

**OFFICIAL REPORT OF PROCEEDINGS****Wednesday, 28 May 1986****The Council met at half-past Two o'clock****PRESENT**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY

SIR DAVID AKERS-JONES, 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 (*Acting*)

MR. JAMES KERR FINDLAY, Q.C., J.P.

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

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

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

THE HONOURABLE ERIC PETER HO, C.B.E., J.P.

SECRETARY FOR TRADE AND INDUSTRY

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

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

THE HONOURABLE HU FA-KUANG, O.B.E., 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 DISTRICT ADMINISTRATION

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

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

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, O.B.E., J.P.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, J.P.

THE HONOURABLE CHAN NAI-KEONG, C.B.E., J.P.

SECRETARY FOR LANDS AND WORKS

THE HONOURABLE CHAN YING-LUN, J.P.

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.

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

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

THE HONOURABLE JAMES NEIL HENDERSON, O.B.E., J.P.

SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE JOHN WALTER CHAMBERS, J.P.

SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE IAN FRANCIS CLUNY MACPHERSON, O.B.E., J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN

THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.

DR. THE HONOURABLE CHIU HIN-KWONG

THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE THOMAS CLYDESDALE

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

THE HONOURABLE HUI YIN-FAT

THE HONOURABLE RICHARD LAI SUNG-LUNG

DR. THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.

THE HONOURABLE LEE YU-TAI

THE HONOURABLE DAVID LI KWOK-PO, J.P.

THE HONOURABLE LIU LIT-FOR, J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE POON CHI-FAI

PROF. THE HONOURABLE POON CHUNG-KWONG

THE HONOURABLE HELMUT SOHMEN

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING

THE HONOURABLE TAM YIU-CHUNG

DR. THE HONOURABLE DANIEL TSE CHI-WAI, O.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT

THE HONOURABLE JOHN RAWLING TODD, C.V.O., O.B.E., J.P.  
SECRETARY FOR HOUSING

#### **ABSENT**

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

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

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, J.P.

THE HONOURABLE LAU WONG FAT, M.B.E., J.P.

#### **IN ATTENDANCE**

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR. LAW KAM-SANG

**Papers**

The following papers were laid on the table pursuant to Standing Order 14(2):

*Subject* *L.N. No.*

**Subsidiary Legislation:**

Boilers and Pressure Receivers Ordinance	
Boilers and Pressure Receivers (Exemption) (Consolidation) (Amendment) Order 1986 .....	125
Public Health and Municipal Services Ordinance	
Public Health and Municipal Services (Civic Centres) (Amendment of Thirteenth Schedule) Order 1986 .....	126

**Sessional Papers 1985-86:**

No. 57—Television Advisory Board Hong Kong—11th Report

**Oral answers to questions****Central provident fund**

1. MR. PANG asked (in Cantonese): *Will the Government inform this Council whether it has any concrete plans to consider setting up a central provident fund?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I advised Members in the course of the Budget debate last month that we were nearing completion of a re-assessment of the arguments for and against a central provident fund. When that exercise is completed, we shall I hope be in a better position to consider, in consultation with interested bodies, whether the establishment of a central provident fund in Hong Kong would be desirable.

MR. PANG (in Cantonese): *Sir, I agree with the reply given by the Secretary for Education and Manpower but I would like to know whether in the process of re-assessment, the Government will maintain an objective view and provide adequate information on both sides of the question?*

SECRETARY FOR EDUCATION AND MANPOWER: Yes, Sir, the paper has been written with a view to giving both the pros and the cons of such a scheme.

MR. HUI: *Sir, can Government inform this Council when will the re-assessment of the arguments for and against a central provident fund be completed and in what ways does Government intend to consult with interested bodies?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, re-assessment has, in fact, been written and will be considered within the Administration within the next few weeks.

MR. LEE YU-TAI: *Sir, may this Council be informed which interested parties will be consulted and whether or not public consultation will take place?*

SECRETARY FOR EDUCATION AND MANPOWER: It is perhaps premature to answer that question fully, but certainly I am sure Members of this Council would be one of the interested bodies.

MR. SZETO (in Cantonese): *Sir, ever since 1 January this year, with the implementation of the long service fund, has there been an increase in the number of private firms adopting provident funds and by how much and is this in any way related to the long service payments?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, this is a rather different question although related. I could not give any figures for this off the cuff although my impression is that in the last year or two there has been a considerable increase in the number of private provident funds. I will do my best to give a written answer to Mr. SZETO on this point. (Annex I)

MR. TAM (in Cantonese): *Sir, will the Government consider passing laws to the effect that companies with over a certain number of employees will have to set up provident funds as an interim measure?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I think it would be premature to attempt to answer a question of that kind because this could well be one of the options which might have to be considered.

MR. TAI: *Sir, may I be enlightened why it is premature to answer the question of Mr. Desmond LEE regarding the consultation of interested bodies?*

SECRETARY FOR EDUCATION AND MANPOWER: Well, Sir, because this paper has only just been completed and is not yet considered by anybody, so part of the consideration of that assessment would be who needs to be consulted.

MR. CHEONG-LEEN: *Sir, in the context of an overall assessment, could I ask the Secretary for Education and Manpower whether he is aware that there is an increasing number of small- and medium-sized manufacturing enterprises which are now considering transferring their production to mainland China much earlier than envisaged due to the comparatively high cost of labour in Hong Kong?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, that seems to me a general point which may or may not relate to this question.

MR. TAM (in Cantonese): *Sir, is the Government of the view that a central provident fund has the following benefits; firstly, it would reduce Government's expenditure in social security especially for the elderly and secondly, it increases the sense of belonging of the employees in their employment?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, those amongst many other points are covered in this assessment and it is perhaps premature for me to make any comment on them until the paper has been considered.

MR. SZETO (in Cantonese): *Sir, not too long ago we have read in the press that the Commissioner for Labour says that it is not Government's intention to set up a central provident fund. Is this report a mistake?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I think Standing Order 18(1) precludes comment on press reports. However, I would be prepared to say that as far as I am aware the views expressed by the Commissioner for Labour related to the views of experienced officers in the Labour Department and do not represent a decision by Government one way or another.

## **Community halls**

2. MR. YEUNG asked: *Will Government inform this Council:*

- (a) *whether there are community halls in all of the 19 districts in Hong Kong for cultural and recreational activities;*
- (b) *what is the average utilisation rate of each of these community halls; and*
- (c) *whether these community halls are air-conditioned and if not, whether there are plans to install air-conditioning systems in these halls?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, there are community halls managed by either Government or other community organisations in all of the 19 districts except Wanchai and Islands. Plans are already in hand to provide community hall facilities in these two districts also.

The average utilisation rate of each of these community halls varies. During the first 10 months since the CNTA took over the management of the community hall facilities in June 1985, the overall average utilisation rate of these halls is about 46 per cent. This utilisation rate is worked out on the basis of the average of all the community halls under CNTA management. The utilisation rate in respect of each community hall is based on the number of hours booked as compared to the number of hours available per month.

Of a total of 61 community halls managed by CNTA and other community organisations, 11 are air-conditioned. As for the remainder, most of which were built in the '60s and '70s, an application has been made for the inclusion of an item for the Public Works Programme to provide air-conditioning. The proposal is to implement air-conditioning in stages in the next few years.

MR. YEUNG: *Sir, what steps will the Government take to enhance the overall average utilisation rate so as to minimise the wastage of the available resources?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the utilisation rate is a function of the nature of the activities, publicity efforts and generally the demand for these facilities in particular districts, rather than simply provision of air-conditioning or other types of facilities. Measures have already been taken to improve the situation in many forms, one of which is to relax the rules governing the exemption of fees for the usage of community centre facilities in order to encourage local organisations to hold activities in these venues. Secondly, District Officers together with the Community Hall Management Committees play an active role in advising the provision of programmes, as well as helping organise activities in these halls. Thirdly, while planning installation of air-conditioning and other type of improvement, renovation and refurbishing of the older halls are carried out to make them more attractive to members of the public and finally the opening hours are adjusted to suit the public. Some of these halls are now open on Sundays in order to maximise usage.

DR. HO: *Sir, the proper siting of community halls will encourage a higher utilisation rate. In planning new community halls, will Government give more consideration to the proper siting of these community facilities?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, obviously for the development of such important facilities, very careful consideration is given to siting.

DR. LAM (in Cantonese): *Sir, since the utilisation of community halls is so low, will Government consider opening certain community halls for students to use as study rooms after school hours?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the average utilisation rate of 40 per cent cannot be considered to be low. This is an average. In many of these halls the utilisation rate reaches about 80/90 per cent. It is only in some of the newly developed areas that the utilisation rate is low and this will no doubt increase in the time to come.

MR. CHEONG: *Sir, would the Secretary be kind enough to inform this Council of the cost of providing each community hall infra-structure in terms of capital cost?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, it obviously varies from one centre to another and I shall give a comprehensive list to Mr. CHEONG in due course. (Annex II)

MR. JACKIE CHAN (in Cantonese): *Sir, will Government inform this Council whether community halls in each district are planned and developed according to population ratio?*

SECRETARY FOR DISTRICT ADMINISTRATION: Yes, Sir, community centres and halls are planned in accordance with the planning requirements.

MR. LEE YU-TAI: *Sir, would the Secretary for District Administration inform this Council whether or not improvements have been made in the provision of manpower for the management of community halls, since I asked the question last winter?*

SECRETARY FOR DISTRICT ADMINISTRATION: Yes, Sir, additional manpower has been provided for in this year's Estimates.

DR. TSE: *Sir, could I ask how is the usage rate calculated when only a small part of a large community hall complex is being used?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, as I mentioned in my reply, the utilisation rate is based on the halls which are managed by CNTA and on the basis of the number of hours available compared with the number of hours taken up.

MR. CHEONG-LEEN: *Sir, as regards providing air-conditioning for the older centres, the Secretary for District Administration says it will take a 'few years'. Does that mean it will be done within three or four years? Is that the estimated period?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, subject to the approval of the necessary funds, it is hoped that the air-conditioning can be provided to most of these halls within the next few years.

DR. LAM (in Cantonese): *Sir, just now my question was left unanswered by the Secretary for District Administration. It is whether Government will consider opening some of the community halls for students outside school hours for self-study.*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, as a temporary usage, such use can be considered.

MR. YEUNG: *Sir, until such time when the remainder of the community halls are air-conditioned, what interim measures are in hand to improve the ventilation of such halls some of which, I understand, are not even provided with electric fans?*

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the utilisation rate is not entirely related to air-conditioning. In fact, the five most heavily used halls are not air-conditioned. But obviously the question of ventilation and other facilities will be taken into consideration in the course of renovation and refurbishing.

### Neglect of young children

3. MRS. NG asked (in Cantonese): *In view of the recent serious accidents involving young children being left alone in their homes, will Government inform this Council whether there are any plans to review the current legislation dealing with the problem of neglect of young children?*

SECRETARY FOR HEALTH AND WELFARE: Sir, section 27 of the Offences Against the Person Ordinance makes it an offence to wilfully assault, ill-treat, neglect, abandon or expose any child under the age of 16. In addition, the Protection of Women and Juveniles Ordinance gives the Director of Social Welfare wide powers to take action in the interests of any child who is likely to be exposed to any moral or physical danger. The director can make an order regarding the control and custody of the child in danger, or alternatively can apply to a juvenile court for a care and protection order to place the child under the care of an appropriate person.

These statutory provisions are considered to be adequate to deal with cases of serious abuse or neglect of young children. However I doubt whether they are appropriate for use in cases of the type referred to by Mrs. NG in which children are left alone while their parents are out; these seem to me to involve negligence rather than serious neglect. In such cases it is very doubtful whether legislation is the right answer, but there is perhaps a need for action to be taken to warn parents of the dangers of leaving their children unattended, to encourage more mutual help among neighbours, and to publicise the services available for families with young children. The Director of Social Welfare plans to initiate a publicity campaign on these lines as soon as possible.

MRS. NG (in Cantonese): *Sir, since the existing legislation is inadequate to deal with cases of serious abuse of young children, can the Government consider passing legislation to state that children, let's say, under the age of five should not be left alone at home, and can the Government consider extending child care services so that we can avoid more tragedies happening?*

SECRETARY FOR HEALTH AND WELFARE: Sir, as I said in my answer, we doubt whether legislation is really appropriate for dealing with cases of this type. However, I believe that in some other countries there is some legislation of these sort and we propose to try and obtain copies of this to see whether there is anything that we can learn from these laws elsewhere. So far as services for looking after young children are concerned, there are of course a variety of these services; perhaps the most significant being the day care centres, which already provide over 24 000 places as at the end of April 1986 and there are plans to provide another 18 nurseries with another 1 800 places in the course of the present financial year.

MR. POON CHI-FAI (in Cantonese): *Sir, can the Government inform this Council whether some people neglect their children because of some financial restraints and if this is so, will the Government consider any plans to help these parents?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, I am sure that the need for mothers to go out to work is one of the reasons why these problems occur, but so far as the child care centres are concerned, there is a fee assistance scheme by which families in need can obtain financial assistance towards the payment of the fees for these centres.*

MISS DUNN: *Sir, does the Government have any idea of the extent of this kind of problem of young children being left unattended by adults and can it explain why it is considered inappropriate to have appropriate legislation for this sort of problem?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, I am afraid due to the nature of the problem, there is no way in which we can produce any realistic estimate of how many children are affected in this way. I am afraid the second part of Miss DUNN's question escaped me; perhaps she wouldn't mind repeating it.*

MISS DUNN: *Why is it considered inappropriate to have legislation for this kind of offence?*

SECRETARY FOR HEALTH AND WELFARE: *Sir, I think the problem is it is difficult to see how legislation would work. We perhaps would have to say it was against the law for anyone to leave children unattended for more than a certain period of time. I am sure it would be very difficult to define how long that period should be. Also, this would be a very difficult law to enforce if we did enact anything of this kind.*

MR. HUI: *Sir, the Secretary has kindly just informed us that he will try to research into other countries' provision in this regard. Could we ask the Government to inform this Council when such a review is completed or a study has been made?*

SECRETARY FOR HEALTH AND WELFARE: *Yes, Sir, I shall be glad to do so.*

### **Review of representative Government**

4. MR. CHEONG-LEEN asked: *In the 1987 review of representative Government in Hong Kong, will full consideration be given to establishing a further three functional constituencies for:*

- (a) the tourist industry;*
- (b) the media; and*
- (c) the accounting profession?*

CHIEF SECRETARY: I must refer Mr. Hilton CHEONG-LEEN to the 1984 White Paper on the Further Development of Representative Government in Hong Kong which, referring to the earlier Green Paper says that a review should take place in 1987 with a view to deciding among other things the possible mix of members elected by the electoral college and the functional constituencies. The request made by Mr. Hilton CHEONG-LEEN, Sir, is covered by that statement.

MR. CHEONG-LEEN: *Sir, will the Chief Secretary confirm that the preliminary work on carrying out such a review has already started and, if so, that the substance of my question is to be taken fully into consideration?*

CHIEF SECRETARY: Sir, the situation is being reviewed on a continuous basis through the period between the last review and publication of the White Paper, and the publication of the Green Paper next year and your point, Sir, will be fully taken into consideration.

DR. CHIU: *Sir, will the Government inform this Council of the criteria in assessing a profession's eligibility for being a functional constituency?*

CHIEF SECRETARY: Sir, I can do no better than quote the Green Paper in 1984 which stressed that full weight should be given to the representation of the economic and professional sectors of Hong Kong's society which was so essential to the future confidence and prosperity.

MR. MARTIN LEE: *Sir, will the Administration please inform this Council whether the mass media would like to be represented in this Council or whether they would prefer to continue to play their independent role of critics of this Council, so that whenever we make a mistake they can write about it?*

CHIEF SECRETARY: Sir, the mass media, so far as I know, Sir, have not expressed a definitive opinion but certainly, Sir, I think the point that Mr. Martin LEE has made about the need for an independent media is very well made.

## **Rent control**

5. MR. LEE YU-TAI asked: *On the subject of rent control on private housing, would the Administration inform this Council:*

- (i) of the number of tenancies currently under rent control;*
- (ii) of the range of monthly rentals of these tenancies, and how the rentals compare with equivalent properties in the decontrolled sector;*
- (iii) of the number of tenancies to be decontrolled progressively in, say, the next three years; and*
- (iv) whether or not there is any long-term policy on rent control in respect of private housing, and if so, the time scale for its implementation?*

SECRETARY FOR HOUSING: Sir, I will answer the fourth part of the question first as this may help to put the answers to the remaining parts in context. In 1981 following a review of rent control Government announced that its long-term policy objective was to phase out rent control as soon as circumstances permitted, subject to social and economic conditions. At the same time, provided a sitting tenant was willing to pay a market rent, he should be protected from unreasonable demands from his landlord seeking to take advantage of his position. As Members may recall, there have been annual reviews of the operation of rent control in 1983, 1984 and 1985. At the time of the 1985 review it was envisaged that rent control would be phased out by about 1991.

Turning to the earlier parts of the question, there are currently some 2 200 pre-war domestic units under control under Part I of the Landlord and Tenant (Consolidation) Ordinance, and a further 105 000 post-war tenancies under control under Part II of that Ordinance.

Permitted rents of pre-war premises range from \$300-\$2,000 per month and average about 55 per cent of free market levels. For post-war premises the range is greater: from a few hundred dollars for smaller flats to about \$8,000 for larger units. The average of such controlled rents stands at about 68 per cent of the equivalent market value.

Over the next three years, on the basis of the present legislation and assuming that there is no significant change in market levels, the rents of some 50 000 flats would reach or would be close to market levels.

The 1986 review has now been completed and I expect to be speaking on this in this Council next week. I will then be able to give a fuller and clearer explanation of Government's objectives and of how Government proposes to achieve these objectives under the somewhat complex workings of the Landlord and Tenant (Consolidation) Ordinance.

However, Sir, at this point I should explain what are the effects of decontrol so as to allay the fears of those who will eventually be affected. In becoming decontrolled, tenants lose the protection of rent control under Parts I and II of the Landlord and Tenant (Consolidation) Ordinance, but virtually all will continue to enjoy the protection of security of tenure given by Part IV. This ensures that, providing a sitting tenant is prepared to pay a market rent, he will be protected from any unreasonable demands of his landlord. For example, a tenant who considers that the rent demanded is above the market may apply to the Lands Tribunal for a declaration of the going market rate for his premises.

MR. LEE YU-TAI (in Cantonese): *Sir, I would like to ask a question concerning the sandwiched class. They live in houses which are controlled at present; they are not eligible to apply for public housing and on the other hand they are not so well off as to be able to live in uncontrolled luxury flats. So for, say, a living unit of 500 sq ft, over the past 10 years, what has the rent level increased to? Will*

*de-control measures give rise to speculation in the property market, thus resulting in further increase in the property rent, and how would the sandwiched class be affected?*

SECRETARY FOR HOUSING: I am afraid, Sir, that the question is rather too specific for me to give an answer at the moment on this particular flat. However, perhaps I can say that in 1981 as far as pre-war premises were concerned, rents were then about 20 per cent of market value and for post-war premises about 40 per cent. As a result of the de-control measures which have been taken, those rents have now moved, as I said, to about 55 per cent and 68 per cent of market value. If the present measures continue, Sir, they should reach market value in about four years' time.

MR. LI: *Sir, I see it is the Government's intention to phase out rent control by 1991. Would the Administration review the situation with regard to changing circumstances in the property market at each stage of the implementation of the de-control process?*

SECRETARY FOR HOUSING: Sir, yes, that, in fact, is why we undertake an annual review. At that time we look at economic and social consequences of the state of the property market.

### **Community service order and spent conviction schemes**

6. MR. HUI asked: *Will Government inform this Council of the latest developments in relation to the community service order and spent conviction schemes; and whether Government yet has a time table for implementation of these schemes?*

ATTORNEY GENERAL: Sir, the present position on the implementation of the community service order scheme is that a Senior Social Work Officer has returned from a two-month attachment programme after studying the operation of a similar scheme in the United Kingdom. He has now prepared a draft plan on the operational arrangements for a pilot scheme in Hong Kong and circulated it to Government departments and voluntary agencies likely to offer placements. A working group has been set up within the Social Welfare Department to examine the practical aspects of the implementation of the scheme. The working group will take approximately two months to firm up proposals on the pilot scheme which will then be submitted to the Social Welfare Advisory Committee for comment. It is aimed, Sir, to introduce the pilot scheme by the end of this year.

Following a period of extensive consultation, a draft Bill to implement a spent conviction scheme will be considered by the Executive Council within the

next two to three weeks. If approved, the Bill will be introduced into the Legislative Council as soon as practicable thereafter. Once it is passed into law it will become effective immediately.

MR. HUI: *Sir, can Government inform this Council of the following with regard to the community service order scheme: (1) how many cases will be expected to be dealt with in the first year of operation of this scheme; (2) will Government provide additional resources in terms of manpower and programme expenses for the voluntary agencies who are a major partner in operating the scheme; and (3) when and how does Government intend to assess and review this pilot project for Hong Kong?*

ATTORNEY GENERAL: Sir, initially the pilot scheme will operate in three magistracies. It is difficult to estimate the number of offenders likely to be involved because this scheme presents an additional option for the courts in exercising its powers after conviction. But it is likely in our estimation that the total number of cases will not exceed 120 at any particular time. Sir, the number of staff required for this is under consideration. It is likely, I believe, that we will need something like five additional welfare officers. As to the question of additional funding for voluntary agencies, I am sure if I may speak for my colleague, the Secretary for Health and Welfare, that when the scheme is in operation and it appears that the voluntary agencies do need resources, he will consider that sympathetically. As to the question of the assessment of the matter, the idea at the moment is that the pilot scheme will run for perhaps something like two years and then the scheme will be evaluated, in consultation of course with the voluntary agencies, and the matter will be submitted to the Social Welfare Advisory Committee for advice before the scheme is implemented in full in all magistracies.

### **Daylight saving time**

7. DR. TSE asked (in Cantonese): *In view of the practice of daylight saving time in China, will Government inform this Council whether Hong Kong would adopt daylight saving time in order to avoid confusion being caused to the large volume of traffic between China and Hong Kong?*

CHIEF SECRETARY: Sir, since 4 May when China changed to summer time, I am advised that there has been no particular confusion or inconvenience to travellers. Indeed, specifically to avoid confusion and inconvenience, the Chinese authorities have made adjustments to the schedules of airlines, ferries, hovercraft and trains. No change was, therefore, required on the Hong Kong side and the opening hours of the border crossing points remain the same. In view of this, the Government has no plan to adopt daylight saving time.

DR. TSE (in Cantonese): *Sir, this year in New York City of the United States, the authorities decided to adopt daylight saving time and also to extend daylight saving time in order to save energy. I would like the Government to inform us whether the Government will consider taking similar measures; if there is no plan to change I would like to know why.*

CHIEF SECRETARY: Sir, there is no indication at this present time that there is a great volume of opinion in Hong Kong that would wish to change over to daylight saving time. If there are such indications the Government would no doubt be prepared to conduct another assessment of public opinion. But in saying that, Sir, I should perhaps remind Members of this Council that when the public opinion surveys were last taken in 1977 something like 70 per cent of the population expressed themselves in support of the present system of GMT plus eight throughout the year for a whole variety of reasons. Those reasons, Sir, seem to me to still stand. But further to that I would also add that in considering any change to this question of introducing summer time we have to bear in mind the operation of our international links, particularly the airlines, and the considerable numbers of arrivals and departures which take place between the hours of 10.30 and midnight each day. If we were to change to summer time then it would need alteration to a great many international airline schedules.

MR. LEE YU-TAI: *Sir, is there any truth in saying that people in mainland China work during the day and Hong Kong people, being industrious, work day and night so there is no need for a daylight saving scheme for the latter?*

CHIEF SECRETARY: I think the logic of that statement is somewhat faulty, Sir!

### **Membership of unlawful societies**

8. DR. HO asked: *Will the Government inform this Council of*

- (a) the sentencing patterns;*
- (b) the average length of custodial sentences; and*
- (c) the size of fines*

*imposed on persons convicted of membership, claiming membership and inducing membership of an unlawful society and being an office bearer of an unlawful society in the years 1983, 1984 and 1985 respectively?*

ATTORNEY GENERAL: Sir, Dr. HO is referring to offences provided for under the Societies Ordinance, Chapter 151. The unlawful societies mentioned include all triad societies.

As aggregate statistics on sentences handed down for those found guilty are not kept as a matter of course at present, full information on sentencing patterns and average sentences over the last three years is unfortunately not available. The implementation of the Standardised Law and Order Statistical System, which will be providing data by the end of this year, will rectify this situation.

However, Sir, some relevant statistics are available through two surveys conducted by the Commissioner of Police on prosecutions under the Societies Ordinance, covering 1983 and the three-month period, July to September 1985. The results of these surveys are shown as Tables 1 and 2 of the information paper which hon. Members have. The statistics given refer to those cases where the principal charge, that is the charge carrying the highest possible sentence, was for an unlawful society offence. In 1983, 330 persons were arrested for unlawful society offences as the principal offence, as compared with 572 persons in 1984 and 759 persons in 1985.

Sir, to answer the points Dr. Ho has raised in turn:

- (a) the sentencing patterns are shown in the results of the surveys. Hon. Members will note that 32 per cent were acquitted and nearly half were conditionally discharged, bound over, put on probation or dealt with under the superintendent's discretion scheme in 1983;
- (b) statistics for 1983 and 1984 on the average length of custodial sentences are regrettably not readily available. As can be seen from Table 3 of the information paper, in 1985 the average length of custodial sentences for the 12 persons sentenced to prison was from six to 12 months; and
- (c) on the average size of fines, again I regret that no statistics are readily available for 1983 and 1984. But as can be seen from the results of the survey of prosecutions brought in the three-month period, July to September 1985 (those in Table 2), fines imposed then varied from \$250 to \$1,000, giving an average of \$605.

Table 1

**Number of triad society member offenders arrested on the principal charge of unlawful society offences in 1983  
by type of sentence, by type of court**

	<i>Acquitted</i>	<i>Conditionally Discharged</i>	<i>Bound Over</i>	<i>On Probation</i>	<i>Fined</i>	<i>Detention/ Training/ Treatment Centre/ Homes</i>	<i>Imprison ment</i>	<i>Suspended Sentence</i>	<i>Superinte ndent's Discretion</i>	<i>Defendant absent/ case result not yet available/ case file in action</i>	<i>Total</i>
Supreme Court											
District Court											
Magistracy	105	21	20	45	18	16	7	5			237
Superintendent's Discretion									23		23
Pending/unknown										70	70
Total	105	21	20	45	18	16	7	5	23	70	330
% of total	31.8	6.4	6.1	13.6	5.5	4.8	2.1	1.5	7.0	21.2	100.0
% of trial cases	44.3	8.9	8.4	19.0	7.6	6.8	3.0	2.1			100.0
% of convicted cases		15.9	15.1	34.1	13.6	12.1	5.3	3.8			100.0

2. A total of 330 triad society members were arrested in 1983 on principal charge of unlawful society offences. 23 offenders were discharged under the Superintendent's Discretion Scheme and 237 were tried in Magistracies. Of those cases with known results, 44.3 per cent were acquitted. Of the convicted offenders, 34.1 per cent were sentenced to probation, 17.4 per cent were given custodial sentences, 15.9 per cent conditionally discharged, 15.1 per cent bound over, 13.6 per cent fined and 3.8 per cent suspended sentences.

Table 2

**Number of offenders principally charged for offences under the Societies Ordinance (Cap. 151) by sentence, Jul.—Sep. 1985**

**No. of offenders prosecuted**

Offence	<i>Detention Centre/ Training Centre/ Homes</i>		<i>Suspended Sentences</i>	<i>On Probation</i>	<i>Bound Over</i>	<i>Conditionally Discharged</i>	<i>Acquitted</i>	<i>Case Result not yet available</i>	<i>All Offenders Prosecuted</i>	<i>Offenders discharged under Super- intendent's Discretion Scheme</i>		<i>All Offenders</i>
	<i>Fined</i>	<i>Discretion</i>								<i>All</i>		
Being a member of triad society	2	4	8*	19	14	1	69	8	125	1	126	
Professing or claiming to be a triad member	2	2	2*	8	3	1	19	3	40	12	52	
Possessing triad society document				2	3	1			6		6	
Inducing another to become a triad member		1		2	1		5	1	10		10	
All offence	4	7	10	31	21	3	93	12	181	13	194	
% of all offenders	2.1%	3.6%	5.2%	16.0%	10.8%	1.5%	47.9%	6.2%	93.3%	6.7%	100.0%	
% of Offenders with known result of trial	2.4%	4.1%	5.9%	18.3%	12.4%	1.8%	55.0%					
% of offenders convicted	5.3%	9.2%	13.2%	40.8%	27.6%	3.9%						

\* Money fined—no. of offenders

Being a member of triad society: \$250—1, \$300—1, \$500—3, \$1,000—3, total—8

Professing or claiming to be a triad member: \$500—2, total—2.

Table 3

## Sentenced persons admitted in 1985 for conviction of Unlawful Society, analysed by detailed nature of the offence

	<i>Office bearer</i>	<i>MOTS/* Claiming MOTS</i>	<i>MOTS and</i>					
			<i>Inducing other to be MOTS</i>	<i>Criminal intimidation</i>	<i>Disorderly conduct assault PC</i>	<i>Resisting Police</i>	<i>Blackmail, assisting in management of unlawful society</i>	<i>Criminal intimidation/common assault</i>
I. Prisoner (Male)								
1-3 mths.	—	—	—	1	—	—	—	—
3-6 mths.	—	2	—	—	1	—	—	—
6-12 mths.	1	2	1	—	—	1	—	1
12-18 mths.	—	—	1	—	—	—	1	—
II. Training Centre (Male)	—	4	—	—	—	—	—	—
III. Detention Centre	—	17	—	—	—	—	—	—
Total	1	25	2	1	1	1	1	1

\* MOTS = Membership of a triad society.

*Note:* Excluding 5 TC inmates and 1 DATC inmate convicted of Unlawful Society but without further information on nature of offence. (DATC = Drug Addiction Training Centre)

DR. HO: *Sir, comparing the conviction statistics in Tables 1 and 2, there is a big drop in custodial sentences in the two years concerned, that is from 17.4 per cent dropping to 5.3 per cent and a substantial increase in bound-overs and suspended sentences respectively. Is this indicative of a leniency towards custodial sentences in assessing the level of penalty by the Judiciary? And may I ask the Acting Attorney General to explain the change in this sentencing pattern?*

ATTORNEY GENERAL: Sir, I don't think it would be proper for me to offer opinions on the general sentencing patterns. It is, of course, as Members know, the function of this Council to set the maximum penalties for particular offences and it is a function of the Judiciary to determine what sentence is imposed in the particular circumstances of each case. We must always bear in mind that these statistics are not always very helpful. They do not reveal all the facts of the case. That is the way the Judiciary approaches the matter, quite properly, in the light of the merits of each case so it is difficult, Sir, to draw conclusions even if I were inclined to do so from this kind of statistics. There is one factor, however, that Members should bear in mind which may be of importance. The maximum fine set in the cases concerned is \$5,000 and that was set in 1964 which at that time was, of course, a considerable amount of money. I don't know what the equivalent today would be but it would certainly be many times that. Of course, the discussion paper issued recently on the triad problem includes, as I remember it, consideration of increasing those penalties. That increase in penalties may result in the sentences by the court increasing because the courts, of course, always take the maximum sentences set by this Council as an indication of the seriousness with which the lawmaker regards the offence.

### **Hong Kong as a contracting party to GATT**

9. MR. CHEONG asked: *In the light of the unquestionably welcome news that Hong Kong is now deemed to be a separate contracting party to the GATT, would the Government inform this Council:*

- (a) of the significance of such a development; and*
- (b) what plans are there, if any, to strengthen our Geneva Office and the Multilateral Division of the Trade Department so as to cope with the expected increase in workload in the very near future?*

SECRETARY FOR TRADE AND INDUSTRY: Sir, Hong Kong is deemed to be a contracting party to the GATT by virtue of the declaration by Her Majesty's Government (HMG) to the Director General of the GATT on 23 April 1986 under the provisions of Article XXVI(5)(c) of the GATT. This declaration formally stated that Hong Kong possesses full autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement.

This declaration by HMG was reinforced by a parallel declaration by the Chinese Government made on the same day that as from 1 July 1997 the Hong Kong Special Administrative Region will meet the requirements for a customs territory to be deemed to be a contracting party as prescribed in the GATT Article XXVI(5)(c), and therefore may, using the name 'Hong Kong, China', continue to be deemed to be a contracting party to the GATT.

By these declarations the British and Chinese Governments have taken the necessary concrete steps envisaged in paragraph 4(A) of Annex II to the Joint Declaration to secure the Hong Kong Special Administrative Region's rights and obligations under the GATT and the Multi-Fibre Arrangement in continuation of Hong Kong's current status.

As Hong Kong has for some years been playing an autonomous role in the GATT and the MFA from within the British delegation there will be little variation of substance in our future role on being deemed to be a contracting party to the GATT. One change is that Hong Kong representatives will now speak in Hong Kong's name, rather than as 'the United Kingdom speaking for Hong Kong'. With this new status, we shall, of course, continue to play our full part in support of the basic principles and purposes of the GATT and in defence of Hong Kong's rights thereunder. The other difference will be that we shall have to pay our share of the GATT budget, which has hitherto been part of the United Kingdom's contribution and borne out of United Kingdom funds. Funds for this purpose for the current year have already been voted by the Finance Committee of this Council.

The work-load of the Geneva Office and the Multi-lateral Division of the Trade Department has indeed increased as a result of Hong Kong's involvement in a range of current multilateral trade issues, including the future of the Multi-Fibre Arrangement and the preparatory committee for the next GATT round. A review of the staffing of the Geneva Office has recently been completed in order to take cognizance of its responsibility and workload. Arising from this review proposals to strengthen the Geneva Office will be put to the Finance Committee of this Council for consideration in the near future. The Multilateral Division of the Trade Department is considered to be adequately staffed at present, though the position will be closely monitored.

MR. CHEONG: *Sir, can the Secretary confirm that (a) the route so taken in securing Hong Kong's new status in the GATT is the most simple and the most effective amongst a number of other alternatives, and (b) by virtue of the most simple and effective route being adopted, this fully demonstrates the sincerity and the pragmatic attitudes taken by both signatory Governments of the Joint Declaration in the process of implementation of the terms of that important agreement.*

SECRETARY FOR TRADE AND INDUSTRY: Sir, I have much pleasure in confirming both points.

PROF. POON: *Sir, in view of the fact that Hong Kong would become a full contracting party to the GATT, does it imply that the Government will be more reluctant to consider reviewing its non-intervention policy towards industry?*

SECRETARY FOR TRADE AND INDUSTRY: *Sir, the Government's policies in regard to the GATT have not altered one bit by virtue of our being deemed to be a contracting party to the GATT so the question of our attitude to intervention in industry will likewise be unaffected.*

### **Australasian and New Zealand legal qualifications**

10. MR. LAI asked: *Does the Government intend to propose amendments to the Legal Practitioners Ordinance so as to recognise Australasian and New Zealand legal qualifications for the purpose of private practice in Hong Kong; and, if so, will this hinder the development of a strong local legal profession?*

ATTORNEY GENERAL: *Sir, the Australasian lawyers in Attorney General's Chambers submitted their case for a change in the law to the UMELCO Security Panel and having heard the interested parties, the panel expressed a view on 17 May this year that there was a case for amending the law to allow Commonwealth-qualified lawyers with an appropriate period of service in the Attorney General's Chambers to be eligible for admission to the Hong Kong Bar, subject to certain conditions. However, Sir, the panel considered that the proposal should only be endorsed if it was part of an overall review of the policy of admission to the Hong Kong Bar.*

The Government, Sir, intends to conduct this review, in consultation with interested parties, and, in due course, submit to the Executive Council proposals for amendments to the law thought appropriate. Obviously, Sir, until that review is conducted and the advice of the Executive Council obtained, I cannot say what the amendments will be.

Sir, the Attorney General expressed the view to the UMELCO Security Panel that allowing the admission to the Hong Kong Bar of experienced Australasian lawyers with long service in his chambers would not hinder the development of a strong local legal profession and he remains of that opinion.

MR. LAI: *Sir, can the Acting Attorney General inform this Council (a) of the length of time which is necessary for the Government to conduct and complete this review; (b) given the small number of Commonwealth qualified lawyers involved and their lengthy experience, can their admission to the local Bar be considered a serious threat to the young local lawyers; and (c) would the quality of the service provided by the local Bar be improved by the admission of the Australasian lawyers?*

ATTORNEY GENERAL: Sir, as to the timing of the matter, until the review group starts work and starts looking at the problems, it is very difficult to say how long it will take. My own estimation would be that the group should be ready early next year with the package. I should say, Sir, that the UMELCO Security Panel did recommend that the question of the admission of Australasians should not be earlier than the middle of next year and so we are not, in view of that recommendation, under great pressure to work quickly but I would imagine that early next year we should be ready with a package to submit to the Executive Council. Sir, there are a small number involved but, with respect, unless I am pressed I would not want to enter into this debate once more. The battle has been fought and the verdict has been returned by a group of wise men and women and I don't want, with respect, unless I am pressed on the matter to open up that battle again.

### Written answer to question

#### Cases of discharge against medical advice

11. DR. LAM asked: *Will the Government inform this Council:*

- (a) *of the total number of 'discharge against medical advice' cases in the past three years in: (i) Government hospitals; and (ii) subvented hospitals; and*
- (b) *what are the main reasons for such action?*

SECRETARY FOR HEALTH AND WELFARE: The numbers of patients who are 'discharged against medical advice' are not collected as a matter of routine for statistical purposes and in the time available it has not been possible to obtain data from the subvented hospitals. However, seven major Government hospitals, Queen Mary, Queen Elizabeth, Prince of Wales, Princess Margaret, Kowloon, Tang Shiu Kin and Tsan Yuk maintain computerised in-patient records. Together, these hospitals account for about 90 per cent of all in-patients treated in Government hospitals and the information requested is as follows:

<i>Year</i>	<i>No. of cases discharged against medical advice</i>
1983	20 900
1984	17 600
1985 (Jan.-Sept.)	12 300

These figures represent 4 to 5 per cent of total discharges in these seven hospitals.

I will write to Dr. LAM with further information on subvented hospitals when this is to hand. (Annex III)

It is not possible to give any reliable indication of the reasons why individual patients choose to discharge themselves from hospital; they cannot be compelled to give their reasons and even if asked would not necessarily give correct

answers. Patients do of course have freedom of choice to decide in which hospitals they wish to be treated, and are free to terminate their stay in hospital if they so wish.

## Government Business

### Motions

#### INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR LANDS AND WORKS moved the following motion:

That with effect from 1 June 1986—

- |                  |  |
|------------------|--|
| First Schedule.  | (a) the functions exercisable by the Director of Engineering Development by virtue of the enactments specified in the second column of the First Schedule be transferred to the Director of Highways;  |
| First Schedule.  | (b) the enactments specified in the second column of the First Schedule be amended in the manner specified opposite thereto in the third column of that Schedule;  |
| Second Schedule. | (c) the provision specified in the third column of the Second Schedule of the enactment specified in the second column of that Schedule be amended by deleting 'Engineering Development Department' wherever it occurs and substituting the following— |
|                  | 'Highways Department';   |
| Third Schedule.  | (d) the functions exercisable by the Director of Engineering Development by virtue of the enactments specified in the second column of the Third Schedule be transferred to the Director of Civil Engineering Services;                                |
| Third Schedule.  | (e) the enactments specified in the second column of the Third Schedule be amended in the manner specified opposite thereto in the third column of that Schedule;  |
| Fourth Schedule. | (f) the provision specified in the third column of the Fourth Schedule of the enactment specified in the second column of that Schedule be amended by deleting 'Engineering Development Department' and substituting the following—                    |

'Civil Engineering Services Department';

- (Cap. 123.) (g) the Fourth Schedule to the Buildings Ordinance be amended by deleting item 5 and substituting the following—  
     ' 5. Civil Engineering Services Department.  
     6. Highways Department.';
- (Cap. 354.) (h) section 16(2)(b) of the Waste Disposal Ordinance is amended by deleting 'that Department' and substituting the following—  
     'the Director'; and
- (Cap. 370.) (i) (i) the functions exercised by the Secretary for Lands and Works by virtue of the Roads (Works, Use and Compensation) Ordinance be transferred to the Secretary for Transport; and  
 (Cap. 370.) (ii) section 2(1) of the Roads (Works, Use and Compensation) Ordinance be amended in the definition of 'Secretary' by deleting 'Lands and Works' and substituting the following—  
     'Transport'.

## FIRST SCHEDULE

### ENACTMENTS IN RESPECT OF WHICH FUNCTIONS OF THE DIRECTOR OF ENGINEERING DEVELOPMENT ARE TRANSFERRED TO THE DIRECTOR OF HIGHWAYS

<i>Item</i>	<i>Enactment</i>	<i>Amendment</i>
(Cap. 28.)	1. Crown Land Ordinance	In the Schedule, delete 'Director of Engineering Development' and substitute the following— 'Director of Highways'.
(Cap. 105.)	2. Public Lighting Ordinance	In sections 2 and 3, delete 'Engineering Development' wherever it occurs and substitute the following— 'Highways'.
(Cap. 107.)	3. Tramway Ordinance	In the definition of 'Director' in section 2, delete 'Engineering Development' and substitute the following— 'Highways'.
(Cap. 132.)	4. Public Health and Municipal Services Ordinance	In the definition of 'street' in section 111A, delete 'Engineering Development' and substitute the following— 'Highways'.
(Cap. 203.)	5. Cross-Harbour Tunnel Ordinance	In the definition of 'Director' in section 2, delete 'Engineering Development' and substitute the following— 'Highways'.
(Cap. 265.)	6. Peak Tramway Ordinance	In the definition of 'Director' in section 2, delete 'Engineering Development' and substitute the following— 'Highways'.



	<i>Item Enactment</i>	<i>Amendment</i>
(Cap. 104. sub. leg.)	2. 'Star' Ferry Company, Limited By-laws	In by-law 20, delete 'Engineering Development' and substituting the following— 'Civil Engineering Services'.
(Cap. 132.)	3. Public Health and Municipal Services Ordinance	(a) In the Third Schedule, delete 'Engineering Development' wherever it occurs and substituting the following— 'Civil Engineering Services'; and  (b) in the Sixth Schedule, delete 'Engineering Development' wherever it occurs and substitute the following— 'Civil Engineering Services'.
(Cap. 147.)	4. Sand Ordinance	In sections 2(1) and (2), 3(1) and 4, delete 'Engineering Development' wherever it occurs and substituting the following— 'Civil Engineering Services'.
(Cap. 228.)	5. Summary Offences Ordinance	In sections 13(6)(a), 13A(a), 37(c) and 38(1) and (2), delete 'Engineering Development' wherever it occurs and substitute the following— 'Civil Engineering Services'.
(Cap. 228. sub. leg.)	6. Summary Offences (Permitted Work) Regulations	In the definition of 'Director' in regulation 2, delete 'Engineering Development' and substitute the following— 'Civil Engineering Services'.
(Cap. 247.)	7. Oil Pollution (Land Use and Requisition) Ordinance	In the definition of 'competent authority' in section 2, delete 'Engineering Development' and substitute the following— 'Civil Engineering Services'.

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#### FOURTH SCHEDULE

PROVISION IN RESPECT OF WHICH REFERENCE TO  
THE ENGINEERING DEVELOPMENT DEPARTMENT IS AMENDED TO  
THE CIVIL ENGINEERING SERVICES DEPARTMENT

	<i>Item Enactment</i>	<i>Amendment</i>
(Cap. 354.)	1. Waste Disposal Ordinance	Section 16(2)(b).

He said: Sir, I rise to move the motion standing in my name on the Order Paper. This motion arises from the re-organisation of certain departments in the Lands and Works group. The first stage came into effect on 11 April 1986. The second stage which will come into effect on 1 June 1986 involves the formation of a *Highways Department* and the transformation of the Engineering Development Department into a *Civil Engineering Services Department*.

The motion concerns the second stage. To enable the new Directors of the Highways Department and the Civil Engineering Services Department to assume their roles with effect from 1 June 1986, certain statutory powers need to be transferred to them. These powers are set out in the motion and the attached schedules.

Arising from this re-organisation, the Highways Department will be responsible to the Secretary for Transport for transport policy and the highways development programme although works policy, construction standards, contract procedures and Public Works Programme co-ordination will continue to be my responsibility. The opportunity is also being taken, therefore, to transfer the functions of the Secretary for Lands and Works exercisable under the Roads (Works, Use and Compensation) Ordinance (Chapter 370) to the Secretary for Transport.

Sir, I beg to move.

*Question put and agreed to.*

### **Pharmacy and Poisons Ordinance**

THE SECRETARY FOR HEALTH AND WELFARE moved the following motion: That the following regulations, made by the Pharmacy and Poisons Board on 1 May 1986, be approved—

- (a) the Pharmacy and Poisons (Amendment) Regulations 1986; and
- (b) the Poisons List (Amendment) Regulations 1986.

He said: Sir, I move the motion standing in my name on the Order Paper in respect of the Poisons List (Amendment) Regulations 1986 and the Pharmacy and Poisons (Amendment) Regulations 1986.

Under section 29 of the Pharmacy and Poisons Ordinance, the Pharmacy and Poisons Board is empowered, subject to the approval of this Council, to make regulations providing for the control of pharmaceutical products and poisons.

The list of poisons under control, i.e. the Poisons List, and the various schedules of pharmaceutical products under the Pharmacy and Poisons Regulations are updated by the Pharmacy and Poisons Board from time to time when new products appear on the market. The proposed amendments to the two sets of regulations reflect the latest up-dating of the list and schedules by the board.

In addition, the proposed amendments also require medicines containing any antihistamine for internal use by human beings to be labelled with a prescribed cautionary statement on their tendency to cause drowsiness.

Sir, I beg to move.

*Question put and agreed to.*

**First Reading of Bills****ANTIQUITIES AND MONUMENTS (AMENDMENT) BILL 1986****PUBLIC BUS SERVICES (AMENDMENT) BILL 1986****ROAD TRAFFIC (AMENDMENT) BILL 1986**

*Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).*

**Second Reading of Bills****ANTIQUITIES AND MONUMENTS (AMENDMENT) BILL 1986**

THE SECRETARY FOR DISTRICT ADMINISTRATION moved the Second Reading of: 'A Bill to amend the Antiquities and Monuments Ordinance'.

He said: Sir, I rise to move the Second Reading of the Antiquities and Monuments (Amendment) Bill 1986.

Section 17 of the Antiquities and Monuments Ordinance provides for the appointment by the Governor of an advisory board to advise the Antiquities Authority on monuments. The purpose of this Bill is to amend the structure of that board.

The existing provisions of the Ordinance provide that the same Government official, the Secretary for Municipal Services, is both the authority and the chairman of the board which advises him. This arrangement is inappropriate in that giving one official this dual role does not provide the appropriate checks and balances. The Bill amends this situation by providing that the chairman of the board shall be a person to be appointed by the Governor. The Secretary for Municipal Services will remain the Antiquities Authority.

The Bill also removes the present limit of nine members on the board including the chairman and vice-chairman. Sir, the work of the Antiquities Advisory Board covers a number of disciplines and requires a similarly wide range of expertise to be represented on it. The present limit is therefore considered to be unnecessarily restrictive.

Other provisions of the Bill provide for the deletion of the post of vice-chairman which has had no role or statutory powers, and for the setting of a quorum at a meeting of the board of not less than half the number of board members.

Sir, I move that the debate be now adjourned.

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

**PUBLIC BUS SERVICES (AMENDMENT) BILL 1986**

THE SECRETARY FOR TRANSPORT moved the Second Reading of: 'A Bill to amend the Public Bus Services Ordinance'.

He said: Sir, I move the Second Reading of the Public Bus Services (Amendment) Bill 1986.

Part V of the Public Bus Services Ordinance contains provisions of the profit control scheme for the franchised bus companies. At present the scheme is applicable only to the Kowloon Motor Bus Company (1933) Limited and the China Motor Bus Company Limited. The New Lantao Bus Company (1973) Limited is not subject to a profit control scheme in view of the relatively small financial scale of the company's operation.

Under the Ordinance, operation of the profit control scheme in respect of a franchised bus company is to be reviewed by the Governor in Council every two years. Earlier reviews of the scheme have indicated that it was working satisfactorily except for a small number of anomalies. The object of the Bill is therefore to rectify these identified weaknesses of the scheme, bringing its operation more in line with standard accounting principles and practices.

Clause 2 of the Bill amends section 26 of the Ordinance to include realised and unrealised currency exchange loss arising from transactions in connection with the franchise of a bus company as operating costs; realised currency exchange profits arising from transactions in connection with the franchise as well as proceeds of sale of any stocks of stores and spares acquired for the purpose of or in connection with its franchise will be included as operating receipts. Definitions of operating profit and permitted return are also clarified.

Clause 3 amends section 28 to exclude tax charges relating to profits of operations outside the scheme in calculating the operating profits.

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

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

**ROAD TRAFFIC (AMENDMENT) BILL 1986**

THE SECRETARY FOR TRANSPORT moved the Second Reading of: 'A Bill to amend the Road Traffic Ordinance'.

He said: Sir, I move the Second Reading of the Road Traffic (Amendment) Bill 1986.

The object of this Bill is to make provision for the use and control of village vehicles. It enables the Governor in Council to make regulations to regulate the use of such vehicles through a permit system.

Village vehicles are motorised carts which are used to transport agricultural produce, building materials and other goods in rural and other areas which are inaccessible or closed to ordinary vehicles. Some of them are controlled by pedestrians while others are operated by a driver seated on the vehicle. Village vehicles have contributed to the development of the rural areas, and the use of such vehicles has the support of most of the local communities on the outlying islands and in the remote parts of the New Territories. They do serve as a convenient means of transporting goods and building materials in areas where the only alternative would be to use manual labour.

Though village vehicles are in use throughout the rural areas of the New Territories and the outlying islands, the use of these vehicles is illegal because they are unregistered, unlicensed and uninsured. However, registration and licensing of these vehicles are not possible because they cannot satisfy the requirements of the Road Traffic (Construction and Maintenance) Regulations. As they cannot be licensed insurance companies will not insure them.

These village vehicles pose a particular risk to public safety when fully loaded and used on steep and narrow footpaths. There has also been considerable public criticism on the public nuisance resulting from the noise such vehicles make. However, in view of the need of the rural communities for such a means of transportation, it is proposed to bring these vehicles within the law through a permit system so that those village vehicles which comply with certain basic safety and noise control requirements can continue to be used.

The proposed permit system is a simpler system, with less stringent elements of control than the registration and licensing system applicable to other types of motor vehicles. The system will be established under a new set of Road Traffic (Village Vehicles) Regulations which will be made by the Governor in Council after this Bill, if accepted by this Council, has passed into law.

Under the proposed system, village vehicles would become a new class of motor vehicles and would be divided into two types, namely, pedestrian-controlled village vehicles and driver-operated village vehicles. Except for specified provisions and regulations, the Road Traffic Ordinance will not apply to village vehicles. The Governor in Council will be empowered to make regulations for the control of village vehicles through the issue of permits and the stipulation of certain standards of construction and permit conditions. The permit for a village vehicle, which is valid for a year, is issued or renewed on payment of a fee of \$50.

Consequential amendments are made to the Motor Vehicles Insurance (Third Party Risks) Ordinance to require that village vehicles be insured against third party risks, and to the Motor Vehicles (First Registration Tax) Ordinance to exclude village vehicles from the classes of motor vehicles defined in that Ordinance.

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

*Motion made. That the debate on the Second Reading of the Bill be adjourned.*

*Question put and agreed to.*

## **BANKING BILL 1986**

### **Resumption of debate on Second Reading (19 March 1986)**

MR. SWAINE: Sir, the Banking Bill 1986 was introduced into this Council on 19 March 1986 and the Financial Secretary then allowed two months for detailed examination and representation by interested bodies before resumption of the debate. In the event this Bill comes back to this Council just one week after the target date, with its principles intact but with no less than 171 amendments to 78 clauses. These amendments reflect the extensive consultation that has taken place involving the Administration, the advisory committees, professional bodies and other interested parties, and the ad hoc group of Unofficial Members formed to study this Bill. It would be fair to say that the final form of this Bill represents a large measure of consensus. No one, after all, complains with the need for this legislation, although it has been necessary to ensure that sufficient safeguards are provided against some of its more stringent requirements.

Thus the penal provisions of clauses 58(4), 60(8), 63(6), 64(4) and 95(2) which place the directors and managers of authorised institutions at risk for failing to comply with the requirements of those clauses will be ameliorated by providing the defence of reasonable excuse. This will be in addition to the omnibus defence provided by clause 130 where the offence is committed without the consent or connivance of the person prosecuted. Amendments will accordingly be moved at the Committee stage.

Among the more important amendments which are worthy of mention are those under clauses 7(2), 82 and 86. The commissioner is to have specific power to issue guidelines for the guidance of authorised institutions indicating the manner in which he proposes to exercise his statutory functions. He may in particular specify business practices which should not be engaged in by authorised institutions for fear of causing dependence on the financial soundness of a single party. This replaces the former provision by which the commissioner would have issued directions rather than guidelines in this respect. Clause 86 which contains prohibitions on authorised institutions engaging in certain trades will be deleted, and the intention is that these will instead be covered by guidelines under clause 7.

As a result of the specific recommendations of the ad hoc group, the following amendments will also be moved:

- (a) Clause 71 will be deleted. This would have rendered void a resolution passed by the exercise of voting power in excess of the specified percentage (10 per cent or more) without the approval of the commissioner. The implications of declaring such a resolution void would have been very far reaching.
- (b) Clause 70(1) will be amended to remove the restriction which would otherwise apply to the exercise of voting power by the holding company of an authorised institution as this would be remote from the real mischief.
- (c) Clause 62 will be amended to provide that the commissioner's complaints against auditors shall be made to the Registrar of the Society rather than its Disciplinary Committee, to accord with normal procedures.
- (d) Clause 60(1) will re-instate the requirement for a copy of the audited accounts to be published in the newspapers.
- (e) Minor amendments will be made to clauses 61(1) and 99 to clarify or improve their operation.

The *ad hoc* group raised with the Administration the basic question of appeals from decisions of the commissioner and the Financial Secretary to the Governor in Council, and queried whether the forum of appeal might not more appropriately be a judicial or quasi-judicial tribunal. We understand that a general review is in progress over the question of administrative appeals, and we have been assured by the Administration that this point will be taken into account in the light of this review.

Reforms have however been agreed on some specific measures, to provide for an appeal to the Governor in Council from decisions where there was previously no right of appeal, namely:

- (a) Under clauses 21(6) and 22(1A) from the imposition of conditions by the commissioner on or affecting the registration of a deposit-taking company.
- (b) Under clause 25(5) from the imposition of conditions by the Financial Secretary on the licensing of a deposit-taking company.

Amendments will accordingly be moved to these clauses at the Committee stage and also to clause 99(1) by permitting an appeal from the commissioner to the Financial Secretary where the former requires an authorised institution to cease issuing a misleading advertisement.

Sir, other Members of the *ad hoc* group will be speaking on other aspects of the Bill. Subject to the agreed amendments which will be moved at the Committee stage, I support the motion.

MR. CHEONG: Sir, in rising to support the motion, please allow me first to declare an interest as a non-executive director of a locally incorporated bank; namely, the Wing On Bank. Secondly, I would like to applaud the Administration's

determination and hard work in successfully putting this Bill for our consideration this afternoon. It is certainly no mean feat to have been able to prepare a well drafted major piece of important legislation on the one hand, whilst having to direct attention towards sorting through the maze of problems within the banking sector on the other. Time was also a major constraint as leaders of our responsible Administration naturally wish to correct as many anomalies as possible and in as short a time frame as possible. Given the circumstances and the final performance, the efforts of the Administration is certainly worthy of our praise and respect. Perhaps possible critics of the Administration ought to delve deeper into considering and understanding all aspects of the problems associated with the issues and be more objective in their assessments before making a big song and dance to the gallery.

Sir, I have always harboured the conviction that as a Member of this Council, one should always look at the macro interest of Hong Kong as the number one priority. It is with that in mind that I would like to offer a few observations.

First, it is without a shred of doubt that Hong Kong should strive to maintain our position as an international financial services centre. This is vital not only for our developments in the short-term but also for our long-term future. As such, the policy that the Administration had adopted in dealing with the banking problems we faced not only had won praises and recognition in the international market place but had certainly averted a disastrous loss of confidence in Hong Kong. The provisions of this Bill, when enacted, would no doubt provide the much needed tools to strengthen the foundation upon which the integrity and the viability of Hong Kong as an international financial centre can be further built. Some might feel that those powers given to the Commissioner of Banking may be far too sweeping and worry about possible abuses. These are legitimate concerns and it behoves the Administration to take special note of these concerns and act responsibly and reasonably in the implementation of the provisions of this Bill. Also, it behoves Members of this Council to objectively monitor future developments and voice the necessary suggestions rationally when the need arises. In the interest of Hong Kong, we surely all must work with one another and not against one another.

Secondly, I plead that members of the financial community should do some soul searching themselves and objectively look into what they had done in the past few years that might have contributed towards our woes. Were our friends in the financial world so blinded by the heat of the property and stock markets in the late '70s and early '80s as to indiscriminately increase the money supply through very aggressive lending policies? Were they not too concerned about gaining a market share thus unwittingly adding fuel to the fire resulting in the encouragement of more speculative activities in the market place? Were they, in fact, not responsible somewhat in supplying the knives that facilitated some people to commit suicide? Such soul searching exercise would, I am sure, help to provide a degree of balance to the future development of our financial sector.

Thirdly, within any economic entity in this world, the existence of a healthy financial sector, as mainly represented by banks and deposit-taking institutions is an important kingpin to the stability and prosperity of that entity. Managements of such institutions, by virtue of the nature of their work, are normally held in high esteem, and wields a lot more influence than other members living within that community. Thus, they are likely to be more exposed than others to a slightly narrower developments of their perceptions of values. This could be one of the reasons giving rise to the existence of a small number of black sheeps within the community of bankers who have betrayed the trust and respect bestowed upon them. No legislation in this world can become the panacea for eliminating unbalanced judgements and fraudulent practices. It must be the responsibility of the management of our financial institutions to guard against human failing and weaknesses. In that respect, perhaps bankers should consider providing intensive training programmes for their up and coming managers not only in respect of their professional skills but also in respect of the field of character development.

Finally, in the light of severe ups and downs experienced since 1979 by our property and stock markets, a phenomenon which probably contributed indirectly to a series of banking problems, it is understandable that the screws are being tightened through measures taken by both the Administration and the banking industry. I support wholeheartedly the rationale behind those measures. However, I wish to caution against adopting an overkill psychology. Lending institutions act as a vital lubricant to the smooth running of any economy. In our case, for the next few years, with domestic demand subsiding somewhat from its dizzying height, our economic growth will most likely be led by our traditional trading and industrial sectors. It is imperative that their growth prospects should not be choked by the natural emotional overswing of attitudes of our bankers from being overtly aggressive to being overtly defensive in their lending policies.

In closing, Sir, allow me to offer a special tribute to Sir John and his team. For the past few years, there is no doubt that we have a major crisis on our hands. Sir John as captain of his team displayed admirable leadership in steering Hong Kong out of troubled waters to calmer waters. Despite his own misfortune that he could not have foreseen the magnitude and weight of the problems he had to face and solve during his term of office, Sir John will always be remembered as the robust stalwart who has successfully safeguarded both the short and the long-term economic interest of Hong Kong.

With these remarks, Sir, I have pleasure in supporting the motion.

DR. IP: Sir, we live in an advanced community in which, in return to conforming to the society by abiding in some ways by their restrictive legislations, we are also protected by them, so, while it is illegal not to allow our children to attend school, we are ensured that teaching establishments possess a certain standard. While it is illegal to drive a car without proper qualification, Government

ensures that cars driven on the road are roadworthy. While we cannot build a house to whatever shape and size we so desire, we can be assured that one which is built according to the Building Regulations would be safe to live in. The same should apply to banks and deposit-taking companies, such that while not anyone can operate such organisations, we can be assured that when one is allowed to exist, it is safe for us to deposit our money in.

With the increasing complexity of our community and the increasing complexity of the services so offered to the man on the street, Government needs to step in increasingly with legislations for consumer protection. I see the Banking Bill to be one of such. Furthermore with the recent bank and deposit-taking company collapses indicating inadequate central supervision of the stability of such financial organisations, the Banking Bill is a timely bit of legislation.

I sat on this working group, heavily weighted with professionals, to look into this Banking Bill very much as a layman representing the man on the street. I questioned the various aspects of the Bill from a consumer's angle and it has satisfied me that a good balance has been struck, firstly between consumer protection and the privacy of competitive commercial operations, and secondly between the urgency of setting standards and the reality that some financial organisations are unable to meet such criteria immediately.

Although the Administration has not accepted my proposal that there should be an annual publication of registered banks and deposit-taking companies, so that the consumer can check to see whether his choice is a sound one, I have been assured that there would be a convenient channel through which a consumer can check.

In welcoming this Bill, being one of the most complex one I have been involved with, I would like to congratulate the Administration for their positive efforts in obtaining the views of those professional bodies chiefly affected and on behalf of consumers I would also like to thank the convener of this group, Mr. John SWAINE, for his time and efforts spent on this Bill. It has been a pleasure working with him.

And lastly, it is so reassuring to know that once this Bill is enacted, we have Government to supervise the banks to ensure that they are safe, and for the banks in turn to supervise and manage our money for us, while we are all busy at our work making Hong Kong one of the best and most prosperous communities in the world.

With these words, Sir, I support the Bill before Council.

MR. PETER POON: Sir, I declare an interest as a director of Hang Lung Bank, Overseas Trust Bank and Hong Kong Industrial and Commercial Bank. Having said that, I welcome the Banking Bill 1986. It is a Bill consolidating the laws regulating both banks and deposit-taking companies and incorporating very substantial improvements to the prudential supervision of these institutions.

One provision in the Bill is particularly helpful to auditors. I refer to section 61 which provides for tripartite meeting of the directors, the auditors and the Commissioner of Banking to discuss the affairs of a bank. I understand that the Hong Kong Society of Accountants has been consulted and supports such arrangement. Hitherto, auditors of banks are often in a dilemma when they find it necessary or appropriate to discuss clients' affairs with the Commissioner of Banking but are refrained from doing so because of the question of confidentiality. The new provision will facilitate useful exchange of views which will enable problems to be identified at an early stage and possibly enable them to be solved or dealt with as the occasion arises, and not until the audit report has come out.

I shall later on move at Committee stage a number of amendments to the Bill for reasons which have already been eloquently given by my hon. colleague Mr. John SWAINE. I am satisfied that, the Bill, after the various amendments proposed, will give the Commissioner of Banking adequate but not excessive powers. I am also convinced that the Bill, if passed, will greatly strengthen the existing extent and quality of banking supervision.

With these remarks, Sir, I support the motion.

MR. YEUNG (in Cantonese): Sir, being a member of the boards of directors of the Overseas Trust Bank and the Hang Lung Bank, I declare an interest in the Banking Bill.

In order to have a sound banking system in Hong Kong, attention must be given to improving the supervision of banking operations. The closure of banks will not only affect the prosperity and stability of Hong Kong, but also put pressure on the exchange rate of the Hong Kong dollar.

The existing Banking Ordinance was enacted twenty years ago and is already outdated. The present Banking Bill has been drafted after Government's review of the Banking Ordinance last year. It can be seen that the Bill spells out in detail the sphere of the Commissioner of Banking's powers, the risk-asset ratio of banks and deposit-taking companies, the liquidity ratio, the auditing procedures of banks and deposit-taking companies as well as the relationship between the Commissioner of Banking and auditors and so on. These measures are useful to prudential supervision by the commissioner. The new Bill reflects a different but more timely emphasis in Government's approach to the supervision of banking business—the provisions of the new Bill are more flexible and more dependent on the commissioner's discretion and profound judgement. Moreover, better supervision can be achieved by unifying the supervision of banks and that of deposit-taking companies. Hence, the Bill clearly indicates that Government takes steps to reinforce control and draws up a set of guidelines to ensure a healthy development of the financial sector in future.

I believe that the Commissioner of Banking should have power in order to effectively supervise the businesses of banks and deposit-taking companies. The

new Bill which delegates greater power to the commissioner also gives him more responsibilities. While he must bear responsibility for his work, we must also have faith in the commissioner who is familiar with the local and international banking industries and who has good and close connections in the industry and can be expected to exercise judgment and flexibility in his work and to foresee future development. Naturally, the quality, experience and judgment of the commissioner and his staff will be the crucial elements for effective supervision. If the staff of the office who are responsible for supervision are inexperienced and do not have sound professional knowledge, there will be cases of abuse of power and even problems of ineffective supervision. The staff of the office should, therefore, acquire as much professional knowledge in finance as possible and keep close contact with the banking industry in order to have a better understanding of the relationship amongst the financial institutions and the actual situation of their businesses. The Office of the Commissioner of Banking should continue to make efforts to upgrade the quality of its staff as well as to recruit and train more suitable personnel.

In fact, the amended Banking Bill does not affect the original spirit of the legislation. Instead, it consolidates and maintains the sound operating system of banks and deposit-taking companies. Furthermore, for the sake of a favourable development of the whole finance industry and the economy, it is particularly important for the financial industry to exercise greater self-discipline. All in all, the Bill can be said to be a compact and comprehensive document. It does not only enhance the supervision standard of the local banking industry, but also help in the development of the financial industry in Hong Kong and ensure that depositors and investors will have confidence in the local banking industry.

Sir, I support the motion.

MR. CHEONG-LEEN: Sir, not being a banker, I shall confine my remarks to a few non-technical observations.

In recent years, liberalisation in the banking industry has encouraged the establishment here of more banks and deposit-taking companies per square mile than in most other industrialised cities in the world. This has led to more competition, more risk-taking, smaller profit margins and a range of abuses in the industry.

The liberalisation did indeed cause a number of serious problems in the banking industry to surface, and in the interest of preserving what is generally still accepted as Hong Kong's stable financial climate, the Government considered it wise to come to the rescue of several banks, and to use the Exchange Fund as the financial guarantor of its actions.

In recent months, I have had occasion to speak to concerned people in the banking and investment fields in different parts of the world, and there was much praise for the Financial Secretary and the Banking Commissioner for their decisive actions. Against the delicate background of the Sino-British

negotiations leading up to the signing of the Joint Declaration and thinking ahead of the prospects of 1997 and beyond, it is not difficult to understand why I too support the Financial Secretary's decisions to utilise the Exchange Fund in the specific ways that he did to stabilise the broader financial spectrum in Hong Kong. His objective was maintaining confidence—both internally and externally—and that objective has been achieved. He could not have done otherwise but to Hong Kong's detriment and harm to her on-going prosperity. Had he done otherwise and had there most unfortunately been a serious bank run, I have no doubt that he would have been politically crucified by the community. The financial impact of any bank run, especially during the past two or three years, could have unleashed forces seriously affecting Hong Kong's financial system, with attendant loss of confidence locally and internationally resulting thereby.

Now speaking both as a legislator and as a consumer, I think the time has come to tighten and improve the banking system, so that there is greater protection for the consumer public and enhanced reputation for Hong Kong's banks and other financial institutions both locally and internationally. As our financial sector continues expanding, we shall have to think of our own interests, not only in domestic terms, but equally in global terms as well. By so doing, Hong Kong's role as a financial services centre, providing sophisticated expertise within the Asia-Pacific Region and particularly to China itself, will be even further strengthened.

I support the Banking Bill 1986 together with the amendments to be proposed both by the Official side and by the Legislative Council *ad hoc* group.

MR. CLYDESDALE: Sir, as a professional accountant, I, too, welcome the introduction of this Bill which should enhance the regulation of the business of banking in Hong Kong and should assist the Commissioner of Banking to identify potential problems earlier than hitherto. In particular the provision which formalises the relationship between authorised institutions, supervisors and auditors and enables meetings between these three parties to take place without ethical constraints is most helpful. Such meetings should enable the three parties to jointly work out, on a timely basis, solutions to problem matters revealed by audit or examination thus helping to safeguard the interests of depositors and shareholders.

The Bill does not specifically address the particular problem of the use of nominee companies to conceal the concentration of loans to one person or company. Since, however, authorised institutions should be aware of the identity of the ultimate beneficial borrower of funds and the uses to which the funds are to be put, I would recommend that the commissioner give consideration to introducing a requirement for this information to be recorded by the authorised institution in a register to be available for inspection by both the auditors of the institution and the commissioner.

The Bill introduces a number of different percentage tests, particularly those relating to the amended liquidity and new capital adequacy ratios, which have not been tried in practice. Although the capital adequacy test will not be brought into operation until approximately two years after the other provisions of the Bill, it is to be hoped that the commissioner will consider any necessary adjustments to these percentages and classifications of assets in the light of operational procedure.

Enough has been said on the subject of appeals procedure for me to suggest merely that among other possibilities consideration might be given to the establishment of a Banking Commission similar to the existing Securities Commission.

Sir, with these remarks, I support the motion.

MR. LI: Sir, I would like first to declare my interest as the chief executive of Bank of East Asia, a locally incorporate bank.

The Banking Bill 1986 is a very important development for our banking and financial community.

As representative of the financial constituency in this Council, and as a member of the ad hoc group formed to study the Bill, I am well aware that the Bill before us is the product of much collective thought, careful scrutiny, lengthy discussions and painful soul searching.

Given the problems we have faced, particularly in the recent years, we all hope that this new Bill will provide adequate safeguards for the future. However no amount of legislation will prevent the unscrupulous, the imprudent and the inept from leading our financial institutions to disaster. Ultimately, the quality of our banking institutions depends on the quality of our bankers.

In general terms, the Bill has received widespread support within the banking and financial fraternity. The Financial Secretary, the Secretary for Monetary Affairs and the Commissioner of Banking may well go down in history as dedicated and determined men who made the Bill possible. They deserve our heartiest congratulations and grateful thanks.

But now the time has come for the Bill to be put to the acid test in the banking and financial sector it is meant to guide and to guard.

I believe that our industry is cautiously optimistic for the future, although we do, of course, reserve the right to see if the Bill will work as well in practice as on paper, and whether in addition to providing the promised antidotes, there might be side effects we did not anticipate.

I propose that this Bill be introduced with the utmost care and with a pledge to the community of regular and fair review and a large measure of flexibility in adapting the provisions of the Bill to a constantly changing environment. My personal view is that we should, in time, give further consideration to permitting

aggrieved institutions the right of appeal to an independent committee, consisting of a Judge and Members of this Council who are not involved in the financial and banking sector.

Hong Kong is a vital international centre for finance and investment. We must sustain and enhance our position, and in doing so, maintain a balance between prudent regulation and the free enterprise policies that have historically served us so well. I would reiterate that ultimately, sound banks depend more on good bankers than on good banking laws.

Finally, on behalf of the banking and financial community, may I offer our best wishes to our Financial Secretary on this his last attendance in this Council and extend to him our gratitude for an outstanding job performed under the most difficult conditions.

With these remarks, Sir, I support the motion.

MR. SOHMEN: Sir, may I please declare an interest as a non-executive director of the Hongkong and Shanghai Banking Corporation. The views I am expressing should however not necessarily be considered as reflecting those of the bank.

Sir, many years ago I had the privilege of being included in the work on the revision of a bank act in another jurisdiction. That process took two and a half years. It is a measure of the efficiency of Hong Kong that only two and a half months of public analysis and discussion were required to bring the Banking Bill to Committee stage and to Third Reading since it was first introduced in this Council. Preparatory work and consultation had of course gone on for a longer time; nevertheless, given that a large number of comments were received and needed to be drafted into amendments to the Bill, the Administration should be congratulated for not only being most receptive to the submissions made, but for maintaining the time table with only a small delay. It will be a better Bill because of these amendments.

The analytical process was facilitated no doubt by the general acceptance of the Bill and its objectives on the part of the financial sector, the concerned professions, and the community at large. It is clearly perceived as a measure required to deal with the problem areas identified in recent collapses and liquidity crises of a number of our financial institutions, and to re-introduce greater public confidence in the whole system, at home as well as abroad. We must however remain fully conscious of the fact that the Banking Bill cannot and will not provide any guarantees against future failures. It will at best afford somewhat greater protection for depositors and investors alike. In an area as complex, as fragile, and as open to potential abuse as banking, supervision and regulation will never be wholly perfect nor wholly successful. I believe the Banking Bill in its present form will at least go some considerable way to addressing the difficulties in a rational, comprehensive, and internationally accepted manner.

The Banking Bill is not landmark legislation but essentially seeks to put teeth into the supervisory provisions of the 1964 Act, as well as setting objective parameters for lending, capital adequacy, and liquidity. For effective supervision it gives the Banking Commissioner access to relevant information not required to be published or supplied under other legislation. It is meant to allow the commissioner to identify any incipient weaknesses in the ownership, management, and business of the financial institutions. Since banking is more of an art than a science, the Banking Commissioner's task is not an easy one; he needs a degree of discretion and room for the exercise of what must ultimately be subjective judgment. He must also always balance the need for confidentiality and for the preservation of trust in the system with the necessity of access to full information. Fears had been expressed that the commissioner's powers were too sweeping, and the *ad hoc* group was pleased to see that the Administration accepted:

- (1) the desirability to allow additional appeals from the commissioner's decisions;
- (2) the power to issue directives under clause 82, and the functions of the commissioner enumerated under clause 7(2) now to be subject to guidelines only;
- (3) the requirements for disclosure of information on shareholdings under clause 64 to allow the defence of 'reasonable excuse' for non-compliance;
- (4) the removal in clause 70(1) of what seemed an excessive and extraterritorial power to approve both domestic and overseas shareholders of holding companies of local banks and deposit-taking companies; and finally,
- (5) the deletion of the original clause 71 and clause 86 on the grounds of vagueness and perceived difficulty in application.

Guidelines will be issued in place of clause 86, a much more flexible and practical arrangement.

I would hope that in all those instances where an appeal is allowed, the commissioner will give full reasons for his decisions so that the appeals procedure can be effective. I am encouraged that the Administration has agreed to further explore the possibility—raised by the hon. David LI—for appeals to be heard by a judicial tribunal rather than by the Governor in Council as now foreseen, after an overall review presently in progress of the administrative appeals procedure is completed. Clearly this suggestion was not so fundamental in the overall context of the Bill so as to risk delaying its passage.

For the proper implementation of the Bill it is obviously of critical importance that the staffing and the resources of the commissioner's office be given full attention and support. As the hon. YEUNG Po-kwan has already also suggested it is essential that there is on-going professional expertise available to the commissioner, given the past experience and the width of the new

monitoring framework. I would like to suggest in this context, and, of course, without casting any aspersions on the competence of the present staff, that consideration be given to the secondment to the Banking Commissioner's Office of experienced and active commercial bankers, especially in the two years prior to the provisions of Part XVII of the Bill becoming effective. Not only could career bankers from the commercial sector help the supervisory authority in the assessment of risks and of their weighting, but could also provide a practical input to the application of many of the other technical provisions of the Bill. In turn these bankers could obtain a better understanding of the work of a Government regulatory unit which may be useful experience on return to their normal managerial responsibilities. In fact, a programme of continuous interchange of personnel between the two sides, while possibly radical in concept, would make good practical sense; and in Hong Kong we actually already have some precedents. This proposal, if implemented, would also take the steam out of the argument that the Banking Bill has in parts submerged commonsense by theory, and could help in the effort of preventing those who always readily see, and are keen to exploit any legislative loopholes, from too easily achieving their aims. Sometimes poachers do make more effective gamekeepers.

Other public criticisms of the Bill relate to its possible effects on the smaller banks and DTC's; among the latter are especially those whose asset portfolios include large offshore loans, loans to parent institutions, or securities held as trading assets, and which as a result have argued for the creation of a new category of 'limited service banks' subject to more liberal rules. The disadvantages to Hong Kong as an international financial centre resulting from the possible scaling down or disappearance of the operations of these DTC's, if such a differentiation was not ultimately accepted, must be weighed against the greater demands likely to be made on effective supervision of several different categories of financial institutions. The whole tenor of the present Bill is of course towards unification and not diversity; the reasons so far advanced for separate treatment are also not fully convincing.

The smaller banks, traditionally closely-owned by family interests and doing business to a large extent with related shareholders will undoubtedly be affected by the limitations on the loans provisions of the Bill, and not only by capital adequacy ratios. Whether the likely disappearance of the limited number of remaining smaller banks and their service capability for the proverbial 'man in the street' is a proper price to pay for the increasing sophistication and size of Hong Kong as a financial market-place of international standing, or is in any event inevitable or actually preferred, is perhaps an academic question. Historical examples can likely be found of banks which survived *because* of the concentration of risk to a single name or a single sector affiliated with it, while other banks with an acceptable diversified exposure and fully supervised got concurrently into difficulties.

What should also be welcomed in the Bill is the inclusion (in the Third Schedule) of some off-balance sheet risks, given the concern of bank supervisory

authorities in many countries with the growing practice of securisation of debt. Only time and experience will tell whether the risk classifications are realistic and do in fact correspond to the actual loss experience of a sufficiently representative sample of financial institutions governed by the Bill.

The Banking Bill classifies perpetual floating rate notes as capital, and those issued and qualifying for purposes of clause 3 of the Third Schedule amount to over US\$ 8 billion, of which US\$ 1 billion is said to be held in Hong Kong. An issuing bank is allowed to count the notes for not more than half of its paid-up capital, but since they qualify as share capital in the application of clause 87, subject to the exemptions of sub-clause (2) thereof, institutions governed by the Bill holding such notes will face restrictions. Claims that this will affect the issue, the trading, and consequently the price of these notes are probably well-founded; on the other hand, it seems difficult to make a distinction in the character of this form of debt for separate parts of the Bill, and the adopted treatment has the benefit of logical consistency.

Sir, all legislation contains compromises, and so does the Banking Bill, but I believe that they are acceptable compromises reached after a great deal of informed debate. The Bill does of course attempt to lock the stable door after the horse has bolted—several horses in fact—but it is a necessary and still a very timely Bill. For that reason, Sir, I fully support the motion.

4.20 p.m.

HIS EXCELLENCY THE PRESIDENT: At this point, Council might like a short break.

4.38 p.m.

HIS EXCELLENCY THE PRESIDENT: Council resumes.

FINANCIAL SECRETARY: Sir, on my last appearance in the Council after 12 years as a Member I am pleased, indeed honoured, to be able to marshal the concluding stages of this significant and overdue Bill—arguably the most important to come before the Council in this session. Its importance stems from the fact that a stable and prosperous economy is essential for the future of Hong Kong. We have no future unless the economy flourishes. Sound banking is a vital element. All has clearly not been well, which most will acknowledge to be a considerable, if uncharacteristic understatement. New law will not provide a panacea. Personal integrity is not a product of legislation. Nor is sound banking. But this Bill is a major step forward. With experience there will be a need for further amendment and improvement. But we will have a proper foundation on which to build.

As the admirable chairman of the ad hoc group will confirm, I made it clear that a properly considered and fully scrutinised Ordinance was of far more importance than my own face. Moderate delay would not have been disastrous.

But we are just on schedule. It has nevertheless been a close run thing with Committee stage amendments to 78 clauses to be made—171 in all.

Some will fairly ask why this rather unusual proceeding has been necessary. Many, including the Senior Member, know that in our earlier considerations we had concluded that a White Bill procedure would have been the appropriate course to take with a bill so complicated. This would however have meant a further delay of another six months or so after two years work and extensive consultation. In these circumstances we then concluded that for obvious reasons this was not in the best interest of Hong Kong and we embarked on the course which ends here this afternoon.

It is a course that could not have been taken without the full co-operation of the ad hoc group, to whose major and very knowledgeable contributions I pay tribute. I think that they will also wish me to thank the others involved including the Office of the Commissioner of Banking, the Monetary Affairs Branch, the Law Draftsman, the Hong Kong Association of Banks, the DTC Association, the two Advisory Committees, the Hong Kong Society of Accountants and many many other outside institutions. I cannot remember any bill which has been the product of so much consultation and hard work.

The amendments to the Bill do not affect the substance of the *new* policies and approaches embodied in it. All agree that these are necessary to strengthen prudential supervision and thus to promote a stable system and a degree of protection for depositors. This consensus reflects the result of the extensive consultation before the Bill was drafted. Most of the amendments cover practical, technical, and drafting matters; indeed, a number of them relate to provisions that are carried over from the two existing Ordinances which the Bill will replace. I will now describe briefly the main amendments that I will move in the Committee stage.

*Clause 2(1): Definition of deposits*

The existing DTC Ordinance defines deposits in a way involving only positive interest. Under our present linked exchange rate system, zero or even negative interest rate for Hong Kong dollar deposits is certainly not inconceivable. The Bill therefore extends the definition of deposits to cover this possibility. As a result, it has been represented to us that some loans of money which are not really deposits in the normal sense might be caught unwittingly: these are loans on terms referable to the provision of property or services, and loans by one company to another, both companies being in the same group, but neither being an authorised institution. The definition of deposits will therefore be amended accordingly.

*Clause 2(1): Definition of perpetual subordinated debt*

Perpetual subordinated debt is one of the recent innovations in the rapidly changing financial market-place. It is (some say) as sound as equity capital, and comes into the Bill as part of the capital base in calculating the capital adequacy

ratio, and, for consistency, it is treated as equity capital when authorised institutions hold it as an asset, subject to the limitations on shareholdings in clauses 87 and 88. Because of the difficulties in drafting a satisfactory definition of this type of instrument, the proposal now is to introduce a new schedule listing the actual debt issued which is recognised by the commissioner for this purpose.

*Clause 7(2): Commissioner's guidelines*

One of the important and new provisions in the Bill is clause 7, which spells out the functions of the commissioner. It reflects an approach to prudential supervision that relies more on the commissioner's discretion and qualitative judgment than previously. It has been suggested that the commissioner should issue guidelines to the industry on how he will exercise his functions under various provisions. Although there is nothing to prevent him from doing so under the Bill as drafted, the Administration accepts that it would be useful explicitly to provide for that through an amendment to this clause. The commissioner will issue these guidelines only after the necessary consultations with the industry and the advisory committees.

*Clauses 44(7) etc.: Appeals*

Mr. SWAINE has mentioned amendments to several clauses to provide for appeals to the Governor in Council. For the same reason, I will be moving amendments to clauses 44(7), 46(7), 49(7), 70(5) and 72(4), to provide for appeals to the Governor in Council in respect of conditions which the commissioner attaches to his approvals to the establishment of branches, the exercise of voting power, the giving of directions and instructions by controllers, and the appointment of directors and secretaries.

*Clauses 59(2), etc.: Consultations and time limits for decisions*

It is implicit in the flexible and discretionary approach embodied in the Bill that the commissioner, in carrying out his functions, will do so in close consultation with the institutions concerned. However, some of the representations suggested that the requirement for such consultation should be explicitly written into the law. We see no difficulty with that, and there will be amendments to clauses 59(2) and 105(1) to this effect.

It has also been represented to us that where the commissioner's approval is required in respect of the exercise of voting power by substantial shareholders under clause 70, and the appointment of directors and secretaries under clause 72, the commissioner's decision should be conveyed to the applicants within a specified time. While the Administration appreciates the reasons behind this suggestion, the time taken for a decision is not always within the commissioner's control: he may have to await information from others, including in some cases overseas supervisory authorities. Instead of a specified time limit, therefore, I will be moving amendments to clauses 70(1), 70(4), 72(1), 72(2) and 72(3), to the effect that the commissioner shall convey his decisions as soon as practicable.

*Clauses 70, 71: Substantial shareholders*

The control of ownership in locally incorporated institutions is an essential proposal of the Bill. This is embodied in clauses 70 and 71.

As Mr. SWAINE has explained, there are likely to be practical difficulties in implementing clause 71; it will therefore be deleted. This means that the only sanction against substantial shareholders voting without the commissioner's approval (as required under clause 70) will be the penalty under clause 70(6). It is considered therefore that that penalty should be raised. I will be moving an amendment to raise it to \$500,000 and five years imprisonment. This will bring it to the same level as that for carrying on banking business or deposit-taking business illegally in clauses 11(2) and 12(6).

At the same time, to avoid disrupting the business of the institution, it needs to be made clear that nothing done in contravention of clause 70(1) shall be invalid by reason only of that contravention. I will be moving an amendment to that effect.

*Clause 72: Appointment of directors*

Clause 72 requires appointment of directors of locally incorporated institutions to be subject to the commissioner's prior approval. Since it is customary in Hong Kong for a director formally to retire after a three-year term, and to be re-appointed if required, we have accepted the suggestion that such rotating directors, on re-appointment, should not require the commissioner's approval. Related to this amendment, and to the amendment I mentioned earlier that nothing done in contravention of clause 70(1), including of course the appointment of directors in a shareholders meeting, shall be invalid for that reason only, I will also be moving an amendment to the effect that the commissioner may withdraw approvals given to the appointment of directors and secretaries. There will be an advance notice of seven days and an opportunity for representation to be made, and of course, provision of subsequent appeal to the Governor in Council.

*Clause 76: Maintenance of adequate provisions*

Clause 76(1) requires institutions to maintain provisions against bad and doubtful debts, and to ensure that they are adequate before any profit or loss is declared. It is carried over from the existing Banking Ordinance. We thought that consultation with the commissioner would be useful in determining what is adequate, hence clause 76(2). It has, however, been criticised as impractical. I will therefore be moving an amendment to delete this provision. At the same time, prudence requires that, *first*, adequate provisions be maintained against bad and doubtful debts and diminution of the value of assets, and not just the former; and *second*, that this be done at all times, and not just before declaring profit or loss. A second amendment to this clause will meet these points.

*Clause 82: Commissioner's directions*

Clause 82 was meant to tackle those cases where an institution's exposures to a number of different persons in fact all depend on the creditworthiness of a single party. Since it is difficult to describe such circumstances in precise legal language, the route taken in the Bill was for the commissioner to issue appropriate directions to the institutions to regulate these types of exposures. It is however now considered that since the breach of these directions would attract criminal sanction, this would vest too much power in the commissioner. I will therefore be moving an amendment to the effect that the commissioner may issue *guidelines* on the subject of exposure to a single party. An institution will not be specifically sanctioned for violation of these guidelines, but such violation will be taken into account in the supervisory authorities' administration of other provisions of the Bill.

*Clause 81: Lending to single parties*

The very important clause 81 is related to clause 82. It sets a prudential limit—25 per cent of capital and reserves—on an institution's lending, guarantees or incurring of other liabilities to any one person and others closely associated with him as defined in that clause. But the concept of exposure to a single party is broader than just that of being a lender or guarantor: it includes the holding of debt securities and shares issued by that party. The original intention was to introduce this broader concept through one of the commissioner's directions under clause 82. As a result of the amendment to clause 82 I just mentioned, it is considered that the 25 per cent limit in clause 81 should also include debentures and shares issued by the borrower. I will be moving an amendment to this effect.

*Clause 86: Authorised institution not to engage in trade etc.*

Clause 86, basically carried over from the existing Ordinance, attempts to regulate other business undertakings of authorised institutions. This clause has been criticised as being too vague. On the other hand, specifying a statutory list of businesses that authorised institutions may or may not engage in would produce an unwieldy list and require extensive prior consultation with the industry. The Administration considers, therefore, that it would be more appropriate to achieve this through the issuance of guidelines under clause 7, or through licence or registration conditions, or both. The commissioner will, after the necessary consultations, issue an early guideline to the industry on this subject when the Bill comes into operation.

*Clause 87 etc.: Limitations on loans by and interests of authorised institutions*

Part XV regulates loans by and interest of authorised institutions. Some of the provisions apply to banks and some, with insignificant differences, apply to DTCs. We have accepted the sensible suggestion that such more or less parallel provisions should be combined to apply to all authorised institutions, for the benefit of better drafting. I will therefore be moving amendments to clauses 87, 88, 89 and 90 to this effect. There will also be an amendment to insert a clause on

the commissioner's powers where an authorised institution places moneys with foreign banks. This is a clause carried over from the existing Ordinances but has been unwittingly omitted from the Bill.

*Clause 133: Validity of contracts*

Clause 133, which is carried over from the existing Banking Ordinance and DTC Ordinance, provides, inter alia, that, in case of contravention of this Ordinance on the entering into of any contract, the institution may enforce the contract if the court is satisfied that the institution exercised all due diligence to avoid the contravention of the prohibition. One of the representations has drawn our attention to the difficulties this provision has caused in a recent case where a deposit-taking company could not enforce repayment of some loans due to it. This is clearly not in the interest of depositors of the institution. The more sensible alternative is to provide that contravention of this Ordinance on the entering into of any contract will not render that contract unenforceable. But contravention of any provision of this Ordinance, of course, will attract the sanction provided for under that provision.

*Schedules 3 and 4: Capital to risk assets ratio and liquidity ratio*

Schedules 3 and 4 on the capital to risk assets ratio and liquidity ratio are technical. Indeed, a number of technical terms are used on the possibly naive assumption that their meanings are well understood among the professions. It is clear from the many comments received, however, that this assumption is not necessarily well founded. The two schedules have therefore been completely re-drafted to use language as legally precise as possible. Despite the complete re-drafting, there has been little change in the substance; the only point I should mention is that instead of deducting from the capital base investment in companies, not being subsidiaries, in which the authorised institution holds 20 per cent or more of shares, such investment will be treated as a risk asset with a weighting of 10. We have also accepted the suggestion that 'capital adequacy ratio' sounds more meaningful than 'capital to risk assets ratio'. I will be moving amendments to these two schedules accordingly.

*Other amendments*

In addition to those mentioned above, I will be moving a number of minor amendments dealing mainly with technical and drafting matters.

*Implementation*

After enactment of the Bill, time will need to be allowed for the authorised institutions and the Commissioner of Banking's office to prepare for the new requirements, for example, the different liquidity ratio calculations, new information returns and seeking various approvals from the commissioner. The intention therefore is for the Bill to come into effect three months after enactment—except for the new capital adequacy ratio. Since this ratio will place substantial requirement on some of the institutions concerned, it will be brought into effect in about two years' time.

*Other issues*

Although there will be many amendments to this Bill, the placing of the final product on the statute book does not mean that with the passage of time it will not be further amended and improved. I will now mention three issues.

*Capital adequacy ratio*

*First*, the capital adequacy ratio, and in particular, the risk weightings attached to various assets and contingent liabilities. These weightings purport to measure the riskiness of the assets and contingent liabilities to which they apply. Measuring risk is far from being an exact science. In addition, the financial market-place is inventing new instruments with a speed that regulators find hard to follow. I will not be surprised, therefore, if events and experiences suggest the need for change in some elements of this ratio possibly before it even becomes operational in two years' time.

*Appeal procedure*

*Second*, Mr. SWAINE, Mr. SOHMEN and Mr. LI mentioned variations on the idea of a tribunal to hear appeals under the Bill instead of Executive Council. The procedure in the Bill, following that in the two existing Ordinances, is for aggrieved parties to appeal to the Governor in Council or, in some cases, to the Financial Secretary. Members are aware that the Administration has been reviewing the general question of administrative appeals: the outcome should be known relatively soon. I confirm that we will be ready to re-examine the appeal procedures under this piece of legislation when the result of the general review is known. Personally I do not like the proposal of a tribunal, which seems to add unnecessary complications. With experience I have faith in ExCo. But my firm views do not of course bind the Government for the future.

*Acceptance of gifts*

*Third*, there was a late suggestion on the question of acceptance of gifts by directors and employees of banks and deposit-taking companies. The suggestion is for a tougher standard to be adopted in view of the nature of business of these institutions and the ease with which acceptance of gifts can lead to, or disguise, malpractices. I am in favour of higher ethical standards in our business community. They are indeed overdue. But the suggestion in its specifics clearly requires detailed consideration and extensive consultation, and it came too late for this to be possible without holding the Bill up until the next session. The Administration, however, will actively pursue it. If a consensus emerges that the relevant provision in this Bill, namely, clause 128, or alternatively the Prevention of Bribery Ordinance, is inadequate and needs to be strengthened, having secured ExCo approval, we will put the necessary amendments before this Council. But first there must be further discussion—particularly with the ICAC.

*Four*, both I and my successor share the views of Mr. YEUNG Po-Kwan and Mr. SOHMEN on the need properly to staff the commissioner's office. This is an

issue of the utmost importance to which our attention has for some time been directed. It will continue to be.

My Unofficial colleagues, who have spoken this afternoon, have raised other points on the implementation of the Bill. I welcome their general support; and in particular that of Mr. Stephen CHEONG, Mr. POON and Dr. IP. Amongst other points the register of banks and DTC's that Dr. IP referred to will be available for public inspection in the commissioner's office, but it's availability will need to be publicised. Mr. CLYDESDALE drew attention to the problem of nominee companies, and raised the idea of a Banking Commission and this will be considered. Naturally I much welcome Mr. CHEONG-LEEN'S wise comments on the need to avoid banking collapses, and Mr. CHEONG'S much valued support. This view clearly has majority support however much we all deplore that the situation has arisen in the first place. For the sake of brevity, that is to say relative brevity, Sir, I will not respond in further detail, but the commissioner and the Administration will give careful consideration to all their valuable advice.

Sir, I conclude by again thanking those concerned. I assure them and this Council as a whole that we know that the Bill is neither final nor perfect. But we are moving on. Sir, so am I, I beg to move.

*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 Bill**

Council went into Committee

### **BANKING BILL 1986**

Clauses 1, 4 to 6, 8 to 10, 13, 16, 17, 19, 23, 26, 31 to 39, 41, 42, 45, 47, 48, 50, 51, 53 to 57, 67, 68, 100, 103, 107, 109, 111 to 120, 122, 123, 125 to 127, 129 to 132, 135, 137, 138, 140, 142, to 151 and 153 were agreed to.

Clauses 2, 3, 7, 11, 12, 14, 15, 18, 20, 24, 27 to 30, 40, 43, 44, 46, 49, 52, 59, 65, 66, 69, 72 to 94, 96 to 98, 101, 102, 104 to 106, 108, 110, 121, 124, 128, 133, 134, 136, 139, 141 and 152.

FINANCIAL SECRETARY: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

*Proposed amendments***Clause 2**

That clause 2(1) be amended—

- (a) in the definition of 'bank', by deleting 'carries on banking business and'.
- (b) in the definition of 'capital to risk assets ratio', by deleting 'to risk assets' in both places where it occurs and substituting the following—  
'adequacy'
- (c) in the definition of 'company'—  
 (i) by deleting 'means a company' and substituting the following—  
'means a body corporate'; and  
 (ii) in paragraph (c) thereof, by inserting after 'incorporated' the following—  
'or established'.
- (d) in the definition of 'controller'—  
 (i) in paragraph (a) thereof by deleting '(or any of them)';  
 (ii) by deleting ', but with references in this definition to a company also being construed as references to a body corporate, whether or not it is a company;' and substituting a colon; and  
 (iii) by inserting the following—  
 'Provided that a person shall not be deemed to be a person in accordance with whose directions or instructions the directors of a company are accustomed to act by reason only that the directors of the company act on advice given by him in a professional capacity.'
- (e) in the definition of 'deposit', by deleting all that occurs after paragraph (a) and substituting the following—  
 '(b) does not include a loan of money—  
 (i) upon terms involving the issue, by any company other than an authorised institution, of debentures or other securities in respect of which a prospectus has been issued under the Companies Ordinance;  
 (ii) upon terms referable to the provision of property or services; or  
 (iii) by one company to another (neither company being an authorised institution) at a time when one is a subsidiary of the other or both are subsidiaries of another company,

(Cap. 32.)

and references in this Ordinance to the taking or the making of a deposit shall be construed accordingly;'

(f) in the definition of "'holding company" and "subsidiary company"', by deleting "'subsidiary company"' and substituting the following—

"subsidiary".

(g) in the definition of 'local branch', by deleting 'transacts' wherever it occurs and substituting the following—

'carries on'.

(h) by inserting after the definition of 'local representative office' the following—

"'manager" in relation to an authorised institution means its chief executive and any other person employed by the institution who, under the immediate authority of a director or of the chief executive, exercises managerial functions or is responsible for maintaining accounts or other records of the institution;".

(i) by deleting the definition of 'money at short notice'.

(j) in the definition of 'overseas branch', by deleting 'transacts banking business or carries on' and substituting the following—

'carries on banking business or'.

(k) by inserting after the definition of 'overseas representative office' the following—

Fifth  
Schedule.      "'perpetual subordinated debt" means any of the debt instruments specified in the Fifth Schedule;'.  
Fifth  
Schedule.

(l) in the definition of 'unincorporated bank' by deleting 'to whom or to which a banking licence to transact banking business in Hong Kong has been' and substituting the following—

'holding a valid banking licence'.

That clause 2(2) be amended by deleting paragraph (c) and substituting the following—

'(c) an advertisement or document which consists of or contains information likely to lead, directly or indirectly, members of the public to—

(i) make deposits; or

(ii) enter into, or offer to enter into, agreements to make deposits,

shall be treated as being an advertisement or document which is or contains an advertisement to members of the public so to do; and'.

### Clause 3

That clause 3 be amended—

(a) in subclause (1)—

(i) by deleting 'This Ordinance' and substituting the following—

'Part III of this Ordinance';



**Clause 12**

That clause 12 be amended—

(a) by deleting subclauses (1) and (2) and substituting the following—

'(1) No business of taking deposits shall be carried on in Hong Kong except by an authorised institution.

(2) A registered deposit-taking company shall not take any short-term deposit in Hong Kong.'

(b) in subclause (3), by deleting the proviso.

**Clause 14**

That clause 14 be amended—

(a) in subclause (2), by deleting paragraphs (a) and (b).

(b) in subclause (3), by deleting ', other than a depositor who is a bank incorporated outside Hong Kong which is not licensed under this Ordinance or a bona fide employee of the company,'.

(c) in subclause (6), by deleting ', other than a person who is a bank incorporated outside Hong Kong which is not licensed under this Ordinance or a bona fide employee of the company, any sum less than the specified sum for the purpose of depositing that sum, or that' and substituting the following—

'any sum less than the specified sum for the purpose of making a deposit of that sum, or of that'.

**Clause 15**

That clause 15 be amended, in subclause (1)—

(i) by deleting 'transact' and substituting the following—

'carry on'; and

(ii) by deleting 'transacting' and substituting the following—

'carrying on'.

**Clause 18**

That clause 18 be amended—

(a) by renumbering it as subclause (1).

(b) by inserting after subclause (1) the following—

'(2) The Governor in Council may, by notice in the *Gazette*, amend the amount of share capital issued and paid-up specified in subsection (1).'

**Clause 20**

That clause 20 be amended by deleting subclauses (3) and (4).

**Clause 24**

That clause 24(4) be amended by deleting 'loss disclosed in the most recent balance sheet lodged by the company under section 60(2)' wherever it occurs and substituting the following—

'debit balance appearing in the profit and loss account of the company'.

**Clause 27**

That clause 27 be amended, in subclause (1)—

- (i) in paragraph (a), by deleting 'licensed'; and
- (ii) in paragraph (e), by deleting 'licensed' where it first occurs.

**Clause 28**

That clause 28 be amended—

- (a) in subclause (1), by deleting 'licensed' where it first occurs.
- (b) in subclause (6)(a), by deleting 'licensed' where it first occurs.

**Clause 29**

That clause 29 be amended, in paragraph (a)(i), by deleting 'transact' and substituting the following—

'carry on'.

**Clause 30**

That clause 30(1) be amended by deleting 'transact' and substituting the following—

'carry on'.

**Clause 40**

That clause 40(2) be amended by deleting 'does' and substituting the following—

'shall'.

**Clause 43**

That clause 43 be amended—

- (a) in paragraph (a), by deleting 'and be subject to the same liabilities and penalties' and substituting the following—

', and be subject to the same liabilities and penalties, under this Ordinance'.

- (b) in paragraph (b), by deleting all that occurs after 'registered,' and substituting the following—

'but the transfer shall not affect the liability of that or any other person for any act or omission done, caused, permitted or made prior to the transfer.'

#### **Clause 44**

That clause 44 be amended, in subclause (7)—

- (i) by inserting after 'Commissioner' the following—  
' , or by any conditions to which an approval is made subject by the Commissioner under subsection (4),'; and
- (ii) by deleting 'or revocation, but that refusal or revocation' and substituting the following—  
'the revocation or the conditions, but that refusal, that revocation or, as the case may be, those conditions'.

#### **Clause 46**

That clause 46 be amended—

- (a) in subclause (3), by inserting after 'incorporated' the following—  
'or established'.
- (b) in subclause (6), by deleting 'subsection (2)' and substituting the following—  
'subsection (5)'.
- (c) in subclause (7)—
- (i) by inserting after 'Commissioner' the following—  
' , or by any conditions to which an approval is made subject by the Commissioner under subsection (4),'; and
- (ii) by deleting 'or revocation, but that refusal or revocation' and substituting the following—  
'the revocation or the conditions, but that refusal, that revocation or, as the case may be, those conditions'.

#### **Clause 49**

That clause 49 be amended, in subclause (7)—

- (i) by inserting after 'Commissioner' the following—  
' , or by any conditions to which an approval is made subject by the Commissioner under subsection (4),'; and
- (ii) by deleting 'or revocation, but that refusal or revocation' and substituting the following—  
'the revocation or the conditions, but that refusal, that revocation or, as the case may be, those conditions'.

**Clause 52**

That clause 52(2) be amended by inserting after 'in writing thereon' the following—  
' , and any such representations shall form part of his report to the Governor in Council'.

**Clause 59**

That clause 59(2) be amended by deleting 'appoint another auditor to act with the auditor appointed by an authorised' and substituting the following—  
' , after consultation with the authorised institution, appoint another auditor to act in addition to the auditor appointed by the'.

**Clause 65**

That clause 65(1) be amended by deleting '14' and substituting the following—  
'30'.

**Clause 66**

That clause 66 be amended—

(a) by deleting subclause (1) and substituting the following—

'(1) An authorised institution which ceases to carry on the business of taking deposits or, as the case may be, banking business, shall forthwith notify the Commissioner in writing of that fact.'

(b) in subclause (2), by deleting 'a deposit-taking company' and substituting the following—

'an authorised institution'.

**Clause 69**

That clause 69 be amended by deleting subclause (1) and substituting the following—

'(1) An authorised institution incorporated in Hong Kong shall not without the prior approval in writing of the Financial Secretary—

(a) make any arrangement or enter into any agreement for the sale or disposal of its business by amalgamation or otherwise; or

(b) make any reconstruction of its capital.'

**Clause 72**

That clause 72 be amended—

(a) in subclause (1), by inserting after 'a particular case' the following—

' , shall be conveyed to the applicant and to the institution concerned as soon as practicable in writing, '.

- (b) by deleting subclause (2).
- (c) in subclause (3)—
- (i) by deleting 'or consent under subsection (2)';
  - (ii) by inserting after 'refusal' the following—  
'as soon as practicable'.
- (d) by deleting subclause (4) and substituting the following—

'(4) Any person aggrieved by the refusal by the Commissioner to grant approval under subsection (1), or by the imposition by the Commissioner of conditions under that subsection, may appeal to the Governor in Council against the refusal or the conditions but that refusal or, as the case may be, those conditions shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.'

- (e) in subclause (5), by deleting 'or (2)'.

### Clause 73

That clause 73(1) be amended—

- (a) by deleting 'Subject to section 72, no' and substituting the following—  
'No'.
- (b) by deleting 'be an employee of an authorised institution' and substituting the following—
- 'become an employee of an authorised institution or, if becoming such an employee without such consent, act, or continue to act, as such employee'.

### Clause 74

That clause 74 be amended by deleting subclause (1) and substituting the following—

'(1) Every authorised institution shall appoint a chief executive of the institution who shall be—

- (a) an individual; and
- (b) ordinarily resident in Hong Kong,

except that, in the case of an authorised institution incorporated outside Hong Kong, such chief executive is only required to be the chief executive in respect of the business in Hong Kong of the institution.'

**Clause 75**

That clause 75(3) be amended by deleting all that occurs after paragraph (a) and substituting the following—

'(b) not less than \$150,000,000 in the case of a licensed deposit-taking company.'

**Clause 76**

That clause 76 be repealed and substituted by the following—

'Maintenance of adequate provision for bad and doubtful debts and for diminution of value of assets.

**76.** (1) Every authorised institution shall at all times maintain adequate provision—

(a) for its bad and doubtful debts, if any; and

(b) against the diminution, if any, of the value of its assets, or the materialising of its contingent liabilities.

(2) Every director and every manager of an authorised institution which contravenes this section commits an offence and is liable—

(a) on conviction upon indictment to a fine of \$200,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine of \$50,000 and to imprisonment for 6 months.'

**Clause 77**

That clause 77 be amended, in subclause (1)—

- (i) by deleting 'transact' and substituting the following—  
'carry on'; and
- (ii) by deleting 'profit and loss account' and substituting the following—  
'most recent audited annual accounts'.

**Clause 78**

That clause 78 be amended by deleting subclauses (1) and (2) and substituting the following—

'(1) A bank that is incorporated in Hong Kong shall not distribute any extraordinary profits unless the aggregate of its paid-up share capital and published reserves after such distribution will be not less than \$200,000,000.

(2) A deposit-taking company that is incorporated in Hong Kong shall not distribute any extraordinary profits unless the aggregate of its paid-up share capital and reserves after such distribution will be not less than—

- (a) \$20,000,000 in the case of a registered deposit-taking company; and
- (b) \$150,000,000 in the case of a licensed deposit-taking company.'.

### Clause 79

That clause 79 be deleted and substituted by the following—

'Interpretation and application. **79.** (1) In this Part—  
"non-listed company" means a company not listed on the Unified Exchange:

Provided that any public statutory corporation designated for the purposes of this definition by the Financial Secretary by notice in the *Gazette* shall be deemed not to be a non-listed company;

"relative" means—

- (a) any ascendant or descendant, any spouse or former spouse of any such ascendant or descendant, and any parent, brother or sister of any such spouse or former spouse;
- (b) any brother or sister, aunt or uncle and any nephew or niece;
- (c) any spouse or former spouse, any ascendant of any such spouse or former spouse, and any brother or sister, aunt or uncle or nephew or niece of any such spouse or former spouse,

and, for the purposes of this definition, any step-child shall be deemed to be the child of both its natural parent and of its step-parent and any adopted child to be the child of the adopting parent, and a spouse shall include anyone living as such;

"reserves" in relation to any authorised institution means reserves which appear in the accounts of the institution, and does not include any reserves which are represented by the writing down of the value of assets or by provision for the depreciation of fixed assets;

"value" means—

- (a) in the case of shares in a company other than a trust company registered under Part VIII of the Trustee Ordinance, the total of the current book value and the amount for the time being remaining unpaid on the shares; and

(b) in any other case, the current book value.

(2) In determining the paid-up capital and reserves of an authorised institution for the purposes of this Part, there shall be deducted any loss disclosed in the most recent balance sheet of the institution lodged with the Commissioner under section 60(2).

(3) For the purposes of sections 83, 84 and 85, "unsecured" means granted without security, or, in respect of any advance, loan or credit facility granted or financial guarantee or other liability incurred with security, any part thereof which at any time exceeds the market value of assets constituting that security; and "security" means such security as would, in the opinion of the Commissioner, be acceptable to a prudent banker.

(4) In relation to any authorised institution that is incorporated outside Hong Kong, this Part shall apply, save for the purpose of determining the paid-up capital or reserves of the institution, only to its principal place of business in Hong Kong and its local branches, and shall do so as if that principal place of business and those branches were collectively a separate authorised institution.'

#### Clause 80

That clause 80 be amended—

(a) by deleting subclause (1) and substituting the following—

'(1) An authorised institution shall not grant any advances, loans or credit facilities, including irrevocable documentary letters of credit to the extent to which they are not covered by marginal cash deposits, or give any financial guarantee or incur any other liability, against the security of its own shares.'

(b) in subclause (2)—

(i) by deleting 'advance, loan or credit facility' and substituting the following—

'advances, loans or credit facilities, including irrevocable documentary letters of credit to the extent to which they are not covered by marginal cash deposits, or give any financial guarantee or incur any other liability;'; and

(ii) paragraphs (a) and (c), by inserting after 'company' wherever it occurs the following—

'of the institution.'

**Clause 81**

That clause 81 be amended—

(a) by deleting subclause (1) and substituting the following—

'(1) The financial exposure of an authorised institution to—

- (a) any one person;
- (b) two or more companies which—
  - (i) are subsidiaries of the same holding company; or
  - (ii) have the same controller (not being a company);
- (c) any holding company and one or more of its subsidiaries; or
- (d) any one person (not being a company) and one or more companies of which that person is the controller,

shall not exceed an amount equivalent to 25 *per cent* of the paid-up capital and reserves of the institution.'

(b) by inserting after subclause (1) the following—

'(1A) The financial exposure of an authorised institution to any such person, company or combination thereof as is referred to in subsection (1)(a), (b), (c) or (d), shall for the purposes of this section be taken to be the aggregate of—

- (a) all advances by the authorised institution to; and
- (b) in relation to financial exposure to a company, the value of the authorised institution's holdings of shares and debentures (within the meaning of those terms in section 2 of the Companies Ordinance) issued by,

(Cap. 32.)

that person, company or combination:

Provided that this section shall not apply to—

- (a) transactions between authorised institutions, or between the branches of authorised institutions;
- (b) transactions to the extent to which they are covered by a form of guarantee acceptable to the Commissioner;
- (c) an authorised institution the liabilities of which are assured by a letter of comfort accepted by the Commissioner under subsection (2) or (3), so long as the institution conforms with any limitation on the aggregate amount of any investments and advances which the institution may make, being a limitation imposed by the Commissioner under subsection (4)(a) or (6) or by the terms of a letter of comfort;

- (d) the purchase of bills of exchange or documents of title to goods where the holder of such bills or documents is entitled to payment outside Hong Kong for goods exported from Hong Kong;
- (e) any advances made against telegraphic transfers or against any bills or documents referred to in paragraph (d);
- (f) any advances made to the Government;
- Third  
Schedule. (g) any advances maturing or callable within one year, made to any eligible government as defined in paragraph 1 of the Third Schedule; or
- (h) transactions between an authorised institution and a bank incorporated outside Hong Kong which is not licensed under this Ordinance where any such bank is, in the opinion of the Commissioner, adequately supervised by a banking supervisory authority in its place of incorporation.'
- (c) in subclause (2)—
- (i) by inserting at the end of paragraph (a) the following—  
'or'; and
- (ii) by deleting paragraph (b) and substituting the following—  
'(b) is given by another bank incorporated in Hong Kong, or by a bank incorporated outside Hong Kong which is not licensed under this Ordinance but is, in the opinion of the Commissioner, adequately supervised by a banking supervisory authority in its place of incorporation; and'.
- (d) in subclause (3)—
- (i) by inserting at the end of paragraph (a) the following—  
'or'; and
- (ii) by deleting paragraph (b) and substituting the following—  
'(b) is given by a bank incorporated in Hong Kong, or by a bank incorporated outside Hong Kong which is not licensed under this Ordinance but is, in the opinion of the Commissioner, adequately supervised by a banking supervisory authority in its place of incorporation; and'.
- (e) in subclause (4)(a), by deleting 'advances, loans, facilities, guarantees or liabilities' and substituting the following—  
'advances and investments'.
- (f) in subclause (7)—
- (i) by deleting 'any advances, loans, facilities, guarantees or liabilities' and substituting the following—  
'any advances and investments'; and

(ii) by deleting paragraphs (i) and (ii), and the proviso thereto, and substituting the following—

- '(i) permit any advances included in computing such aggregate to be outstanding until the maturity thereof, or until they may lawfully be terminated without penalty to the institution, as the case may be; and
- (ii) retain any investments included in computing such aggregate, for a period of not more than 3 months, or such longer period as may be approved by the Commissioner in writing in any particular case, from the date of the specification of the new limit, the imposition of the limit or, as the case may be, the withdrawal of the bank referred to in paragraph (c):

Provided that, in either case, no new advances or investments which are to be included in computing such aggregate are granted, incurred or made while the amount permissible under this section is so exceeded.'

(g) in subclause (8), by deleting 'advances, loans, facilities, guarantees or liabilities' and substituting the following—

'advances or investments'.

(h) in subclause (9), by deleting paragraph (b) and substituting the following—

'(b) the expression "advances" shall include—

- (i) any kind of advance, loan, (whether by way of deposit or otherwise) or credit facility, including an irrevocable letter of credit to the extent to which it is not covered by a marginal cash deposit, given by an authorised institution; and
- (ii) any financial guarantee given, or liability incurred, by an authorised institution;

(ba) the expression "investments" shall mean any such holding by an authorised institution as is referred to in subsection (1A)(b)';

## Clause 82

That the Bill be amended by repealing clause 82 and substituting the following—

'Commissioner may publish guidelines on business practices of authorised institutions.

**82.** (1) Without prejudice to section 7(3) or to the other provisions of this Part, the Commissioner may, after consultation with the Financial Secretary, by notice in the *Gazette* from time to time publish for the guidance of authorised institutions, guidelines, not inconsistent with this Ordinance, specifying business practices which should not be engaged in by

authorised institutions because, in his opinion, such business practices will or may cause the soundness of the financial position of authorised institutions to be dependent upon the soundness of the financial position of a single party.

(2) For the purposes of subsection (1), guidelines given in a notice under that subsection—

- (a) may be expressed to apply to all authorised institutions or to a class of authorised institutions specified in the notice; and
- (b) may specify what constitutes a single party for the purposes of any such guidelines and, without prejudice to the generality of that power, any class or description of persons or business may constitute such a single party.

(3) Where an authorised institution engages in business practices specified in a notice under subsection (1), the Governor in Council, the Financial Secretary or the Commissioner, as the case may be, may, where he is of the opinion that the case is of sufficient importance to justify him so doing, exercise any of his powers under Part V, VI or X in respect of the institution'.

### Clause 83

That clause 83 be amended—

(a) in subclause (2)—

(i) by deleting 'or (c)' and substituting the following—

'(c), (ca), (cb) or (cc)';

(ii) by deleting 'or any of his relatives'.

(b) in subclause (4), by inserting after paragraph (c) the following—

'(ca) any relative of any such employee;

(cb) any controller (not being an authorised institution) of the bank;

(cc) any relative of an individual who is a controller of the bank;'

(c) by deleting subclause (5).

(d) by deleting subclause (7).

(e) by deleting subclause (8) and substituting the following—

'(8) For the purposes of subsections (2) and (4), a facility granted to or on behalf of any firm, partnership or non-listed company which a person specified in subsection (4)(a), (b), (c), (ca), (cb) or (cc) is able to control, shall be deemed to be granted to that person or on his behalf.'

**Clause 84**

That clause 84 be amended—

- (a) in subclause (2), by deleting 'or (c)' and substituting the following—  
'(c), (ca), (cb) or (cc)'.
- (b) in subclause (5)(a), by deleting 'bank within the meaning of this Ordinance or which is, additionally or alternatively, a bank' and substituting the following—  
  
'licensed bank or by a bank incorporated outside Hong Kong which is not licensed under this Ordinance and'.
- (c) in subclause (6), by inserting after paragraph (c) the following—  
  
'(ca) any relative of any such employee;  
(cb) any controller (not being an authorised institution) of the deposit-taking company;  
(cc) any relative of an individual who is a controller of the deposit-taking company;'.
- (d) by deleting subclause (7).
- (e) by deleting subclause (9).
- (f) by deleting subclause (10) and substituting the following—  
  
'(10) For the purposes of subsections (2) and (6), a facility granted to or on behalf of any firm, partnership or non-listed company which a person specified in subsection (6)(a), (b), (c), (ca), (cb) or (cc) is able to control, shall be deemed to be granted to that person or on his behalf.'.

**Clause 85**

That clause 85 be amended by deleting subclause (1) and substituting the following—

'(1) An authorised institution shall not grant to any one of its employees any facility specified in subsection (1A) to an aggregate amount of such facilities in excess of one year's salary for the employee.

(1A) For the purposes of subsection (1) the following facilities are specified—

- (a) the granting, or permitting to be outstanding, or unsecured advances, unsecured loans or unsecured credit facilities including unsecured irrevocable documentary letters of credit;
- (b) the giving of unsecured financial guarantees; and
- (c) the incurring of any other unsecured liability.'.

**Clause 86**

That clause 86 be deleted and substituted by the following—

'Powers of  
Commissioner  
where moneys  
placed with  
foreign bank.

- 86.** (1) Where the Commissioner—
- (a) has reason to believe that an authorised institution has granted to any foreign bank any advances, loans (whether by way of deposit or otherwise) or credit facilities; and
  - (b) is of the opinion that the extent or manner in which such advances, loans or credit facilities have been made is not in the interests of the depositors of the authorised institution,

he may, by notice in writing to the institution, exercise his powers under this section.

- (2) A notice under this section may—
  - (a) prohibit the authorised institution from granting, after the date of the service of the notice, any advances, loans or credit facilities to the foreign bank specified in the notice and any other foreign bank so specified which the Commissioner has reason to believe is associated with the first-mentioned foreign bank;
  - (b) where any moneys are held at call, demand or notice by the authorised institution with any bank specified by the Commissioner in pursuance of his powers under paragraph (a), direct the institution forthwith to demand repayment of such moneys in accordance with the terms upon which they are held;
  - (c) prohibit the authorised institution from permitting to be outstanding with any bank specified by the Commissioner in pursuance of his powers under paragraph (a)—
    - (i) any moneys which should have been repaid to the institution by virtue of a direction under paragraph (b);
    - (ii) any advances, loans or credit facilities repayable or terminable upon the elapse of any time or the occurrence of any event, after the elapse of such time or the occurrence of such event.

(3) A requirement under subsection (2)(a) shall not prohibit the grant of any advance or loan after the date of service of the notice in pursuance of any agreement entered into prior to such date unless the Commissioner otherwise directs; but it shall be the duty of the authorised institution to notify the Commissioner of any relevant agreement within 7 days of the receipt by it of a notice under this section.

(4) In this section—

"foreign bank" means—

- (a) any bank incorporated outside Hong Kong which is not licensed under this Ordinance;
- (b) any undertaking of an authorised institution, including that of the institution to which notice is given under this section, which is situated outside Hong Kong.

(5) Every director and every manager of an authorised institution which fails without reasonable excuse to comply with any requirement of the Commissioner in the exercise of his powers under this section commits an offence and is liable—

- (a) on conviction upon indictment to a fine of \$200,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine of \$50,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.'

### Clauses 87 and 88

That clauses 87 and 88 be deleted and substituted by the following—

<p>'Limitation on shareholding by authorised institutions.</p>	<p><b>87.</b> (1) Subject to subsections (2) and (3), an authorised institution shall not acquire or hold any part of the share capital of any other company or companies to an aggregate value in excess of 25 <i>per cent</i> of the paid-up capital and reserves of the institution, except such share capital as the institution may hold as security for facilities granted by it or acquire in the course of the satisfaction of debts due to it:</p>
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Provided that all share capital acquired in the course of the satisfaction of debts due to it shall be disposed of at the earliest suitable opportunity, and in any event not later than 18 months after the acquisition thereof or within such further period as the Commissioner approves in writing in any particular case.

- (2) Subsection (1) shall not apply—
  - (a) where an authorised institution acquires or holds any part of the share capital of any company or companies under an underwriting or subunderwriting contract for a period not exceeding 3 months, or such further period as the Commissioner approves in writing in any particular case; or
  - (b) to any holding, approved in writing by the Commissioner, of share capital in—
    - (i) another authorised institution; or
    - (ii) a subsidiary formed by the authorised institution concerned for the carrying out of nominee, executor or trustee functions, or of other functions incidental to banking business or to the business of taking deposits.
- (3) Every director and every manager of an authorised institution which contravenes this section commits an offence and is liable—
  - (a) on conviction upon indictment to a fine of \$200,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
  - (b) on summary conviction to a fine of \$50,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.
- (4) In this section, 'share capital' includes perpetual subordinated debt.'

### **Clauses 89 and 90**

That clauses 89 and 90 be deleted and substituted by the following—

'Limitation on holding of interest in land by authorised institution.

**89.** (1) An authorised institution shall not purchase or hold any interest or interests in land situated in or outside Hong Kong of a value or to an aggregate value, as the case may be, in excess of 25 *per cent* of the paid-up capital and reserves of the institution.

(2) Subject to subsection (4), an authorised institution may, in addition to the value of any land permitted to be purchased or held under subsection (1), purchase or hold interests in land situated in or outside Hong Kong to any value, where the occupation of such land is, in the opinion of the Commissioner, necessary for conducting the business of the institution or providing housing or amenities for the staff of the institution.

(3) For the purposes of subsection (2), but without limiting the generality thereof, the Commissioner may in his discretion regard as necessary for conducting the business of an authorised institution the whole of any premises in which an office of the institution is situated.

(4) The aggregate value of interests in land purchased or held by a deposit-taking company under subsections (1) and (2) shall not exceed the aggregate amount of the paid up capital and reserves of the deposit-taking company.

(5) There shall not be taken into account in the assessment of the value of interests in land for the purposes of this section the value of any interest in land mortgaged to the authorised institution to secure a debt due to the institution nor the value of any interest in land acquired pursuant to entry into possession of land so mortgaged, provided that the interest acquired is disposed of at the earliest suitable opportunity, and in any event not later than 18 months after its acquisition or within such further period as the Commissioner may, in writing, allow in any particular case.

(6) Every director and every manager of an authorised institution which contravenes this section commits an offence and is liable—

- (a) on conviction upon indictment to a fine of \$200,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues; or
- (b) on summary conviction to a fine of \$50,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.'

**Clause 91**

That clause 91 be amended by inserting after 'company' the following—  
' , notwithstanding anything contained in sections 88 and 90,'.

**Clause 92**

That clause 92(1) be amended by deleting 'Notwithstanding' and substituting the following—  
'In the case of a bank, notwithstanding'.

**Clauses 93 and 94**

That clauses 93 and 94 be deleted.

**Clause 96**

That clause 96 be amended, in subclauses (1)(a)(i) and (ii) and (5)(a) by deleting 'deposit money' wherever it occurs and substituting the following—  
'make any deposit'.

**Clause 97**

That clause 97 be amended, in subclause (1)(a) and (b), by deleting 'deposit money' wherever it occurs and substituting the following—  
'make any deposit'.

**Clause 98**

That clause 98 be amended—

- (a) in subclause (1), by deleting 'deposit money' and substituting the following—  
'make a deposit'.
- (b) in subclause (3)—
  - (i) in paragraph (a) by inserting after 'director' the following—  
'or controller';
  - (ii) by deleting paragraph (b).

**Clause 101**

That clause 101 be amended, in subclause (1), by deleting 'licensed bank, a bank incorporated outside Hong Kong' and substituting the following—  
'bank, an institution'.

**Part XVII**

In the heading to Part XVII, by deleting 'TO RISK ASSETS' and substituting the following—  
'ADEQUACY'.

**Clause 102**

That clause 102 be amended—

- (a) in subclause (1), by deleting 'to risk assets' and substituting the following—  
'adequacy'.
- (b) in subclause (2), by deleting 'to risk assets ratio of an authorised institution' and substituting the following—  
'adequacy ratio of an authorised institution which has any subsidiary'.

**Clause 104**

That clause 104(1) be amended by deleting 'is not' and substituting the following—  
'shall not be'.

**Clause 105**

That clause 105 be amended—

- (a) in subclause (1), by deleting 'by notice in writing served on an authorised institution, vary the capital to risk assets' and substituting the following—  
'after consultation with an authorised institution, by notice in writing served on it vary the capital adequacy'.
- (b) in subclauses (3) and (4), by deleting 'to risk assets' wherever it occurs and substituting the following—  
'adequacy'.

**Clause 106**

That clause 106 be amended by deleting subclauses (2) and (3) and substituting the following—

- '(2) The liquidity ratio of an authorised institution shall be calculated for each calendar month on the basis of the sum of its liquefiable assets and the sum of its qualifying liabilities,

Fourth  
Schedule. Witin the meaning of the Fourth Schedule, for each working day of the calendar month concerned except that the Commissioner may, as he thinks fit, by notice in writing served on an authorised institution, permit the institution to calculate its liquidity ratio by reference to such days during the calendar month concerned as the Commissioner may specify in the notice:

Provided that if any such specified day is a public holiday the immediately preceding working day shall be taken for the purposes of such calculation.

(3) In relation to an authorised institution that operates in Hong Kong and also elsewhere, this Part shall apply only to its principal place of business in Hong Kong and its local branches and shall do so as if that principal place of business and those branches were collectively a separate authorised institution.'

### Clause 108

That clause 108(1) be amended by deleting 'is not' and substituting the following—  
'shall not be'.

### Clause 110

That clause 110 be amended—

(a) in subclause (1)—

- (i) by inserting after 'institution' the following—  
'incorporated in Hong Kong';
- (ii) by deleting 'charges' and substituting the following—  
'amounts secured by way of charge'; and
- (iii) by deleting 'in Hong Kong' where it last occurs.

(b) in subclause (2)—

- (i) by deleting 'charges' and substituting the following—  
'amounts secured by way of charge';
- (ii) by deleting 'an authorised institution's assets (excluding *contra* items) in Hong Kong' and substituting the following—

'the assets (excluding *contra* items) of an authorised institution incorporated in Hong Kong'.

(c) by deleting subclause (3) and substituting the following—

'(3) Where any civil proceedings have been instituted against any authorised institution incorporated in Hong Kong, irrespective of whether the proceedings have been instituted Before, on or after the commencement of this Ordinance, the institution shall, if those proceedings materially affect, or could materially affect, the financial position of the institution, forthwith notify the Commissioner of those proceedings and provide the Commissioner with such particulars of those proceedings as he may require.'

(d) by deleting subclause (4).

(e) in subclause (6), by deleting the definition of 'charges' and substituting the following—

"assets" includes assets outside Hong Kong;

"charge" includes lien, encumbrance, equitable interest and third party right.'

#### Clause 121

That clause 121(5) be amended in the proviso to paragraph (a), by deleting 'individual' and substituting the following—

'particular'.

#### Clause 124

That clause 124(5) be amended—

(a) in paragraph (d), by inserting after 'police' the following—  
'or the Independent Commission Against Corruption'.

(b) by deleting paragraph (e) and substituting the following—

(Cap. 50.) (e) to the disclosure of information by the Commissioner to the Registrar, the Council or the Disciplinary Committee under the Professional Accountants Ordinance in respect of any complaint that can be made under section 34 of that Ordinance in respect of any auditor of an authorised institution, including an auditor appointed under section 59(2) or approved under section 63(3)(b);'

(c) in paragraph (f), by deleting the full stop and substituting the following—  
';or'.

(d) by inserting after paragraph (f) the following—

- '(g) to the disclosure of information concerning an authorised institution, to its auditor or former auditor, during a meeting called under section 61.'

### Clause 128

That clause 128 be amended by deleting '(other than a compradore)'.

### Clause 133

That clause 133 be amended—

(a) by deleting subclause (1) and substituting the following—

'(1) The contravention of any prohibition in this Ordinance on the entering into of any contract shall not render that contract unenforceable.'

(b) in subclause (2), by deleting '5 August 1983' and substituting the following—  
'the commencement of this Ordinance'.

### Clause 134

That clause 134 be amended by deleting subclause (2) and substituting the following—

'(2) Where the licence or, as the case may be, the registration of an authorised institution is revoked or suspended under this Ordinance, such revocation or suspension shall not affect any right—

- (a) of any person against the institution; or  
(b) of the institution against any person.'

### Clause 136

That clause 136(3) be amended by deleting 'a bank' and substituting the following—  
'an authorised institution'.

### Clause 139

That clause 139 be amended by inserting after subclause (3) the following—

'(4) The Commissioner may, by notice in the *Gazette*, amend the  
Fifth Schedule. Fifth Schedule.'

**Clause 141**

That clause 141 be amended by deleting 'Fifth' and substituting the following—  
'Sixth'.

**Clause 152**

That clause 152 be amended by inserting after subclause (4) the following—

'(5) Where at the commencement of this Ordinance the financial exposure of an authorised institution to any persons exceeds that which is permitted by section 81, but would not do so if no account were taken of investments (as defined in subsection (9) of that section) that were made by the institution before such commencement, then those investments may be disregarded for the purposes of calculating the financial exposure of the institution under that section for—

- (a) a period of not more than 3 months from the commencement of this Ordinance; or
- (b) such longer period as may be approved by the Commissioner in writing in any particular case,

provided that the institution does not in any such period further increase its financial exposure, within the meaning of that section, to the same persons.'

The amendments were agreed to.

Clauses 2, 3, 7, 11, 12, 14, 15, 18, 20, 24, 27 to 30, 40, 43, 44, 46, 49, 52, 59, 65, 66, 69, 72 to 94, 96 to 98, 101, 102, 104 to 106, 108, 110, 121, 124, 128, 133, 134, 136, 139, 141 and 152, as amended, were agreed to.

Clauses 22, 58, 61, 62, 71 and 99.

MR. PETER POON: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

*Proposed Amendments***Clause 22**

That clause 22 be amended by inserting after subclause (1) the following—

'(1A) Any company aggrieved by any conditions to which its registration is made subject by the Commissioner under subsection (1) may appeal against the conditions to the Governor in Council, but those conditions shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.'

**Clause 58**

That clause 58(4) be amended, in paragraph (b), by inserting after 'fails' the following—  
'without reasonable excuse'.

**Clause 61**

That clause 61(1) be amended by deleting 'governing board, by whatever name called,' and substituting the following—  
'directors'.

**Clause 62**

That clause 62 be deleted and substituted by the following—

'Commissioner  
may make  
complaint where there  
is misconduct,  
etc. by auditor.  
(Cap. 50)

**62.** Notwithstanding any other provision of this Ordinance or the Professional Accountants Ordinance, the Commissioner may, where he is of the opinion that there are grounds for a complaint under section 34 of that Ordinance in respect of any auditor of an authorised institution, including an auditor appointed under section 59(2) or approved under section 63(3)(b), make such complaint to the Registrar under that Ordinance.'

**Clause 71**

That clause 71 be deleted.

**Clause 99**

That clause 99 be amended—

(a) in subclause (1), by deleting 'cease issuing' and substituting the following—  
'withdraw or, as the circumstances require, remove, and to cease issuing.'

(b) by inserting after subclause (1) the following—

'(1A) Any authorised institution aggrieved by a notice served under subsection (1) may appeal to the Financial Secretary against the requirement contained therein, but the notice shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.'

The amendments were agreed to.

Clauses 22, 58, 61, 62, 71 and 99, as amended, were agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 21 be amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

**Clause 21**

That clause 21 be amended—

(a) in subclause (3)—

(i) in paragraph (a), by deleting 'loss disclosed in the balance sheet' and substituting the following—

'debit balance appearing in the profit and loss account'; and

(ii) in paragraph (b), by deleting everything that occurs after 'any' and substituting the following—

'debit balance appearing in the profit and loss account of the company.'

(b) by inserting after subclause (3) the following—

'(3A) The Governor in Council may, by notice in the *Gazette*, amend the amount of paid-up share capital specified in subsection (2)(a).'

The amendment was agreed to.

MR. PETER POON: Sir, I move that clause 21 be further amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

**Clause 21**

That clause 21 be amended by deleting subclause (6) and substituting the following—

'(6) Any company aggrieved by the refusal of the Commissioner to register it under subsection (2), or by the imposition by him of conditions under subsection (1), may appeal to the Governor in Council against the refusal or the conditions but that refusal or, as the case may be, those conditions shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.'

The amendment was agreed to.

Clause 21, as amended, was agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 25 be amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

### **Clause 25**

That clause 25 be amended, in subclause (3), by deleting 'and to section 49'.

The amendment was agreed to.

MR. PETER POON: Sir, I move that clause 25 be further amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

### **Clause 25**

That clause 25 be amended, by deleting subclause (5) and substituting the following—

'(5) Any registered deposit-taking company aggrieved by the refusal of the Financial Secretary to grant a deposit-taking licence to it under subsection (1), or by the imposition by him of conditions under subsection (1) or (3), may appeal to the Governor in Council against the refusal or the conditions, but that refusal or, as the case may be, those conditions shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.'

The amendment was agreed to.

Clause 25, as amended, was agreed to.

MR. PETER POON: Sir, I move that clause 60 be amended as set out under my name in the paper circulated to Members.

*Proposed amendment***Clause 60**

That clause 60 be amended—

(a) by deleting subclause (1) and substituting the following—

'(1) Every authorised institution shall, not later than 6 months after the close of each financial year, publish in one English language daily newspaper and one Chinese language daily newspaper, each of which shall be a newspaper circulating in Hong Kong—

- (Cap. 32.)
- (a) a copy of its audited annual balance sheet for that year, and any notes thereon, a copy of the profit and loss account and a copy of the report of the auditor made pursuant to section 141 of the Companies Ordinance or section 114 of this Ordinance;
  - (b) the full and correct names of all persons who are directors or managers for the time being of the institution; and
  - (c) the names of all subsidiaries, for the time being, of the institution, and shall thereafter exhibit them throughout the year in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch, together with, in the case of an authorised institution which is a company limited by shares or limited by guarantee and having a share capital, a copy of the report of the directors laid before the company in general meeting in accordance with section 129D(1) of the Companies Ordinance.'

(b) in subclause (8), by inserting after 'which fails' the following—  
'without reasonable excuse'.

The amendment was agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 60 be further amended as set out under my name in the paper circulated to Members.

*Proposed amendment***Clause 60**

That clause 60 be amended—

(a) by deleting subclause (3).

(b) in subclause (4), by deleting 'section 59' and substituting the following—

'section 59(1) subject to such conditions as he may think proper to attach thereto'.

The amendment was agreed to.

Clause 60, as amended, was agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 63 be amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

### **Clause 63**

That clause 63 be amended, in subclause (3)—

(i) in paragraph (b), by deleting 'section 59' and substituting the following—  
'section 59(1)'.

(ii) in paragraph (ii), by inserting after 'its duties under' the following—  
'Part XII, XIV, XV, XVII or XVIII of'.

The amendment was agreed to.

MR. PETER POON: Sir, I move that clause 63 be further amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

### **Clause 63**

That clause 63 be amended, in subclause (6), by inserting after 'which fails' the following—  
'without reasonable excuse'.

The amendment was agreed to.

Clause 63, as amended, was agreed to.



The amendment was agreed to.

FINANCIAL SECRETARY: I move that clause 70 be further amended as set out under my name in the paper circulated to Members.

*Proposed amendment*

**Clause 70**

That clause 70 be amended—

- (a) in subclause (1), by inserting after 'a particular case' the following—  
' , shall be conveyed to the applicant as soon as practicable,'
- (b) in subclause (4), by inserting after 'refusal' the following—  
'as soon as practicable'.
- (c) in subclause (5)—
  - (i) by inserting after 'Commissioner' the following—  
'or the imposition of conditions by him under that subsection'; and
  - (ii) by deleting 'refusal, but that refusal' and substituting the following—  
'refusal or conditions, but that refusal or, as the case may be, those conditions'.
- (d) by inserting after subclause (5) the following—  
  
'(5A) Nothing done in contravention of subsection (1), or in reliance on the exercise in contravention of that subsection of any voting power, shall be invalid by reason only of that contravention.'
- (e) in subclause (6)(a), by deleting '\$200,000 and to imprisonment for 2 years' and substituting the following—  
'\$500,000 and to imprisonment for 5 years'.

The amendment was agreed to.

Clause 70, as amended, was agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 95 be amended as set out under my name in the paper circulated to Members.

*Proposed amendment***Clause 95**

That clause 95 be amended—

(a) in subclause (1)(a) and (b), by deleting '82,' wherever it occurs.

(b) by inserting after subclause (1) the following—

'(1A) Any authorised institution, if at any time called upon in writing by the Commissioner so to do, shall satisfy him by the production of such evidence or information as he may require, whether or not the institution is engaging in any business practices specified in a notice under section 82.'

The amendment was agreed to.

MR. PETER POON: Sir, I move that clause 95 be further amended as set out under my name in the paper circulated to Members.

*Proposed amendment***Clause 95**

That clause 95 be amended, in subclause (2), by deleting 'to comply with this section' and substituting the following—

'without reasonable excuse to comply with subsection (1) or (1A).'

The amendment was agreed to.

Clause 95, as amended, was agreed to.

New clause 71A. 'Director and secretaries require Commissioner's approval.'

*Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).*

FINANCIAL SECRETARY: Sir, in accordance with Standing Order 46(6), I move that new clause 71A as set out in the paper circulated to Members be read a Second time.

*Question put and agreed to.*

Clause read the Second time.

FINANCIAL SECRETARY: Sir, I move that new clause 71A be added to the Bill.

*Proposed addition***New clause 71A**

That the Bill be amended by inserting after clause 71 the following—

'Director and secretaries require Commissioner's approval.

**71A.** (1) No person shall—

- (a) become a director or secretary of an authorised institution incorporated in Hong Kong without the consent in writing of the Commissioner; or
- (b) if becoming a director or secretary without such consent, act or continue to act as a director or secretary, as the case may be, without such consent,

and for the purposes of this subsection consent may be given subject to such conditions as the Commissioner may think proper to attach thereto and shall be conveyed to the person, and the institution, concerned as soon as practicable.

(2) Where the Commissioner refuses to give consent under subsection (1), he shall notify the person concerned in writing of his refusal as soon as practicable.

(3) The Commissioner may by notice in writing to the person and the authorised institution concerned withdraw any consent given under subsection (1), or amend any condition attached to any such consent, if the Commissioner—

- (a) has given to the director or secretary concerned not less than 7 days' advance notice of his intention to do so, specifying his reasons; and
- (b) has taken into account before so doing any written representation received by him from the director or secretary concerned,

and in any such case the director or secretary concerned shall cease to act as such or, as the case may be, shall comply with the amended conditions.

(4) A person aggrieved—

- (a) by a refusal to grant consent, or by conditions attached to a consent, under subsection (1);
- (b) by the withdrawal of consent under subsection (2); or
- (c) by the amendment under subsection (2) of conditions attached to a consent,

may appeal to the Governor in Council against the refusal, conditions, withdrawal or amendment, as the case may be, but such refusal, conditions, withdrawal or amendment shall take effect immediately notwithstanding that an appeal has been or may be made under this subsection.

(5) Any person who contravenes subsection (1) or (3) commits an offence and is liable—

(a) on conviction upon indictment to a fine of \$200,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine of \$50,000 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues.

(6) (a) A person shall not be regarded for the purposes of subsection (1) as becoming a director of an authorised institution if he is appointed to serve as a director of it immediately on the expiration of a previous term by him as a director.

(b) A person who is a director or secretary of an authorised institution immediately prior to the commencement of this Ordinance shall for the purposes of this section be regarded as having the consent of the Commissioner under subsection (1) to continue to act as director or secretary, as the case may be.'

The addition of the new clause was agreed to.

First and Second Schedules were agreed to.

FINANCIAL SECRETARY: Sir, I move that the Third to Fifth Schedules be amended as set out in the paper circulated to Members.

*Proposed amendments*

### **Third and Fourth Schedules**

That the Bill be amended by deleting the Third and Fourth Schedules and substituting the following—

## THIRD SCHEDULE

[ss. 102 &amp; 139(3).]

## CAPITAL ADEQUACY RATIO

1. In this Schedule—

"book value" in relation to any thing referred to in this Schedule means its current book value, after deducting any provision made in the books against a reduction in its value;

"debt securities" means any securities other than shares or stocks;

"eligible bank" means—

- (a) any authorised institution which is a bank or licensed deposit-taking company; and
- (b) any bank incorporated outside Hong Kong which is not licensed under this Ordinance, except a bank which is, in the opinion of the Commissioner, not adequately supervised by an appropriate, recognised banking supervisory authority of the place in which it is incorporated;

"eligible Government" means—

- (a) the Government; and
- (b) any other government, except a government which is, in the opinion of the Commissioner, one that should not be accepted for the purposes of this Schedule;

"guarantee" includes indemnity;

"registered deposit-taking company" does not include any deposit-taking company the registration of which is for the time being suspended under this Ordinance.

2. The capital adequacy ratio of an authorised institution shall be calculated as the ratio, expressed as a percentage, of its capital base, as specified in paragraph 3, to its risk assets, as specified in paragraph 4.

3. The capital base of an authorised institution shall be determined by taking the sum, calculated in Hong Kong dollars, of the book value of—

- (a) its paid-up capital;
- (b) its general reserves, including inner reserves, share premium account and revaluation reserves;
- (c) its undistributed profits as shown in the latest audited accounts, less—
  - (i) any dividends subsequently declared, or paid, but not provided; and
  - (ii) any net loss for the period since the end of the period covered by the latest audited accounts;

- (d) where the Commissioner determines under section 102(2) that the accounts of the institution are to be on a consolidated basis, its minority interests, and
- (e) its perpetual subordinated debt, but not exceeding the equivalent of half of the total of the amounts referred to in sub-paragraphs (a), (b), (c) and (d),

and by deducting therefrom the sum, calculated in Hong Kong dollars, of the book value of—

- (i) its shareholding in any company which is a subsidiary or the holding company of the institution, other than any shareholding that falls to be deducted under sub-paragraph (ii);
- (ii) its loans to, shares and debentures issued by, and guarantees of liabilities of, connected companies of the institution, where in the opinion of the Commissioner the institution has made the loans, is holding the shares or debentures or, as the case may be, has given the guarantees, other than in the ordinary course of business; and for the purposes of this sub-paragraph 'shares' and 'debentures' shall have the meaning assigned to them by section 2 of the Companies Ordinance, and a company shall be treated as a connected company of the institution if it is a subsidiary or the holding company of the institution, or is otherwise of a description falling within section 64(1)(a), (b), (c), (d) or (e); and
- (iii) the intangible assets of the institution.

4. The risk assets of an authorised institution shall be the sum of all the products achieved by—

- (a) taking the book value, calculated in Hong Kong dollars, of each of the items referred to in the Table in relation to that institution; and
- (b) in relation to each item, multiplying that value by the risk weight specified in the Table for the category to which that item belongs:

Provided that no item that has been deducted under paragraph 3(i), (ii) or (iii) in calculating the capital base of the institution shall be taken into account for the purposes of this paragraph.

#### TABLE

##### *Category I—risk weight 0.0*

<i>Item</i>	<i>Nature of item</i>
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- (a) Government certificates of indebtedness held by the institution for note issue.
- (b) Currency notes and coins held by the institution.

- (c) Gold in any form which is an asset of the institution and which it has contracted to sell to customers.
- (d) Shares, stocks and debt securities which are an asset of the institution and which it has contracted to sell to customers.
- (e) Liabilities of the institution, whether contingent or otherwise, in respect of forward foreign exchange contracts, interest rate swap contracts, currency swap contracts, option contracts and futures contracts.
- (f) Liabilities of the institution, whether contingent or otherwise, in respect of—
  - (i) bills received by the institution for the purpose of the collection of funds;
  - (ii) letters of guarantee in respect of the import of goods, in relation to which the institution is liable under import bills;
  - (iii) trust receipts in respect of the movement of goods, in relation to which the institution either has made loans which are outstanding or is liable under letters of credit.
- (g) Underwriting commitments of the institution that have subsisted for less than 3 months.

*Category II—risk weight 0.2*

<i>Item</i>	<i>Nature of item</i>
(a)	Loans made by the institution to eligible banks and eligible governments, being loans that mature or are callable within 1 year and are not subordinated to the claims of ordinary creditors of the borrowers.
(b)	Debt securities held by the institution that were issued by eligible banks or eligible governments, are redeemable within 1 year and are not subordinated to the claims of ordinary creditors of the issuers.
(c)	Loans made by the institution that are guaranteed by an eligible bank or eligible government and mature or are callable within 1 year.
(d)	Debt securities held by the institution that are guaranteed by an eligible bank or eligible government and are redeemable within 1 year.
(e)	Guarantees given by the institution in respect of the financial liabilities of eligible banks and eligible governments.
(f)	Contingent liabilities of the institution that are guaranteed by eligible banks or eligible governments.
(g)	Loans by, and contingent liabilities of, the institution that are secured by cash deposits of equivalent value with the institution.

*Category III—risk weight 0.5*

<i>Item</i>	<i>Nature of item</i>
(a)	Bills, certificates, notes, paper and debt securities held by the institution which— <ol style="list-style-type: none"><li>(i) are negotiable;</li><li>(ii) have a remaining term to maturity of not less than 1 year and not more than 10 years; and</li><li>(iii) have been issued, guaranteed or accepted by eligible banks or eligible governments.</li></ol>
(b)	Import bills and export bills held by the institution that mature within 6 months or are payable after sight.
(c)	Loans made by the institution to registered deposit-taking companies, being loans that mature or are callable within 1 year and are not subordinated to the claims of ordinary creditors of the borrowers.
(d)	Debt securities held by the institution that were issued by registered deposit-taking companies, are redeemable within 1 year and are not subordinated to the claims of ordinary creditors of the issuers.
(e)	Loans made by the institution that are guaranteed by registered deposit-taking companies and mature or are callable within 1 year.
(f)	Debt securities held by the institution that are guaranteed by registered deposit-taking companies and are redeemable within 1 year.
(g)	Guarantees given by the institution in respect of the financial liabilities of registered deposit-taking companies.
(h)	Contingent liabilities of the institution that are guaranteed by registered deposit-taking companies.
(i)	Underwriting commitments of the institution that have subsisted for not less than 3 months.
(j)	All contingent liabilities of the institution not specified elsewhere in this Table.

*Category IV—risk weight 10*

<i>Item</i>	<i>Nature of item</i>
(a)	Equity investments by the institution in any company, not being a subsidiary of the institution, in which the institution holds the beneficial ownership, directly or indirectly, of not less than 20 <i>per cent</i> of the share capital.

*Category V—risk weight 1.0*

<i>Item</i>	<i>Nature of item</i>
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(a) All assets not specified elsewhere in this Table.

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FOURTH SCHEDULE

[ss. 106 & 139(3).]

LIQUIDITY RATIO

1. In this Schedule—

“relevant bank” means—

- (a) any authorised institution; and
- (b) any bank incorporated outside Hong Kong which is not licensed under this Ordinance, except a bank which is, in the opinion of the Commissioner, not adequately supervised by an appropriate, recognised banking supervisory authority in the place in which it is incorporated;

“one-month liability” in relation to any authorised institution or relevant bank means—

- (a) any liability, other than a contingent liability, the effect of which will or could be to reduce within 1 month the liquefiable assets of that institution or relevant bank; and
- (b) any contingent liability that in the opinion of the Commissioner may result in a reduction within 1 month of the liquefiable assets of that institution or relevant bank.

2. The liquidity ratio of an authorised institution shall be calculated as the ratio, expressed as a percentage, between its liquefiable assets, as specified in paragraph 3 and its qualifying liabilities, as specified in paragraph 4.

3. The liquefiable assets of an authorised institution shall be the sum, calculated in Hong Kong dollars, of the following amounts—

- (a) the amount, if any, by which its total one-month liabilities to relevant banks are exceeded by the total one-month liabilities of relevant banks to it;
- (b) currency notes and coins held by the institution in Hong Kong dollars or in any currency freely convertible into Hong Kong dollars;
- (c) repayments to the institution in respect of loans made by it that are repayable by instalments, being repayments—

- (i) which will fall due within 1 month;
  - (ii) in respect of which the institution has no reason to expect any default; and
  - (iii) which are not otherwise taken into account in calculating the liquefiable assets of the institution;
- (d) the amounts that the institution can realise within 1 month (after deduction of the costs of such realisation) for such of its following assets as are available to meet any or all of its qualifying liabilities—
- (i) export bills maturing within 6 months, or payable after sight, and discountable in Hong Kong dollars or in a currency freely convertible into Hong Kong dollars;
  - (ii) securities that were issued, or are the subject of any guarantee or indemnity given, by the Government or by any government approved by the Commissioner for the purposes of this sub-paragraph;
  - (iii) other bills, certificates, notes, paper or debt securities which—
    - (A) are negotiable;
    - (B) have a remaining term to maturity of not more than 10 years; and
    - (C) are denominated and traded in Hong Kong dollars or in a currency freely convertible into Hong Kong dollar,except for any that are issued by a person or government specified for the purposes of this sub-paragraph by the Commissioner by notice in writing served upon the authorised institution;
  - (iv) gold.

4. The qualifying liabilities of an authorised institution shall be the sum, calculated in Hong Kong dollars, of—

- (a) the amount, if any, by which the total one-month liabilities of relevant banks to the authorised institution are exceeded by its total one-month liabilities to relevant bank; and
- (b) the total of its other one-month liabilities.'

The amendments were agreed to.

The Third to Fifth Schedules, as amended, were agreed to.

*Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).*

FINANCIAL SECRETARY: Sir, in accordance with Standing Order 46(7) I move that new Fifth Schedule as set out in the paper circulated to Members be read a Second time.

*Question put and agreed to.*

Schedule read the Second time.

FINANCIAL SECRETARY: I move that new Fifth Schedule be added to the Bill.

*Proposed addition*

### **New Schedule**

That the Bill be amended by renumbering the Fifth Schedule as the Sixth Schedule and inserting after the Fourth Schedule the following—

#### 'FIFTH SCHEDULE [ss. 2(1) & 139(4).]

##### PERPETUAL SUBORDINATED DEBT

<i>Issuer</i>	<i>Month of issue</i>	<i>Amount of issue</i>	<i>Short title of issue</i>
Bank of Scotland	November 1985	US\$250 millions	Undated floating rate primary capital notes
Barclays	June 1985	US\$600 millions	Undated floating rate primary capital notes
Barclays	February 1986	US\$750 millions	Undated floating rate primary capital notes
Kleinwort Benson	June 1985	US\$100 millions	Perpetual floating rate notes
Lloyds	May 1985	US\$750 millions	Primary capital undated floating rate notes
Lloyds	November 1985	US\$500 millions	Global certificate (45 Primary Capital Sr. 2) floating rate notes
Midland	May 1985	US\$750 millions	Perpetual Floating rate notes
Midland	August 1985	US\$500 millions	Perpetual Floating rate notes
National West- Minister	May 1985	US\$500 millions	Primary capital floating rate notes (Series A)
National West- Minister	May 1985	US\$500 millions	Primary capital floating rate notes (Series B)
National West- Minister	November 1985	US\$500 millions	Primary capital floating rate notes (Series C)
Royal Bank of Scotland	December 1985	US\$350 millions	Undated floating rate primary capital notes

<i>Issuer</i>	<i>Month of issue</i>	<i>Amount of issue</i>	<i>Short title of issue</i>
Standard Chartered	May 1985	US\$400 millions	Undated primary capital floating rate notes
Standard Chartered	July 1985	£150 millions	Undated primary capital floating rate notes
Standard Chartered	November 1985	US\$300 millions	Undated primary capital floating rate notes (Series 2)
Standard Chartered	December 1985	US\$400 millions	Undated primary capital floating rate notes (Series 3)
Hongkong & Shanghai Bank	August 1985	US\$400 millions	Primary capital undated floating rate notes (1st series)
Hongkong & Shanghai Bank	November 1985	US\$400 millions	Primary capital undated floating rate notes (2nd series).

The addition of the new schedule was agreed to.

### **Third Reading of Bill**

The Attorney General reported that the

BANKING BILL 1986

had passed through Committee with amendments and moved the Third Reading of the Bill.

*Question put on the Bill and agreed to.*

Bill read the Third time and passed.

### **Valedictory**

HIS EXCELLENCY THE PRESIDENT: Hon. Members, this is the last occasion on which the Financial Secretary, Sir John BREMRIDGE, will attend as a Member of this Council.

I scarcely need to remind you of Sir John's long and distinguished service. He first joined this Council as an Unofficial Member in July 1974 and served in that capacity until December 1980. He subsequently rejoined the Council as an ex-officio Member following his appointment as Financial Secretary in June 1981. His combined service as an Unofficial and as an Official spans eleven and a half years.

Sir JOHN took over as Financial Secretary just as the world was experiencing a recession of considerable severity. Given the exposure of our economy to external forces, this alone would have called for skill and determination. Yet Sir John not only successfully brought Hong Kong's economy through an external crisis, he has successfully steered it through a series of internal problems—the collapse of the property market, the currency crisis of September 1983, and a number of serious problems in the banking sector.

Financial Secretaries and Finance Ministers would probably agree that their objectives are to promote a sound currency, low inflation, a balanced Budget, high employment and economic growth. Most would be happy to see the achievement of some of these. They would envy Sir John's tremendous contribution to the achievement of them *all*. We in Hong Kong would wish to thank him for it and to acknowledge the steadfastness of purpose, the coolness of judgment and the incisive intellect which have made it possible.

Hon. Members will also long recall Sir John's contribution to the proceedings of this Council. They have been enriched by his forthrightness, mastery of his subject and abiding good humour.

I am sure that hon. Members would wish to join me in wishing Sir John and Lady BREMRIDGE a long and happy retirement and in assuring them of a warm welcome whenever they return to Hong Kong.

MISS DUNN: Sir, on behalf of the Unofficial Members of this Council, I join you, Sir, in expressing gratitude to Sir John BREMRIDGE for his years of service as Financial Secretary.

Nobody could describe Sir John BREMRIDGE as a retiring man but he keeps on doing it.

It is barely five and a half years since Lord MACLEHOSE and Mr. Oswald CHEUNG paid fitting tributes to Mr. BREMRIDGE as he then was upon his retirement from this Council. It is not often that we are fortunate enough to have the chance to do the same thing twice.

When Sir John retired for the first time he was my chief in Swires. We were as sorry to see him go from the firm as we were to see him go from the Council.

It was therefore with great pleasure that we learned of his appointment as Financial Secretary. Here was a man whom we knew, a man who knew Hong Kong, a man who, although he had spent a career in the private sector, had taken a keen interest in many public affairs far removed from the day to day business of doing business.

His appointment must have seemed to easy at first. Money was pouring into the public coffers far more speedily than anyone could spend it. The collapse of the land boom put an end to that. It has indeed been, as you said, Sir, a long and difficult struggle to get back to the sound financial position which he presented

in the Budget just passed. This involved a reshaping of the tax system, without raising the overall burden intolerably, and a constraining of the rate of growth in public expenditure. Neither were pleasant nor easy tasks but he achieved them fairly and in a way that was accepted even by those who found the impact of the changes uncomfortable.

But it is John BREMRIDGE the man that we shall all miss: small of stature, of no mean weight, but large in outlook, broad in vision and big-hearted. We shall miss his good humour, his cutting wit and his quotable quotes, both inside and outside this Council. 'Don't shoot the pianist—he's doing his best' he said recently in this Council. His advice to his successor is to do his best and then 'run like hell'. Only just now when concluding the debate on the Banking Bill, he reminded us that personal integrity is not a product of legislation and that a properly considered and fully scrutinised Ordinance was of far more importance than his own face.

Those of us who try to criticise him, find that it is impossible to nail him down. He always says that his figures are roughly accurate, that his forecasts are unlikely ever to be right and that his predictions are almost certainly bound to be wrong. But like the good sailor that he is, he has steered the Hong Kong ship on a steady course and kept us off the rocks.

The strain of holding high office at a time when he should have been enjoying a relaxing retirement from a highly successful business career must have been as demanding on Lady Bremridge as on her husband. We sometimes forget that wives never retire. She has remained effectively active in the community and she will be sorely missed from her work for the mentally handicapped and in our new City Polytechnic. We wish her and Sir John a real chance now to enjoy a proper retirement.

Sir John has reminded us recently of the longevity of retired Financial Secretaries. Hong Kong's first Financial Secretary, Sir Sydney CAINE, has already survived forty six years since leaving the post. We all hope that Sir John will improve on such a worthy example.

### **Adjournment and next sitting**

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday 4 June 1986.

*Adjourned accordingly at twenty-three minutes past Five o'clock.*

*Note:* The short titles of motions bills listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

**WRITTEN ANSWERS****Annex I****Written answer by the Secretary for Education and Manpower to Mr. SZETO'S supplementary question to Question 1.**

First of all, I should caution that the Government only has information on retirement schemes which apply for approval from the Commissioner of Inland Revenue under the Inland Revenue (Retirement Scheme) Rules. During the period January to June 1986, 235 new provident funds/retirement schemes were approved by the Commissioner of Inland Revenue, compared with 159 over the corresponding period in 1985.

In 1985, the rate of increase in the number of approved schemes was approximately 12 per cent. The increase in the number of approved schemes in the first six months of this year, by 235 from 3 992 to 4 227, is roughly 6 per cent, which is in line with the 1985 rate of increase. It seems fair to say therefore that there is a sustained trend in the growth of private provident fund schemes, but that the introduction of the long service payment scheme has not so far had a dramatic influence on this trend.

From enquiries made by the Labour Relations Service with some banks and insurance companies which manage private provident funds, there has been a growing interest among employers during recent months on the setting up of provident funds. It is reported that the volume of enquiries received by these banks and insurance companies about provident funds has doubled this year. However, it is too early to conclude simply on the basis of the volume of enquiries that the enactment of long service payment provision under the Employment Ordinance will encourage faster growth of private provident funds, as interested enquiries may not necessarily be translated into action. Your point however is a very interesting one and we will monitor the position over the next year or two.

**Annex II****Written answer by the Secretary for District Administration to Mr. CHEONG'S supplementary question to Question 2.**

The cost of the older type of community centre facilities that were built in the 60s and 70s would be difficult to trace. I take it, however, that you are more interested in the current ones with up-to-date infra-structure (i.e. multi-purpose hall, conference room and other welfare facilities). The estimated capital costs as at 1986 prices in respect of the different types of centres are:

WRITTEN ANSWERS—*Continued*

	<i>Estimated Capital Cost (including air-conditioning) \$ million</i>
<i>Community Centre</i> (Site area: about 2 100 m <sup>2</sup> )	17
<i>Estate Community Centre</i> (Site area: about 1 600 m <sup>2</sup> )	11.7
<i>Community Hall</i> (Site area: about 900 m <sup>2</sup> )	5

For your information, Government is currently planning to adopt new designs for future community centre facilities with air-conditioning and in-creased site areas. The up-to-date cost estimates, however, are not yet available. The tentative timing for implementing the new designs for community centre facilities is 1988-89 onwards.

**Annex III****Written answer by the Secretary for Health and Welfare to Dr. LAM's written question to Question 11.**

The Medical and Health Department has enquired of all subvented hospitals, but only the United Christian Hospital and Yan Chai Hospital are able to supply statistics on cases involving discharge against medical advice, which are recorded below for your information:

	<i>No. of cases</i>	<i>Percentage of total discharges</i>
<i>United Christian Hospital</i>		
1983(July-Dec)	306	1.98
1984	424	1.41
1985	507	1.71
<i>Yan Chai Hospital</i>		
1983	47	0.6
1984	59	0.7
1985	74	0.7