examination performance and previous working experience exemption may be granted from the whole or part of his externship. The Bill includes provision for appeals in the event of a person being aggrieved by a decision not to grant an exemption.

The Medical Council and the medical associations have been consulted on these proposals, and there is unanimous support for the proposition that no

properly qualified doctor from a foreign country should be discouraged from coming to Hong Kong to practice. The existing examination procedures and the frequency of the examinations will also be carefully scrutinised with a view to initiating more flexible arrangements.

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*—SECRETARY FOR HEALTH AND WELFARE.

*Question put and agreed to.*

### **COMPANIES (AMENDMENT) BILL 1983**

#### **Resumption of debate on second reading (9 March 1983)**

*Question proposed.*

MR. BROWN:—Sir, the Companies (Amendment) Bill is an important piece of legislation, and this is reflected in the large number of public representations received on the proposed amendments. Its importance has also been acknowledged in the way Unofficial Members of this Council have deliberated on the Bill. It was decided at the outset that a special *Ad Hoc* Committee should be formed to study the Bill and consider comments from the public; I address you, Sir, as the Chairman of the LegCo *Ad-hoc* Group formed for this purpose.

The complexity of this Bill is perhaps self-evident, but it should be noted that the proposals were first published as a draft Bill on 18 July 1980, and the LegCo *Ad-hoc* Group took the unusual step of deliberating on comments from the public and reaching agreement with the Administration on a wide ranging number of changes whilst the Bill was still in its draft form, and prior to the current Bill being introduced into this Council on 9 March 1983. In short the Bill now before us *already* includes some 41 amendments and seven deletions proposed by the *Ad-hoc* Group, and these in turn affect more than 70 sections of the principal Ordinance. I and my colleagues are grateful to the Administration for the help, assistance and understanding received during the consultative process and for amending the draft Bill to accommodate our suggestions.

Representations from the public over the period from July 1980 to March 1983 came not only from the Law Society, the Hong Kong Society of Accountants and many other professional bodies but also from ordinary members of the public. In total no less than 112 specific proposals were received to modify, cancel or add to the amendments detailed in the original draft Bill. Moreover, a further 118 proposals were received from similar sources subsequent to the Bill before us being introduced into this Chamber. This,



together with the fact that the *Ad-hoc* Group has met on 15 occasions to deliberate on the Bill, will perhaps explain the amount of time it has taken to bring matters to this stage and counter criticism of our unnecessary delay.

The further representations made subsequent to the Bill's first reading and publication in 1983 have been considered and discussed with the Administration. As a result 27 additional amendments of substance to 18 clauses will be proposed at the committee stage, and this number excludes amendments of a purely technical nature. Even then the end result of placing this Bill on the Statute Book will be merely to reach a further milestone on a journey which commenced in 1974 when a programme of legislation was initiated to implement the recommendations of the Companies Law Revision Committee Second Report, which was published in April 1973.

We still have a long way to go down this road and a number of very important issues still need to be addressed. For this reason the *Ad-hoc* Group particularly welcomes the intention to establish a Standing Committee on Company Law Reform after the enactment of this Bill, with terms of reference calling for an annual report on progress made in regard to those matters referred to it for further examination. Matters to be referred to the new committee include:—

- (1) To consider whether the *ultra vires* doctrine should be maintained and the extent of protection that should be afforded to third parties in *ultra vires* transactions.
- (2) To consider the question of restriction on the giving of financial assistance by a company for the purchase of its own shares; in this connection to consider simultaneously the question of whether a company should be able to purchase its own shares which is now allowed in Britain under sections 46-52 of the Companies Act 1981.
- (3) To review the law on registration of charges in the light of the many suggestions made by various members of the public for far-reaching amendments even to the extent of departing from the British system. In this connection, to consider matters arising from the application of Part III of the Ordinance on the subject to a company incorporated outside Hong Kong in the light of findings in the *Slavenburg* case.
- (4) To consider whether in the case of a private company which is not a member of a group of companies which includes a listed company, approval of the company should be required for the disposal of its fixed assets by its directors.
- (5) To consider the requirement in the proposed new section 155D (Director's duty regarding information to shareholders) in this Companies (Amendment) Bill and in particular to see whether any further exemptions are justified.
- (6) To consider the question of general fiduciary duty of directors.

- (7) To consider whether the proposed new section 162 (disclosure by directors of material interest in contracts) should be extended as has been done in Britain by section 60 of the Companies Act 1980.

I have mentioned just a few of the subjects which the Administration has agreed will be referred to the new Standing Committee on Company Law Reform—the initial items for referral actually number twenty two and a full list is appended to the printed version of this speech for those who have a special interest in this matter. When similar legislation in the United Kingdom was last being debated in the House of Lords one of their Lordships expressed the view that in lieu of an amendment bill it would be more appropriate to produce an entirely new bill when amendments are so numerous. He was possibly thinking of a comment made by another member of the same House in the Seventeenth Century, George Seville, the first Marquis of Halifax, when he remarked that there were only three kinds of persons who did not understand the law, that is, those who had made it, those who enforced it, and those who had to abide by it. (*laughter*) I feel it would assist all of us in understanding our company legislation if, in the event the Standing Committee were to recommend significant further changes to our company law, we produced an entirely new bill rather than another voluminous amendment bill.

Sir, the various amendments to be proposed at the committee stage will be moved by my Unofficial Colleagues. The amendments have been divided into subject groups and each Member will speak to those amendments within one group and explain the reasons for them. To avoid repetition no one Member will speak on all amendments, but I should make it clear that the amendments as a whole have the unanimous support of the whole *Ad-hoc* Group. Subject to those amendments, and others which by agreement will be moved by the Administration, I support the motion.

## APPENDIX

### Subjects to be referred to the Standing Committee on Company Law Reform

- (1) To consider amendments to the statutory definitions of ‘director’, ‘debenture’ and ‘officer’.
- (2) To consider whether the *ultra vires* doctrine should be maintained and the extent of protection that should be afforded to third parties in *ultra vires* transaction.
- (3) To consider the question of restriction on the giving of financial assistance by a company for the purchase of its own shares; in this connection to consider simultaneously the question of whether a company should be able to purchase its own shares which is now allowed in Britain under sections 46-52 of the Companies Act 1981.

- (4) To consider with regard to section 48B of Cap. 32 (application of premiums received on issue of shares) the question of whether equivalent provisions to those in sections 36-41 of the Companies Act 1981 are required to provide certain reliefs in connection with company mergers and reconstructions.
- (5) To review the law on registration of charges in the light of the many suggestions made by various members of the public for far-reaching amendments even to the extent of departing from the British system. In this connection, to consider matters arising from the application of Part III of the Ordinance on the subject to a company incorporated outside Hong Kong in the light of findings in the Slavenburg case.
- (6) To consider whether resolutions signed by all directors should be deemed to have been passed at meeting.
- (7) To consider whether in the case of private companies which is not a member of a group of companies which includes a listed company, approval of the company should be required for the disposal of its fixed assets by its directors.
- (8) To consider whether a company secretary should have specified qualifications.
- (9) To consider the requirement in the proposed new section 155D (Director's duty regarding information to shareholders) in the Companies (Amendment) Bill 1983 and in particular to see whether any further exemptions are justified.
- (10) To consider the question of credits and quasi-loans in the context of prohibition of loans to directors.
- (11) To consider whether the proposed new section 168 and Ninth Schedule (rights of company and minority shareholders in case of successful takeover offer) should be extended to cover takeover offers made by individuals.
- (12) To consider whether the word 'managers' should be deleted from s. 159 since it is deleted from s. 170(2).
- (13) To consider whether the scope of the new section 224 (Power to arrest absconding contributory or officer) should be extended to include current shareholders.
- (14) To consider implementing the recommendation on wrongful trading in the Cork Report.
- (15) To consider whether powers granted for the making of rules as to costs in section 296 should only be in respect of the winding up of companies.
- (16) To consider whether a new section should be included in Part VI of Cap. 32 setting out the powers deemed to have by a receiver appointed under a floating charge.
- (17) To consider whether there should be a completely new form of Table A, designed for a private company and whether the revised Table A in the Companies (Amendment) Bill 1983 should be further up-dated.
- (18) To consider the question of general fiduciary duty of directors.

- (19) To consider whether the proposed new section 162 (disclosure by directors of material interest in contracts) should be extended as has been done in Britain by section 60 of the Companies Act 1980.
- (20) To consider the subject of 'convertibles' raised by Mr. KNIGHT in pages 99-100 of 'Law Lectures 1980' in respect of the proposed new section 168.
- (21) To consider whether the restriction on company names should be extended to personal names.
- (22) To consider the requirement in the proposed new section 80(2)(j) in the Companies (Amendment) Bill 1983 for a charge on shares held by the company in a body corporate which is its subsidiary when the charge is created.

MR. PETER C. WONG:—Sir, I agree with Mr. BROWN that the Companies (Amendment) Bill is an important as well as a complex piece of legislation. The Bill contains no less than 260 clauses in addition to six schedules and three appendices. All these add up to 212 pages in fine print.

The Companies Ordinance enacted in 1932 has been amended more than 50 times, many of which may be termed minor changes or improvements. The present exercise, however, is a major over-haul completing the programme of legislation commenced in 1974 to implement the recommendations of the Companies Law Revision Committee (Second Report).

Company Law is one of the most fascinating of legal subjects. Its fascination, however, is not always readily apparent to those who attempt to master its intricacies. To appreciate its underlying principles it is important to view it in its historical and economic context.

The birth of Company Law in England dates back to 1720 with the passing of the so-called Bubble Act as a result of the disastrous collapse of many business organizations in that year. The famous or infamous South Sea Bubble and its inevitable burst in 1720 has certain features not too different from the 1973 crash of our own stock market. Literature on the Bubble Crisis is immense, and serious students on the subject will find two popular accounts, both published in 1960, interesting and enlightening. This Chamber, however, is not the forum to indulge in historical events, except perhaps to touch on one or two salient and relevant episodes. The Bubble Act was finally repealed in 1825 and since that year the Board of Trade has played an important role in formulating Company Law as we know it today. The process of evolution which spanned over 260 years shows no signs of abatement. As recent as 1981, major changes were introduced.

As with the English Company Law, our own law is far from being perfect. Society is seldom static and the law must be continuously up-dated to reflect the realities of the times. I therefore welcome the proposal to establish a Standing Committee charged with making recommendations as and when problems are encountered.

As indicated by Mr. BROWN, the agreed amendments have been batched to facilitate the moving of these amendments by seven Unofficial Members and the Secretary for Economic Services. The division of work was done in a perfectly democratic way. For my part I will be moving the following amendments—

*Clause 24(b)*

Clause 24 amends section 45 of the principal Ordinance regarding allotment of shares. The Law Society is of the view that the allotments referred to in the new sub-section (1A)(a) should be described as ‘alloted credited’ and not merely as ‘alloted’. This point is well taken and appropriate amendment will accordingly be introduced.

*Clause 27*

Clause 27 adds new sections 57A, 57B and 57C. I shall be moving amendments only to new sections 57A and 57B.

*New Section 57A*

- (a) *Sub-section (1)* deals with shares with no voting rights. The words ‘nonvoting’ must appear on share certificates as well as in any prospectus or report in respect of the shares. For the sake of clarity the report referred to shall be described as ‘directors report’. The Law Society’s comments in this respect are appreciated.
- (b) *Sub-section (2)* provides that share certificates issued by a company which has its share capital divided into different classes must contain a statement to that effect as well as the amount fixed by the memorandum in respect of the shares of each class and the voting rights attached thereto. As the memorandum of a company rarely specifies the amount of the shares of each class, reference to the memorandum will be deleted and the amendment will make it clear that the nominal value of the shares in each class must appear on the certificate.

*New Section 57B*

- (a) This section provides that with the exception of a pro-rata allotment of shares to members, the directors of a company must first obtain the approval of the company in general meeting. Subsection (5) stipulates that any resolution whereby an approval is given should be registered as provided by section 117 of the principal Ordinance. Again for the sake of clarity, an amendment will be moved requiring any resolution that is revoked or varied as provided in subsection (3) to be registered as well.
- (b) A doubt has been expressed regarding subscribers’ shares. It is not clear whether these shares are caught by the provisions of this new section. As it is not the intention that such shares should be brought within the ambit of this section, appropriate amendment to that effect will be moved at the committee stage.

Finally, all references to 1983 in these two clauses will be deleted and substituted by 1984.

Sir, the Companies (Amendment) Bill represents the culmination of almost two decades of concerted and arduous efforts, and a major step forward in our attempt at reforms in the field of commercial law. Recent legislation in England permits a company to purchase its own shares. This is a basic departure from well entrenched principles. The fast changing scene in the financial world demands radical changes. This and other matters will provide the Standing Committee with a busy agenda. Apart from the specific points referred to by Mr. BROWN, the Committee may wish to examine such general and basic issues as monopolies, multi-national companies, the social responsibilities of companies, public ownership and the question of industrial democracy—relationships between the company and its employees—which has dominated discussion in the academic and business world over the past 15 years. How these vital issues are resolved will most certainly influence the future development of Company Law.

Sir, with these remarks, I support the motion.

MR. CHARLES YEUNG:—Sir, as the general aspect of the amendments to the existing Companies Ordinance has been covered by Mr. BROWN and my other Colleagues will be speaking specifically on various detailed amendments, I shall confine my remarks to the clauses of the Bill to which amendments are to be proposed by me at the committee stage.

*Power to close register of members and register of debenture holders*

Clause 63 of the Bill replaces section 99 of the principal Ordinance with new provision clarifying the requirements relating to the closing of the register of members and the register of debenture holders during the year. Specifically, a company may close the registers in question for not exceeding 30 days in each year, with further provision for extending the period of 30 days. However, it has been pointed out to us by the Law Society of Hong Kong that it would be desirable to impose an overall limit on the power of a company to extend the closure of such registers. This is indeed desirable, and further, it has been proposed to limit any extension of the closing of the register of members and register of debenture holders to a maximum of 60 days.

The Administration has agreed to the proposals, and at the committee stage, I shall be moving amendments to effect these changes.

*Minutes of proceedings of meetings of managers and directors*

Clause 84 of the Bill amends section 119 of the principal Ordinance to require, *inter alia*, a company to keep minutes of all general meetings, meetings of directors and meetings of managers. The Hong Kong General Chamber of Commerce contends that the requirement for keeping minutes of meetings of managers be deleted because of interpretational problems for companies and enforcement difficulties for the authorities. The primary problem appears to be the difficulty in defining what is a manager. Thus, in the words of Professor WILLOUGHBY the term could refer to receivers who are managers taking the

place of the directors or to relatively junior executives who are not directors. The Administration keeps a fairly open mind on this issue, though it is aware from past experience, that many companies in Hong Kong even neglect to keep proper minutes of meetings of directors.

In the end, both the Group and the Administration agree to delete the requirement to keep minutes of meetings of manager. Accordingly, I shall be moving amendments at the committee stage to this effect.

In respect of compulsory acquisition of shares of the shareholdings of a small minority of shareholders in a take-over bid, our existing law is found in section 168 which adopted the British 1929 Companies Act.

Since 1929 the commercial pattern has undergone much change and the employment of this compulsory power in take-over bids has increased in frequency and in technique. A review conducted by the Cohen Committee in Britain has resulted in refinement of the law in the 1948 Companies Act. However, the 1948 Act in this aspect is still not want of critics, particularly in its drafting. The Report of Jenkins Committee presented to the British Parliament in 1962 has much to say and recommend to improve the law.

We, in Hong Kong, are therefore fortunate to share the benefit of the experience and expertise of the British counterpart in framing our law.

*Rights of minority shareholders in case of successful take-over offer*

Clause 125 replaces section 168 with new provision to give effect (as proposed by the Company Law Revision Committee) to the Jenkins Committee recommendations in respect of take-overs and the acquisition of minority interests. The rights of the company on the one hand and of the minority shareholders on the other are set out in detail in the new Ninth Schedule.

As such, it is important that the words in the Ninth Schedule should be consistent with those in clause 125. The Law Society of Hong Kong has drawn our attention to three areas of inconsistency. To get over this, I shall be moving amendments to delete reference to words meaning 'contracted for' in the proposed section and paragraphs 2 and 10 of the Ninth Schedule wherever it occurs; to replace 'to which the offer relates' with 'for which the offer is made' in paragraphs 2 and 10; and to insert after 'class of shares' the phrase 'not less than nine-tenths in value'.

*Copy of order to be delivered to Registrar*

Clause 134 repeals and replaces section 185 of the principal Ordinance, and provides that on the making of a winding-up order, a copy of the order be delivered by the company to the Registrar. The Law Society of Hong Kong pointed out, quite rightly so, that the clause, as drafted, does not specify that the winding-up order is to be delivered to the Registrar for the purpose of registration. As that is indeed the intention of the clause, it should be

appropriately amended; and at the committee stage, therefore, I shall be moving an amendment to the effect.

*Documents delivered to Registrar to conform to certain requirements*

Clause 240 replaces, *inter alia*, section 346 of the principal Ordinance which specifies that documents delivered to the Registrar are to conform to certain requirements. If such requirements are not complied with, the Registrar will serve a notice to the person who submits the documents stating how that person has not complied with the requirements. That person will be given a 14-day grace period to comply with the requirements. It is, however, not absolutely clear from the clause when the grace period for non-compliance will begin. To make this clear, it has been suggested that the period should begin from the date of receipt of the notice served by registered post. Accordingly, I shall be moving a technical amendment to subsection 346(2) to this effect.

Sir, with these remarks, it is my pleasure to support the motion.

MR. SO delivered his speech in Cantonese:—

督憲閣下：本法案長達二百六十條，有附表六個，草擬如此冗長之法案，無疑是一件艱巨而繁瑣的工作。法案間有文書和打字方面的錯漏實屬無可避免。在諮詢過程中，一些市民和團體都指出這些錯漏，同寅謹此致謝。本人知悉當局將動議作出大部分必要的修訂，以糾正錯漏。至於本人則只提出其中在第七十七和第一七八條的兩項。在委員會審議階段中，本人將會動議作出有關修訂，將該等錯漏糾正。

督憲閣下，本人謹此陳詞，支持當前動議。

*(The following is the interpretation of what Mr. SO said.)*

Sir, the drafting of a bill of the size we are dealing with, comprising 260 clauses and six schedules, must be very difficult and tedious. It is therefore only natural that the Bill would be punctuated by clerical and typing errors. During the consultation process, individuals and groups have drawn our attention to these errors, and we are most grateful. I understand that the Administration will be moving most of these necessary amendments to rectify the errors. For my part, I shall simply mention two of these, in clauses 77 and 178. At the committee stage, therefore, I shall be moving appropriate amendments to rectify the two errors.

With these remarks, Sir, I support the motion.

MR. WONG PO-YAN:—Sir, the economy of Hong Kong has undergone tremendous development in the past decades.

From entrepot trade to the progressive growth of manufacturing industries and their subsequent diversification and the emergence of the tertiary service sector, the evolution of our economy has brought about important changes and complexity to our economic structure.

In recognition of the need to review and update our legislative framework and regulatory system so that our manufacturers and traders can operate efficiently,



and of the need to facilitate further growth and expansion of the economy, the Company Law Revision Committee was appointed to consider and to make recommendations to revise company legislation of Hong Kong.

The Companies (Amendment) Bill 1983 we are discussing this afternoon is to implement the recommendations of the Committee. It seeks to improve the basic legal framework for the regulation of the companies to meet the present day requirements of Hong Kong. It stipulates amendments to rules for the companies' constitution, management and dissolution to enable these companies, as individual legal entities, to accept opportunities and responsibilities, and to discharge their functions properly.

Like an individual, a company has certain responsibilities to its members and the community. But as a body corporate, the discharging of these responsibilities is entrusted to human agents, its directors.

A director, in discharging his duties, must act honestly in the exercise of his powers in the interest of the company. He must act in accordance with the code of commercial morality and business ethics voluntarily.

However, this self-regulatory system has, in many recent instances, proved inadequate in protecting the interests of the shareholders, the company and the public. A code of conduct, in the present circumstances, is appropriate. But to be effective, a code of conduct needs the power of sanction.

To this effect, I am pleased to be able to move the amendments to clause 114 of the Companies (Amendment) Bill 1983.

Clause 114 adds new sections 157A to 157J.

New sections 157A to 157F introduce new requirements relating to appointment, qualifications, removal and resignation of directors, including the power of the court to make disqualification orders against fraudulent persons or directors of insolvent companies. These new provisions adopt to a large extent the 1948 and 1976 U.K. Companies Acts, but with the former modified as recommended by the Companies Law Revision Committee to suit the circumstances of Hong Kong.

*Resignation of director or secretary*

Specifically, the new section 157D deals with the procedure for resignation by directors and secretaries of companies. Subsection 157D(3) specifies, *inter alia*, that where the articles of a company require a director or secretary of the company to give notice for resignation, the notice should be in writing. It is not absolutely clear, however, from the wordings, that the requirements in respect of notice of resignation shall apply to the person giving such notice. This has been pointed out to us by the Hong Kong General Chamber of Commerce, and we are grateful.

To remove any ambiguity over the intention of the clause, therefore, I shall be moving an amendment at the committee stage to the clause.

*Prohibition of loans to directors*

The new sections 157H, 157I and 157J break new ground in respect of the making of loans or the giving of guarantees by companies to directors or for the benefit of directors. Under new section 157H, which does not apply to banks or deposit-taking companies, the general rule is that loans or guarantees by a company to the directors of the company or of its holding company, or to a company controlled by any one or more of its directors, are prohibited.

There are five exceptions:

- (1) loans etc. as between companies in the same group;
- (2) loans etc. by private companies (except those belonging to a group of companies of which a member is a listed company) if approved in general meeting;
- (3) loans etc. to defray legitimate expenses incurred while on company business;
- (4) loans (not exceeding 80% of the value) for the purchase of a residence; and
- (5) loans etc. (up to amounts not exceeding \$500,000) by companies whose ordinary business includes the lending of money or the giving of guarantees.

The latter three exceptions are subject to a 'global' limit of 5% of net assets, and that are dealt with under subsection 157H(7). There is, however, a slight drafting error, which is that the subsection makes reference to 'approval' of balance sheet. As balance sheets are 'laid before' a company rather than 'approved by' it, an appropriate amendment to the clause is necessary.

Accordingly, I shall be moving the necessary amendments at the committee stage.

In conclusion, it must be emphasized that as stated by my colleague, Mr. W. C. L. BROWN, that the present Bill represents not final efforts to modernize the existing company legislation but rather, the beginning of a new and crucial phase of our company law reform process.

As pointed out by His Excellency in his address to this Council on 5 October 1983, a Standing Committee on Company Law Reform would be appointed after the enactment of this Bill (para. 20 Opening Address) to keep under review the adequacy of the regulatory system as circumstances alter. Already, 22 subjects have been identified for its urgent attention and consideration. Thus, in anticipation of the establishment of the Standing Committee, Sir, I have much pleasure in supporting the motion.

MR. STEPHEN CHONG:—Sir, our community's efforts in striving for economic progress no doubt has reached a milestone. Looking ahead to the future, the introduction of the Companies (Amendment) Bill is indeed timely. For, in consolidating our success and in preparing for our next phase of growth, it is

necessary to continuously update our legal system, thereby defining more clearly and in more detail the parameters within which our companies can or should operate.

Turning specifically to the provision of this Bill, our able Chairman of the Legislative Council *Ad Hoc* Group, the Honourable Bill BROWN has already covered the most salient features of our deliberations. I will simply confine myself to a brief expose on the rationale behind the various amendments I will be moving in the committee stage this afternoon. After all the subject matter is so dry that I should not prolong honourable Members' agony of having to sit up one minute longer than is necessary.

*First, power to arrest absconding contributory or officer*

Clause 155 replaces section 224 of the principal Ordinance which empowers the court to arrest an absconding contributory or officer. However, for the section to be meaningful, the powers of arrest should cover past officers of a company so that they could not evade responsibility and this section simply through resignation.

We have reached agreement with the Administration to specify that any past or present officer of the company will be covered in the new section 224.

*Secondly, dissolution of company by order of court*

Clause 158 replaces section 227 with new section 226A which provides for a summary method of dissolution, and a new section 227 which recasts the existing section 227 by providing that a dissolution order may be made only when the liquidator makes application to the court in that behalf.

Specifically, under new subsection 227(2), the liquidator must deliver a copy of the court order to the Registrar within 14 days. However, we were of the opinion that the section should further specify that the order is to be delivered to the Registrar for the purpose of registration.

*Thirdly, special procedure for voluntary winding up in case of inability to continue in business*

Clause 161 adds new section 228A to introduce a special procedure to speed up the appointment of a liquidator in an urgent case where a company cannot by reason of its liabilities continue in business.

The clause, as drafted, needs to be clarified in two areas. First, new subsection 228A(3)(a) makes reference to the winding up of a company being deemed to commence at the time of the delivery to the Registrar of the statutory declaration that the company cannot continue its business. We consider that the words 'be deemed to' in the clause are unnecessary, and should be deleted. Secondly, new subsection 228(4)(b) provides for the appointment of a provisional liquidator, but without specifying that the public notice of such an appointment should state the name and address of the provisional liquidator.

We think it would be desirable that relevant details such as names and address of the provisional liquidator be published.

*Fourthly, disqualification of undischarged bankrupts*

Clause 209 adds a new section 297A to the principal Ordinance. Together with other new clauses which amend Part VI of the Bill dealing with receivers and managers, a number of new provisions relating to the functions of receivers and managers will be introduced.

Specifically, new section 297A prescribes the penalties for any person who is an undischarged bankrupt to act as a receiver or manager. However, although the intention of the provision may be quite clear, it does not specifically say that an undischarged bankrupt shall be disqualified from being a receiver or manager of the property of a company on behalf of debenture holders. As such clarification is highly desirable, I shall be moving an amendment to the clause at the committee stage to this effect.

Sir, with these remarks, I support the motion.

MISS TAM:—Sir, directors in the exercise of their powers are fiduciary agents for the company and they must use their powers for the benefit or intended benefit of the company. Subject to this overriding consideration the Directors may do whatever is fairly incidental to the exercise of their power in carrying out the objects of the company, and hence whether the interest of the shareholders are properly protected depends on the judgment and honesty of the company's directors, and the more the shareholders know of their own vested interests the better the shareholders can protect their interest in the company.

For the same reason it is also important to disclose the true identity of the directors of a company, particularly in the case of companies where generally the shareholders have little inside or personal knowledge of its decision makers. Sir, I shall be moving for amendments under clauses 110 and 112 of the Bill which deal with the directors' responsibilities.

*Restriction on body corporate being director*

Clause 110 amends the principal Ordinance by adding new sections 154A and 154B. The new section 154A provides that, except in the case of certain private companies, it will no longer be possible to have bodies corporate as directors of companies. Thus the identity of each of the individual person who is a director of the company is revealed and can no longer be hidden behind a veil. In order to give sufficient time for adjustment, a period of six months' grace is allowed for companies to conform after the Bill comes into operation. Also the Law Society of Hong Kong feels that the wordings in the section need to be clarified so as to avoid any possible confusion over which companies are to be referred to and how and when the directors of bodies corporate should vacate their offices. The Group is grateful to the Law Society for making these points. We have consulted the Law Draftsman, and the Group has suggested that subsections

154A(2) and (3) be redrafted to accommodate these drafting points. Accordingly, at the committee stage, I shall be proposing amendments to clause 110 to that effect.

*Disposal by Directors of Company's Fixed Assets*

In order to further protect the interest of the shareholders clause 112 adds new sections 155A to 155D which impose restrictions and obligations on directors in their management functions vis-a-vis both the company and the shareholders. This is an important amendment because these new provisions deal with the disposal by the directors of a company's fixed assets. They impose an obligation on the directors to indicate the purpose of the Company's resolutions required for such disposal of fixed assets, and to disclose any related interests of the directors of a material nature and, also, to keep all shareholders equally informed. Understandably, because of its importance, the clause has attracted copious comments and strong representations from professional bodies and most of these comments are made on the new sections 155A and 155D.

New section 155A provides that the directors of a company should seek the approval of the company at a general meeting for disposal of the company's fixed assets if the value to be disposed of over a period should exceed 33% of the company's fixed assets.

Both the Hong Kong General Chamber of Commerce and the Law Society of Hong Kong have strongly proposed that private companies be exempted from this section. In principle there are no good reasons for doing so but taking into account the strong views of the legal and business sectors, it was initially felt that as a first step, the section should be applied only to listed companies and their subsidiaries so that the most vulnerable areas where shareholders need most protection are covered. However, on further deliberations, it is found that this objective would not be totally achieved if only listed companies and their *subsidiaries* are covered. Accordingly, it is now proposed that the requirement should be applied to all listed companies and their subsidiaries *and* to companies which are members of a group of companies which includes a listed company. At the committee stage, I shall be moving amendments to the proposed subsections 155A(1), (2), (3) and (5) of clause 112 to give effect to this. The question as to whether the section should apply to private and unlisted public companies which are not subsidiaries of listed public company will be referred to the Standing Committee on Company Law Reform for consideration.

The proposed new sub-section 155A(5) includes a provision which exonerates a director who has failed to comply with section 155(A)(1) (that means obtaining the company's approval in a general meeting or to dispose of assets of up to 33%). If he should fail to do that, he should be subjected to fine or imprisonment, but he would be exonerated if the transaction he executed is subsequently approved by the company in a general meeting. The Law Society of Hong Kong and Professor WILLOUGHBY of the H.K.U. School of Law, felt

very strongly that such a director should not escape criminal responsibility. The Group also agrees that this proviso is undesirable, and accordingly, I shall be moving an amendment for its deletion.

The legal profession has also drawn our attention to two other technical points under the proposed new subsections 155A(5) and (6) which need clarification. First, it is desirable to clarify that 'disposing of fixed assets' does not include charging of such fixed assets or granting any interest therein by way of security. Secondly, it is necessary to replace the inappropriate reference to 'approval' of balance sheet with a reference to the laying of such a balance sheet before members. The Group has been reminded, and rightly so, that balance sheets are not approved as such. At the committee stage, I shall be moving these technical amendments.

*Directors' Duty Regarding Information to Shareholders*

The proposed new section 155D deals with another important aspect in the Bill, that is the directors' duty regarding information to shareholders. Here, the Group has received strong representation from many sectors, urging the deletion or modification of the section. Now, Members may recall that the proposed new section was recommended by the Jenkins Committee and adopted by our Companies Law Revision Committee (C.L.R.C.). Although it is still considered to be highly desirable in principle, there is no doubt that its ramifications are more complicated than either the Jenkins Committee, the C.L.R.C. or the Administration anticipated. The main problem lies in deciding on who should be exempted from the scope of the provision. There were no exemptions in the 1980 draft Bill and, as a result of public comments, the present Bill has made provisions in subsection (3) of section 155D to confer extensive exemptions. In the 1983 consultation exercise, some very good points about still further exemptions being required were made. And under such circumstances, it would appear premature to enact the section in its present form. Hence, we recommend that the section be deleted and referred to the proposed Standing Committee on Company Law Reform for further consideration. I shall move an appropriate amendment at the committee stage to that effect.

Sir, with these and other amendments proposed in this Council today, I support the motion.

MR. POON:—Sir, it gives me a great deal of pleasure to see that the Companies (Amendment) Bill 1983 has finally come to this Council for resumption of debate on its second reading. Though some complicated and controversial matters are left to the proposed Standing Committee on Company Law Reform to deliberate further, the Bill itself contains many amendments to up-date our company legislation which has been lagging behind Hong Kong's rapid development as a leading financial centre. As a member of the accounting profession, I welcome the proposed changes. They will no doubt contribute to

the improvement of financial reporting and auditing standards in Hong Kong. The new legislation will also plug major loopholes, such as 'Loans to Directors' which is the subject of a lot of focus and concern in recent company failures.

I now turn to the amendments I am going to move.

*Clause 55*

Clause 55 replaces section 91 relating to the application of Part III of the principal Ordinance to companies incorporated outside Hong Kong.

Specifically, new subsection 91(3) allows a company 21 days for registration of charges which are required to be registered by a company on establishment of a place of business in Hong Kong. Society of Accountants has drawn our attention to the fact that, from a practical point of view, communication takes time with an overseas company and that more time should be allowed for the registration. Further, in Part III of the principal Ordinance, the time limit has always been five weeks. It would therefore make more sense to amend the subsection 91(3) to bring the time limit into line with those in other provisions in Part III of the Ordinance. At the committee stage, therefore, I shall be moving an amendment to the clause to extend the time limit in question from 21 days to five weeks.

*Regulations for management of different types of companies*

Clause 253 introduces a new First Schedule to replace the existing First Schedule to the principal Ordinance. This Schedule prescribes regulations for the management of different types of companies. Part I of Table A deals with regulations for the management of a company limited by shares, and not being a private company.

Regulations 82 to 89 deal with the powers and duties of directors of companies. Specifically, regulation 86 deals with the requirement for a director to declare his interest in certain circumstances in accordance with section 162 of the Ordinance. Now, section 162 (clause 118) deals with disclosure by directors of material interests in contracts.

Therefore, to bring regulation 86(1) and (2) in line with the proposed section 162, therefore, Professor WILLOUGHBY of the H.K.U. School of Law has proposed to amend regulation 86(1) and (2) so that a director shall only be required to declare his interest and not to vote in respect of a contract or a proposed contract with a company if the contract is significant in relation to the company's business and his interest in it is material. Although, in the strictest sense, it is not obligatory for these provisions in the regulations to be the same terms as the proposed section 162, there are merits in so doing. Accordingly, I shall move an appropriate amendment to the regulation.

Regulation 90 deals with disqualification of directors; and specifically, regulation 90(g) provides that a director shall be disqualified if he fails to declare his interest in accordance with section 162 of the Ordinance. It has been

suggested that this regulation may result in serious uncertainty regarding the status of many directors of companies in Hong Kong. Also, it may be said that the wordings of regulation 90(g) are inconsistent with the proposed section 162 which only calls for the disclosure of material interests. Furthermore, the revised Table A is based on the Table A of the 1948 U.K. Companies Act, (Regulation 88 of Table A in Schedule 1 of the Companies Act 1948), and in order to be consistent with the U.K. Regulations on the subject, paragraph (g) of regulation 90 should be deleted. I shall so propose at the committee stage.

Lastly, regulations 124 to 128 of Table A deals with the keeping of company accounts. Regulation 128 allows only 14 days before the date of general meeting for sending balance sheet and directors' and auditors' reports to members, when under section 129G(1), clause 91(a) of the Bill, 21 days will be allowed. It seems logical, therefore, to bring the provisions in regulation 128 and section 129G in line with each other. This can be achieved by amending the time limit mentioned in regulation 128 from 14 to 21 days.

At the committee stage, therefore, I shall be moving this amendment.

Finally, Members will note from the Appendix to the printed version of Mr. BROWN'S speech that the question of whether there should be a completely new form of Table A designed for a private company and whether the revised Table A in the Companies (Amendment) Bill 1983 should be further up-dated, will be referred to the Standing Committee on Company Law Reform.

Sir, with these remarks, I support the motion.

SECRETARY FOR ECONOMIC SERVICES:—Sir, Mr. BROWN has described the lengthy process of public consultation that has taken place in relation to this Bill, which was, as he has said, published first as a draft Bill for information in 1980. The *Ad Hoc* Group have thus had to consider the legislation and public comments upon it over a prolonged period of time. I am indeed very pleased to thank Mr. BROWN and the Members of the *Ad Hoc* Group again for their support and for the time and effort they have spent in examining both the draft Bill and the Bill now before this Council together with the many representations that have been made by members of the public. The *Ad Hoc* Group's suggestions have been invaluable in bringing the Bill before this Council, and the legislation when enacted will undoubtedly be further improved by the amendments to be moved by my Unofficial Colleagues at its committee stage.

In addition to those amendments, I shall myself be moving an amendment to clause 46(b)(iii) to delete the proposed new section 80(2)(j). This amendment will remove the proposed requirement to register a charge on shares held by a company in a body corporate which is its subsidiary when the charge is created. Whilst this requirement implements a Company Law Reform Commission recommendation and is considered to be highly desirable in principle, it became apparent from comments made by the Hong Kong Association of Banks that if the new section were enacted, they and other creditors would have real



difficulties in that they could not be certain whether the shares to which a charge related were indeed those of a subsidiary as defined in the principal Ordinance. Having considered these comments, it has been agreed that the proposed requirement should be deleted and the matter referred to the Standing Committee on Company Law Reform for further consideration.

As Mr. Andrew SO has mentioned, I shall be moving a number of minor amendments dealing mainly with technical and drafting matters.

Concern has been expressed by the Law Society of Hong Kong and the Hong Kong Deposit-taking Companies Association about the stamp duty implications for international bonds in the proposed new section 74A in clause 41 of the Bill. Whilst no amendment will be made to this proposed section, which basically serves company law purposes, it is the intention of the Administration to introduce in due course an amendment to the Stamp Duty Ordinance to meet this concern.

Mr. BROWN, Mr. Peter C. WONG, Mr. WONG Po-yan and Mr. Stephen CHEONG have rightly drawn attention to the fact that much remains to be done in the field of company law reform even after the enactment of this Bill. Mr. BROWN has said that we still have a long way to go down this road. Indeed, Sir, the road never ends. May I repeat the words I used when introducing this Bill into this Council on the 9 March last year: ‘Company law must change with the evolution of the economic and business environment. We must in future ensure that companies legislation is kept responsive to our needs. The subject is dynamic and the law in this area has to be constantly updated in the light of changing circumstances.’

So I am pleased to be able to inform this Council that the proposed Standing Committee on Company Law Reform has now been established under the chairmanship of the Honourable Mr. Justice CONS, a Justice of Appeal. The Committee comprises members with legal, accounting, banking, financial and general business backgrounds. *Ex officio* Members include the Secretary for Economic Services or his representative, the Registrar General and the Commissioner for Securities.

The Committee’s terms of reference approved by His Excellency the Governor are:

- (a) to advise the Financial Secretary on amendments to the Companies Ordinance as and when experience shows them to be necessary;
- (b) to report annually through the Secretary for Economic Services to the Governor in Council on those amendments to the Companies Ordinance that are under consideration from time to time by the Standing Committee;
- (c) to advise the Financial Secretary on amendments required to the Securities Ordinance and the Protection of Investors Ordinance with the objective of providing support to the Securities Commission in its role of administering those Ordinances.

The first task facing the Committee will be to deal with those issues mentioned by Mr. BROWN. These have been shown to be complex and often controversial in nature. And so to assist the Committee a considerable amount of research and preparatory work will have to be undertaken. For this purpose, and subject to the approval of Finance Committee, a full-time post of Secretary to the Committee will be created.

My Unofficial Colleagues, who have spoken this afternoon, have raised a number of most interesting points. I hope that they will forgive me if for the sake of brevity I do not answer them today. Nevertheless, in so far as these matters are not covered by amendments to be introduced by my Unofficial Colleagues at the committee stage, I shall ensure that their helpful remarks are passed to the Chairman of the Standing Committee for consideration.

In addition to the matters to be considered by the Standing Committee, and following upon the enactment of this Bill, it will be necessary to introduce consequential amendments to the Companies (Winding-up) Rules and corresponding amendments to the Bankruptcy Ordinance.

Mr. BROWN has suggested that in the event that the Standing Committee recommends significant further changes to our company law, we should produce an entirely new Companies Bill rather than another voluminous amendment Bill. This approach might well be appropriate in future, and I can assure Mr. BROWN that we will not lose sight of his suggestion. In this regard, Members of this Council and others concerned with company law will, I am sure, be pleased to learn that arrangements have already been made to produce a reprint of the complete Companies Ordinance incorporating the amendments now before this Council. This reprint will be published as soon as possible after the amendments have been brought into operation.

Lastly, Sir, I would like to conclude by thanking all the members of our community who have taken the trouble to convey their views to us. Their wide knowledge and experience has contributed much to that consultative process, which is essential in company law reform.

*Question put and agreed to.*

Bill read the second time.

*Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).*

## **DANGEROUS DRUGS (AMENDMENT) BILL 1984**

### **Resumption of debate on second reading (11 January 1984)**

*Question proposed.*

*Question put and agreed to.*

Bill read the second time.

*Bill committed to a committee of the whole Council pursuant to Standing Order 43(1).*

### **Committee stage of bills**

Council went into Committee

### **COMPANIES (AMENDMENT) BILL 1983**

Clauses 3, 6, 7, 9 to 11, 13, 15, 16, 18 to 23, 25, 26, 28 to 33, 35 to 39, 41, 42, 44, 47, 49 to 51, 54, 56, 58, 60 to 62, 64 to 76, 78, 79, 81 to 83, 86 to 91, 93, 95 to 107, 109, 111, 113, 118 to 124, 126 to 129, 131 to 133, 135 to 154, 156, 157, 159, 160, 163 to 165, 167 to 176, 179, 180, 184 to 190, 192 to 208, 211, 214 to 227, 229 to 233, 235 to 239, 241, 242, 245 to 260 were agreed to.

Clauses 1, 2, 4, 5, 8, 12, 14, 17, 34, 40, 43, 45, 46, 48, 52, 53, 57, 59, 80, 85, 92, 94, 108, 115 to 117, 130, 162, 166, 177, 181 to 183, 191, 210, 212, 213, 228, 234, 243 and 244

SECRETARY FOR ECONOMIC SERVICES:—I move that the clauses specified be amended as set out in the paper circulated to Members.

#### *Proposed amendments*

#### **Clause 1**

That clause 1 be amended by deleting ‘1983’ and substituting the following—  
‘1984’.

#### **Clause 2**

That clause 2(a) be amended in the definition of ‘officer who is in default’ by deleting ‘section 351(3)’ and substituting the following—  
‘section 351(2)’

#### **Clause 4**

That clause 4(c) be amended in new subsection (3) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 5**

That clause 5 be amended in new subsection (5) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 8**

That clause 8(*h*) be amended in new subsection (9) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 12**

That clause 12 be amended in new section 19(1)—

(a) by deleting ‘1983’ and substituting the following—  
‘1984’.

(b) by adding after ‘by him’ the following—  
‘; and the Eighth Schedule shall have effect for the purposes of this section as if for references in that Schedule to the registration of a company there were substituted references to its re-registration under this section’.

**Clause 14**

That clause 14 be amended in new section 25A(4) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 17**

That clause 17 be amended in new section 28A by deleting ‘1983’ wherever it occurs and substituting the following—

‘1984’.

**Clause 34**

That clause 34 be amended in new section 65A(2) by deleting ‘rank’ in the second place where it occurs and substituting the following—  
‘ranks’.

**Clause 40**

That clause 40 be amended in new section 73A(2) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 43**

That clause 43 be amended in new section 75B(3)(a) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 45**

That clause 45(d) be amended in new subsection (2A) by deleting ‘1983’ and substituting the following—

‘1984’

**Clause 46**

That clause 46 be amended—

(a) in paragraph (b) by deleting sub-paragraphs (ii) and (iii);

(b) by deleting paragraph (c) and substituting the following—  
‘(c) in subsection (3) by deleting “solely”.’.

**Clause 48**

That clause 48(b) be amended in new subsection (1A) by deleting ‘1983’ wherever it occurs and substituting the following—

‘1984’.

**Clause 52**

That clause 52(1) be amended in new section 87(4) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 53**

That clause 53 be amended in new sections 88(3) and 89(3) by deleting ‘1983’ wherever it occurs and substituting the following—

‘1984’.

**Clause 57**

That clause 57 be amended—

(a) in paragraph (a), by deleting ‘under this Ordinance’ wherever it occurs;

(b) in paragraph (f) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 59**

That clause 59 be amended in new section 95(3) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 80**

That clause 80 be amended in new section 116(5) and (6) by deleting ‘1983’ wherever it occurs and substituting the following—

‘1984’.

**Clause 85**

That clause 85 be amended in new section 119A(2) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 92**

That clause 92 be amended in new section 131(11) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 94**

That clause 94 be amended in new section 140(3) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 108**

That clause 108 be amended in new section 153(2) and (3) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 115**

That clause 115 be amended in new section 158(6) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 116**

That clause 116 be amended in new section 158A(2) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 117**

That clause 117 be amended in new section 161B by deleting ‘1983’ wherever it occurs and substituting the following—  
‘1984’.

**Clause 130**

That clause 130 be amended in new section 177—

- (a) in subsection (1)(e) by deleting ‘occurence’ and substituting the following—  
‘occurrence’;
- (b) in subsection (3) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 162**

That clause 162 be amended in new section 233(5) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 166**

That clause 166 be amended in new section 237A(1) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 177**

That clause 177 be amended in new subsection (3) by inserting after ‘Registrar’ the following—  
‘for registration’.

**Clause 181**

That clause 181(g) be amended in new subsection (7) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 182**

That clause 182 be amended in new section 266(1) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 183**

That clause 183 be amended in new section 266A(1) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 191**

That clause 191 be amended—

(a) in paragraph (c) by deleting ‘such person’ and substituting the following—  
‘person’;

(b) in paragraph (d) in new subsection (3)—

(i) by inserting after ‘carrying on’ the following—  
‘of’;

(ii) by deleting ‘notwithstanding that the facts are discovered in circumstances other than in the course of the winding up’ and substituting the following—  
‘whether or not the company has been or is in course of being wound up’.

**Clause 210**

That clause 210 be amended in new section 298A(3) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 212**

That clause 212(b) be amended in new subsection (3) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 213**

That clause 213 be amended in new sections 300A(8) and 300B(7) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 228**

That clause 228 be amended in new section 333—

(a) by deleting ‘1983’, wherever it occurs, and substituting the following—  
‘1984’.

(b) in subsection (5) by deleting ‘as amended by that Ordinance’.



**Clause 234**

That clause 234 be amended in new section 337B(2) by deleting ‘1983’ and substituting the following—

‘1984’.

**Clause 243**

That clause 243 be amended in new section 350 by deleting ‘trade or use’ and substituting the following—

‘use or trade’.

**Clause 244**

That clause 244(b) be amended in new subsection (1B) by deleting ‘1983’ and substituting the following—

‘1984’.

The amendments were agreed to.

Clauses 1, 2, 4, 5, 8, 12, 14, 17, 34, 40, 43, 45, 46, 48, 52, 53, 57, 59, 80, 85, 92, 94, 108, 115 to 117, 130, 162, 166, 177, 181 to 183, 191, 210, 212, 213, 228, 234, 243 and 244 as amended, were agreed to.

Clauses 24 and 27

MR. PETER C. WONG:—I move that the clauses specified be amended as set out in the paper circulated to Members for the reasons stated in my speech.

*Proposed amendments***Clause 24**

That clause 24(b) be amended in new subsection (1A) by inserting after ‘allotted’, wherever it occurs, the following—

‘credited’.

**Clause 27**

That clause 27 be amended—

(a) in new section 57A—

(i) in subsection (1) by inserting after ‘prospectus or’ the following—  
‘directors’;

(ii) in subsection (2) by deleting ‘the amount fixed by the memorandum in respect of the shares of each class’ and substituting the following—

‘in respect of the shares of each class the nominal value thereof’;  
(iii) in subsection (4) by deleting ‘1983’ and substituting the following—  
‘1984’;

(b) in new section 57B—

(i) in subsection (5) by inserting after ‘this section’ the following—  
‘or revoked or varied under subsection (3)’;

(ii) in subsection (7) by inserting after ‘shares’ the following— ‘or require approval for the allotment to the subscribers of a company’s memorandum of shares is the company which, by subscribing the memorandum, they have agreed to take’;

(iii) in subsections (8) and (9) by deleting ‘1983’ wherever it occurs and substituting the following—  
‘1984’.

The amendments were agreed to.

Clauses 24 and 27, as amended, were agreed to.

Clause 55

MR. POON:—I move that clause 55 be amended as set out in the paper circulated to Members for the reasons previously notified.

*Proposed amendment*

**Clause 55**

That clause 55 be amended in new section 91(3) by deleting ‘21 days’ and substituting the following—

‘5 weeks’.

The amendment was agreed to.

Clause 55, as amended, was agreed to.

Clauses 63, 84, 125, 134 and 240

MR. CHARLES YEUNG:—I move that the clauses specified be amended as set out in the paper circulated to Members.

*Proposed amendments*

**Clause 63**

That clause 63 be amended in new section 99(2)—

- (a) in paragraph (b) by deleting the full stop and substituting a colon;
- (b) by inserting the following proviso to subsection (2)—  
‘Provided that the said period shall not be extended beyond 60 days in any year’.

**Clause 84**

That clause 84(a) be amended by deleting new subsection (1) and substituting the following—

- ‘(1) Every company shall cause minutes of all proceedings at general meetings and at meetings of its directors to be entered in books kept for that purpose.’.

**Clause 125**

That clause 125 be amended in new section 168—

- (a) in subsection (3)(a) by deleting ‘held, acquired or contracted for’, wherever it occurs, and substituting the following—  
‘held or acquired’;
- (b) in subsection (4) by deleting ‘1983’ and substituting the following—  
‘1984’.

**Clause 134**

That clause 134 be amended in new section 185 by inserting after ‘Registrar’ the following—

‘for registration’.

**Clause 240**

That clause 240 be amended—

- (a) by deleting ‘Section’ and substituting ‘Sections’;
- (b) in new section 346(2)—
  - (i) by deleting the full stop and substituting a semicolon;
  - (ii) by inserting thereafter the following—  
‘and any such notice shall be served by registered post.’.

The amendments were agreed to.

Clauses 63, 84, 125, 134 and 240, as amended, were agreed to.

Clauses 77 and 178

MR. SO spoke in Cantonese:—

本人動議按事前交各議員審閱內容，修訂法案第七十七及一七八節。

(The following is the interpretation of what Mr. SO said.)

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

*Proposed amendments*

**Clause 77**

That clause 77 be amended in new section 114A(1) by deleting ‘155C and 163C’ and substituting the following—  
‘155B and 163D’.

**Clause 178**

That clause 178 be amended by deleting ‘225A’ and substituting the following—  
‘255A’.

The amendments were agreed to.

Clauses 77 and 178, as amended, were agreed to.

Clauses 110 and 112

MISS TAM:—I move that the clauses specified be amended as set out in the paper circulated to Members for the reasons I have stated earlier.

*Proposed amendments*

**Clause 110**

That clause 110 be amended in new section 154A—

(a) in subsection (1) by deleting ‘1983’ and substituting the following—  
‘1984’;

(b) by deleting subsections (2) and (3) and substituting the following—

‘(2) This section shall not apply to a private company excepted under subsection (3).

(3) A private company is excepted under this subsection if, but only if, it is not a member of a group of companies of which a listed

company is a member; and for the purposes of this subsection ‘listed company’ means a company in the case of which shares are listed on a recognized stock exchange.

(4) A body corporate which, at the commencement of the Companies (Amendment) Ordinance 1984, is a director of a company other than a private company excepted under subsection (3) shall, if it has not vacated its office as such director within a period of 6 months thereafter, be deemed to have done so upon the expiration of that period, and all acts or things purporting to be made or done after the expiration of that period by a body corporate as director of any such company shall be null and void’.

## Clause 112

That clause 112 be amended—

(a) in new section 155A—

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

‘(1) Notwithstanding anything in the memorandum or articles of—

(a) a company in the case of which shares are listed on a recognized stock exchange; or

(b) a company which is a member of a group of companies of which a company referred to in paragraph (a) is member,

the director of such a company shall not carry into effect any proposals to which this section applies unless those proposals have been approved by the company in general meeting.’;

(ii) in subsection (2)—

(A) by inserting after ‘company’ in the first place where it occurs the following—

‘referred to in subsection (1)(a) or (b)’;

(B) by deleting ‘approved by’ and substituting the following—

‘laid before’;

(iii) in subsection (3) by inserting after ‘company’ the following—

‘referred to in subsection (1)(a) or (b)’;

(iv) in subsection (5)—

(A) by inserting after ‘company’ the following—

‘referred to in subsection (1)(a) or (b)’;

(B) by deleting the colon and substituting a full stop;

(C) by deleting the proviso;

(V) by inserting after subsection (5) the following—

‘(6) In this section a reference to proposals for disposing of any fixed assets does not include a reference to proposals for charging such fixed assets or granting any interest therein by way of security.’;

(b) by deleting new section 155D.

The amendments were agreed to.

Clauses 110 and 112, as amended, were agreed to.

Clause 114

MR. WONG PO-YAN:—I move that clause 114 be amended as set out in the paper circulated to Members.

*Proposed amendments*

**Clause 114**

That clause 114 be amended—

- (a) in new sections 157B(1) and 157C by deleting ‘1983’ wherever it occurs and substituting the following—  
‘1984’;
- (b) in new section 157D(3)—
  - (i) by inserting after ‘the following shall apply’ the following—  
‘to the person resigning’;
  - (ii) in paragraph (a) by deleting ‘unless notice in writing thereof is given’ and substituting the following—  
‘unless he gives notice in writing thereof’;
  - (iii) in paragraph (b) by deleting ‘a copy of such notice shall be delivered to the Registrar not later than 3 days after it is given to the company and there shall be endorsed’ and substituting the following—  
‘he shall deliver a copy of such notice to the Registrar not later than 3 days after it is given to the company and shall endorse’;
- (c) in new section 157E(1) by deleting ‘director, receiver or liquidator of and substituting the following—  
‘director or a liquidator or a receiver or manager of the property of a company’;
- (d) in new sections 157F and 157G by deleting ‘1983’ wherever it occurs and substituting the following—  
‘1984’;
- (e) in new section 157H(7) by deleting ‘approved by’ and substituting the following  
—  
‘laid before’.

The amendments were agreed to.

The amendments, as amended, were agreed to.

Clauses 155, 158, 161 and 209

MR. STEPHEN CHEONG:—I move that the clauses specified be amended as set out in the paper circulated to Members.

*Proposed amendments*

**Clause 155**

That clause 155 be amended in new section 224 by inserting after ‘contributory or’ the following—

‘any past or present’.

**Clause 158**

That clause 158 be amended in new section 227(2) by inserting after ‘Registrar’ the following—

‘for registration’.

**Clause 161**

That clause 161 be amended in new section 228A—

(a) in subsection (1) by deleting ‘continue in business’, wherever it occurs, and substituting the following—

‘continue its business’;

(b) in subsection (3)(a) by deleting ‘be deemed to’;

(c) in subsection (4)(b) by inserting after ‘liquidator’ the following—

‘and his name and address’.

**Clause 209**

That clause 209 be amended in new section 297A—

(a) by deleting ‘If any’ and substituting the following—

‘No’;

(b) by deleting ‘acts’ and substituting the following—

‘shall be qualified for appointment’;

(c) by deleting ‘holders’ and substituting the following—

‘holders, and if such person acts as such receiver or manager’.

The amendments were agreed to.

Clauses 155, 158, 161 and 209, as amended, were agreed to.

## First Schedule

MR. POON:—I move that the First Schedule be amended as set out in the paper circulated to Members.

### *Proposed amendment*

## First Schedule

That the First Schedule be amended—

(a) in Table A—

(i) in regulation 86—

(A) by deleting paragraph (1) and substituting the following—

‘(1) A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract (being a contract of significance in relation to the company’s business) with the company shall, if his interest in the contract or proposed contract is material, declare the nature of his interest at a meeting of the directors in accordance with section 162 of the Ordinance.’;

(B) in paragraph (2) by deleting ‘any contract or arrangement in which he is interested’ and substituting the following—

‘any such contract or arrangement in which he is so interested’;

(ii) in regulation 90—

(A) in paragraph (e) by inserting after ‘company’ the following—

‘given in accordance with section 157D(3)(a) of the Ordinance’;

(B) in paragraph (f) by deleting ‘;or’ and substituting a full stop;

(C) by deleting paragraph (g);

(iii) in regulation 128 by deleting ‘14’ and substituting the following—

‘21’

(b) in Table C—

(i) in the Form of Memorandum by deleting ‘*Socilitor*’ and substituting the following—

‘Solicitor’;

(ii) in the Articles of Association, in article 37—

(A) in paragraph (e) by inserting after ‘company’ the following—

‘given in accordance with section 157D(3)(a) of the Ordinance’;

(B) by deleting paragraph (g) and substituting the following—

‘(g) is directly or indirectly interested in any contract (being a contract of significance in relation to the company’s



business) with the company and, if his interest in the contract is material, fails to declare the nature of his interest in manner required by section 162 of the Ordinance.’.

The amendments were agreed to.

The First Schedule, as amended, was agreed to.

Second, Third, Fourth and Sixth Schedules

SECRETARY FOR ECONOMIC SERVICES:—I move that the Schedules specified be amended as set out in the paper circulated to Members.

*Proposed amendments*

### **Second Schedule**

That the Second Schedule be amended by deleting ‘[s. 249.]’ and substituting the following—

‘[s. 254.]’.

### **Third Schedule**

That the Third Schedule be amended by deleting ‘[s. 250.]’ and substituting the following—

‘[s. 255.]’.

### **Fourth Schedule**

That the Fourth Schedule be amended by deleting ‘[s. 251.]’ and substituting the following—

‘[s. 256.]’.

### **Sixth Schedule**

That the Sixth Schedule be amended—

(a) by deleting ‘[s. 254.]’ and substituting the following—

‘[s. 259.]’

(b) in Part 1 by deleting ‘Section 130(4) Delete “\$100” and substitute “\$200”.’.

The amendments were agreed to.

The Second, Third, Fourth and Sixth Schedules, as amended, were agreed to.



had passed through Committee without amendment and the

COMPANIES (AMENDMENT) BILL

had passed through Committee with amendments, and moved the third reading of the bills.

*Question put on the Bills and agreed to.*

Bills read the third time and passed.

**Adjournment and next sitting**

HIS HONOUR THE PRESIDENT:—Honourable Members, may I wish you a happy, healthy and prosperous, and hopefully calm and peaceful, Year of the Rat. In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday, 15 February 1984.

*Adjourned accordingly at a quarter to five o'clock.*