

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 13 July 1988****The Council met at half-past Two o'clock****PRESENT**HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)

SIR DAVID CLIVE WILSON, K.C.M.G.

THE HONOURABLE THE CHIEF SECRETARY

SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY

MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL

MR. JEREMY FELL MATHEWS, J.P.

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

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

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

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

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

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

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

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 MARIA TAM WAI-CHU, C.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, J.P.

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., 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, O.B.E., C.P.M., J.P.

THE HONOURABLE JACKIE CHAN CHAI-KEUNG

THE HONOURABLE CHENG HON-KWAN, J.P.

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

DR. THE HONOURABLE CHIU HIN-KWONG, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM

THE HONOURABLE THOMAS CLYDESDALE, J.P.

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

THE HONOURABLE HUI YIN-FAT

DR. THE HONOURABLE CONRAD LAM KUI-SHING
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., 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 MRS. ROSANNA TAM WONG YICK-MING
THE HONOURABLE ANDREW WONG WANG-FAT
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT
THE HONOURABLE EDWARD HO SING-TIN, J.P.
THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.
SECRETARY FOR SECURITY
THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION
THE HONOURABLE CHARLES ROBERT SAUNDERS, J.P.
SECRETARY FOR LANDS AND WORKS (*Acting*)
THE HONOURABLE DOMINIC WONG SHING-WAH, J.P.
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)
THE HONOURABLE ADOLF HSU HSUNG, J.P.
SECRETARY FOR HEALTH AND WELFARE (*Acting*)

ABSENT

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.
THE HONOURABLE KIM CHAM YAU-SUM, J.P.
THE HONOURABLE RICHARD LAI SUNG-LUNG
THE HONOURABLE DESMOND LEE YU-TAI
THE HONOURABLE DAVID LI KWOK-PO, J.P.
THE HONOURABLE TAI CHIN-WAH
THE HONOURABLE TAM YIU-CHUNG
DR. THE HONOURABLE DANIEL TSE, O.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:

Port Control (Cargo Working Areas) Ordinance Port Control (Public Cargo Working Area) Order 1988.....	179/88
Public Health and Municipal Services Ordinance Public Health and Municipal Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No.4) Order 1988	180/88
Tate's Cairn Tunnel Ordinance 1988 Tate's Cairn Tunnel (Commencement of Construction Works) Notice 1988.....	181/88
Immigration Ordinance Immigration (Vietnamese Refugee Centres) (Closed Centres) (Designation) (Amendment) (No.2) Order 1988	182/88
Immigration Ordinance Immigration (Places of Detention) (Amendment) (No.2) Order 1988	183/88
Immigration Ordinance Immigration (Vietnamese Refugee Centres) (Closed Centre) (Amendment) (No.2) Rules 1988	184/88

Sessional Papers 1987-88:

No. 65—Customs and Excise Service Welfare Fund—Income and Expenditure Account with balance sheet and certificate of the Director of Audit for the year ended 31 March 1988.

No. 66—Clothing Industry Training Authority Annual Report for the year 1987.

Government Business**Second Reading of Bills****PENSION BENEFITS (MISCELLANEOUS AMENDMENTS) BILL 1988****Resumption of debate on Second Reading (29 June 1988)**

Question proposed, put and agreed to.

Bill read the Second time.

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

HONG KONG FUTURES EXCHANGE LIMITED (TEMPORARY PROVISIONS) BILL 1988

Resumption of debate on Second Reading (22 June 1988)

Question proposed, put and agreed to.

Bill read the Second time.

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

SECURITIES (DISCLOSURE OF INTERESTS) BILL 1988

Resumption of debate on Second Reading (8 June 1988)

Question proposed.

MISS TAM: Sir, the Securities (Disclosure of Interests) Bill 1988 is the result of a long process of consultation with the Hong Kong Association of Banks, the Hong Kong Society of Accountants and members of the securities industry and members of the public.

The purpose of this Bill is to require the beneficial owners of 10 per cent or more of the shares of listed companies to disclose particulars of their share-holdings. Directors and chief executives of listed companies are also required to disclose particulars of their beneficial interests in shares and debentures of such companies and their associated companies.

The ad hoc group in charge of the Bill had received representations made by the Hong Kong Electric Holdings Ltd., the Society of Accountants, and the Association of the Institute of Chartered Secretaries and Administrators in Hong Kong. We also met the representatives from the Hong Kong Association of Banks and we went through the points raised by all of the groups with the Administration in two meetings. We come to the conclusion that the Bill should be supported in principle and the level of notifiable interests stipulated at 10 per cent of a listed company's share capital is a reasonable starting point.

Nevertheless, as an international financial centre, Hong Kong should aim at making its disclosure requirements compatible with that adopted by the international financial community such as in United Kingdom and the USA. The ad hoc group requested the Administration to undertake to reduce the level of notifiable interests from 10 to 5 per cent in two to three years' time. However, the Administration declines to make a commitment to reduce the notifiable percentage at this stage, but indicated that it is their firm intention to do so when the time is ripe. The ad hoc group is therefore requesting the Financial Secretary to make a firm statement on the intention of the Government to reduce the level of notifiable interests as soon as is practicable, and I hope that the Financial Secretary can indicate his commitment to review the situation and fall in line with international practice within a given period of time.

The ad hoc group has also raised the following points with the Administration in respect of the amendments:

1. Clause 7(1)

At our request, the Administration has agreed to clarify in the Financial Secretary's speech concluding the Second Reading debate of the Bill that the five-day notification period was intended to be five business days. This is to ensure that even non-residents can comply with the five-day rule.

2. Clause 13

On the question of whether the disclosure requirement should be applied to warrants, the Administration considers that it should not since the major concern here is whether the interests held confer actual or potential voting rights on the interest holder: warrants do not confer voting rights on the warrant holder until the option to subscribe to shares of a listed company is exercised. Substantial administrative and statutory changes would also be required to allow warrants to be covered by the provision, and these are not considered justifiable. Nevertheless, the point will be explained again by the Financial Secretary.

3. Clause 14(4)

This clause of the Bill provides that any interest in shares held by an authorised institution as collateral for the purpose of a transaction entered into by that authorised institution in the ordinary course of business will also be exempt. It is suggested by the Hong Kong Association of Banks that a problem may arise in the case of a syndicated loan whereby a leading bank may be holding shares as security for advances made by other banks. The Administration considers that an amendment to the clause is not necessary since a secured syndicated loan which falls within a bank's ordinary course of business will be exempt from the disclosure requirement. The bank will in this case be a 'bare trustee', and will be covered by clause 14(1)(a) of the Bill. Representatives of the Association of Banks

indicated that it would be acceptable if the Administration would make a firm public statement to this effect. And I believe the point will be taken up by the Financial Secretary.

The Administration has also agreed to three amendments to the Bill which I will separately deal with in Committee.

Sir, this Bill gives power to the Financial Secretary to investigate into the real beneficial ownership of the shareholding of a listed company (under part IV) and the power under part V to give a freezing order. It also requires directors of a listed company to disclose particulars of any shareholding at 10 per cent or more of the company. The law, once enacted, will bring us in line with the United Kingdom legislation on the major requirements for disclosure of interests and it will fairly strengthen the Financial Secretary's hand in firm prudential control in Hong Kong. We therefore congratulate him on his continuous effort in this respect and we welcome the Bill.

MR. PETER POON: Sir, I rise to support the Securities (Disclosure of Interests) Bill 1988 subject to some minor amendments to be proposed and will speak only briefly as Miss Maria TAM, convener of our ad hoc group, has already summarised the major points. As one of the important financial centres in the world, Hong Kong lags behind a long way in disclosure requirements of interests of directors and major shareholders in listed companies. The United Kingdom introduced the relevant requirements in the Companies Act 1948. USA, Australia and Canada also have had such legislation for a long time. In the second report of the Companies Law Review Committee published in 1973, when our own Companies Ordinance was more or less based on the United Kingdom Companies Act, 1929 model, it was reported that there were detailed discussions on disclosure requirements and despite the very strong minority dissent, the said committee decided against recommending any introduction of such laws at that time for a variety of reasons, which in today's environment would certainly not be valid justifications.

As I understand, there has been extensive consultation and the Bill is generally welcome and is supported by the Standing Committee on Company Law and the Securities Commission. There is some criticism that the Bill has not gone far enough. The main issues are whether the 'notifiable interests' should be 10 or 5 per cent and whether 'discretionary trust' ought to be caught. As to the former, the Administration should review the percentage in two or three years and in the light of experience, and the then circumstances, should consider reducing the percentage to 5 per cent as applicable in many major financial centres. As to the exemption of securities interests in discretionary trust under clause 14(1), I would suggest that the situation be monitored by the Administration and if there are blatant or widespread abuses, prompt and proper action should be taken to introduce the necessary amendment. In its

present form, the Bill is reasonable in the Hong Kong context. It will go a long way to improve Hong Kong's image as a financial centre and will assist the operating of a fair securities market.

Sir, with these remarks, I support the Bill.

FINANCIAL SECRETARY: Sir, I am grateful to Miss TAM and Mr. POON for their support and to members of the ad hoc group for the consideration they have given to the Bill. I fully support the Committee stage amendments to be moved later by Miss TAM.

A number of points have been raised by Miss TAM, Mr. POON and the ad hoc group. The first concerns the notifiable percentage for substantial shareholders. Sir, like Miss TAM, I believe that 10 per cent is an appropriate starting point for Hong Kong. Nevertheless, in answer to Miss TAM and Mr. POON, I can confirm that we will review the situation in two to three years' time in the light of practical experience gained of the legislation in operation, and having regard to the practice in other jurisdictions. We will also consult the general public as well as the Standing Committee on Company Law Reform and the proposed Securities and Futures Commission on any changes that might be proposed.

The second point, Sir, concerns discretionary trusts. Under clause 14(1) of the Bill, a discretionary interest is not caught by the disclosure requirements. This provision follows the United Kingdom legislation. There it has not, to our knowledge, caused any problems. It would be unfair to penalise genuine discretionary trusts at this stage without any evidence of abuse. As Mr. POON has suggested, we will closely monitor the situation and necessary amendments will be introduced should there be widespread abuse in future.

The third point concerns warrants. Warrants do not form part of the issued voting shares of the company. Accordingly, warrants are not covered by the disclosure requirement. The purpose of the disclosure requirement is to reveal actual and potential voting power. This again follows the United Kingdom legislation where it has not caused any problems. Furthermore, to extend the scope of the Bill to apply to warrants would cause serious practical difficulties. It would require major changes to the Companies Ordinance and extensive redrafting of the Bill; this would inevitably delay its passage.

The fourth point raised by the ad hoc group concerns exempt security interests. Interests held as security by authorised financial institutions in the ordinary course of their business are exempt from the disclosure requirements. The banking sector has expressed concern that it may not be sufficiently clear in the Bill that an exempt security interest includes shares held by banks by way of a secured syndicated loan. The present provision again follows the United Kingdom legislation which has not caused problems to the United Kingdom banking community, and I think that further clarification in our legislation is unnecessary. I can assure the banking community that if a secured syndicated loan falls within the ordinary course of a bank's business, it will be exempt.

The last point also raised by Miss TAM in her speech concerns the relevant period for notification. The main disclosure obligations under the Bill must be performed within five days. By virtue of section 71 of the Interpretation and General Clauses Ordinance, this means five business days.

Sir, 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).

SUPPLEMENTARY APPROPRIATION (1987-88) BILL 1988

Resumption of debate on Second Reading (6 July 1988)

Question proposed, put and agreed to.

Bill read the Second time.

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENTS) BILL 1988

Resumption of debate on Second Reading (29 June 1988)

Question proposed.

DR. CHIU: Sir, the Undesirable Medical Advertisements (Amendment) Bill 1988 provides long awaited improvements to the existing legislation to facilitate action against advertisements which constitute a danger to public health. In my speech in this Chamber on 28 November 1985, I drew attention to the fact that there were numerous medical advertisements in various Chinese newspapers and magazines which seemed to have contravened the Medical Registration Ordinance and the Undesirable Medical Advertisements Ordinance, and that the Hong Kong Medical Association had been pursuing the matter for 12 years, but that nothing had been done. We were told that the Medical and Health Department was not a law enforcement agency and that there were problems in bringing cases to court for prosecution.

Advertisements, particularly those in the media, can reach a very wide audience and readership. Many of the medical advertisements use veiled language which is not prohibited under the existing legislation, but have become so widely known and are so blatantly obvious that a person seeing the advertisements has little doubt as to what diseases they refer to. There can be serious consequences to patients' health if they are misled by these advertisements, and, thinking that they can be cured of what they believe to be ailments from which they are suffering, fail to seek proper treatment in time. Delays can make the disease more difficult to cure, and in serious cases this can cause permanent disability or even loss of life.

I am pleased to see that at long last, a Bill which seeks to remedy these defects in order to protect the health and well-being of the public is now put before the Council.

There are two most significant improvements which the Bill will achieve in controlling undesirable medical advertisements.

Firstly, the updating of the schedule in respect of which advertisement is prohibited, and the change in the legislative approach so that the prohibition against advertising depends not on what the advertisement represents, but on whether it is likely to lead persons reading the advertisement to use the medicine, surgical appliances or treatment advertised for the purposes specified in the schedules. As the Secretary for Health and Welfare pointed out in his speech when introducing the Bill, problems of enforcement arise where advertisements avoid the use of the precise terms appearing in the schedule and use instead colloquial terms or veiled language such as signs and symptoms of the disease. I believe the present amendment will plug the loophole.

The second improvement which will facilitate enforcement action is the use of the presumptive clause. The Legislative Council ad hoc group to study the Undesirable Medical Advertisements (Amendment) Bill 1988 supports the Government's intention to overcome the impediment to successful prosecution against undesirable advertisements, that is, to overcome the difficulty in establishing the identity of the person responsible for causing the advertisement to be published. I believe the reversal of the burden of proof to the offenders will facilitate effective enforcement action.

However, what is even more important for effective action is for positive enforcement activities to be initiated by the Government itself. It is not enough for Government merely to react to complaints from victims who have been misled by these advertisements, or to reports from members of the public who object to certain medical advertisements. Government should positively monitor advertisements and signboards and initiate enforcement action against those that contravene the provisions in the Bill. The law will have little or no deterrent effect if advertisements which obviously contain misleading information, or which can lead to wrongful self-medication, are allowed to circulate freely. It will be a waste of government effort if the Bill is tightened but its

provisions are not observed. In order that the Bill can be enforced immediately once it comes into operation, I shall be proposing an amendment in Committee to make this Bill come into effect on a future date, so that sufficient notice and warning may be given, and adequate lead time is given to the advertisers who may need to change their advertisements and signboards.

With these remarks, Sir, I support the motion.

MR. HO SAI-CHU (in Cantonese): Sir, what I am going to say is supported in full by Mr. CHEUNG Yan-lung. The purpose of the Undesirable Medical Advertisements (Amendment) Bill 1988 is to prevent the abuse of advertisements by unqualified persons or unscrupulous dealers to rip heavy profits at the expense of public health. However, while the enactment of legislation is for clamping down on a small group of culprits, we have to ensure that the general public or the majority of law-abiding businessmen would not be caught in a shocked wave or else the legislation would create more problems than it solved.

Although the Bill is applicable to medicines in general with no distinction made between Chinese and Western medicines, in effect, only Chinese medicines would be affected. Chinese and Western medicines are marketed in different ways. All along, Chinese medicines have been relying on advertising to publicise their effectiveness, while patients tend to buy the medicines only after being exposed to advertisements, so once they are deprived of advertising, the industry of Chinese medicines may suffer tremendously.

Western medicines and Chinese medicines are founded on very different philosophical basis. Western medicines are applied in accordance with chemical and pathological analysis while the application of Chinese medicines is based on the two opposing principles and five primary elements of nature. And for the same organ with the same name, like 'kidney', Western doctors see it as an organ for excretion while the Chinese counterparts regard it as a source of energy. Another example is 'heart'—Western doctors regard it as the organ for pumping blood while Chinese doctors think that 'heart' means one's mental condition. In brief, in Chinese medical science, men's bodies are often referred to in an abstract manner. Stamping from this, Chinese and Western doctors could also be interpreting medical advertisements differently. Therefore, I think whether Western and Chinese doctors see eye to eye when it comes to the interpretation of this schedule of the Bill is something that needs to be clarified.

Hong Kong is a Chinese community. The use of Chinese medicines has been passed down from one generation to another. Chinese medicines have come under the supervision of Mainland China's health authority and are constantly being improved on and promoted, resulting in considerable increases in sales in Hong Kong. According to estimates, in 1950 the sales amounted less than \$100,000. But by 1987, the figure rocketed to \$300 million. This illustrates the effectiveness and popularity of Chinese medicines. After all, the 'blacksheep' of the trade is only the minority.

Medical advertisements that are truly undesirable should indeed be prohibited. But at the same time we must ensure that genuinely effective Chinese medicines would not be sacrificed in the course of law enforcement simply because of problems with interpretation. I suggest that the Medical and Health Department should set up a specialised unit with Chinese and Western medical experts as members in order to vet medical advertisements. The body should also handle complaints and answer questions to make sure that the law would be properly enforced in the interest of law-abiding businessmen safeguarded.

Sir, I regret to indicate that before the above-mentioned problems are ironed out, I will object to the passing of Undesirable Medical Advertisements (Amendment) Bill 1988. But if this Bill steamrollers through this Council, I hope that it will be enforced properly so that the interest of law-abiding businessmen as well as the uses of medicines can be safeguarded.

MRS. CHOW: On behalf of the Consumer Council, I would like to welcome this Bill which seeks to control many misleading advertisements in the area of medical and health which have caused suffering and given rise to many complaints from consumers. I hope this helps to weed out other misleading advertisements which the Consumer Council regards as the most necessary step in its ongoing campaign to safeguard consumers' right to accurate information.

Sir, I support the motion.

SECRETARY FOR HEALTH AND WELFARE: Sir, I would like to thank Dr. CHIU and other members of the ad hoc group for the efforts they have put into the examination of this Bill. I would also like to thank Dr. CHIU, Mr. HO, Mr. CHEUNG and Mrs. Selina CHOW for their comments.

Dr. CHIU has succinctly described the current situation in relation to the display of undesirable medical advertisements in newspapers, magazines and street signs and the problems associated with our attempts to bring about successful prosecutions. The Bill therefore aims at removing the legal obstacles so that unqualified persons and unscrupulous dealers making use of advertisements to mislead the public could be effectively brought within the law.

Dr. CHIU will later move two amendments which have been agreed with the ad hoc group and which I am happy to support. The main amendment will enable part I of the Bill to be brought into operation one month after its enactment. The purpose is to allow sufficient time to those who are responsible for putting up signs or placing advertisements which may contravene the law to remove or withdraw them before enforcement action is taken. I would also like to take this opportunity to reassure Dr. CHIU again that once the provisions in the Bill have been enacted, the Administration will take positive action to enforce the Ordinance.

Mr. HO Sai-chu and Mr. CHEUNG Yan-lung have drawn attention to the possible adverse effects of the Bill on the business of the Chinese medicine

dealers and to the differences in the efficacy of Chinese and Western medicines and in their applications. We understand the concerns of the Chinese medicine dealers but I would like to emphasise that the purpose of the Bill is to protect the public against the harmful effects of undesirable medical advertisements. We are not stopping all advertisements on medicine as such. Those which do not contravene the law will be able to continue. In this respect, the Administration has met with representatives of a Chinese medicine merchants association during the consultation period and have also given guidance on their commonly used terms, descriptions and product names, most of which are in fact acceptable.

The suggestion for the establishment of a vetting authority within the Medical and Health Department for all advertisements on Chinese medicine had been considered but was found to be inappropriate because the department has no expertise to deal with Chinese medicine. Furthermore, we should avoid a situation where advertisements might be used to claim that the products advertised had been vetted by the department and had received some form of official approval. As I have explained at the introduction of the Bill on 29 June, although there will not be a formal vetting machinery as such for advertisement, we have assured the medicine dealers that they are always welcome to seek further information or clarification on terminology of diseases generally from the Medical and Health Department.

Part II of the Bill which prohibits advertisements in the form of packages and labels will not come into effect until 24 months after part I comes into operation. There will be sufficient time for the necessary reprinting to be done.

Sir, after considerable effort, we have formulated a Bill which has a large measure of support from Members of this Council and the public. I am sure that its enactment will result in an improvement to the current unsatisfactory situation.

Sir, 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 Bills

Council went into Committee.

PENSION BENEFITS (MISCELLANEOUS AMENDMENTS) BILL 1988

Clauses 1 to 10 were agreed to.

HONG KONG FUTURES EXCHANGE LIMITED (TEMPORARY PROVISIONS) BILL 1988

Clauses 1 to 5 were agreed to.

SECURITIES (DISCLOSURE OF INTERESTS) BILL 1988

Clauses 1 to 7,9 to 30, and 32 to 53 were agreed to.

Clauses 8 and 31

MISS TAM: Sir, I move that clauses 8(1) and 31 of the Bill be amended as set out in the paper circulated to Members. Clause 8 stipulates that a person is taken to be interested in any shares in which his spouse or any child under the age of 21 of his or of his spouse is interested. Members of the ad hoc group consider that it would be unreasonable to hold a person responsible for interests held, for example, by the child of his spouse's former marriages who may not have contacts with him, and has requested the Administration to amend the clause along the lines of the United Kingdom legislation by deleting reference to the child of his spouse. The proposal has been accepted by the Administration and consequential amendments to similar provisions under clause 31 on the child of the spouse of a director and chief executive have also been proposed for the sake of consistency.

Sir, I beg to move.

*Proposed amendments***Clause 8**

That clause 8(1) be amended. by deleting 'or of his spouse'.

Clause 31

That clause 31 be amended—

- (a) in subclauses (1)(b) and (2)(b) by deleting 'or of his spouse' wherever it occurs;
- (b) in subclause (3) by deleting 'or his spouse's' wherever it occurs.

Question on the amendments proposed, put and agreed to.

Question on clauses 8 and 31, as amended, proposed, put and agreed to.

New clause 50A. Method of giving notification to a listed company

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

MISS TAM: Sir, in accordance with Standing Order 46(6) I move that new clause 50A as set out in the paper circulated to Members be read to Second time.

Concern has been expressed by the Company Secretary of the Hong Kong Electric Holdings Ltd. over the procedures for the notification of interests. It would be unfair if listed companies concerned are to be penalised for a failure to enter the requisite information into their register which is caused by a failure on the part of the shareholders, intentionally or unintentionally, to notify them. As a remedy, the Administration has agreed that a new clause 50A should be inserted after clause 50 to require the notification to be made by hand or by registered post to the office of the listed company along the lines of section 356 of the Companies Ordinance.

Sir, I beg to move.

Question proposed, put and agreed to.

Clause read the Second time.

MISS TAM: Sir, I move that new clause 50A be added to the Bill.

Proposed addition

New clause 50A

That the Bill be amended, by inserting, after clause 50, the following—

‘Method of giving notification to a listed company

50A. Any notification required to be given to a listed company under this Ordinance may be given by leaving it at or sending it by post to the registered office of the listed company or, where the listed company does not have a registered office in Hong Kong, the listed company’s principal place of business in Hong Kong.’

Question on the addition of the new clause proposed, put and agreed to.

Schedule was agreed to.

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT) BILL 1988

Clauses 2 to 7 and 9 to 11 were agreed to.

Clauses 1 and 8

DR. CHIU: Sir, I move that clauses 1 and 8 be amended as set out in the paper circulated under my name to Members.

The amendment to clause 1 enables the Ordinance to come into operation on a day to be appointed by the Governor. Rather than having the Ordinance come into operation immediately, the appointment of its future date will enable the Government to publicise the provisions in the Ordinance to give adequate warning to those who may contravene the amended provisions and to give them time to adjust their advertisements to conform with the law. Thus when the Ordinance comes into operation, the Government can immediately take vigorous enforcement action justly and fairly.

The amendments to clause 8 delete the reference to the diseases 'migraine' from item 8 of schedule 1 and 'psoriasis' from item 14 from the same schedule. These diseases have been listed as purposes for which advertising is permitted but they in fact may be symptoms of more serious illnesses for which proper medical consultation is essential. In order to protect the health of the public, it would be better to remove them from the list of permitted purposes.

Sir, with these remarks, I beg to move.

*Proposed amendments***Clause 1**

That clause 1 be amended. by deleting subclause (2) and substituting the following—

‘(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the *Gazette* and different days may be appointed for different provisions.’.

Clause 8

That clause 8 be amended—

- (a) by deleting from item 8 of the proposed Schedule 1 ‘including migrainous headaches. Prevention of migraine and treatment of the condition known as neuralgia, provided that the advertisement consists solely of a labelled container or package in which a medicine, surgical appliance or treatment is supplied’;

- (b) by deleting from item 14 of the proposed Schedule 1 'Temporary relief of psoriasis by application to an external surface of the body.'

Question on the amendments proposed, put and agreed to.

Question on clauses 1 and 8, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

PENSION BENEFITS (MISCELLANEOUS AMENDMENTS) BILL 1988 and the

HONG KONG FUTURES EXCHANGE LIMITED (TEMPORARY PROVISIONS) BILL
1988

had passed through Committee without amendment, the

SECURITIES (DISCLOSURE OF INTERESTS) BILL 1988 and the

UNDESIRABLE MEDICAL ADVERTISEMENTS (AMENDMENT) BILL 1988

had passed through Committee with amendments, and the

SUPPLEMENTARY APPROPRIATION (1987-88) BILL 1988

having been read the Second time was not subject to Committee stage proceedings in accordance with Standing Order 59. He moved the Third Reading of the Bills.

Question on the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Motion**DRAFT BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

MISS DUNN moved the following motion: That this Council takes note of 'The Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (For Solicitation of Opinions)' and urges the people of Hong Kong to study the draft and to express their views on it.

MISS DUNN: The publication of the first draft of the Basic Law is a remarkable event. Who could have conceived 50, 20 or even five years ago that a Government of China would one day publish the draft of such a law, widely promulgate its text, and formally invite public comment upon it? It is also remarkable that China from the beginning has involved Hong Kong people in the drafting process. Indeed some of them are Members of this Council.

These steps alone are, in my view, proof of China's sincerity in seeking to devise for the Hong Kong Special Administrative Region a constitutional framework that will ensure that Hong Kong's distinctive way of life will endure, and that will entrench the rights and freedoms that its people presently enjoy.

We in this Council must take this opportunity to offer our comments on the draft. Unless we do so, we shall only have ourselves to blame if the final version is not to our liking. But there is another reason too. It is inevitable, in a long and complex document like this, drafted in a committee, even in several sub-groups of a committee, that there will be parts that need improvement, clarification or amendment. Draft laws, however carefully they have been drafted, can only benefit from critical examination. I am sure that the experience of all of us in this Council bears that out.

As Members of this Council, we do not comment on behalf of the Hong Kong Government. We comment for ourselves, in good conscience. Day in and day out we strive to serve the people of Hong Kong, and to attend to their concerns. The draft Basic Law is a crucially important document, affecting us one and all for years to come. We cannot stand silent.

We have therefore requested our Constitutional Development Panel, under the convenorship of Mr. Andrew WONG, to examine the draft Basic Law. That panel has consulted other panels on particular aspects of the draft. Mr. Andrew WONG who will be speaking after me will be informing us later in this debate of the progress of his panel and the preliminary views they have formed. When the panel has completed its work, it will report back to all the Members of this Council who are not Official Members. We shall then request the British Government to submit the report to the Chinese authorities. We shall also publish it.

I hope very much that our views will be taken seriously by the Basic Law Consultative Committee as well as by the authorities on the Mainland and given full weight.

Sir, I shall not offer detailed comments on the draft today. Instead I want to put the debate into a wider context. I ask myself what do the people of Hong Kong expect of the Basic Law? To this question I would suggest four answers.

First, the Basic Law must conform not only to the letter of the Joint Declaration, but also its spirit.

Second, the Basic Law should build upon the reality of Hong Kong's present open system of Government, not upon the outmoded form of colonial rule that is set out in our present constitution.

Third, the Basic Law must be sufficiently flexible to allow developments to take place over the next 50 years as Hong Kong continues to grow and mature.

And fourth, although the Basic Law needs to establish the principles by which we shall be governed for the next 50 years, detailed policies should be left for the Hong Kong SAR Government to decide.

Let me elaborate on these points one by one.

My first point is perhaps the most fundamental of all. We recall the approval, clearly and decisively given by the people of Hong Kong to the Joint Declaration less than four years ago. The unique concept of 'one country—two systems', and the idea of Hong Kong people ruling Hong Kong, caught the imagination. They won round those who had been sceptical about the outcome of the negotiations. These phrases are not to be found in the text of the Joint Declaration. Yet they were the spirit—the spirit of the Joint Declaration.

Parts of the Joint Declaration, for example, that which dealt with the future structure of government were left to be elaborated later. The Joint Declaration referred to 'a high degree of autonomy' without any definition of that key concept. So these provisions of the Basic Law must reflect the spirit of the Sino-British accord.

Power must be conferred on the SAR Government not grudgingly, but open-handedly, and without too many strings attached. The Hong Kong SAR Government and the Hong Kong Judiciary must be trusted to exercise their powers responsibly. It will boost confidence if the Basic Law clearly recognises that Hong Kong people know best how to maintain prosperity and stability in this territory.

It is these crucial areas that the Basic Law will be found wanting if it does not fulfil the spirit, as well as the letter, of the Joint Declaration.

My second point is that the Basic Law should reflect the reality of our present constitutional arrangements which is in important ways different from the text of our present constitution in the Letters Patent and Royal Instructions to the

Governor. Those documents were originally drafted in the 19th century, and they gave the Governor extraordinary powers, which could be—and often were—used to give effect to orders he received from London. However, the most important of these powers have fallen into disuse, particularly since the Second World War.

For instance, the Governor has the power of veto over all legislation. And he has the power to reject the advice of the Executive Council, and take his own decisions. But all the recent Governors have accepted the well-established constitutional convention that they cannot override either Council. In short, the Governor today is a part of the Government, not an absolute source of power—although like the chief executive of the future, he still wields a great deal of power and influence.

To put this another way, the trend in recent times has been for authority to be transferred from London to Hong Kong. In its internal affairs, and in its external commercial affairs, Hong Kong already enjoys a high degree of autonomy, far more than the reader of our constitutional documents might imagine. It is important that the drafters of the Basic Law should take account of these present realities. Our future constitution should provide for the continuation and future development of our existing autonomy, and of the balance of power that serves us so well.

In reality, the most important feature of our present system of government is that no-one has supreme power. None of the organs of government has the power to override all the others. The constant search for a widely acceptable consensus between different interests has been the key to stability in Hong Kong. We must preserve it.

My third point is that the drafters of the Basic Law should be concerned about principles, but not with policies. The Basic Law will be our future constitution. Constitutions are all about the principles by which a state or territory shall be governed, about the devolution and the distribution of power, the limits of power, the rights and duties of those who exercise power and of the individual citizen.

The Basic Law should implement the promises in the Joint Declaration. But beyond the implementation of those promises, the Basic Law should not try to lay down in advance the policies which future governments should pursue. Policy will need to be decided by the Government of the day in the light of unfolding circumstances. The hands of future SAR Government ought not to be tied to particular policies which may appeal now, but which could be inappropriate and burdensome and the cause of legal wrangles in times to come.

Many commentators have drawn attention to Chapter V in this connection where, for example, draft articles prescribe how the Government of the Hong Kong SAR should draw its Budget, and practise a low tax policy. I hope very much that future Financial Secretaries will be able to follow these precepts. But

I do not think they have any place in a constitutional document. Nor do I think it wise to include them when nobody can foresee today what manner of fiscal problems will face future Financial Secretaries in years to come.

It would also seem to be contrary to the Joint Declaration to dictate policy matters in this way. It was agreed by the Chinese and British Governments that the Hong Kong Special Administrative Region Government should decide its economic, trade, monetary and financial policies 'on its own', and deal 'on its own' with financial matters, including disposing of its financial resources and drawing up its Budgets. Parts of Chapter V as drafted seem to undermine the autonomy that has been promised to the SAR.

So I hope that the drafters will look again at the line to be drawn—and I acknowledge the line may not be easily drawn—between those principles which must be part of the Basic Law in order to implement specific assurances given by the Joint Declaration, and those matters of policy which should be left for future SAR Government to decide on their own.

My fourth point concerns the need to allow room for future changes. Hong Kong is a dynamic society. Its only constant is change itself; change in the economy, changes to the needs and aspirations of its people, and in their awareness of community concerns and what can be done about them. There have been vast changes in the last 40 years. There have been changes in the last four years since the Joint Declaration was signed. And the pace of change is quickening all the time, in line with the speed of communications and travel.

It is therefore essential that the Basic Law does not have the effect of sapping Hong Kong's energies, or damping its dynamism. New trends, new changes of direction that we cannot imagine will have to be accommodated. A society that cannot change or does not change is one where there is no progress, and where stability is endangered. History shows us many examples.

Hong Kong has succeeded in the past because it has always been able to adapt quickly to change, both external changes in the world outside, and internal changes in the demands of its own people. It has done this by combining consistency of principle with a pragmatic development of policies. The Basic Law would serve us well if it is clear and firm on principles yet permits as much flexibility as possible in the future, consistent with the implementation of the Joint Declaration.

This need for flexibility has been recognised by the drafters. I am not surprised that the draft contains provisions for the amendment of the Basic Law in the future. Similarly, article 67 acknowledges that the way in which the legislative shall be formed may be modified 'in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress'.

We have to accept that we cannot now devise perfect arrangements for 50 years to come. Although many will wish to see more not less spelt out in detail

for the best of reasons, we must be careful not to lock Hong Kong into a rigid frame that prevents it from responding to the need for change in ways that cannot be predicted.

Sir, I am sure that my colleagues who follow me will take up many general and specific points on the draft which have already attracted comment. My own concerns will be among them. But if we seem to concentrate in this debate upon the defects or the weaknesses of the draft Basic Law, it must not be forgotten that the labours of the drafting committee have produced much that is good and a source of satisfaction. Its length owes much to a praiseworthy desire to ensure that nothing in the Joint Declaration was left out and to accommodate too many sectional interests.

The Basic Law drafters' response to the many comments and suggestions from Hong Kong community will be crucial. Hong Kong expects the final draft to reflect their wishes and aspirations in a positive way. The Basic Law is the key to our future, and to our confidence in our future. A great deal is at stake both for China and for Hong Kong.

Sir, I beg to move the motion standing in my name on the Order Paper.

Question proposed.

MR. ANDREW WONG: Sir, I rise in support of the motion moved by the Senior Member the hon. Miss Lydia DUNN 'That this Council takes note of "the Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (for solicitation of opinions)" and urges the people of Hong Kong to study the draft and to express their views on it.' I also take this opportunity to relate to you, Sir, the deliberations and preliminary views of the Standing Panel on Constitutional Development of the Office of Members of the Executive and Legislative Councils, and to place such views on record.

Sir, the present draft Basic Law was first released in May 1988 after more than two years of hard work on the part of the Basic Law Drafting Committee of the People's Republic of China. Since then, the Constitutional Development Panel has had a total of 14 meetings, all within a short period of about eight weeks. In other words, we have been meeting practically twice a week on this most important issue of the draft Basic Law. Most of the meetings were scheduled for 8.30 am. Here, I must thank Members who despite their heavy commitments, found time to attend the meetings. I must also thank the staff of the OMELCO, without whose support services, our deliberations would have been impossible.

The panel has studied the text of the draft Basic Law en toto article by article, and has arrived at a large number of consensual, though preliminary, views. Although the approach has been one of studying the text article by article, if I am not mistaken in my assessment, three considerations loom large and have been at the forefront of the minds of Members.

First, consistency with the Sino-British Joint Declaration. Here, the question is not so much that of adhering to the letter but to the spirit of the Joint Declaration which is that of 'one country, two systems', 'a high degree of autonomy', preservation of the existing so-called 'capitalist system' with its attendant legal, social and economic systems, and a government 'accountable to the legislature' which is to be 'constituted by elections'.

Second, the enforceability and justiciability of the provisions in the Basic Law. Here, the concern is whether or not particular articles are at all necessary and, if so, whether or not the drafting is such that they are not enforceable or justiciable legally or at least the interpretation of them is open to doubt, or that they empower the future authorities so excessively that they become meaningless as 'constitutional' provisions safeguarding the freedom of the people.

Third, the consensual concept of evolution. Here, the consideration is two-fold. One question is: Is the new scheme of things such that in our efforts to evolve towards it during the transition, some if not all of the beneficial elements of our existing systems will be wiped out, or such that our existing system is effectively frozen for the whole duration of the transition? A second question is: Are there articles which effectively proscribe the further and continued evolution of our existing system?

Sir, I might be simply echoing the sentiments of our Senior Member Miss DUNN, whose views are not unlike our three considerations, but which are put so much more eloquently in her speech.

Sir, the Constitutional Development Panel has not concluded its deliberations yet. We will within the coming month submit a report to the OMELCO In-house meeting which comprises all non-government Members of the Executive Council and this Council, with the recommendation that it be published for public information. You will, Sir, readily appreciate that OMELCO is not part of Hong Kong's formal constitutional machinery. You may, however, wearing your other hat not as President of this Council but as Governor of Hong Kong, wish to consider whether or not it would be appropriate for the report, when published, to be conveyed, through diplomatic channels, to the relevant authorities of the People's Republic of China.

I will now attempt to outline to you, Sir, and to the people of Hong Kong the preliminary consensual views of the Constitutional Development Panel. In order not to preempt the report or the views of my hon. Colleagues who will speak after me, my treatment will, of necessity, be brief and inexhaustive. For convenience, I will present them under a number of headings which are entirely my own but which, I believe, do not do injustice to the panel.

(1) Boundaries and status of the Hong Kong Special Administrative Region. Members are of the view that administrative boundaries of the region ought to be part of the Basic Law and consider that a provision should be inserted in Chapter I, preferably in or after article 1, referring to a map showing the

boundaries and that the map should have legal effect. Members are satisfied with article 1 which makes the region an inalienable part of China, but consider that the formulation of 'comes directly under the Central People's Government' in article 11 requires clarification and that article 21 which amplifies this status ought to be appropriately redrafted to the effect that the departments and provinces and so on, of the Central People's Government 'shall not interfere in the affairs of the Hong Kong Special Administrative Region'.

(2) Permanent residents of the Special Administrative Region. Members are inclined that as the region is constituted by people with the right of abode, a separate article should appear in Chapter I defining this right of abode instead of simply referring, in article 3, to 'permanent residents' in connection with the composition of the region's executive authorities and legislature. Members consider that article 23 in Chapter III could be removed to Chapter I. In so doing, the first and last paragraphs of article 23 and article 41, both in Chapter III, will become superfluous and Chapter III could then concentrate on the civil rights of the people.

(3) Substantive areas of powers of the Special Administrative Region. Members take note that articles 2 as drafted could be construed to be inconsistent with the Joint Declaration which stipulates that the 'region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.' With regard to external affairs provided for in article 12 and Chapter VII, Members consider that there is a difference between authorising the region to deal with relevant external affairs specified in Chapter VII and the preferable formulation of authorising the region to deal with all matters except foreign affairs and defence. Members recognise that the most difficult hurdle is that of dispelling the problematic concept of 'residual power.' In the event, the Basic Law Drafting Committee cannot be persuaded to adopt the presumptive approach in drafting the relevant articles. Members are of the view that article 15 should be redrafted to the effect that the region 'enjoys all rights of executive powers, including, together with all the headings and so on, and other administrative affairs in line with the exercising of a high degree of autonomy' and article 19 which makes it possible for additional powers to be delegated to the region, should be retained if the presumptive approach cannot be adopted. On specific provisions governing external affairs, Members feel that article 157 in Chapter VI and article 159 in Chapter VII should be amended by adding the words 'or "Hong Kong"' after 'Hong Kong, China' in order to allow more flexibility for quasi-governmental and private bodies participation in external affairs. Members also suggest that article 164 should be amended to allow the establishment of missions to deal with economic, trade and other external affairs already authorised by the Central People's Government.

(4) Types of powers of the Special Administrative Region. Members generally welcome the provision in the latter half of article 2 in Chapter I that the region is 'to enjoy executive, legislative and independent judicial power, including that of

final adjudication', but note that other provisions in the draft Basic Law, notably articles 16, 17 and 18 in Chapter II and article 169 in Chapter IX could be problematic in that they might be construed as derogating from the said provision in article 2 which is consistent with the Joint Declaration. These articles were examined by Members first separately then conjointly. Members accept that the Central People's Government enjoys executive, legislative and judicial powers over the Hong Kong Special Administrative Region including the interpretation of the Basic Law, but that such powers ought to be strictly consistent with the terms of the Joint Declaration. On article 17 which has to do with legislative power, Members welcome the provision in paragraph 1 which lists out the three sources and the only three sources, of law for the region, that is the Basic Law, the laws previously in force in Hong Kong, and the laws enacted by the legislature of the Special Administrative Region. Members are content that defence and foreign affairs fall outside the region's areas of powers, but are of the view that such laws, enacted by the National People's Congress or its standing committee, if require application locally, should not be decreed by the State Council for local application or be promulgated locally on the directives of the State Council but should be legislated for locally on such directives. Members fear that decrees or promulgation might constitute a fourth source of law, thus deviating from the Joint Declaration. Members are wary of the phrase 'other laws which give expression to national unity and territorial integrity' and submit for the same reason, that is, a possible fourth source of law, that although this phrase is qualified by the phrase 'and which, in accordance with the provisions of this law, are outside the limits of the high degree of autonomy', and that although such laws do exist, such laws ought to be incorporated into the Basic Law probably as an appendix.

On article 18, which has to do with judicial power, Members welcome paragraphs 1 and 2 which vest the region with independent judicial power including that the final adjudication in that courts in the region shall have jurisdiction over all cases in the region shall have jurisdiction over all cases in the region except as restricted by Hong Kong's previous system. Members find the concept of 'executive acts of the Central People's Government' to be novel but ambiguous and are of the view that the existing system whereby the people could take the Government both local (Hong Kong) and central (Britain now, but China after 1997) including defense and foreign affairs, should be maintained. Members consider that the existing system of leaving it to the courts to determine in the trial whether or not 'acts of state' or 'facts of state' are involved and to take appropriate action, is sufficient for the purpose.

On articles 16 and 169 which relate to the power of interpretation of the Basic Law, Members appreciate that under article 67 of the constitution of the People's Republic of China, 'to interpret statutes', and the Basic Law is a statute, is one of the functions and powers of the Standing Committee of the National People's Congress. I personally do not know whether this should be classified as a legislative power or a judicial power as this mechanism of

legislative interpretation of the constitution in the wake of court cases or in the determination as to the 'constitutionality' of subservient laws and act is totally alien to Hong Kong or any country in the capitalist world, but is common-place to all countries which adopt democratic centralism. The problem, therefore, is one of interface between the two systems. Members are of the view that this power of interpretation could be delegated to the courts of the Hong Kong Special Administrative Region. Alternatively and as a minimum, Members consider that the courts of the region should be empowered to interpret all the provisions in the law without prejudicing the power of interpretation of the Standing Committee of the National People's Congress on matters which fall outside the limits of the region's high degree of autonomy, and that interpretations made would be binding on the courts, but cases under adjudication and judgments previously rendered should not be affected. It would appear that with either solution, adopted article 16 is redundant.

As to the question of amending the Basic Law, Members agree that the power belongs to the National People's Congress, but that the right to propose amendments should be restricted to the Standing Committee of the National People's Congress and to the Hong Kong Special Administrative Region's Chief Executive and legislature. Article 170 should therefore be appropriately redrafted to the effect that should the Standing Committee wishes to propose an amendment, the Basic Law Committee and the Special Administrative Region's Chief Executive and legislature should be consulted, and that should the region's Chief Executive and legislature propose an amendment, the standing committee should consult the Basic Law Committee. Members are of the opinion that deputies from the region to the National People's Congress should not develop into an organ of power in the region. Members are also of the view that provisions ought to be made in the Basic Law itself governing the composition and functions of the Basic Law Committee.

(5) Civil rights. Members generally agree that Chapter III should essentially be a chapter on civil rights enjoyed by all people in the Special Administrative Region. As such, some articles in addition to article 23 could be removed to other chapters. For example, article 25 could be in Chapter IV on infrastructure. Members find the provisions in and the drafting of this chapter to be wanting. For example, article 39 as drafted casts too wide a net in favour of the executive and legislative authorities and provides inadequate safeguards to individual freedoms. The use of the term 'unlawful' instead of 'arbitrary' in articles 27 and 28 produces the same effect. Members are inclined that less than drastic redrafting is required to model the chapter on the International Covenant on Civil and Political Rights and/or to at least provide for the enforceability of the said international covenant.

(6) Preservation of the economic and social systems. Members are of the view that preservation of the existing systems should not be at the expense of continued evolution and development. For example, on article 142 in Chapter VI, Members feel that the spirit of the Joint Declaration should be: (a) that

the Special Administrative Region would have its own education system as contrasted to the system in China, and (b) that the region should be able to formulate its educational policies on this basis, and Members consider that it should be redrafted with the addition of the words 'and may formulate its own developmental directions'. Members find Chapters V and VI to contain a fairly large number of provisions which either are matters of policy rather than law or are drafted in such a way as to make their justiciability open to doubt or their interpretation difficult. Members consider that an attempt might be made to identify those articles which touch on policy matters and to transfer them to a separate annex of policy guidelines. Another solution would be for the Basic Law to make a specific reference to the Joint Declaration thereby incorporating into the Basic Law all policy matters contained in the Joint Declaration and its annexes. Members however accept that some of the articles touch on policy matters which are so important that they would need to be included in the main text of the Basic Law in which case the question of justiciability becomes important.

(7) The political structure of the Special Administrative Region. Although Members find section 4,5 and 6 of Chapter IV acceptable by and large, three points deserve some mentioning. Members note that there is no provision for extradition or rendition which can easily be included under either section 4 'Judicial Organs' or Chapter II 'Relationship between Central Authorities and the Special Administrative Region' in the case of rendition. Members are baffled by the term 'local organs of political power' in article 96 which may be legally vague and query if the effects of the articles are that the two municipal councils will cease to be independent but become consultative bodies. Members are of the view that Commissioner Against Corruption, Director of Audit, Commissioner of Immigration and Inspector General of Customs and Excise should be excluded from the list of posts reserved for Chinese nationals in article 100. These three sections on Judicial Organs, District Organisations and Public Servants respectively are unproblematic as they essentially provide for the preservation and continuation of the existing system. However, the same cannot be said of sections 1,2 and 3 which deal respectively with the Chief Executive, the executive authorities and the legislature. This is primarily because the articles are meant to provide for a structure suitable to the changed circumstances. Our task has not been made easier by the sheer number of articles and the many and varied options appended and by a lack of time on the part of the panel. Notwithstanding, we have been able to go through these three sections article by article and have been able to arrive at a fairly large number of consensual views on specific articles. In the interest of brevity, I will save them for the report. During our deliberations, we have discovered that most of the articles in the three sections are interrelated and cannot, therefore, be considered separately. Members are now perhaps inclined that when we further study these three sections, we ought to, first of all, appraise the existing system and the changed circumstances dictated by the change in sovereignty and by the terms of the Joint Declaration, then consider the model of our future executive-legislature

relationship before proceeding to provisions governing the composition of the two authorities. As of now, the panel has an open mind.

(8) The first government of the Special Administrative Region. Members are of the view that the first government ought to be a regular government in contrast to transitional government. This is in the interest of maintaining stability and, hence, prosperity in Hong Kong because a transitional government might generate mistrust and anxiety. Members are generally in support of the so-called 'through train' concept. Members consider that of the two principles of national sovereignty and smooth transition mentioned in article 171 in Chapter X, neither should take precedence or priority, but that in the interest of stability, the less disruption the better and the least disruption the best. The Chief Executive will have to be appointed before 1 July 1997. His principal officials will also have to be appointed beforehand, but presumably most if not all should be serving officials. Again, presumably, the judges to be appointed by the Chief Executive should be serving ones and the Civil Service will remain intact. So why single out the legislature? Why cannot Members of the Legislative Council be deemed to be members of the new legislature and continue for the unexpired term? Why ask all to alight and scramble for a ticket just to board the same train again?

Sir, I have great pleasure in supporting the motion, and in so doing may I once again take this opportunity to urge the people of Hong Kong to study the draft Basic Law and to express their views on it. 'Rome was not built by one, but by many' which is a very loose translation of the Chinese saying: (眾志成城). The same goes for Hong Kong. Let us, Sir, begin to build and re-build Hong Kong.

DR. HO (in Cantonese): Sir, the drafting of the Basic Law has proceeded in a very open manner, and has involved extensive consultations with individuals and groups from different strata of the community. It began with the setting up of the Drafting Committee and the Consultative Committee for the Basic Law. After over two years of work, the draft Basic Law (for solicitation of opinions) was compiled. The document was passed by a plenary session of the drafting committee at the end of April 1988 and then published for formal consultation with the people of Hong Kong. There will be two rounds of comprehensive consultations. It is envisaged that the Basic Law will eventually be promulgated around late 1989 or early 1990 upon completion of the examination and endorsement process.

Judging from the scrupulous and open manner adopted in the drafting process, it is obvious that while resuming sovereignty over Hong Kong, the People's Republic of China is at the same time determined to ensure a smooth transition, to maintain stability and prosperity, to realise the plan of 'one country, two systems' and to retain Hong Kong's existing capitalist system and way of life. The fact that China has shown consideration for the interests of Hong Kong is beyond question.

(1) *'One country, two systems'*

'One country, two systems' is a well-conceived concept. It takes into account the realities in Hong Kong on the one hand and achieves the aim of national unity and territorial integrity on the other. It is indeed the best arrangement for both China and Hong Kong. However, in order to give expression to this concept, I think it is necessary to spell out the 'one country, two systems' principle in the Basic Law so as to provide a legal basis. The Basic Law surely cannot contribute anything towards maintaining and enhancing the confidence of the people of Hong Kong if the principle of 'one country, two systems' is only mentioned in the Preamble but not in the 10 chapters nor the annex. As the legal status of the Preamble has yet to be established, I suggest that the principle of 'one country, two systems' should be included in Chapter I: General principles by amending article 4 as follows:

'In accordance with the principle of one country, two systems, socialist system and policies shall not be practised in the Hong Kong Special Administrative Region and the existing capitalist system and way of life shall not be changed for 50 years.'

Hong Kong will become a special administrative region of the PRC after 1997. It is important that the laws of the HKSAR should not be in conflict with the constitution of China. Therefore, in order to ensure that the plan of 'one country, two systems' will be implemented, considerations should be given to amending the national constitution accordingly.

(2) *The Chief Executive*

Whether the Chief Executive of the future HKSAR can provide an effective leadership to the Government will, to a certain extent, hinge upon the degree of co-operation between himself and the legislature, for instance, whether the legislature will give strong support to the policies, Bills and Budgets introduced by the executive authorities will depend upon the confidence Members of the Legislative Council have in the Chief Executive. On the other hand, whether the Chief Executive will implement the Bills passed by the legislature and deal with the questions raised by its members will in turn depend upon his trust in the Members of the Legislative Council. That is why there must be a high degree of mutual trust, understanding and support between the Chief Executive and the Legislative Council. However, as far as the various alternatives for selecting the Chief Executive contained in Annex I of the draft Basic Law are concerned, emphasis is being placed on the spirit of democracy and representativeness of the concerned parties. Nomination and general election are put forward as the major methods to be used in the selection process, and much importance is being attached to the role played by the electoral college and functional constituencies. It is difficult to predict whether the Chief Executive so elected will in practice have the support of the Members of the Legislative Council. The Chief Executive selected by the methods mentioned in alternatives 3 and 4 may not need the support of the legislature. As for the rest of the proposed methods,

alternative 1 will produce a Chief Executive supported by a minority of the Legislative Council while alternatives 2 and 5 will produce a Chief Executive who will gain the support of 10 to 12 per cent of the Members of the legislature. With such a low degree of support, it is difficult to ensure that the Government will operate in a smooth and efficient manner.

According to my own experience, it is important that the Chief Executive should have the support of the majority of the Legislative Council, otherwise, the HKSAR Government will encounter great difficulties in carrying out administrative work, and end up being an ineffective government. Regrettably, it appears that the relationship between the Chief Executive and the Legislative Council has not been examined in great detail by the draft Basic Law Drafting Committee.

(3) *Checks and balances between the executive authorities and the legislature*

The executive authorities shall be vested with the power of formulating policies and drawing up Budgets whereas the legislature shall be responsible for monitoring duties. The latter can also reject or cut the Budgets submitted to it for examination. The two bodies are independent of each other, creating some sort of checks and balances to ensure that the Government shall operate in a smooth and fair manner.

However, in order to allow the legislature to play a greater monitoring role, I suggest that consideration should be given to slightly extending the terms of reference of the legislature. Article 72(9) of the draft Basic Law states that in the event of serious breach of law or dereliction of duty of the Chief Executive, the legislature may follow certain procedures to raise the motion of impeachment against the Chief Executive and report it to the Central People's Government for decision. It is not a satisfactory nor fair arrangement if the target of impeachment is confined to the Chief Executive only whereas other principal officials can remain immune although they may also seriously breach the law or derelict in their duties. Thus, I suggest that the scope of impeachment should be extended to include other principal officials as well.

Acts of abusive use of power by senior officials of the executive authorities may lead to many injustices. If the legislature is to give free play to its monitoring function, it must be given sufficient power to carry out investigation so that the objective specified in the Joint Declaration that the executive authorities should be accountable to the legislature can be attained. Under the circumstances, article 72 of the draft Basic Law must be amended to extend the powers and functions of the legislature and allow it to set up standing panels and ad hoc groups. Such powers have in fact been enjoyed by the British Parliament and the Hong Kong Legislative Council as evidenced by their present mode of operation.

Sir, with these remarks, I support the motion.

MR. HU: Sir, in considering the first draft of the Basic Law, we have to keep in mind three basic principles. These principles together provide a guideline for determining whether each of the 172 articles in the Basic Law first draft is acceptable or beneficial to the future Hong Kong Special Administrative Region.

The first of these principles is that all provisions in the Basic Law should comply with the Sino-British Joint Declaration. The Basic Law should be a faithful reflection of the terms in the Joint Declaration, including the three annexes. Provisions in the Basic Law should not exceed those stipulated in the Joint Declaration. On the other hand, the Basic Law should also not skip any areas which are mentioned in the Joint Declaration.

Secondly, the provisions in the Basic Law should be flexible, with room for further development and expansion. Although the terms in the Basic Law have to be definitive, it does not mean that they have to be restrictive. If the Basic Law is drafted in such a way that it rules out any chance for further development, the future SAR Government will find its hands tied and may be incapable of coping with the changing situation. This will in turn upset the stability and prosperity of Hong Kong.

The 'one country, two systems' policy towards Hong Kong is accepted by the Hong Kong people; there is also no dispute that Hong Kong's sovereignty will be resumed by China. However, it appears that the Chinese leaders are over-anxious about China's sovereign rights over Hong Kong, and have sometimes gone over board to demonstrate this point, which is unnecessary. The third principle therefore concerns the over-emphasis of sovereign rights on the part of China. As one of the main objectives of the Basic Law is to ensure a high degree of autonomy for the Hong Kong SAR, it would not be proper to place too much emphasis on China's sovereign right over Hong Kong. This may create adverse effect on the promise 'of a high degree of autonomy' and would shatter the confidence among the Hong Kong people.

Based on the above three principles, I have the following observations and suggestions in regard to the different articles in the draft Basic Law.

Article 16 stipulates that legislations made in the Special Administrative Region could be returned for consideration or revoked by the Standing Committee of the Chinese National People's Congress if it considers that the legislation in question is not in conformity with the Basic Law or legal procedures. It is feared that this provision will give China too much opportunity to unduly interfere with Hong Kong's affairs. More stringent conditions will be needed for this provision to protect the high degree of autonomy of the SAR.

The case for article 17 is equally questionable. Paragraph 3 of article 17 of the draft Basic Law states that: 'Laws, enacted by the National People's Congress or its standing committee, which relate to defence and foreign affairs as well as other laws which give expression to national unity and territorial integrity' are

beyond the SAR's jurisdiction and shall be applied to the SAR. This has clearly exceeded the terms as stipulated in the Joint Declaration which in Annex I provides that only foreign and defence matters are the responsibilities of the Central People's Government and that other matters are to be handled by the Hong Kong SAR.

Furthermore, the terms 'national unity' and 'territorial integrity' are too indefinite. They can be interpreted to cover a wide range of activities which may lead to the abuse of the SAR's autonomy. It appears that matters of 'national unity' and 'territorial integrity' can be put under the category of national defence and foreign affairs, which have been clearly stated in the Joint Declaration and the draft Basic Law, and I would suggest that these two terms be deleted from the Basic Law.

Another dubious point in the same article is in its last paragraph. It says: 'If the Government of the Hong Kong Special Administrative Region fails to act in compliance with the directives given by the State Council, the State Council may decree the application of the above-mentioned law in the Hong Kong Special Administrative Region.' This may contradict the provisions in article 15 which stipulates that the Hong Kong SAR is vested with executive power. Some reconsideration of this arrangement is clearly necessary or else it may impinge upon the SAR's autonomy.

Article 21, paragraph 4, provides that people from other parts of China must apply for approval for entry into the SAR but it does not state which authority can grant such approval. It is suggested that such power be vested with the SAR Government.

Chapter V of the draft Basic Law, which relates to the SAR's economic policies, is generally considered too specific and restrictive. Many of the provisions in this chapter concern detailed policy instead of a broad guideline for the SAR Government. This will limit the SAR Government's room for manoeuvring and will restrict its ability to take necessary actions when required in the future.

I would like to highlight some of the area in Chapter V that have raised concern.

Article 105 intends to ensure that the SAR Government will maintain a balanced Budget, which is a valuable practice of the present government and is generally supported. However, the draft Basic Law has gone too far in stipulating how such balanced Budget is to be achieved. The related provisions, it appears, are not necessary. All that the Basic Law needs to state is the principle of a balanced Budget, the rest can be left to the SAR Government.

Similar criticisms have also been made on articles 106, 107 and 108 which concern tax policies. If the Basic Law is drafted in such a restrictive manner, the SAR Government may from time to time be challenged in court for not

complying with the Basic Law when it has to deal with some unforeseeable situations.

Restrictive provisions abound, not only in the chapter which deals with economic policies, but also in other places, such as Chapter VI which deals with education, science, culture, sports, religion, labour and social services policies. Provisions in this chapter should be simplified so that the Basic Law will only lay down a collection of principles for drawing up policies but not the detailed policies themselves.

Article 157 provides that organisations in fields such as education, science, technology, culture, sports, health, professionals, labour, social welfare and religion in the SAR may maintain their relations with the relevant international organisations under the name 'Hong Kong, China', as required.

I would like to point out that the majority of sports organisations in Hong Kong, as well as organisations in other fields, have already established close links with the relevant international organisations. The change of status from purely 'Hong Kong' to 'Hong Kong, China' may lead to complications which are not favourable to the local bodies. It is because local bodies may have to apply for admission afresh to the relevant international organisations under the new 'Hong Kong, China' status. This means that their qualifications will have to come under scrutiny again. I am not saying that local bodies, which are already members of the relevant international organisations, are not qualified. But any re-examination of qualifications is likely to cause unnecessary complications and this is to no one's advantage.

It would save the local bodies much trouble if they are allowed to remain in the relevant international organisations under the name 'Hong Kong'. Therefore I suggest that the Basic Law stipulates that local bodies can join international organisations under the name of either 'Hong Kong, China', or just 'Hong Kong' where appropriate.

Article 169, which deals with the power of interpretation of the Basic Law, stipulates that such power is vested in the Standing Committee of the National People's Congress. I accept this arrangement in principle. However, to demonstrate the high degree of autonomy enjoyed by the SAR, would it be desirable for the standing committee to delegate such power to the Special Administrative Region? Besides those matters concerning national defence or foreign affairs, I am confident that the law courts in Hong Kong can do a good job in interpreting the Basic Law. Of course the ultimate power to interpret the Basic Law should still be vested with the Standing Committee of the National People's Congress.

After commenting on the draft Basic Law itself, I would like to discuss the methods in constituting the Legislative Council and selecting the Chief Executive of the SAR. A number of alternatives for effecting this are outlined in the annexes to the draft Basic Law.

Both quality and quantity will have to be taken into account in constituting the future legislature. The interests of all sectors of the local community should also be carefully balanced. That means the Hong Kong public should be able to elect their representatives to the legislature while caution must also be taken to ensure that a balanced representation is achieved.

I support alternative 1 under Annex II which proposes that 50 per cent of the members of the SAR legislature are elected through functional constituencies, 25 per cent by 'one-man-one-vote' direct election and 25 per cent by an electoral college.

In the selection of the Chief Executive, the various interests of the local community also have to be balanced. The Chief Executive should not be elected by the legislature to ensure that he or she will be able to withstand any undue influence from the legislature and will act independently.

I support alternative 1 as listed in Annex I, under which the Chief Executive is elected by the same kind of electoral college as used in electing 25 per cent of the members of the legislature. This electoral college provides the necessary balance of interests among the various sectors in the local community while it also contains an element of election.

The above two options in forming the legislature and electing the Chief Executive both require the setting up of a broadly represented electoral college. This college is composed of 600 representatives elected from a wide range of local organisations and it can ensure a balanced and complete representation of the Hong Kong community.

This electoral college is a feature which does not exist in Hong Kong's present political system. It will be too hasty for us to set up this electoral college only by 1997 when Hong Kong becomes a Special Administrative Region. We need to plan and prepare ahead.

It is suggested that if the idea of setting up such an electoral college is finally accepted, Hong Kong's present Government should take the first opportunity to set it up after the Basic Law is promulgated. This will allow sufficient time to polish and refine this system when necessary before 1997 so that a smooth transition will be ensured.

With these remarks, Sir, I support the motion.

MR. WONG PO-YAN (in Cantonese): Sir, as a member of the Basic Law Drafting Committee of the Hong Kong SAR People's Republic of China, I welcome the Council's debate on the Basic Law today. The Basic Law will be the Basic Law for Hong Kong after 1997. It has a direct bearing on every Hong Kong resident and should be a matter of concern of everybody. I feel that for Members of this Council, no matter whether they are elected or appointed, they are playing a leading role in society. Therefore, to discuss the Basic Law here and to discuss individual comments will be important as well as representative. I trust that

members of the Basic Law Drafting Committee, whether they are members from China or from Hong Kong, will equally attach importance to opinions expressed by Members of this Council.

In the past three years, the Basic Law Drafting Committee has conducted seven plenary sessions and numerous subgroup meetings in order to draft the Basic Law. According to my observation, no matter whether they are Chinese drafters or Hong Kong drafters, they want to follow closely the letter as well as the spirit of the Sino-British Joint Declaration on Hong Kong's future, to follow the concept on 'one-country, two-systems' and to provide a high degree of autonomy for Hong Kong so that Hong Kong people are able to continue to enjoy social stability as well as prosperity. At the beginning, because members from both parties come from different social and political systems, they have different ways to conduct meetings, to conduct business and to interpret terms as well as words. Nevertheless, through exchanges between both sides, as well as owing to the more liberal policies in China, such differences are getting closer and closer. As a result, Members attained consensus in many areas.

In the past three years, no matter whether it is the plenary session or the subgroup meetings, people from the mass media in Hong Kong have worked hard to cover the content of the meetings. So they have made accurate reports to Hong Kong residents. I think this is very important and deserves our thanks. If we still stick to previous understanding in order to interpret the present situation, this is unrealistic. Concerning the Hong Kong drafters, if we hold different opinions, this is quite obvious and is a good thing. However, I would like to emphasise that every Member has the same objective, that is, for the benefit of the Hong Kong future. Even though we may have differences, such differences have been reduced. I have experienced that the biggest difference can be turned to consensus after a certain period of time.

After the publication of the draft Basic Law at the end of April, the Basic Law Consultative Committee has conducted a large scale programme of publicity to collate public opinion. In fact, many members of the public have submitted opinions to the Basic Law Consultative Committee. I firmly believe that such views will be very important to the refinement of the Basic Law.

Sir, I feel that Members have different opinions of the Basic Law because of several issues. First of all, it is a matter of confidence. Secondly, it is the interpretation of the scope of 'one-country, two-systems', the exercise of sovereignty as well as the high degree of autonomy. Thirdly, should the Basic Law be concise or should be in great detail, and should policy issues be included in the Basic Law.

I feel that such problems can be resolved. First, judging from the social changes in Hong Kong in the past 10 years, many problems have been overcome due to the hard work of the Hong Kong people. If we are able to tackle this issue from a rational as well as pragmatic angle, I think the confidence problem can be resolved. Secondly, if we try to consider opinions expressed by various

parties and to try to put oneself in the angle of another person, then perhaps we are able to solve the second problem. Thirdly, as to whether certain contents should be included in the Basic Law, I agree to the comment made by Mr. Andrew WONG, Convenor of the Constitutional Development Panel. He said, 'if a certain policy is so important that it should be written into the Basic Law, then it should be included.'

Concerning the articles on social welfare, education, as well as medical services, there are very clear stipulations. So economic affairs are not the only topic on which we include details. It is because Hong Kong consists of various interests. Therefore, we have to take care of various interests. We will consider the views expressed by various parties.

Sir, as the Hong Kong Convenor of the Economic Subgroup of the Basic Law Drafting Committee, I would like to comment on the background of the drafting of Chapter V. Before the first subgroup meeting, Hong Kong drafters have met and their understanding was that Hong Kong has attained very good economic development. Therefore our objective was to review the factors leading to the success of the Hong Kong economy and to assess these factors as well as the environment of Hong Kong, together with our forecast for the future. At the same time, we also studied the content as well as the spirit of the Joint Declaration and, after that, we proposed certain points for inclusion, including a balanced Budget, low tax policy, as well as no control on foreign exchange, and so on. At that time we had not expected that it would lead to many controversies.

After the publication of the draft Basic Law, we now learn from various channels comments that are of quality as well as importance. These comments include comments from our Senior Member, Miss Lydia DUNN, who has just made the opening speech. Most of the comments are about article 105, that the Government of the Hong Kong SAR shall, over a number of fiscal years taken as a whole, maintain a basic balance between total budgetary revenues and expenditure. Under article 107, Hong Kong SAR shall continue to practise a low tax policy; and under article 110, the Hong Kong SAR shall continue to practise free and open monetary and financial policies. Some people think that such articles should be deleted. Just now I have also heard Mr. F. K. HU, who is both my colleague as well as my former classmates. We usually have similar opinions on various topics. Obviously, members of the Basic Law Drafting Committee will carefully consider the views expressed by various parties. I feel that if the majority of the BLDC agree to make the necessary amendments, I will not insist on my own opinion.

Nevertheless, I feel that I shall make some personal comments. First, I think Hong Kong must never have a deficit Budget over a long period of time. Therefore, a balanced Budget should be stipulated in the Basic Law. A so-called balanced Budget does not mean that we have to spend all our revenues. Of course, it is a good idea to have a surplus to cater for the rainy days. The reason

is quite simple. Hong Kong does not have any natural resources and we must have a stable Budget as well as a sound financial system. As to whether a balanced Budget provision should be stipulated into the Basic Law, according to my own references, among the 50 states in the United States, there is provision for a balanced Budget in the constitution of 49 states and 36 states have already passed constitutional convention petitions to amend the US Constitution to require balanced Budgets. Apart from this, Professor Alvin ROBUSHKA, during a recent interview with a newspaper in Hong Kong, felt that the low tax policy stipulation as well as the balanced Budget provision in Chapter V, are very good articles and actually can be adopted in the constitution for the USA. Such kind of comments deserve our study and consideration.

The second point concerns article 107. The Hong Kong SAR shall continue to practise a low tax policy; the word 'continue' means that we can make reference to the changes in the standard tax rate in Hong Kong.

Thirdly, according to my memory, the standard tax rate in 1948 was 12 per cent; in recent years, the highest was 17.5 per cent, plus one per cent of interim surcharge and the highest we have ever attained is 18.5 per cent. A low tax policy will be a most important factor to encourage investment. Even though this is not the most important provision, if there is not such a provision, it will affect the confidence of investors.

Sir, with these remarks, I support the motion.

4.30 pm

HIS EXCELLENCY THE PRESIDENT: Members might take a short break at this point.

4.51 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

MR. CHEUNG (in Cantonese): Sir, it has been two months since the release of the draft Basic Law for solicitation of opinions. People of all strata of our society have shown concern. However, when it comes to expressing views on its contents, response has not been regularly forthcoming. The relevant bodies have been unremitting in their efforts to promote the draft and have resorted to different means of promotion. However, it is a real pity that they all concentrate their efforts on presenting and explaining the draft and have not done enough to solicit views from the public. Through the mass media, many useful views have been expressed. However, most concentrate on the technical aspects and little do we know about the views of the ordinary people. Looking back on the period when the development of representative government was discussed, there was an adequate collection of public opinions from all walks of life, both quantitatively and qualitatively. By comparison, it seems more has to be done

this time. The promotion period for the draft Basic Law has expired and there are only two more months to go for the consultation period. If more organised activities are not launched to gauge public views, I am afraid the so-called consultation procedure will be completed in a wishy-washy manner and the solicitation of opinion will just be empty talk.

I remember when the draft was first published, the relevant people thought very highly of it. However, it seems as if more and more people now begin to think that the draft is more insistent on the sovereignty that comes under 'one country' and tends to restrict the high degree of autonomy that may be derived from the 'two systems'. I personally feel that, to the people of Hong Kong, whether the draft is acceptable or not will depend on whether the articles will enable the Hong Kong SAR to achieve a high degree of autonomy for the people here. One country is the reality, whereas two systems is the ideal. Undoubtedly, since 1984, the factor that has helped to maintain the confidence of future is a promise made by the Chinese Government that the people of Hong Kong will enjoy a high degree of autonomy. This is an ideal, not an illusion. This is a goal that can be achieved. Should the draft Basic Law contain too many articles emphasising the exercise of sovereignty and the power of the Central Government and show a lack of confidence in giving Hong Kong the autonomy that has been promised, the ideal held by the people will immediately be destroyed. Confidence will be shaken to its foundations and no one will stand to gain.

In fact, the articles in the draft have reflected the Joint Declaration to a very great extent. The following are examples. The Hong Kong SAR will have the right to enact its own laws. However, the Standing Committee of the National People's Congress can return the laws for reconsideration or even revoke them. National laws outside the autonomy of the region can be applied by promulgation or by directives from the State Council. Even though Hong Kong will have executive powers, the Chief Executive and principal officials will be appointed by the Central Government. The Hong Kong SAR will have independent judicial power and the power of final adjudication. However, the courts have no jurisdiction over the executive acts of the Central People's Government. Besides, the interpretation of the articles of the Basic Law by the Standing Committee of the National People's Congress will be followed by the courts in the Hong Kong SAR. All these restrictions will be obstacles to the high degree of autonomy of the future SAR.

In fact, if we read this draft very carefully, we will easily find that there are many other restrictions on autonomy. Firstly, the Hong Kong SAR will come directly under the Central People's Government. This will place autonomy under the direct leadership of the party. In the actual functioning of the future Hong Kong SAR, how a high degree of autonomy can be achieved under the leadership of the party will be a major issue in the implementation of the Basic Law. Then the people of Hong Kong will be able to participate in the election of deputies to the National People's Congress. The National People's Congress

is characteristic of the political system in a Chinese socialist society. It was set up according to principles of democratic centralism. In this way, will the relationship between the SAR and the socialist system be closer every day? Besides the power to interpret the Basic Law lies with the Standing Committee of the National People's Congress. The interpretation will inevitably be influenced by a socialistic view. Therefore whether autonomy can be achieved will be further tested. Consequently, I feel that if the Central Government has faith in Hong Kong's autonomy, it should adopt a pragmatic approach and work out articles which will, on the one hand, exercise sovereignty and, at the same time, enable a high degree of autonomy so that the confidence of all parties can be maintained. In this way, there will be stability and prosperity in Hong Kong and there will be a smooth transition of political power.

There is another point regarding the political structure that I wish to bring up. In the main text of the draft Basic Law, the future status of the two municipal councils and the district boards is not stated. It merely states that the powers and functions of the district organisations and their composition shall be prescribed by law. The district boards are only mentioned in Note 8, I quote: 'If the present three-tier structure was retained, district boards should still be district consultative bodies.' The Urban Council and the Regional Council are two district administrative organisations which are broadly based and widely representative and have made outstanding contributions and achievements. Yet they are not even mentioned.

I wonder if this is because it is feared that these district organisations will gradually develop into district political organisations. I just feel that such an omission cannot have been incidental. At present, the two municipal councils comprise directly elected members, indirectly elected members, ex officio members, appointed members and they are also financially autonomous, indicating fully their close relationship with people. Their functions are mainly municipal services in the districts. It is clear to all that, in matters of recreation and culture and environmental hygiene and other district services, allowing members of the public to choose their own representatives to be responsible for management is a most effective method and helps greatly in the promotion of a sense of belonging.

I greatly regret the omission of the two municipal councils from the draft Basic Law. I feel that even if no final decision can be made regarding the three-tier system in district administration, they should at least be treated in the same way as the five alternatives for the Chief Executive or the four alternatives for the legislature. All alternatives should be listed in an annex and the electors should be consulted. That is the correct way to go about it.

The omission of the two municipal councils from the draft will deprive the two municipal councils of their places in the constitution and shows extreme disrespect towards them. This will be a blow to the morale of people who participate in municipal services. The faith of the voters in the two municipal

councils will be eroded and their enthusiasm in participation will be dampened. The three-tier system has been confirmed by the political review. How can the draft Basic Law afford to ignore the lower and middle tiers of such a system?

Sir, the draft Basic Law for solicitation of opinion is a consultative document. The authority should not on the one hand, be afraid of criticisms and, on the other hand, not afraid of making amendments. Requests from the public to amend the principles or make technical amendments is the first step in autonomy. May I appeal to the people of Hong Kong to act now and express their views fully, so that we can together bring in a good future for Hong Kong beyond 1997. I have other views regarding the draft Basic Law. However, amongst us, we have an agreement that we will limit our speech to a certain period and that is the reason why I will stop here and just say that I support the motion.

MRS. CHOW: Sir, it has been said, 'A camel is a horse designed by a Committee.'

The governmental structure contained in Chapter IV of the draft Basic Law runs a real danger of doing just that. For in spite of all the detailed thinking that must have gone into the many articles of Chapter IV, with the listing of all the options, it fails to address some key fundamental issues which must be addressed before one can start to consider the options.

I do not think any one will disagree that whatever form of government we end up with in 1997, it must be a good government. By that I mean it must have the good of Hong Kong at heart at all times and it must work to protect the intrinsic values that our people hold dear, and it will be able to resolve any differences between Hong Kong and China without sacrificing those values.

Surely the key question that must be examined, and whether it has been examined is certainly not apparent in the draft, is whether the Hong Kong SAR Government will maintain existing links between the legislative and the executive authorities, or whether it will initiate the so-called separation of power between the two. In my view it would be most difficult, if not impossible, to assess the suitability of any one option put forward regarding the selection of the Chief Executive and the formation of the Legislative Council without a decision on this vital relationship.

Some have advanced the view that since the Chief Executive may not be elected, and the executive authorities are to be appointed by him, the best check and balance is to separate the membership of the Executive and Legislative Councils, so that the elected legislature composed of representatives of the people could effectively monitor the exercise of power and authority by the executive by ensuring that it is held accountable at all times.

While agreeing that the legislature should act as effective check and balance to the executive, I am concerned the danger exists for that check and balance to

overshoot its useful purpose, and end up as a stumbling block to effective and efficient administration.

It is therefore of paramount importance that the Chief Executive and his administration must enjoy the support and confidence of a majority of the legislature, so that government policies, while exposed to public debate, criticism and censure, can retain initiative and control while at all times taking in public views.

It follows therefore that the Chief Executive is best voted into office by a majority of legislators, who will hopefully apply the two equally important criteria of political sensitivity and administrative competence in arriving at their choice.

Critics of this concept have argued that such a method of election may give rise to the need to form political parties, which in turn will breed confrontation and instability. Such proponents ignore the fact that Hong Kong has progressed past the age of unorganised political personnel and activities. What we have are political parties in their infancy, exercising a significant degree of control and discipline on their members. They have clearly identifiable leaders, they cut across district boundaries, and straddle the different levels of unofficial presence in Government.

There is no escape from it. In any case, once you go the election route, there has got to be organisation. In fact, it would be more risky not to have organisation, for without organisation there will be no strength, no discipline, no responsibility. To design a governmental structure with the assumption that no political parties, whatever they call themselves, will exist in 1997 is neither wise nor realistic. To circumvent that status quo by building into the system a complex and unusual entity called the grand electoral college renders the system even more unwieldy and difficult to understand, particularly for the public at large. Whatever system we adopt must be easily comprehended and simple to operate if we want as many people as possible to have enough confidence to participate in it, as either candidates or voters.

If one accepts my argument that in order to have an effective and efficient administration, the Chief Executive must enjoy the support of the majority of the legislature, then the next question must be how the legislature should be formed.

In the present draft of the Basic Law, I again find it difficult to detect the rationale behind the alternatives, except a reluctance to introduce universal suffrage across the board.

At least there is consensus that given our history and the crucial importance of our economic strength, Hong Kong's political system should operate on the principle of balance of interests and economic contribution, rather than on simple head count. Many believe that the huge economic success of Hong Kong today is due to the professional and efficient running of the Hong Kong Inc. If

one accepts that analogy, then one would also appreciate Sir S.Y. CHUNG's view that the basis of the amount of say people should have in the running of Hong Kong must be determined by shares and not by shareholders. In other words, the extent of the power and influence on the shaping of government policies should be weighted according to contribution, so long as the fundamental right to freedom of expression for each and everyone, including the right to question those policies of Government and action arising out of those policies without fear or favour is preserved and respected.

On this basis, the future legislature of the SAR must act as the support and not the opposition of the executive. It must function as the bridge and the buffer between the executive and the people. It must be able to explain government policies to the people, but when these are not accepted, it must be able to achieve compromises acceptable to both sides.

This is what has worked now, and we must preserve what has proved to work as far as possible. To move towards the American system where the executive and the legislature are totally separated is a fundamental change in a style of government historically alien to Hong Kong, not to mention the price Hong Kong can ill afford to pay for such a separation is likely to be more confrontational and unproductive than anything that Hong Kong has so far experienced, and is not conducive to the social harmony that our people treasure.

The simple way out is to retain direct elections via the districts and the functional constituencies, with the latter constituting 75 per cent, but allowing further adjustments as Hong Kong progresses further down the road of democratisation. The rest must be left to political leaders who in turn will motivate the populace.

Whatever system we are likely to end up with in 1997, all will agree that we can do with as little disruption as possible during the changeover. Sometime ago Chinese leaders have been heard to expound on the through train theory. In the last two years, however, the tune has changed. I have been told, rightly or wrongly that the U-turn came about when some Hong Kong people resorted to physical demonstration of displeasure with some government policies. This effect is understandable. Even we ourselves in Hong Kong were nervous over some such demonstration. However the consideration of the overall advantage of the through train should not be easily derailed by odd incidents, which are, when viewed in the long term, mere manifestations of the occasional frustration of some sectors or even the broad community resulting from some unpopular policies, but are themselves not endorsed or supported as suitable or desirable acts by peace-loving population. Hong Kong in turn must convince China, by our words and conduct, that we are mature enough to resolve our problems without taking to the streets, and that we are capable of choosing the right people to lead us.

I would therefore like to send my support to the suggestion put forward by some Members contained in paragraph 4 of the Appendix to the draft Basic Law with reference to the message for the formation of the first Government of the SAR, which states, and I quote:

‘Persons who are members of the Hong Kong Legislative Council in June 1997 shall automatically become members of the first Legislature of Hong Kong SAR on 1st July 1997 and serve to the end of their term. Except for the ceremony of pledging their loyalty to the Hong Kong SAR there shall be no particular arrangement’.

Subsequent to their swearing in, if I may add, members of the first SAR legislature can then proceed to elect their Chief Executive.

Lastly, Sir, a word on the consultation process. Apart from the OMELCO Constitutional Development Panel, this Council, and some relevant government personnel, I have not yet come across one person, who has read the draft from start to finish. It is not up to me to guess the reasons, but the fact remains and it is unsatisfactory. I suggest that both the Drafting Committee and the Consultation Committee of the Basic Law have a responsibility to explain the draft to the people in a fair and objective manner. The document itself is too complex and detailed for the layman to comprehend fully. It is therefore extremely important for those familiar with the document to explain the thinking behind the draft without clouding that explanation initially with their own convictions. The wishes of the people must be based on their own knowledge, understanding and reason. The education process cannot be skipped. No amount of television advertising to project the beautiful image of the Basic Law can fulfil this basic, down-to-earth, and absolutely vital function. In spite of the extensive coverage in the media every day, I do not believe there is as yet adequate involvement and identification on the part of the community. This problem must be recognised and rectified.

Sir, I support the motion.

MISS TAM (in Cantonese): Sir, my participation in the Constitutional Development Panel study of the draft Basic Law is only limited to the analysis of Chapters I, II, IX and a small portion of Chapters IV and V. In order to maintain a more detached position, I refrained from discussion once the panel started summarising its views, so today I will only be expressing my personal opinions.

The Sino-British Joint Declaration was formally signed on 29 December 1984. The Joint Declaration and Annex I contained mainly details expounding the concept of two systems. As for the concept of one country, we only have several clauses touching on its principle. First the Government of the People’s Republic of China has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Second, in accordance with the provisions of article 31 of the Constitution of the PRC, a Hong Kong Special Administrative

Region, upon assuming the exercise of sovereignty of Hong Kong, will be set up. Three, the Hong Kong Special Administrative Region will be directly under the authority of the People's Republic of China.

It was only in April this year, when the draft Basic Law was published, did we learn anything new about the meaning of 'directly under the authority of the Central People's Government of the People's Republic of China'. Other than the Chinese version there is also an English version of the draft Basic Law and they are published at the same time in Hong Kong and in China for the purpose of consulting the Hong Kong citizens, and also those who are interested both inside and out of Hong Kong. The two Houses of the British Parliament and the Legislative Council of Hong Kong will debate this, and I do not think any country has been so open in accepting views and conducting consultation in the drafting of her constitution, so I think the sincerity of China deserves our sincere responses.

Among the many views expressed on this, many concern policy articles which are not touched upon in Annex I of the Joint Declaration. They are articles 105-108, 122, 123, 124, and articles 25 and 40 in Chapter III, and also the articles concerning social welfare mentioned by Mr. WONG Po-yan. Actually all these articles mention policies which the Hong Kong people would like to see implemented.

Articles 105-108 touch on public finance and taxation, and I do not think they are just there to protect the vested interests of some sectors of the community. If we really have a low tax policy and if we can maintain a basic balance between revenue and expenditure, it would be good for Hong Kong. I think it is good for the constitution to stipulate Ordinances concerning public finance and taxation. This is not unfounded. Mr. WONG Po-yan has also spoken on this. But since we must use the procedure of article 170 to revise any codified policies within the exercise of a high degree of autonomy, we will be actually limiting the high degree of autonomy of Hong Kong.

That is why I think that all these articles setting out instructive policies should be contained in an annex and they should not be legally binding. The Government should try its best to implement these policies, but if it departs from the policy when the necessity arises, it will not be regarded as violating the constitution. Actually India and Ireland have similar instructive policy articles in their constitutions and Mr. Andrew WONG has also spoken on this.

Sir, I have already expressed my views on articles 16-18, article 22 and article 169 on other occasions, so I will not waste any more time on these today. I think Hong Kong should not have residual power, but the jurisdiction should only be bound by the present legal principles. I think that the seven laws which are nationally applicable are necessary for Hong Kong, these are the items in the nationality act, and I do not think that these will affect the degree of autonomy in Hong Kong, but the presentation is really too vague in the draft Basic Law, but I have also expressed my views on other occasions.

On political structure, I agree to the separation of powers but we must maintain neutral checks and balances. But on the two chapters concerning political chapters and duties and freedom there is no prohibition mentioned on the formation of political parties. The formation of political parties is still allowed 'when the necessity arises'. Talking about the selection of a Chief Executive and the formation of the legislature, these are contained in Annex I and Annex III, and we can amend these articles through the legislature, and the Chief Executive should also enjoy the power of revising these articles. Only thus, can we adapt the 50 years time? We have been talking about the idea of general election, and I do not want to wait too long before we can have a general election in Hong Kong, but we have been debating this for a very long time, since 1984, and if we debate this again this afternoon we may not arrive at a consensus, so the Hong Kong people may not really want us to debate this.

Sir, our political ideas may become the focus of our discussion and debate, but there is something more important, and that is the formation of the Committee of Basic Law, its relationship to the Standing Committee of the National People's Congress and also the number of votes needed to endorse a proposal or report submitted from the Committee of Basic Law.

The power of the Chief Executive and of the executive authorities will be checked by the legislature elected and I will not comment on any particular alternative which will give us a more effective legislature. After all any party that can have 50 per cent of the votes in the legislature can control the legislature, and the decision of the Chief Executive and the executive authorities will be influenced by the legislature. We know that the decision of the Basic Law Committee is very important on questions such as the interpretation and revision of the Basic Law, the applicability of national laws in Hong Kong, or whether certain laws are a violation of the constitution. These points are not explained in great detail in the draft Basic Law. I think that the Basic Law Committee should be an operational authority and not an advisory body. From what I understand the recommendation made by an operational body carries more weight. For example, the Basic Law Drafting Committee is an operational body. Of course it cannot endorse the basic law. This is the jurisdiction of the NPC, but if the NPC does not endorse the final report submitted by the Basic Law Drafting Committee, they will have to do the work all over again. I think that at least 50 per cent of the Basic Law Committee members should come from Hong Kong and they must have a two thirds majority before they can endorse any report for submission to the National People's Congress. After the National People's Congress has endorsed them, these reports must be disclosed so that the Hong Kong people will know more about the work of the Basic Law Committee. This will enhance our trust in it and we will not commit the same mistake in violating the constitution. As for the size of membership, I think 20 people will be enough. We can have a representative nominated by the Chief Executive, a judicial representative nominated by the Chief Justice, a legislative representative nominated by the legislature, and a legal representative

nominated by the legal profession, and these will be appointed by the Central Government.

We have not decided on the formation of the Basic Law Committee; this should be contained in separate law. But the Basic Law Drafting Committee believes that upon the promulgation of the Basic Law, regulations concerning the formation of the Basic Law Committee should also be promulgated. I think these two are closely related. Before we decide whether we accept the Basic Law we must have an answer on how the Basic Law Committee is to be formed. Only so can we put the minds of the Hong Kong people at ease and provide a fair arrangement.

Sir, with these remarks, I support the motion.

MR. CHAN YING-LUN (in Cantonese): Sir, this is a debate I have waited for four years. I believe that during the period between the signing of the Sino-British Joint Declaration in 1984 and the promulgation of Basic Law in 1990, consultation exercises should be conducted on an ongoing basis. It should not be dropped half way. Regarding the draft Basic Law, I have the following three requests to make.

First, the Basic Law must comply with the provisions of the Joint Declaration; second, the wording of the articles must be clear enough to enable them to function properly; and third the Chinese Government must keep its promise by seriously considering views expressed by Hong Kong people.

Sir, in this debate I will be centring my speech on these three requests, and my speech will be on the articles of the draft concerning the protection of human rights. I find that some of these articles do not measure up to my first two requests.

Concerning the first request, to comply with the Joint Declaration—to a certain extent this is beyond the draft Basic Law, because certain provisions in the draft, for instance those regarding acts to undermine national unity or to subvert the Central Government, are absent in the Joint Declaration. If these provisions were present in the Joint Declaration, Hong Kong people would have found it much more difficult to accept them because provisions like these would cast a shadow over how human rights would be under the Declaration. These provisions could pave the way for legislation like anti-revolutionary laws depriving Hong Kong people of their rights and freedom. I think that anti-treason legislation is necessary. Actually such laws exist in our present legal system, but Hong Kong certainly does not need with expressions like ‘subvert Central Government’ and ‘undermine national unity’. All we need to do is to amend existing legislation and to stipulate that trial must take place at a court of Hong Kong, and the problem would then be solved. We can also learn from the example of the other autonomous regions, where there are laws passed between 85 and 86, and these laws contain expressions like ‘the autonomous region will uphold national unity’. In other words, we only need to say ‘Hong Kong SAR

will uphold national unity' in the preamble of the Basic Law. That will do. This is to achieve the effect of shifting the task of upholding national unity onto the shoulders of the SAR Government rather than individuals.

My second request is for the articles to have very clear wording so that they can function properly. Most of the controversial expressions used in the articles have to do with legal matters, for example, article 5 and article 41 use the expressions 'in accordance with law'. I think this is very dangerous. Does this mean that the fundamental rights and freedoms of Hong Kong people will be at the mercy of the legislature? This is because the Basic Law does not prohibit the legislature from enacting harsh laws. I figure that the intention of using 'in accordance with law' was not to impose legislative restrictions over Hong Kong people's fundamental rights and freedoms, but it appears that this is precisely the effect it may have none the less. Fundamental human rights come with the birth of a person. They are not granted by the ruler. They should never be subject to any legislative restrictions. Therefore I think the expression 'in accordance with law' should go. Article 39 says that: 'the freedom and rights enjoyed by Hong Kong residents should not be restricted unless prescribed by law.' I think wording like this is acceptable. This is a good example.

Articles 27 and 28 use the expressions 'unlawfully arrested', 'detained and imprisoned', 'unlawful restrictions of the residents' freedom', 'unlawful search or intrusion into residents' homes', but no provisions are made to prohibit the commitment of these acts on an arbitrary basis. How can human rights be safeguarded under these circumstances? Therefore I suggest that the word 'unlawful' should be changed to 'arbitrary' so that the articles can function as intended. Article 30 says that Hong Kong residents who hold valid travel documents shall have the freedom to travel and freedom of entry and exit. I feel that the word 'valid' could constitute restriction over freedom of entry and exit. What is meant by valid? The word is indefinite. It could mean periodical validity or legality. The latter meaning could enable the ruler to restrict freedom of entry and exit by invalidating the travel documents.

Article 23 attempts to define Hong Kong SAR residents. I think to put it in Chapter III, which is about fundamental rights and duties of the residents, is inappropriate. It could be misinterpreted to mean that only SAR residents need to abide by the articles. Therefore, these two particular sections should be included in the preamble.

Article 24 refers to Hong Kong residents. I think a more appropriate expression would be 'anybody in Hong Kong'—meaning that all persons including tourists, as long as they are residing or transiting in Hong Kong are entitled to the rights listed in Chapter III. Because of these proposed alterations, article 41 saying that persons in the Hong Kong SAR other than Hong Kong residents shall in accordance with law enjoy the rights and freedoms of Hong Kong residents prescribed in this chapter, can be deleted to avoid repetition.

Sir, in a free society there are still restrictions over human rights, and therefore I agree to the restriction over human rights imposed by article 39, but the problem is that the six grounds for restrictions would subject the duties and rights listed in Chapter III to similar restriction. I think the scope should be narrowed down, because different societies have different degrees of tolerance. Hong Kong is a free and democratic society. The degree of tolerance is high here. Therefore, I think that it is necessary to delineate clearly in the article the extent of tolerance, which in turn should be based on the criteria for a free and democratic society.

Article 38 stipulates that International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights will be applicable to Hong Kong. Most Hong Kong people feel that it is not good enough to include the International Covenants applicable to Hong Kong. Therefore three remedies are put forward. First to introduce the provisions of the covenants into the Basic Law; or second, to stipulate very clearly in the Basic Law that the covenants must be respected; or third, to raise the status of the covenants so that they are above the law of Hong Kong. Any legislation drafted should not go against this covenants. I think, of these three remedies, the best one is to introduce the provisions of the covenants into the Basic Law so that the freedoms and rights of Hong Kong residents can be fully safeguarded.

Sir, the conclusion I draw from what I have said is that some of the articles do not comply with my first two requests, and therefore I would really like to urge the Chinese Government to listen to my third request, that is to keep its word, because if the articles are not amended, it would be very difficult to safeguard the human rights of Hong Kong people.

The safeguarding of human rights depends on the provisions of the Basic Law, but if we do not have a sound and comprehensive legal system there will be no safeguarding of human rights. Regarding detailed analysis of the draft Basic Law to avoid repetition I will leave it in the capable hands of my hon. Colleagues.

Sir, finally, I would like to say something on the part of the Basic Law on education and these are views shared by myself and Mrs. Rita FAN. Article 142 stipulates that the Hong Kong SAR shall maintain the education system previously practised in Hong Kong, and the wording is very much the same as that for the Joint Declaration. We all think that this is worthy of our support and the aim is to protect the independence of Hong Kong education so that it does not have to follow that of the Chinese system, and the education system in Hong Kong can meet the needs of the Hong Kong community. Hong Kong is an international society, and that is why its education system must meet the needs of Hong Kong as well as those of the international community. I think we must respect the spirit of freedom in our present education system, but it does not mean that we have to completely preserve it for the future Hong Kong SAR

Government. That is why both Mrs. Rita FAN and I feel that article 142 should be duly amended to reflect this spirit of freedom.

Sir, with these remarks, I support the motion.

MRS. NG (in Cantonese): Sir, the draft Basic Law for solicitation of opinions is a document that affects everyone in Hong Kong. I would like therefore to urge the people of Hong Kong to voice their views so that the final draft will meet the needs and functioning of the future SAR.

I would like to put forward two points.

Article 9 of Chapter I regarding languages. The article reads 'In addition to the Chinese language, the English language may also be used by the executive authorities, legislature and judicial organs of the Hong Kong Special Administrative Region.' I think to say that the English language may also be used is not definite enough. Hong Kong is an international financial centre and the importance of English cannot be ignored. Article 91 of Chapter IV states—'Judges and other members of the judiciary of the Hong Kong Special Administrative Region shall be chosen by reference to the judicial and professional qualities and may be recruited from other common law jurisdictions.' Judges recruited from other jurisdictions I believe will only have English as their major language. Therefore I feel that equal emphasis should be placed on English in the Hong Kong SAR. It should be an official language, enjoying equal status with Chinese. This should be made clear in the draft Basic Law.

In the early '70s, the Hong Kong Government stipulated the use of Chinese in official business. This has been effective both in administration and in enhancing communication with the public. Therefore, our future Government should give equal weight to both English and Chinese, so that this very effective language policy can continue to achieve its function.

I also hope that the future Chinese Government and the Hong Kong SAR can really adhere to article 30 in Chapter III, that is, that Hong Kong residents shall have the freedom of movement within the Hong Kong SAR and the freedom of emigration to other countries. Hong Kong residents who hold valid travel documents shall have the freedom to travel, and the freedom of entry and exit, and unless restrained by law shall be free to leave the Hong Kong SAR without special authorisation. I feel that the freedom to come and go is a basic right and it must be protected.

Sir, with these remarks, I support the motion.

MR. CHEONG-LEEN: Sir, one objective of the Legislative Council debate on the draft Basic Law is to stimulate the political awareness of the people of Hong Kong in how they will be governed from 1997 onwards.

For the 5.5 million people who will still be here in 1997, the more they come to understand about the Basic Law during the transition period, the less

fatalistic they will be—and they could even be more confident—that after the British withdraw in 1997 and China resumes sovereignty, economic prosperity will continue, personal freedoms will not be diminished and the momentum for political democracy will not be reversed.

Together with the views of other legislators who will have spoken today and tomorrow, I hope that my views will be conveyed by the Administration to the Chinese Government through the proper channels.

The Chinese Government has shown an open-mindedness in their willingness to listen to and receive all forms of criticisms and opinions on this first draft of the Basic Law. I hope that this willingness to listen will engender positive response on the part of the Chinese Government to amend the draft Basic Law to meet the wishes and aspirations of the majority of the Hong Kong community. That will be crucial to maintaining confidence all round.

As many Councillors will be speaking during the debate, I shall confine myself to several cardinal principles which I believe have relevance to the Basic Law right up to the time it comes up for adoption by the National People's Congress in 1990.

Firstly, the Basic Law has to conform with the spirit and letter of the Sino-British Joint Declaration, and any deviation from the terms of the Joint Declaration cannot be permitted.

I believe that this principle represents the overwhelming consensus and unity of purpose, not only on the part of the British and Chinese Governments, but equally on the part of the Hong Kong Legislative Council, and the overwhelming majority of the people of Hong Kong.

It will be incumbent upon the Legislative Council through its in-house meeting and the Constitutional Development Panel of OMELCO to study the draft Basic Law so that deviations from the Joint Declaration which have crept into the draft will be brought to the attention of the Chinese Government and the drafting committee for suitable amendments to the draft Basic Law.

Secondly, the draft Basic Law has to wholly reflect the 'one country—two systems' concept.

Besides preserving Hong Kong's capitalist system in economic development combined with expanding measures of social justice, the personal freedoms which Hong Kong people now enjoy under a benevolent British colonial rule should be preserved at all costs within the framework of the Basic Law. By the time the British withdraw from Hong Kong in 1997, these personal freedoms should be faithfully upheld under the rule of law by the Hong Kong SAR Government. Respect for national sovereignty and adherence to the expression of national unity must be balanced by respect for human rights and liberty of the individual.

Thirdly, the Chinese Government have promised the people of Hong Kong a high degree of autonomy to be incorporated in the Basic Law. This principle was succinctly captured in the phrase prevalent during the negotiations, ‘港人治港’ meaning in English ‘Hong Kong people governing Hong Kong’.

If Hong Kong is to thrive as a prosperous cosmopolitan city, I believe that apart from defence and foreign affairs, Hong Kong should be given under the Basic Law the fullest possible measure of internal self-government under Chinese sovereignty.

The high degree of autonomy indicated in the different articles of the draft Basic Law is expected to promote economic prosperity and social stability in Hong Kong. However, much refining is still required to be done in areas such as interpretation of the Basic Law and the scope of the Hong Kong SAR Judiciary as a Court of Final Appeal. The constitutional relationship between the Central Government and the Hong Kong SAR Government will have to be clearly demarcated, keeping intervention by the Central Government to the absolute minimum and only under prescribed conditions and procedures.

In addition, the Basic Law should be expected to build on the present systems so that personal freedoms are protected and not violated, democratic political practices consistent with social stability are encouraged in every way, and individuals are allowed to seek within the law whatever they wish to do in order to achieve a greater sense of personal fulfilment and happiness in life.

Towards this end, I would propose that all the provisions of the ‘International Covenant on Civil and Political Rights’ and the ‘International Covenant on Economic, Social and Cultural Rights’ as applied to Hong Kong shall be incorporated as much as possible in the draft Basic Law, and that the two covenants be attached as annexes to the final Basic Law when passed by the National People’s Congress in 1990.

Being a member of the OMELCO Constitutional Development Panel, I would hope that the panel’s report coming out in the next few weeks on its deliberations of the draft Basic Law will be given wide publicity and studied by all those who are concerned with the future of Hong Kong.

Sir, I would now like to briefly comment on certain parts of the draft Basic Law.

Chapter I: General Principles

Article 4

If Hong Kong’s existing capitalist system and way of life shall not be changed for 50 years, as stated in this article, it follows that China’s socialist system and policies will have much to learn from Hong Kong’s existing system, and will undergo changes in the years ahead as circumstances dictate.

Providing China's leadership continues to be moderate and stable—and I have no reason to believe that it will not continue to be so in the years ahead—the terms of article 4 augur well for the future prosperity of Hong Kong.

Chapter IV: Political Structure

Section 1: The Chief Executive

While I accept that in the long term, the Chief Executive may well be elected by direct election on a one-man-one-vote basis, I do not believe that direct election is advisable at the initial stage of formation of the Hong Kong SAR Government.

I have previously advocated that the Chief Executive be elected from among members of the legislature, which would still be my first choice. However, should the Chief Executive not be a member of the legislature, I would propose that in the formative years of the Hong Kong SAR Government the Chief Executive should be elected by a widely representative electoral college, which will be dissolved after the election is completed. This electoral college should be solely for the purpose of electing the Chief Executive and not used also to elect representatives to the Legislative Council.

The electoral college shall comprise between 600-1 000 representatives from all walks of life. The nominating committee however shall accept the nomination of any permanent resident who receives the endorsement of at least 10 per cent of the membership of the electoral college, each member of which can endorse only one nomination.

In regard to article 55, I believe that at least three quarters of the Executive Council should come from the Legislative Council so as to ensure a working liaison between the executive authorities and the legislature.

Executive Councillors sitting in the legislature could then be given the responsibility of getting Government business moving through the legislative time-table, and of even answering questions at Question Time.

Section 3: The legislature

As regards the methods of constituting the Legislative Council in the Hong Kong SAR Government, I am in favour of starting off in 1997 with about 70 members:

One third of the members to be elected by functional constituencies

One third by direct elections by districts

One third by a number of electoral colleges including the following:

The municipal councils

District boards

Groups of advisory boards and statutory boards

I believe that these electoral colleges should elect Legislative Councillors only and be kept separate from the electoral college set up to elect a Chief Executive.

As regards article 70, I believe that the President of the Legislative Council should be elected from among the Members of the Legislative Council.

I believe that my proposal represents a good foundation for democratic participation to be further developed by Hong Kong people in the years ahead after 1997.

Chapter VII: External Affairs

As regards article 159, I would urge that in order to allow more flexibility, the words 'or "Hong Kong"' should be added after the words 'Hong Kong, China'. Such is already the existing situation in Hong Kong, especially in trade practices and negotiations, in participation in international sports and cultural events and so on. It would therefore be both desirable and reasonable that the practice be allowed to continue after 1997. I believe Mr. F.K. HU, the deputy convener of the Recreation and Sports Panel of OMELCO, has already made the same point.

Chapter X: Supplementary Provisions

In relation to the formation of the first government and first legislature of the Hong Kong SAR, I support the 'through train' concept in order to ensure a smooth transfer of sovereignty and with minimum disruption in the life of the community.

Once the draft Basic Law is adopted in 1990 by the National People's Congress, it will be up to the British and Chinese Governments to carefully plan how far and fast to move forward politically along the lines spelt out in the Basic Law so that by 1997 the political, administrative and other structures will have been already in place, enabling a smooth transfer of sovereignty to be effected.

Much remains to be done in the consulting process and the redrafting of the draft Basic Law. I would hope that the OMELCO Constitutional Development Panel can expand its liaison with other interested parties in the community in order to arrive at a wider consensus in the redrafting by the Basic Law Drafting Committee leading to a second and even better version of the Basic Law in 1989.

Sir, I support the motion.

MR. SOHMEN: Sir, to draft a Basic Law for the Special Administrative Region of Hong Kong is like putting square pegs into round holes. It looks easy but the end result always leaves gaps. Public debates and learned comment are useful to identify the obvious technical deficiencies, and we are now pretty much agreed as to what they are and my colleagues are or have been addressing them already.

A 'normal' constitutional law basically determines the structure and functions of the organs of government, and the relationships between them; it also regulates relations between Government and the individuals within the state, and identifies the law-making authority. Hong Kong's Basic Law additionally needs to deal with a number of transitional arrangements, and must address the relationship between Central Government and the SAR by attempting to delineate the boundaries of national sovereignty and local autonomy. The Basic Law is therefore not just a legal framework but a political manifesto designed to reassure the people of Hong Kong. I suppose it has not quite done its job so far—or perhaps it has overdone it.

The Basic Law draft naturally follows the Joint Declaration and the 'one country, two systems' concept. The latter was a brilliant negotiating tactic but should not be seen as a workable operating principle for any length of time, certainly not for a period as long as 50 years after 1997. Anyone who is in the least bit aware of today's social and economic dynamism in the whole Far East region, and conscious of developments even since the Joint Declaration was signed, must accept the utopian character of such a suggestion. The impossibility of maintaining two separate systems within one national entity and one with traditions revolving around a clear political centre over many centuries may not be a popular theme at this time both here and in the United Kingdom; but this is the reality. And the speed of interaction and changed relations between Hong Kong and the Mainland in the few years since 1984 should give a better idea of what lies ahead than all of the wishful thinking of those who still do not accept that Hong Kong will inexorably be drawn into the mainstream of Chinese political and economic progress. I believe it is irresponsible to pretend otherwise and by so doing perhaps raise false hopes, particularly when this is not really necessary.

Hong Kong's people should be made to understand—assuming here, perhaps wrongly, that they do not understand already—that the guarantees for Hong Kong's future do not lie in the artificial preservation of, or in only cosmetic alterations to the old colonial structures and processes that have been in place with few significant modifications over 100 years. China's needs to emulate Hong Kong's successful system if she wants to achieve her national goals closer to the target dates envisioned by her leadership provide much better assurance.

Those who in the context of the Basic Law argue that we must trust China are as naive as those who argue the opposite are being too pessimistic. And those who seriously believe that the United Kingdom will be willing or be able to interfere in the internal affairs of China after 1997 are as misguided as those who do not see China's clear self-interest in protecting the foundations of Hong Kong's success. Nations act mostly out of self-interest and not out of generosity or altruism and they are therefore more predictable in their behaviour. But, Sir, success is not something that either the United Kingdom in the past, or China in future, will hand to Hong Kong on a silver plate. Our continued success must, as always, depend on the willingness of the people of Hong Kong to rise to the

challenge of how to export our economic achievements. If we can do that, and thereby help to reduce the gap between the two systems, we shall be all right irrespective of the perfection or the imperfection of the Basic Law. Now that challenge will obviously not be met if we continue to face widespread emigration of our best and brightest. It will also not be met if we go on arguing amongst ourselves about the choice of methods to insulate Hong Kong and its life-style from the rest of China, or about what might be the most ideal political models to adopt for our future existence.

Without wishing to denigrate their very hard work and their dedication, my strongest criticism of the Hong Kong contingent of the Basic Law drafters, and of the various local political groupings is that they have so far failed in reaching a compromise as to what should be the most efficient government structure for Hong Kong. And what should be one of the most essential elements of a Basic Law has thus remained only a set of largely contradictory options. As a result, the Chinese authorities will be forced into making the final choice for us, despite their obvious willingness to listen to and accommodate local preferences. This, Sir, in my mind, is the real tragedy of Hong Kong's political inexperience.

It is equally regrettable that many—if not most—of the comments on the first draft consist in just highlighting the 'flaws': be they drafting errors or omissions, the confusion between legal norms and policy guidelines, unresolved technical issues like nationality and the use of English or the strengthening of the Bill of Rights, or unfavourable comparisons with the Joint Declaration or other constitutional documents elsewhere. Few serious commentators have so far stressed the acceptable parts of the draft or have addressed themselves positively and unemotionally to the unresolved issues. In one word, imagination has been in relatively short supply, with everybody simply projecting forward from the existing base. One should remember that it is one thing to be a dependent territory with the mother country of over 100 years' standing located thousands of miles away, and quite another to share a contiguous land border with the new sovereign entity populated with cousins 200 times more numerous and all eager to enjoy the better life of Hong Kong they see or hear about. Nobody to my knowledge has as yet publicly acknowledged the political risks within China arising out of the implementation of the Joint Declaration, if perhaps only to stress the practical limits of Chinese elbow-room. Reality, I am afraid, is always multi-faceted.

On China's part, she will not achieve her ambitions for Hong Kong if there is an excessive—because also largely unnecessary—emphasis in the Basic Law on aspects of national sovereignty. I say unnecessary because any possible fears about external or internal threats to the resumption of sovereignty are no longer real. The formalistic and defensive insistence on sovereign rights in the face of the general acceptance of future sovereign power can only lead to misunderstandings and complications. This applies in particular to questions like the formation of the first SAR Government and the transitory arrangements, the interpretation of the Basic Law, or the applicability of national laws in the SAR.

And I believe the Chinese Government will have to accept that in order to ensure stability and prosperity there will also have to be continuity as well requiring some internal concessions. Articles 16-18, 21 and 169 of the draft Basic Law are cases in point. The proposed formation of the 'Committee for the Basic Law' is another. The perception that such a 'clutch' is required not only underlines the weakness in the way the boundaries are presently drawn to separate the powers of the central and local governments, but also shows a measure of unwillingness to accept the fact the some constitutional authority must necessarily lie with Beijing.

Sir, I am also critical of the so-called 'through-train' label for the actual transition in 1997 which some of my hon. Colleagues favour. It conjures up unpleasant images of a locomotive ramming barriers. If we need labels at all, I would prefer to use the term 'change of gauge'. The new SAR Government must obviously be identified before 1 July 1997, and must be familiar with its responsibilities before it is sworn in. This suggests a readiness on the part of the United Kingdom to permit preparatory arrangements being made in the territory under the authority of the Chinese Government prior to the British surrender of sovereignty; but also suggests that the Chinese authorities must willingly accept British co-operation in these efforts. And there seems to be no logical reason why either side should have any real difficulty with this.

The problems that do remain are in the arguments still surrounding the method of selecting or electing the Chief Executive, and in the treatment of the incumbent members of the legislature. The Judiciary, fortunately, is to be simply kept on, a most elegant solution although all in a bit surprising.

As a member of the so-called 'Group of 81' and for the reasons advanced by it, I am in support of the proposal to elect the future Chief Executives of the SAR through a broadly-based electoral college, representative of all sectors of the community and including the Members of the Legislative Council. Such a college could be established in late 1996. It should be remembered that indirect presidential elections are a feature also in many established democratic countries.

On the other hand, I have never made a secret of the fact that I am not so much in favour of electoral college elections for a quarter of the seats in the Legislative Council, be it before or after 1997. Instead I would argue that developments after 1991 and the Basic Law provisions should aim for the replacement, in 1994, of the then remaining appointed members by members elected by functional constituencies, for them to hold office—like their directly elected colleagues—until 30 June 1997.

Elections of members of the first SAR legislature on the basis of the electoral model introduced in 1994 should take place two months prior to 1 July and comply with Basic Law prerequisites as to qualifications of candidates and terms of office. The new legislature could then be empanelled also on 1 July 1997 and face no difficulties with their allegiance, nor any other transitional

dilemmas. This solution would also obviate the need for the setting-up of temporary or provisional governmental bodies which are mentioned in the Basic Law draft but which should, in my view, not be pursued. Discontinuity and uncertainty at a time when firm leadership during the first few months and years of the SAR's existence will be particularly needed could then be avoided.

If—as it now appears—we shall continue with a Civil Service government in Hong Kong after 1997, two fairly important constitutional issues still need to be addressed. One concerns the nature of the relationship between the executive and legislative branches, and in particular the question of how legislative proposals will be introduced and dealt with in the Council if government officials are no longer members. Logically government officials should not be elected.

The other question relates to the potential difficulties of a Chief Executive not having the confidence or support of the Legislative Council, nor having any influence over it once the appointment system terminates. Mrs. Selina CHOW has touched on this already. Now, let us assume for the sake of argument that Mr. Martin LEE becomes Chief Executive and that he then faces the sort of opposition to his policies he has had the misfortune to encounter from colleagues in this Chamber during the last three years. How would such conflicts be resolved without creating the threat of permanent instability—even with the safety valves of Council dissolution and/or forced resignation of the Chief Executive becoming available? In this respect the idea to elect the Chief Executive by the Members of the Legislative Council has some merit. On the other hand, would this solution not run counter to the principle of the separation of powers, and would it really increase, and not decrease, the chances of meeting the accountability requirements stipulated in the Joint Declaration? I believe much more discussion is required on this point both here in Hong Kong and within the drafting committee.

Some of these problems might not have to be faced if the drafters had been less keen to just replicate existing structures and had instead embarked upon a somewhat more innovative approach and one that is more reflective of the novelty of Hong Kong's situation and the need to cater for an unprecedented historical event. Perhaps the Joint Declaration has been followed too slavishly; it is no surprise that the drafters got stuck in all those areas where the agreement is silent or obscure.

Where I would also still like to see more informed debate is on the limits of the 'foreign affairs and defence' authority of the Central Government vis-a-vis the Hong Kong SAR. I fear that article 12 of the draft will create many interpretational problems in future, especially in light of the rights given to the SAR in articles 117, 119, 131, 139, 140, and 158-165 of the draft. While not a question of principle, it is hoped that the Joint Liaison Group and also foreign governments may be allowed to assist in helping to identify the practical

ramifications of these provisions. Of course the inevitable integration of Hong Kong into the Mainland, especially in the economic sphere, will over time likely see a greater alignment of policies and interests here as well.

The Chinese Government's legal responsibility for the drafting of the Basic Law must include a moral responsibility to respect both local and overseas views that could help to improve the quality of the document. There is no evidence to suggest that there is anything else but great willingness to do so; this would indeed be in the interest of all of China and not only in Hong Kong's.

Sir, I hope the people of Hong Kong realise that our fate is still very much in our own hands. We should not miss the chance to help mould it. I therefore whole-heartedly support the motion.

Suspension of sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Order I now suspend the sitting until 2.30 pm tomorrow afternoon.

Suspended accordingly at eight minutes past Six o'clock.