

1 HONG KONG LEGISLATIVE COUNCIL -- 12 April 1989

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 12 April 1989

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

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

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE PIERS JACOBS, O.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

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

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

SECRETARY FOR DISTRICT ADMINISTRATION

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.

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.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 PETER POON WING-CHEUNG, O.B.E., J.P.

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

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

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

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

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

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, J.P.

THE HONOURABLE TAM YIU-CHUNG

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

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

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

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.  
SECRETARY FOR LANDS AND WORKS

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

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 CHAU TAK-HAY, J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS. PEGGY LAM, M.B.E., J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, J.P.

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

THE HONOURABLE MRS. ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, 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

Subsidiary Legislation:

L.N. NO.

Electricity Networks (Statutory Easements) Ordinance  
Electricity Networks (Statutory Easements)  
(Application of Ordinance) Order 1989.....  
78/89

Merchant Shipping (Liability of Shipowners and Others)  
Act 1958  
Merchant Shipping (Limitation of Shipowners' Liability)  
(Hong Kong Dollars Equivalent) Order 1989.....  
79/89

Inland Revenue Ordinance  
Inland Revenue (Interest Tax)(Exemption)  
(Amendment)(No. 3) Notice 1989.....  
80/89

Tax Reserve Certificates (Fourth Series) Rules  
Tax Reserve Certificates (Rate of Interest)  
(No. 3) Notice  
1989..... 81/89

Fixed Penalty (Criminal Proceedings) Ordinance  
Fixed Penalty (Criminal Proceedings)  
(Amendment) Regulations 1989.....  
82/89

Fixed Penalty (Traffic Contraventions) Ordinance

Fixed Penalty (Traffic Contraventions)  
(Amendment) Regulations 1989.....  
83/89

Waterworks Ordinance  
Waterworks (Amendment) Regulations 1989.....  
84/89

Hong Kong Airport (Control of Obstructions) Ordinance  
Hong Kong Airport (Control of Obstructions)  
(Consolidation) (Amendment) Order 1989.....  
85/89

Coroners Ordinance  
Mortem Examination  
(Amendment) Order  
1989.....  
86/89

Places for Post-

Port Control (Cargo Working Areas) Ordinance  
Port Control (Public Cargo Working Area)  
Order  
1989.....  
87/89

Registration of Persons Ordinance  
Registration of Persons  
(Application for New Identity Cards) (No. 3)  
Order  
1989.....  
88/89

Public Health and Municipal Services Ordinance  
Library (Urban Council) (Amendment)  
By-Laws  
1989.....  
89/89

Public Health and Municipal Services Ordinance  
Pleasure Grounds (Urban Council)

(Amendment) By-Laws 1989.....  
90/89

Public Health and Municipal Services Ordinance  
Public Swimming Pools (Urban Council)  
(Amendment) By-Laws 1989.....  
91/89

Interpretation and General Clauses Ordinance  
Specification of Public  
Offices..... 92/89

Immigration Ordinance  
Immigration (Places of Detention)  
(Amendment) (No. 2) Order 1989.....  
93/89

Interpretation and General Clauses Ordinance  
Declaration of Change of Title  
(Deputy Financial Secretary) Notice 1989.....  
94/89

Interpretation and General Clauses Ordinance  
Declaration of Change of Title  
(Rating and Valuation Surveyors) Notice 1989.....  
95/89

Public Health and Municipal Services Ordinance  
Food Business (Regional Council)  
(Amendment) By-Laws 1989.....  
97/89

Public Health and Municipal Services Ordinance  
Frozen Confections (Regional Council)  
(Amendment) By-Laws 1989.....  
98/89

Public Health and Municipal Services Ordinance

Funeral Parlour (Regional Council)  
(Amendment) By-Laws 1989.....  
99/89

Public Health and Municipal Services Ordinance  
Hawker (Regional Council) (Amendment)  
By-Laws  
1989.....  
100/89

Public Health and Municipal Services Ordinance  
Milk (Regional Council) (Amendment)  
By-Laws  
1989.....  
101/89

Public Health and Municipal Services Ordinance  
Offensive Trades (Regional Council)  
(Amendment) By-Laws 1989.....  
102/89

Public Health and Municipal Services Ordinance  
Places of Amusement (Regional Council)  
(Amendment) By-Laws 1989.....  
103/89

Public Health and Municipal Services Ordinance  
Swimming Pools (Regional Council)  
(Amendment) By-Laws 1989.....  
104/89

Public Health and Municipal Services Ordinance  
Undertakers of Burials (Regional Council)  
(Amendment) By-Laws 1989.....  
105/89

Places of Public Entertainment Ordinance  
Places of Public Entertainment  
(Licences) (Specification of Fees)

(Regional Council Area) Notice 1989.....  
106/89

Multilateral Investment Guarantee Agency (Overseas  
Territories) Order 1988

Multilateral Investment Guarantee Agency  
(Designated Persons) Order  
1989..... 107/89

Public Health and Municipal Services Ordinance  
Public Health and Municipal Services  
(Public Pleasure Grounds)  
(Amendment of Fourth Schedule) (No. 2) Order 1989..... 108/89

Official Languages (Amendment) Ordinance 1987  
Official Languages (Amendment) Ordinance 1987  
(Commencement of Remaining Provisions) Notice 1989..... 109/89

#### Sessional Papers 1988-89

No. 64 -- Report of changes to the approved Estimates of Expenditure  
approved during the second quarter of 1988-89  
Public Finance Ordinance : Section 8

No. 65 -- Mass Transit Railway Corporation  
Annual Report 1988

No. 66 -- Consumer Council  
Annual Report 1987-1988

#### Addresses by Members

Report of changes to the approved Estimates of Expenditure approved during the second  
quarter of 1988-89  
Public Finance Ordinance : Section 8

FINANCIAL SECRETARY: Sir, in accordance with section 8(8) (b) of the Public Finance Ordinance, I now table for Members' information a summary of all changes made to the approved estimates of expenditure for the second quarter of the financial year 1988-89.

Supplementary provision of \$2,236.3 million was approved. It was fully offset either by savings under the same or other heads of expenditure or by the deletion of funds under the Additional Commitments subheads. This included \$1,407.0 million for payment of the Hong Kong Government's cash contribution towards the cost of the garrison in 1988-89, \$266.0 million to cover the Value Added Tax and Salaries Tax on Allowances incurred under the 1981 Defence Costs Agreement, \$247.2 million to meet the expenses in implementing the new Student Travel Scheme, and \$125.0 million to enable the universities, polytechnics and the Baptist College to award salary increases to minor staff following the adjustment to the Civil Service Model Scale I Pay Scale with retrospective effect from 1 April 1987, and to academic and non-academic staff following the adjustment to the Civil Service pay scales with effect from 1 April 1988.

Approved non-recurrent commitments were increased by \$42.3 million during the period, and new non-recurrent commitments of \$314.9 million were also approved.

Sir, in the same period, a net increase of 1 670 posts were approved.

Items in the summary have been approved either by Finance Committee or under delegated authority. The latter have been reported to the Finance Committee in accordance with section 8(8) (a) of the Public Finance Ordinance.

#### Mass Transit Railway Corporation Annual Report 1988

FINANCIAL SECRETARY: Sir, in accordance with section 16(4) of the Mass Transit Railway Corporation Ordinance, the Annual Report and Accounts of the Mass Transit Railway Corporation for the year ending 31 December 1988 are tabled today.

Consistent with the strong growth of Hong Kong's economy in 1988, the corporation's fare revenue rose by 11% to \$2,066 million. Together with the additional revenue from other sources such as property rentals and advertising, total revenue for 1988 was \$2,307 million or 12% higher than the figure recorded for 1987.

Costs were contained to a 7% increase over 1987, despite pressure from increased labour costs and substantial increases in railway maintenance costs. The corporation's Profit before Interest and Finance Charges increased to \$837 million, some 29% over the previous year.

Interest and finance charges of \$1,372 million were paid in 1988, giving a loss of \$535 million as against \$749 million in 1987. The receipt of non-recurrent property development profits of \$722 million led to the corporation's first net profit of \$200 million, compared with a net loss of \$78 million in 1987. In view of the non-recurrent nature of property development profits, it will be some time in the future before railway operating revenue will regularly produce a net profit for the corporation.

The corporation reduced its indebtedness by 4% to a total debt of \$17,434 million at the end of 1988. Following the Executive Council's agreement in April 1988, the Government paid a further \$1,000 million in respect of the corporation's partly paid shares in accordance with the Finance Committee's approval. There remains uncalled on the partly paid shares a further \$2,500 million, and this expenditure is provided for in the Government forecast of medium-term expenditure.

At the end of 1988, shareholders' funds stood at \$6,315 million, an improvement of over \$2,900 million. This arose from the further equity injection of \$1,000 million that I have just referred to, the net profit earned during the year and the revaluation of investment properties held by the corporation which increased its reserves by \$1,604 million. This movement led to a year-end debt to equity ratio of 2.8 to 1 compared with 5.3 to 1 in 1987.

The corporation has, and will continue to have for some time, a large burden of debt. In recognition of this, the corporation remains an active and innovative borrower in Hong Kong and in the world financial markets. I am happy to add that during the year the corporation improved its international credit ratings. This is important because it ensures that the corporation is well regarded in the international financial markets now and in the future.

In 1988, 630 million passengers were carried. This represents a 6% increase over 1987. For the future, further increases in the passenger growth are expected. The consequence will be the continued build-up of the peak hour patronage along the Nathan Road Corridor. The corporation has and will continue to adopt measures to encourage

more people to travel to work earlier or later. The opening of the Eastern Harbour Crossing in late summer should provide some relief. For the longer term, development options on our future transport network will be set out in the Second Comprehensive Transport Study to be published shortly and the corporation is expected to play an active role in such developments.

I am satisfied that the corporation's costs are contained and its revenue growth is sufficient to meet its obligations. Its good credit ratings and financing arrangements have won the corporation an excellent reputation in international financial markets. The board of the corporation and I are in agreement that the prospect of any future extension of the MTR must be carefully examined to ensure that this reputation is maintained.

Finally, Sir, I would like to thank the former chairman, Mr Wilfrid Newton, and the board, as well as the management and staff of the Mass Transit Railway Corporation for the very responsible and efficient way in which they have managed the corporation during the past year.

#### Consumer Council Annual Report 1987-1988

MR. MARTIN LEE: Sir, this is the first time I have the opportunity of making a statement in this Council, and as I have a captive audience, it would be wrong for me to exceed three minutes.

Tabled before this Council today is the Annual Report of the Consumer Council of 1987 - 1988. And in presenting it, I must give credit where it is due, namely, the Honourable Mrs. Selina CHOW who occupied the chair immediately before me and who now occupies the seat directly in front of me.

Sir, justice in the market-place is what consumer protection is all about. And in this context of Hong Kong, everybody is a consumer -- from an old man who buys a newspaper from a street vendor to a child who buys a lollipop in a super-market. And the Consumer Council seeks to protect them all.

But often it takes quite a long time before the public can see the fruit of its work. And, the revamped Travel Agents Ordinance is one ready example. The report gives a vivid account of the contribution made by the Consumer Council in the legislative process of the amendments to this Ordinance. But it is not until now

that we are beginning to witness its effect. Another example is the amendments to the Money Changers (Disclosure of Rates, Charges and Commissions) Ordinance. The amendments were passed into law only last month, but, the Consumer Council had been pressing for change for some years.

Sir, as to the report itself, I wish to highlight the "Right to Know" campaign. It was officially launched by you last year, and by the Chief Secretary this year. And I am glad to report that the campaign has been immensely successful. Indeed, very few consumers today are still unaware of the campaign's slogan in Chinese: " " which means: "If you ask more, you get more".

Sir, the monthly magazine "Choice" which is published in Chinese is becoming more and more popular. During the year under consideration, the circulation averaged 46 400 copies per issue. My regret is that this monthly magazine is not published in English for those consumers who do not read Chinese. During the year under report, the Consumer Council published its first English version entitled "Choice Buying Guide 1988" which brought together in one volume all the major tests, in-depth studies and survey reports from the preceding 12 issues of the Choice magazine. This proved to be very popular among English reading consumers. And very recently, we published the Choice Buying Guide 1989.

Sir, I hope that we can soon publish all our magazines in both Chinese and English because I believe that it is a service which we ought to provide even though we may sustain a loss in doing so. And I hope we will have the support of the Administration and my colleagues in the Finance Committee on this additional item of expenditure.

Oral answers to questions

Port and airport development

1. MR. SIT asked: Sir, in view of the Government's plan to make a decision regarding the second airport and the location of new port facilities within this year, and the fact that Shenzhen has already started work on an airport at Huang Tian and some major port facilities at Yan Tian and Ma Wan, will the Government inform this Council whether it has any formal liaison with the Chinese authorities regarding the development of port and airport facilities in both places so as to ensure that these large scale developments are well co-ordinated to meet the respective regional demands in future?

SECRETARY FOR LANDS AND WORKS: Sir, formal liaison on port and airport developments between Hong Kong and the Chinese authorities last took place in late 1987. However, less formal exchanges also take place from time to time especially at an operational and technical level. These include both visits to China by local officials and briefings for Chinese officials coming here. As and when more detailed plans for Hong Kong's future port and airport developments can be drawn up later this year, more formal discussions with the Chinese authorities will again be considered.

Our consultants on port and airport developments have been requested to examine factors pertinent to the specific needs of Hong Kong. The new facilities in southern China are likely to differ in nature and scope from those of ours. However, their possible effects on Hong Kong will be taken into account when deciding on Hong Kong's future port and airport needs.

MR. SIT: Sir, will the Secretary please inform this Council whether the Government would initiate the setting up of a joint committee with the Shenzhen Municipal Government to replace the existing haphazard and piecemeal exchange of information as the demand and development of these major urban and economic facilities require long-term monitoring and co-operation, particularly so when mistakes in such planning would lead to great economic losses and political adversity for a long time? In this regard, I would like to quote example of the desalting plant in Tuen Mun.

SECRETARY FOR LANDS AND WORKS: Sir, the lack of formal liaison fora does not indicate the lack of information. We are, fortunately, in a position to get a very varied and wide feedback on developments within China and are able to take, as will our consultants, a fairly informed view as at the time we make our development decisions. Formal liaison fora have advantages and disadvantages. They tend to be somewhat high-profile and inhibiting on frank exchange and as it is essentially information that we will be requiring, I see no immediate advantage in setting up a formal committee.

MR. BARROW: Sir, whilst co-ordination with China is clearly essential, would the Secretary confirm to this Council that the policy of Hong Kong having totally

independent aviation and port facilities will be firmly maintained so that we will not need to rely on any set-ups outside the territory?

SECRETARY FOR LANDS AND WORKS: Sir, within my field of work I can only confirm that the airport studies are being pursued on that basis.

MR. ANDREW WONG (in Cantonese): Sir, Mr. SIT mentioned Yan Tian. As far as I know Yan Tian is located in Mirs Bay. Since the entire area during high tide lies within Hong Kong territorial waters, how could any port facilities for Yan Tian be set up? I wonder if the Administration has liaised with the Chinese authorities to ascertain if port facilities are going to be set up in Yan Tian.

SECRETARY FOR LANDS AND WORKS: Sir, as far as I am aware, there are no plans for Chinese facilities within Hong Kong.

MR. SIT: Sir, in respect of the second paragraph of his reply, could the Secretary elaborate in what manner the future Chinese ports and airport facilities will differ from our planned future facilities? I personally am worried by the fact that over half of Hong Kong's present export trade is re-exports. With China as the dominant origin and destination of such goods concerned, there will exist a potential high overlapping of market that these future port and airport facilities are destined to serve.

SECRETARY FOR LANDS AND WORKS: To the best of our information, and I think our information is good, at present there are no plans locally for deep sea container berths. That is the function of Hong Kong in the overall Pearl Delta system. We are providing the deep sea facilities here as at present. We understand that the ports in China may be used to feed Kwai Chung or the Hong Kong Container Terminal and for smaller vessels.

2. MR. CHENG HON-KWAN asked: Sir, in view of recent reports on Government's plan to impose a building height restriction on a piece of land on Garden Road which will soon be put to tender for sale, will Government inform this Council what criteria

are adopted in determining such a restriction?

SECRETARY FOR LANDS AND WORKS: Sir, the decision to impose a building height of 220 metres on the sale site between the Bank of China Building and Murray Building was taken following a planning study of this and the adjacent sites which I have here, and is aimed at producing a scaled gradation between the Bank of China and the lower development in Murray Building and St. John's Cathedral. Limitation to 220 metres will not result in a reduction in plot ratio and will secure good lines of sight from the new building.

There is nothing unusual in this decision. Planning restrictions are frequently included in lease conditions in the interest of landscaping and the environment, particularly in the control of significant sites and where buildings may break the sky-line or introduce an unwanted type of development into the area. Specified height restrictions are generally better and more helpful to tenderers than application of discretionary controls over design disposition and height which are contained in many present lease conditions.

MR. CHENG HON-KWAN: Sir, will the Secretary advise this Council whether the criteria used in the planning study resulting in such a scaled gradation are merely a subjective arbitrary discretion and not in accordance with any established guideline?

SECRETARY FOR LANDS AND WORKS: Sir, there is no code for planning descriptions of this kind and no mathematical formula. But I would say it is not arbitrary in that the decision reflected a combined view within the Government of officials concerned with this matter.

MR. MARTIN LEE: Sir, will the Administration assure this Council that the imposition of the building height restrictions in question is not with a view to ensuring that the Bank of China Building, which is a ghastly looking building with bad Fung Shui, will be guaranteed to be the tallest building of the land?

SECRETARY FOR LANDS AND WORKS: I can so assure this Council, Sir.

MR. EDWARD HO: Sir, Mr. Martin LEE already asked part of my question. But, in arriving at a decision of imposing a building height on a prime site in Central, which was not done in the adjoining site, will the Secretary please inform this Council whether he has obtained professional opinions from urban designers and architects?

SECRETARY FOR LANDS AND WORKS: Sir, I have, but such are within the Government, not from outside.

MRS. SO (in Cantonese): Sir, since relaxation of the building restriction at the mid-levels in 1982, the number of new high-rise residential buildings has soared, thereby imposing even greater strain on roads and infrastructural facilities which are already stretched. Will the Government inform this Council how it would proceed with long-term public works planning in order to alleviate this problem?

SECRETARY FOR LANDS AND WORKS: Sir, that wanders so far from the original subject that I hope I may be excused in either dealing with it in writing or perhaps taking it on another occasion. (Annex I)

HIS EXCELLENCY THE PRESIDENT: I think if you give Mrs. SO an answer in writing, that might meet her request.

Decision not to prosecute authors of allegedly false submissions

3. MR. MARTIN LEE asked: Sir, in relation to the recently announced decision not to prosecute in any of the 2 581 cases of allegedly false submissions to the Survey Office in 1987, will the Administration inform this Council whether investigations have established the identities of any persons or organizations responsible for forging submissions, and if so, what factors have led to them escaping prosecution?

ATTORNEY GENERAL: Sir, the police have attempted to follow up on all the 2 581 complaints of allegedly false submissions made to the Survey Office in 1987 and have

attempted to interview all complainants. However, only 2 310 complainants responded to the police investigation; the rest either refused to be interviewed or could not be located. Of the 2 310 complainants interviewed, only four wished to sustain their complaints; the others withdrew their allegations.

In respect of the four complaints not withdrawn, the authors of the submissions were identified.

Sir, having given very careful consideration to these cases and after taking the advice of the Director of Public Prosecutions, I decided not to prosecute any of them.

This Council will be aware why it would be inappropriate for me to explain my decision not to prosecute in these cases. It is improper for me to disclose the reasons not to prosecute as the disclosure may trigger off a public debate on the guilt or innocence of the suspects. It is unfair that they should be subject to a "trial" outside the Court where they have no opportunity to defend themselves.

It may be helpful to this Council if I were to restate briefly the principal criteria to be considered in deciding whether to institute criminal proceedings. Firstly, there is the sufficiency of evidence criterion. There are a number of ways in which this can be described. My predecessor, in this Council on 25 March 1987, expressed it thus: there must be enough evidence to prove all the ingredients of an offence. He went on to note that a bare prima facie case is, generally speaking, not enough to warrant a prosecution. There must be a reasonable prospect of securing a conviction.

If the first criterion -- the sufficiency of evidence test -- is satisfied, then the second criterion is the public interest test. This can be expressed in the question: does the public interest require a prosecution? That question brings into consideration a number of factors, some of which were, by way of example, described by the Attorney General in this Council on 25 March 1987.

MR. MARTIN LEE: Sir, in relation to the four complaints which had not been withdrawn, will the Attorney General, without repeating general principles which I know full well, inform this Council why the authors of the four forged submissions, who were identified, were not prosecuted? And in relation to the other 2 306 complaints, will

the Attorney General inform this Council whether any criminal offences had been disclosed and, if so, whether any of the authors were identified; and, if so, why were they not prosecuted?

ATTORNEY GENERAL: Sir, in relation to the first of Mr. LEE's supplementaries, I cannot, of course, for reasons that I have already given, go into the reasons why I decided not to prosecute in these four cases. As regards the second and subsequent supplementaries, I am not, of course, responsible for the police nor police investigations. I cannot supply the answers to Mr. LEE's questions. I am not sure if the Secretary for Security is able to assist. If not, then either he or I will supply a written answer.

HIS EXCELLENCY THE PRESIDENT: Secretary for Security, can you add to that?

SECRETARY FOR SECURITY: Sir, I can add to it to the extent of saying that there were three main reasons for the withdrawals. The first was that, having lodged their complaints, 794 persons out of the total of 2 306 recalled that they had actually personally completed the submissions; secondly that 125 recalled that they had authorized submissions to be made on their behalf; and, thirdly, that 1 387 were not certain whether they had personally completed the submissions or if they had authorized others to complete the submissions on their behalf, but in any event they did not wish to pursue their complaints. Beyond that, Sir, I am afraid I can add nothing further to the answer.

MR. MCGREGOR: Sir, I must say I find it extraordinary that over 2 000 responses of this nature should result in no subsequent action. Can the Government state whether these forged papers largely reflected a particular political view on the future system of government in Hong Kong?

HIS EXCELLENCY THE PRESIDENT: Chief Secretary, can you answer this one?

CHIEF SECRETARY: Yes, Sir. I would like to make two points, both of which I have made in this Council before but which relate to Mr. MCGREGOR's question. Firstly, I think it is as well to remember that there were 130 000 submissions and, of those,

there were only a number of 2 000 in which there was any question of their authenticity. As to the nature of the submissions which were the subject of questions, I made the point, Sir, in my speech in this Council on 4 November 1987 that of the opinions expressed in the disputed submissions roughly half were in favour of introducing direct elections in 1988 and the other half were against. They therefore had, in that respect, a neutral effect, Sir.

MRS. FONG: There may be good reasons for not prosecuting the four cases mentioned. However, there must be some action taken to deter future cases of forged submission. Can the Administration explain what actions are being taken?

ATTORNEY GENERAL: Sir, my responsibility does not extend to broader questions of future systems in relation to submissions. My responsibilities are concerned with the decision to prosecute or not to prosecute.

HIS EXCELLENCY THE PRESIDENT: Chief Secretary, can you add on that?

CHIEF SECRETARY: No, Sir.

MR. MARTIN LEE: Will the Administration inform this Council whether it has satisfied itself that no pressure had been brought to bear on these many complainants who later saw fit to withdraw their complaints? And what steps were taken by the Administration so to satisfy itself?

ATTORNEY GENERAL: Sir, I regret that I cannot answer that question. I dealt with the decision to prosecute or not to prosecute on the basis of the facts that were laid before me.

HIS EXCELLENCY THE PRESIDENT: Secretary for Security, can you help on that?

SECRETARY FOR SECURITY: I am afraid I cannot, Sir. I can make enquiries and I would be very happy to pass on the results of those enquiries to Mr. LEE, but I cannot answer at the moment.

HIS EXCELLENCY THE PRESIDENT: Mr. LEE, I suggest that you put that question down separately for answer.

MR. ANDREW WONG (in Cantonese): Sir, did the 2 581 submissions referred to originate from individuals or from groups? If from both, what were the respective figures? Among them how many supported the introduction of direct election in 1988 and how many opposed it? What were the details? If the Chief Secretary does not have a ready answer, for record purpose I would request that a formal answer be provided in the official report of proceedings of the Legislative Council.

HIS EXCELLENCY THE PRESIDENT: I will pass that straight to the Chief Secretary who has already answered part of it.

CHIEF SECRETARY: I can give further details, Sir, to Mr. WONG in respect of the false reports. Of the submissions referred to, that is, 1 909 at that stage, 904 supported 977 opposed the introduction of direct elections in 1988, 28 did not comment specifically on the timing of direct elections.

MR. MARTIN LEE: Sir, will the Administration at least inform this Council whether the decision not to prosecute these people who had been identified was due to insufficiency of evidence or whether there was a political reason behind it which is being represented to this Council as public interest?

ATTORNEY GENERAL: Sir, to answer that question would, I regret, breach the principle to which I have already referred in my main answer. It would not be proper for me to start identifying whether both criteria or one has led me to the decision. If I were to do so I would be asserting that there was insufficient evidence in some cases and not in others. In doing so, I would be opening up the very debate which

would be improper for me to enter into. Could I add this, Sir, that the decision not to prosecute was mine, and mine alone. In reaching that decision, I had the benefit of the advice of the Director of Public Prosecutions. I did not consult, nor did I take anybody else's opinion into account.

MR. MCGREGOR: Sir, can the Attorney General say why the documents were destroyed with such unseemly haste after the issue of the information by the Government, thus effectively preventing any further examination of these documents in relation to enquiries from this Council?

HIS EXCELLENCY THE PRESIDENT: I will put this to the Chief Secretary.

CHIEF SECRETARY: Sir, as Members will be aware, there was a good deal of public concern at the time that submissions which were made in response to the survey report should be destroyed after a reasonable period of time and their confidentiality thus preserved. It was in line, Sir, with that broad wish of the public that the submissions were subsequently destroyed.

MR. MARTIN LEE: Sir, will the Administration explain to this Council why there was no distinction made between submissions which were quite proper on the face of them and those which had been found to be forged, in relation to destruction?

CHIEF SECRETARY: Sir, I think the general principle of destruction of the documents applies equally to the original documents and to these documents. Many of these documents, which have been the subject of this particular question, have been since identified by the people who made them as being genuine and therefore the confidentiality aspect should be preserved, Sir.

Asbestos in brake linings

4. PROF. POON asked: Sir, as asbestos is contained in almost all vehicle brake linings, will Government inform this Council whether this will create any adverse

environmental impact; and if so, what actions will be taken to minimize such adverse environmental impact?

SECRETARY FOR LANDS AND WORKS: Sir, the heat and abrasion which occur during the application of brakes in vehicles result in the release of small quantities of fine dust consisting of degraded resins, fillers and other products of wear including asbestos, from the brake linings. Only a very small amount of asbestos is released as free fibres, since most of the asbestos is changed by the intense heat of brake operation into a harmless non-fibrous material. So the use of asbestos-containing vehicular brakes does not create any adverse environmental impact and its risk on the health of the public at large is negligible.

PROF. POON: Sir, the Secretary has just told us that only a very small amount of asbestos is released as free fibres. I would like to ask the Secretary if there is any quantitative estimate or measurement, either locally or overseas, of the amount of free asbestos released?

SECRETARY FOR LANDS AND WORKS: Yes, Sir. Back in 1984 we did do two tests by two different methods. Twenty-three samples were analysed of air which had been taken from around the entrances to the Cross Harbour Tunnel where a lot of people have to brake, and they were analysed by a technique which is known as polarized light microscopy which, although it cannot positively identify asbestos fibres, can in fact count all the fibre samples. Even on the assumption that all of the fibres counted by this technique have actually been asbestos, which is of course very unlikely in view of the other components of the brakes, the fibre levels ranged from 0 - 37 nanogrammes per cubic metre which is a very low level. The other forms of sample -- we took four samples -- were analysed by the Government Chemist using electron microscopy which actually can identify the asbestos fibres and, in fact, in the air samples taken, no asbestos fibres were found at all. So we feel fairly confident that we have tested this thing objectively.

MR. POON CHI-FAI (in Cantonese): The Secretary's answer mentioned that the use of asbestos-containing brakes would have no adverse effects on the environment or on public health in general. Could this Council be informed whether maintenance work

carried out on asbestos-containing brakes would pose any health hazard to repair workers? If the answer is yes, are there any preventive measures?

SECRETARY FOR LANDS AND WORKS: Sir, any factory or industrial undertaking which is concerned with asbestos fibres must comply with regulations -- the Factories and Industrial Undertakings Asbestos Special Regulations -- and codes of practice issued by the Labour Department. And the Labour Department does keep a particular eye on workshops where such processes are carried out.

MR. PETER WONG: Sir, how are these asbestos linings disposed of and what assurance do we have that they will not pose any health hazard afterwards?

SECRETARY FOR LANDS AND WORKS: Sir, to my knowledge no very special measures are taken for the disposal of these linings, bearing in mind the relatively low component part which is asbestos, but they are in fact disposed of through normal municipal waste disposal, that is, in dumps and by incineration.

Phasing out of bisessional primary school

5. DR. IP asked: Sir, will Government consider a progressive approach in implementing its programme of phasing out bisessional primary school by starting with Primary Six as soon as possible and then proceeding to the next lower level of classes whenever possible until full implementation by 1998?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, we are studying various options for phasing out bisessional primary schools within a reasonable number of years. Dr. IP's suggestion that we should begin with Primary Six pupils and work downwards is a good one, and we shall certainly consider it.

Dr. IP suggests that we might implement whole day schooling for all primary pupils by 1998. I am afraid that this may be a bit too optimistic. I have just received

the initial results of our study and these suggest a building programme lasting about 12 years. Since it takes five years to plan and build a school, the time frame we are looking at is the period 1994 to 2006 for a complete conversion to whole day schooling. This would be subject to policy approval by Executive Council and the normal resource allocation procedures.

Our projections indicate that complete conversion would require something like 4 400 additional classrooms. This is equivalent to 147 schools of our new 30 classroom design. Since we cannot find enough sites in suitable locations large enough for the new design, the actual number of new schools of various sizes may have to be as many as 170. About 100 of these would be additional schools arising from a new policy of whole day provision, and the rest would be needed to replace schools demolished in housing redevelopment programmes.

Because of the large number of schools required for full conversion, and the difficulty of finding suitable sites for all of them, we are now studying an option along the lines suggested by Dr. IP. This would involve mixed mode primary schools, in which the older children (P4 - P6) would go to school all day, while children in P1 - P3 would continue to go for half the day. This would reduce the number of new schools needed, but it would require changes to school administration and would be more complicated both for schools and parents than a programme of full conversion.

DR. IP: Sir, is it correct to say that mixed-mode primary schools in which the older children go to school all day while children in Primary One to Three would continue to go for half a day exist in Hong Kong and are operating efficiently?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I believe there are such schools. I am not sure. I will check with the director and confirm in writing. (Annex II)

MRS. FAN: Sir, the Secretary said that it takes five years to plan and build a school. This is a very long period. Can the Secretary explain why it takes so long, especially in view of the fact that a standard design already exists for schools? And can the Secretary look into the possibility of shortening that period?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the reasons why a school takes a certain time to build are beyond my expertise, but I shall certainly ask the suitable authorities to look into whether it can be shortened.

MR. DAVID CHEUNG: Sir, the Secretary mentioned he is studying an option of mixed-mode primary schools. Would the Secretary kindly inform this Council when the study will be completed, and whether this Council will be informed?

SECRETARY FOR EDUCATION AND MANPOWER: I would hope it would not take too long, a matter of weeks, or perhaps a month or two. I think this Council would in the normal course of events be informed because we will seek a policy decision from the Governor in Council and it would then normally be the subject of a Legislative Council brief.

MR. MICHAEL CHENG (in Cantonese): Will Government first consult the parents as well as school boards of primary schools prior to deciding whether or not to proceed progressively with the conversion of half-day school into whole-day?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, our normal practice in consulting on such matters is to consult through the school boards. Of course, we would hope that the headmasters and others on these boards would in fact also convey

the views of the parents of their pupils. They are closely in touch with parents. We would of course welcome any views from the parents if they care to put them to us.

Chinese illegal immigrant workers

6. MRS. TU asked: Sir, how many Chinese illegal immigrant workers have been sentenced to prison over the past six months, what is their average age and the full length of the sentences, and what percentage of them are recorded as first offenders?

SECRETARY FOR SECURITY: Sir, from October 1988 to March 1989, about 400 illegal immigrants found at places of employment have been prosecuted and sentenced to imprisonment. Some 90% of these have been sentenced to terms of 15 to 18 months and over 90% of them have no record of previous conviction. The mean age of the Chinese illegal immigrants imprisoned is about 27.

MRS. TU: Sir, the average age given by the Secretary is higher than I expected, judging from the prisoners I saw recently. Could the Secretary therefore say how many of the imprisoned offenders are teenagers, and whether any of those teenagers are below the age of 16?

SECRETARY FOR SECURITY: Sir, I do not have those figures. I would be happy to supply them in writing to Mrs. TU. (Annex III)

MR. TAI: Sir, will the Secretary inform this Council why Chinese illegal immigrants landed in Hong Kong are being prosecuted but not other illegal immigrants landed in Hong Kong?

SECRETARY FOR SECURITY: Sir, illegal immigrants are prosecuted at their place of work because they have committed an offence under the Immigration Ordinance by landing or remaining in Hong Kong without the permission of the immigration authority. That is the basic reason, Sir.

MRS. FONG: Putting people in prison costs the public money. Has it been considered that the costs of imprisonment should be charged to the person or organization which engaged the services of the illegal immigrant?

SECRETARY FOR SECURITY: No, Sir, that is not the way things work. I think perhaps I should explain the reasons for the present prosecution policy. This became necessary to curb a growing problem of illegal immigration. In the beginning of 1988 the daily average of arrests were 61 per day. We then saw a surge in the number of illegal

immigrants arrested. For example, in March last year the total number of arrests had gone up to 98 per day. In April it had gone up to 104 per day, which was a 51% increase on the total for the preceding year. These high figures justified the Administration's taking a tougher line than before against illegal immigrants, and by prosecuting them we hoped that they would be deterred from committing the offence again. In this, Sir, we have been proved right, as the numbers thereafter dropped steadily, and the daily average for this year is 35.

MR. MICHAEL CHENG (in Cantonese): Sir, will Government inform this Council whether illegal immigrant workers from China have, to a certain extent, contributed to over-crowding in our prisons? If yes, what are the solutions?

SECRETARY FOR SECURITY: Yes, Sir, I can say that the numbers of illegal immigrants in the prisons have contributed substantially to over-crowding in prisons. They constitute 26% of our present prison population of 11 126.

MRS. TU: Sir, is it correct, as the Secretary has already confirmed, that having young people among mainly criminal elements in a criminal environment puts a strain on the prison staff and on public resources as well as on the offenders? And if that is so, and apparently it is, has the Government considered recommending the alternative of a stiff suspended sentence which could be reactivated if the offender repeated his offence?

SECRETARY FOR SECURITY: No, Sir, there is no intention at the moment of changing the policy in that respect.

MR. MCGREGOR: Sir, since there is obviously an extremely serious labour shortage, particularly in the construction industry at the present time, and since these illegal immigrants are obviously coming in to do an honest day's work for an honest day's pay, could the Government not now consider some modification to its present policy of permitting this type of importation of labour from China?

SECRETARY FOR SECURITY: No, Sir, there is absolutely no question of allowing such illegalities to contribute to the labour supply in Hong Kong.

MR. TAI: Sir, in respect of the prosecution of illegal immigrants landed in Hong Kong, how does the Secretary differentiate between Chinese illegal immigrants and the Vietnamese illegal immigrants?

SECRETARY FOR SECURITY: Sir, I think my honourable friend is not comparing like with like. All Vietnamese boat people surrender themselves on arrival in Hong Kong and are kept in detention centres. It is extremely unlikely that they will be caught in places of employment.

MR. ARCULLI: Sir, will the Secretary please inform this Council whether there have been any prosecutions against organizations or persons involved in the employment of these unfortunate people?

SECRETARY FOR SECURITY: Yes, Sir, there have.

MR. POON CHI-FAI (in Cantonese): Sir, the Secretary for Security indicated in his reply that over 90% of these illegal immigrants had no previous record of conviction, which implies that a small number of them do have previous convictions. Will Government inform this Council what sorts of offences they committed?

SECRETARY FOR SECURITY: Sir, I cannot give a complete breakdown of this, but the categories of offence for which illegal immigrants are prosecuted relate to those who come into Hong Kong in what are called "self-organized groups", in other words, that they are not brought in by snakeheads; secondly, illegal immigrants found in groups of three or more in places of employment; thirdly, multiple evaders with previous records of illegal entry into Hong Kong; and fourthly, illegal immigrants involved in crimes or offences in Hong Kong other than that of illegally remaining in Hong Kong.

MR. MCGREGOR: Sir, with respect to the Secretary, I was not suggesting any continuation of illegal immigration, I was suggesting a change of government policy towards legal immigration. Perhaps the appropriate Secretary could answer that question?

HIS EXCELLENCY THE PRESIDENT: Since that was a statement, Mr. MCGREGOR, and also a wider question, could you put it down as a separate question?

Monosodium glutamate

7. MR. EDWARD HO asked: Sir, in view of the potentially harmful effect of monosodium glutamate on health and its wide application in local restaurants, will the Government inform this Council whether it intends to control the use of monosodium glutamate in the preparation of foodstuffs in Hong Kong?

SECRETARY FOR HEALTH AND WELFARE: Sir, monosodium glutamate, commonly known as MSG, is the sodium salt of glutamic acid. Glutamic acid is a component of proteins and has a substantial natural presence in the food supply.

MSG is perhaps the best studied of all food additives. The Expert Committee on Food Additives, which is a subsidiary body jointly of the World Health Organization and the Food and Agriculture Organization of the United Nations, conducted extensive chemical, biochemical, toxicological and other reviews in 1987, as a result of which MSG was considered by the Expert Committee as safe for human consumption. On the basis of the available data, the total dietary intake of glutamates arising from their use at the levels necessary to achieve the desired taste-enhancing effect do not, in the opinion of the Expert Committee, represent a hazard to health. The recommended "Acceptable Daily Intake" of MSG has since been designated by the Expert Committee as "not specified". This is the Expert Committee's most favourable designation on the safety of a food additive.

In common with general international practice, the Municipal Services Branch, as the local food control authority, follows the recommendations of the Expert Committee, and does not consider it necessary to control the use of MSG in the preparation of foodstuffs in Hong Kong.

MR. EDWARD HO: Sir, will the Secretary inform this Council whether he is aware that the Hong Kong Consumer Council in its monthly publication "Choice" in January 1987 considered that for people who are sensitive to the consumption of MSG extreme physical discomfort can be caused and that consumption of excessive amounts in serious cases can cause the onset of asthma to the extent that hospitalization is required? Can he comment on that?

SECRETARY FOR HEALTH AND WELFARE: Sir, I am not aware of the Consumer Council's report on this particular subject, but I am aware that rapid absorption of high doses of MSG has been known to produce in some people reactions such as headaches, burning sensation in the chest, neck, abdomen or limbs, and flushing of the face. These reactions are temporary and recovery is complete after a few hours, and these symptoms are believed to be hyper-sensitive reactions to MSG and not the result of intoxication. I am also aware from the Health Department, Sir, that they have received no report of confirmed cases of illness due to the consumption of food containing MSG.

MR. MARTIN LEE: Would the Secretary for Health and Welfare like me to supply him free of charge a copy of the Choice magazine in question?

SECRETARY FOR HEALTH AND WELFARE: The short answer is "yes," Sir. There is no long answer.

MR. EDWARD HO: Sir, will the Secretary please inform this Council whether he is also aware that the International Organization of Consumers Unions, through its Asian Pacific offices, campaigned in 1986 against the use of MSG in foodstuffs for infants and the young, and that warning labels should be placed on food packages containing MSG?

SECRETARY FOR HEALTH AND WELFARE: Sir, the extensive reviews by the expert committee of the FAO and WHO to which I referred occurred after the date to which Mr. Edward HO referred concerning the use of MSG in baby foods. In 1987, Sir, the same expert committee also reviewed MSG in infant diets and concluded that infants metabolized MSG in a similar way to adults. It removed its previous recommendation against the consumption of glutamates by infants under the age of 12 weeks and there is now no

restriction on the consumption of glutamates by infants.

#### Employment visas for qualified professionals

8. MR. PETER WONG asked: Sir, in view of the findings of a recent survey conducted by the Hong Kong Society of Accountants which indicate that there are 2 100 vacancies in the accountancy field, will the Government inform this Council whether consideration will be given to relaxing existing immigration procedures for the grant of employment visas to qualified professionals from overseas who have been offered employment by local companies and audit firms?

SECRETARY FOR SECURITY: Sir, the existing immigration policy permits a person to enter Hong Kong for employment providing he possesses a special skill, knowledge or experience of value to and not readily available in Hong Kong, or that he is in a position to make a substantial contribution to the economy of Hong Kong.

The Immigration Department has been applying this policy liberally and flexibly. I understand that qualified professional accountants do not normally encounter problems in entering Hong Kong to take up employment and the need to relax immigration procedures does not therefore arise.

MR. PETER WONG: Sir, could I refer the Secretary to the time-wasting and costly procedures of advertising for staff that we know does not exist in Hong Kong, and then presenting this documentary evidence to the immigration office to substantiate the need to bring in people from outside? The point is that it is the procedures that should be reviewed and not the policy.

SECRETARY FOR SECURITY: Sir, I think the fact that the refusal rate has consistently been below 10%, and would have been lower if cases not pursued by sponsor discounted, does not suggest that the present procedures are inadequate or too slow.

HIS EXCELLENCY: Chief Secretary, can you add to that?

CHIEF SECRETARY: Sir, I would just like to add one word. I think that the community as a whole would wish to be reassured before people are brought into Hong Kong to be employed here that there are no local people who are able to do the work. And it is for that reason that evidence of advertisement is presently required. I should add, Sir, that the working group which is looking into the provision of the relaxation of policy on this subject is looking into this very question as to what sort of efforts will be required in future.

MR. ARCULLI: Sir, will the Secretary inform this Council what is the average time taken to process an application by a foreign skilled worker, from the time of application to the time of granting permission to come to work in Hong Kong?

SECRETARY FOR SECURITY: Sir, I cannot give a general answer to that. I think we are talking about accountants still, but I can certainly check on this and try to find an average figure and also a specific figure for accountants for Mr. ARCULLI. (Annex IV)

Written answers to questions

Coal-fired power station

9. MR. TAM asked: Will Government inform this Council whether consideration is being given to the construction of a new coal-fired power station in Hong Kong and, if so, what are the justifications for undertaking the project, what steps will be taken to assess its impact on the environment, and what factors will be taken into account in selecting the appropriate location of the power station?

FINANCIAL SECRETARY: To ensure sufficient generating capacity is available to meet the forecast demand for electricity, the China Light and Power Company (CLP) has informed the Government that it would like to build a further coal-fired power station in the territory which would commence operation in 1996. CLP's preference for a coal-fired station is based on the company's experience at the Castle Peak Power Station, which has shown coal to be reliable, economic and capable of meeting

acceptable environmental standards.

While the Government has not completed its examination of CLP's forecasts and proposals, it recognizes that, no matter how sound the case for a new power station, to find a suitable site will be an extremely difficult task. Accordingly, and having regard to the long lead time involved in such projects, the Secretary for Lands and Works has established a working group to examine preliminary suggestions made by CLP on possible sites.

Of the five sites initially suggested, three -- at Gruff Head, Crescent Island and High Island -- are all in the east of the territory in country parks and for environmental and conservation reasons are not favoured. The other two sites proposed are at Fan Lau -- on southern Lantau and at Black Point near the Castle Peak Power Station. While CLP prefers the Fan Lau site further investigation of both sites, and other possible locations has still to be undertaken.

In carrying out a comprehensive site search for a major facility of this kind, every effort is made to identify and evaluate all practicable options with due regard being given to environmental considerations. Account is also taken of strategic planning considerations such as the future port and airport development in the territory. Having chosen the most suitable site, a comprehensive Environmental Impact Assessment will have to be carried out to consider the potential impact of the proposed power station and its associated works such as the construction of transmission lines, access roads and pulverized fuel ash storage and disposal facilities on the environment.

On the factors that will be taken into account in selecting the site, these are numerous and generally include the impact on those living near the proposed location, the planning considerations and environmental impact as a whole, particularly in respect to stack emissions and cooling water, the need for good foundation conditions, the need for deep water for cooling and for deliveries by bulk fuel carriers and the need, if coal is used, for suitable areas to dispose of ash produced by the plant. Security and safety of supply, together with the economic considerations are also important factors that must be taken into account.

Authority to demand production of identity card

10. MR. TAM asked: Will Government inform this Council whether the staff of the Urban Services Department are empowered to demand identity cards from unlicensed hawkers and "litterbugs" for inspection in the course of discharging their duties and, if not, whether there are proposals for existing legislation to be amended to enable them to do so?

SECRETARY FOR HEALTH AND WELFARE: There are different provisions under the Public Health and Municipal Services Ordinance (Cap 132) governing the enforcement of provisions in respect of unlicensed hawking and depositing of litter in a street or public place.

In the case of unlicensed hawking, section 84(1) provides, among other things, that any authorized public officer such as a member of Urban Services Department staff, may arrest without warrant any person suspected of such an offence. Section 85(1) provides that any person who is so arrested shall be taken to the nearest police station, or be given into the custody of a police officer, who is empowered to obtain evidence of the identity of the person. Since this procedure is always followed, the question of Urban Services Department staff powers to demand identity cards does not arise. They do not have, but equally they do not require, such powers.

For littering offences, the prime method of enforcement is the issue of a notice to the litterer to appear before a magistrate under section 8A of the Magistrates Ordinance. The notice is issued by authorized Urban Services Department staff. The form of the notice is prescribed and is set out as Form 1A in Part I of the Schedule to the Magistrates (Forms) Rules made under the Magistrates Ordinance (Cap 227). The form provides for the entry of the Hong Kong Identity Card number of the suspect, if known. Section 131(3) of Chapter 132 requires Urban Services Department staff to make complaint or lay information in respect of various offences including littering offences in the manner prescribed by the Magistrates Ordinance.

Section 23(1)(a) of Chapter 132 provides that any public officer authorized by the Urban Services Department may require any person whom he reasonably suspects of having contravened any regulation made under section 15, (and the Public Cleansing and Prevention of Nuisance (Urban Council) By-laws were made under that section), to give his correct name and address and produce evidence to that effect to him. Powers of arrest are given in default.

Section 23(1)(a) of Chapter 132 was considered in the Supreme Court of Hong Kong

in the case Attorney General and Tam Man-Wai (Mag. App. 917 of 1988). In that case Mr. Justice HOOPER said in this connection that failure to produce an identity card at first instances under 23(1) would not amount to obstruction but that if the suspected person had no evidence of his name and address other than his identity card, the public officer would be entitled to demand that the suspect produce it.

The answer is therefore not entirely straight-forward but the Urban Services Department is satisfied that these various provisions, when read in conjunction with the judgement of Mr. Justice HOOPER in relation to section 23 of Chapter 132, gives its officers sufficient powers to enforce the legislation. The department has issued full guidelines to its staff to enable them to enforce the legislation satisfactorily.

Financial allowances for members of advisory boards and committees

11. MR. MCGREGOR asked: Since talented and experienced people can make a significant contribution in advising the Government in its administration of public services, will the Government consider providing financial allowances to members of government advisory boards and committees as compensation for the time taken in discharging public duties, in order to encourage able people who are not well endowed financially to accept appointment to serve on such boards and committees?

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, there is no doubt that the Government relies heavily on the advice of members of the public who serve on statutory and non-statutory boards and committees. Various forms of payments, such as remuneration, honorarium, fee and allowance, are in fact available to members of 42 boards and committees. Whether payment should be made to members of a particular board or committee and the level of the payment are decided on a case-by-case basis. The factors for consideration include the frequency and duration of meetings, the professional expertise required and the nature and level of responsibilities. The Government is satisfied that although payments are not made to members of many of the boards and committees, there is no evidence to suggest that this is a disincentive to participating in community work through appointment to such bodies.

Zoological garden

12. MR. MCGREGOR asked: Will the Government consider constructing and operating a zoological garden in the New Territories that is up to international standards to provide a much needed educational and recreational facility for the people of Hong Kong?

SECRETARY FOR DISTRICT ADMINISTRATION: Sir, the provision and management of zoological gardens in the territory is the responsibility of the Municipal Councils. In January 1988, the Regional Council agreed in principle to provide a zoo of international standards in the Regional Council area. Extensive research on the provision and operations of a zoo has been undertaken by the Regional Services Department, executive arm of the Regional Council, through liaison with reputable zoos in Australia, Canada, England, Japan and Singapore.

An inter-departmental ad hoc working group has also been formed to search for suitable sites for a zoo. Up to date, several sites have been identified by the working group. Proposals have already been submitted to the Development Progress Committee for consideration. Once a site has been reserved, the Regional Council will consider the feasibility of commissioning a consultancy study on the zoo project.

Photocopying machines for aided secondary schools

13. MR. DAVID CHEUNG asked : Will Government inform this Council whether photocopying machines will be included as a standard item to be provided for aided secondary schools and, if so, when they will be included?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, a review of the standard furniture and equipment list for aided schools was completed in November 1988. This review established the need for a photocopying machine in both primary and secondary schools. Subject to funds being allocated, aided secondary schools will be provided with photocopiers in the financial year 1990-91. Funds for photocopiers in aided primary schools may not be available until the following financial year.

Film censorship panel advisers

14. MR. DAVID CHEUNG asked: Will Government inform this Council whether the number

of panel advisers on film censorship can be increased in order to reduce the frequency at which an adviser attends film censorship sessions and to maintain an adviser's sensitivities in performing his role?

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, the Commissioner for Television and Entertainment Licensing is empowered under section 6 of the Film Censorship Ordinance 1988 to appoint members of the public to the panel of advisers. Advisers are assigned from the panel to give advice to the censor on a specific film by completing a questionnaire and where appropriate discussing with the censors. The number of persons who may be appointed to the panel is not specified in the law. At present a total of 136 persons from a wide cross-section of the community have been appointed to the panel for a period of one year effective from 10 November 1988. An average of four to five advisers are assigned from the panel to advise on a film at each film viewing session. Each adviser is normally required to attend a film viewing session once every two weeks. So far there is no evidence to suggest that the sensitivities of the advisers have been affected in any way at the existing frequency of viewing. Furthermore, the commissioner considers that the existing frequency of viewing by the advisers should enable them to maintain an appropriate level of consistency in the substance of their advice. There is therefore no reason why the existing frequency of viewing by them should be changed. It is of course always possible for the commissioner to appoint more advisers to the panel but such additional appointment should not be for the purpose of reducing the frequency of viewing by the advisers but for the purpose of assigning more advisers to give advice on each film. In this connection, the commissioner is regularly reviewing the need to appoint more advisers to the panel.

Control of vice signs

15. MR. SIT asked: Will the Government inform this Council what progress has been made regarding the proposals for prohibiting public display of signs advertising prostitution services and for the control of vice establishments as contained in the Crimes (Amendment) Bill 1988, which was published as a White Bill in July 1988 for public consultation?

SECRETARY FOR SECURITY: Sir, following the public consultation on the draft Crimes (Amendment) Bill in 1988, the Administration has considered the views expressed by

the public and is now in the process of revising the Bill for submission to the Executive Council. It is intended to introduce the Crimes (Amendment) Bill into the Legislative Council in the current legislative session.

#### Redevelopment of civil servants' co-operative building society property

16. MRS. TU asked: Will Government confirm whether members of civil servants' co-operative building societies wishing to redevelop their property must pay to Government the residual land cost before the Government can disclose the amount of plot ratio premium payable for redevelopment and if so, whether the information on both the land cost and the amount of plot ratio premium could be made available simultaneously so as to avoid causing unnecessary delays to such redevelopment projects?

SECRETARY FOR LANDS AND WORKS: Sir, members of civil servants' co-operative building societies who have obtained title to their own flats are required to pay a premium, calculated on two-thirds of the land value, before they may sell their flats in the open market. Estimates of the likely premium are given on request. When all the owners have paid the necessary premium they are of course free to redevelop their properties but the new building would be limited to the bulk of the existing building. If the collective owners, either by themselves or in conjunction with a developer, wish to redevelop to a greater intensity, then a further lease modification would be necessary and the amount of the premium payable for it would depend on all the terms and conditions of the redevelopment. As with all lease modification cases the premium could only be assessed when all the terms and conditions of the proposed redevelopment are finalized; so it is unlikely that this could be done at an early stage.

#### Emigration

17. MRS. CHOW asked: Will Government inform this Council of the basis of estimation for the number of 42 000 Hong Kong people emigrating in 1989 as stated in the Government's submission to the Foreign Affairs Committee on emigration; what is the breakdown of the figure by countries of destination and how the figures compare with those in the last three years?

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, in estimating the extent of emigration, the Government relies on three main sources of information:

(a) applications for Certificates of No Criminal Conviction (CNCC) processed by the Royal Hong Kong Police Force, which are required by most destination countries;

(b) visas issued by the main destination countries, according to statistics provided by their Consulates or Commissions in Hong Kong; and

(c) statistics on the balance of movement of Hong Kong residents (other than those in and out of China) provided by the Immigration Department.

Based on these sources and allowing for the various time intervals in the emigration process, the breakdown by country of destination for the last three calendar years, and forecast for the current year, is as follows:

Year	Canada	USA	Australia	Others	Total
1986	5 615	7 742	4 441	1 191	18 989
1987	16 254	7 411	5 208	1 125	29 998
1988	24 588	11 777	7 846	1 606	45 817
1989*	16 400	12 800	10 900	1 900	42 000

(\*All figures rounded off to nearest 100)

Government Business

First Reading of Bills

BANKING (AMENDMENT) BILL 1989

BUSINESS REGISTRATION (AMENDMENT) BILL 1989

DUTIABLE COMMODITIES (AMENDMENT) BILL 1989

INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1989

ROAD TRAFFIC (DRIVING LICENCES REGULATIONS AND REGISTRATION AND LICENSING OF VEHICLES REGULATIONS) (AMENDMENT) BILL 1989

SECRETARY FOR DISTRICT ADMINISTRATION INCORPORATION (AMENDMENT) BILL 1989

DIRECTOR OF SOCIAL WELFARE INCORPORATION (AMENDMENT) BILL 1989

DIRECTOR OF EDUCATION INCORPORATION (AMENDMENT) BILL 1989

THE OPEN LEARNING INSTITUTE OF HONG KONG BILL 1989

TRAFFIC ACCIDENT VICTIMS (ASSISTANCE FUND) (AMENDMENT) BILL 1989

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

Second Reading of Bills

BANKING (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Banking Ordinance".

He said: Sir, I move that the Banking (Amendment) Bill 1989 be read the Second time.

This Bill seeks to give legislative effect to the proposals in this year's Budget to increase with effect from 1 April 1989 the fees payable by deposit-taking companies. These fees were last revised in 1988. The increases are designed to reduce the under-recovery of Government supervision costs incurred in respect of these companies. I estimate that the increases will yield an additional \$3 million in the current year.

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

Question on adjournment proposed, put and agreed to.

#### BUSINESS REGISTRATION (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Business Registration Ordinance".

He said: Sir, I move that the Business Registration (Amendment) Bill 1989 be read the Second time.

This Bill seeks to give legislative effect to the proposals in this year's Budget to increase the business registration fee from \$550 to \$630 with effect from 1 April 1989. This fee was last revised in 1987. The increase is designed to maintain the revenue yield in real terms. I estimate that this increase will yield an additional \$37 million in the current financial year.

This fee will apply to all registered businesses, but small businesses will continue to be granted exemption, if their monthly turnover does not exceed certain prescribed limits.

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

Question on adjournment proposed, put and agreed to.

#### DUTIABLE COMMODITIES (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Dutiable Commodities Ordinance".

He said: Sir, I move that the Dutiable Commodities (Amendment) Bill 1989 be read the Second time.

This Bill seeks to give legislative effect from 1 March 1989 to the proposals in this year's Budget to revise the duty payable on beer, to reduce the duty payable

on brandy, and to increase the duty payable on other types of liquor, on industrial alcohol, on tobacco and on hydrocarbon oils.

By repealing section 63 of the Ordinance, the Bill will change the method by which duty is assessed on beer. It will replace an archaic and administratively costly system based on specific gravity by a system which requires assessment on the volume of beer released for local sale. The new system will also eliminate the need for repayment of duty on beer which has been exported, and will generally simplify matters both for the beer trade and the Customs and Excise Department.

The Bill will also reduce the level of duty on brandy. This will eliminate the differential on specific duty rates which previously existed between brandy and other spirituous liquors.

The various increases are designed to maintain the revenue yield in real terms. I estimate that the increases will yield an additional \$266 million in the current financial year.

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

Question on adjournment proposed, put and agreed to.

#### INLAND REVENUE (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Inland Revenue Ordinance".

He said: Sir, I move that the Inland Revenue (Amendment) (No. 2) Bill 1989 be read the Second time.

This Bill seeks to give legislative effect to the taxation concessions proposed in this year's Budget. They include a reduction in the standard rate from 15.5% to 15%, and a reduction in the rate of profits tax payable by corporations from 17 per cent to 16.5%.

In addition, the Bill seeks to introduce an allowance for those parents, such

as widows or single parents, who are solely or predominantly responsible for the care of dependent children, but who are currently ineligible for a personal allowance at the higher rate applicable to married persons. This Bill also provides for the complete abolition of interest tax and an increase in the initial allowance for expenditure incurred on qualifying machinery and plant.

I estimate the cost to the General Revenue of implementing these proposals to be approximately \$1,100 million in the current financial year, and \$1,735 million per annum thereafter at present levels of chargeable income.

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

Question on adjournment proposed, put and agreed to.

ROAD TRAFFIC (DRIVING LICENCES REGULATIONS AND REGISTRATION AND LICENSING OF VEHICLES REGULATIONS) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Road Traffic (Driving Licences) Regulations and the Road Traffic (Registration and Licensing of Vehicles) Regulations".

He said: Sir, I move that the Road Traffic (Driving Licences Regulations and Registration and Licensing of Vehicles Regulations) (Amendment) Bill 1989 be read the Second time.

This Bill seeks to give legislative effect from 1 March 1989 to the proposals in this year's Budget to increase the fees for vehicle registration and driving licences. These fees were last revised in 1988. The increases are designed to maintain the revenue yield in real terms. I estimate that the increases will yield an additional \$103 million in the current financial year.

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

Question on adjournment proposed, put and agreed to.

SECRETARY FOR DISTRICT ADMINISTRATION INCORPORATION (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Secretary for District Administration Incorporation Ordinance".

He said: Sir, I move that the Secretary for District Administration Incorporation (Amendment) Bill 1989 be read the Second time. With your permission, Sir, I shall speak not only to its provisions but also to those of the Director of Social Welfare Incorporation (Amendment) Bill 1989 and the Director of Education Incorporation (Amendment) Bill 1989.

The three principal Ordinances provide the Secretary for District Administration Incorporated, the Director of Social Welfare Incorporated and the Director of Education Incorporated respectively with powers to accept trusts and to invest and deposit trust funds in accordance with provisions of the Trustee Ordinance.

At present, there are no provisions in the three Ordinances for accounting and auditing arrangements in respect of the various trust funds. For control purposes, the Governor has declared these trust funds to be public moneys under the Public Finance Ordinance and the Audit Ordinance. Nevertheless, in view of the importance of the trust funds and the extent of the Administration's responsibility, it is desirable that these Ordinances should be amended accordingly to provide for the keeping of accounts and records of transactions involving these trust funds and for their audit by the Director of Audit. These arrangements will bring the three Ordinances in line with similar Ordinances.

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

Question on adjournment proposed, put and agreed to.

DIRECTOR OF SOCIAL WELFARE INCORPORATION (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Director of Social Welfare Incorporation Ordinance".

He said: Sir, I move that the Director of Social Welfare Incorporation (Amendment) Bill 1989 be read the Second time.

In moving the Second Reading of the previous Bill on the Order Paper, I have

described the nature of the provisions of this Bill which I commend for the reasons stated.

I move that the debate on this motion be adjourned.

Question on adjournment proposed, put and agreed to.

#### DIRECTOR OF EDUCATION INCORPORATION (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Director of Education Incorporation Ordinance".

He said: Sir, I move that the Director of Education Incorporation (Amendment) Bill 1989 be read the Second time.

In moving the Second Reading of the Secretary for District Administration Incorporation (Amendment) Bill 1989, I have already described the nature of the provisions of this Bill which I commend for the reasons stated.

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

Question on adjournment proposed, put and agreed to.

#### THE OPEN LEARNING INSTITUTE OF HONG KONG BILL 1989

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to establish the Opening Learning Institute of Hong Kong as a body corporate for the provision in Hong Kong of opportunities for higher education by means of open learning, and to provide for related matters".

He said: Sir, I move that the Open Learning Institute of Hong Kong Bill 1989 be read the Second time.

Sir, you first announced our intention to set up the Open Learning Institute (OLI) in your speech in this Council in October 1987. Since then, the Planning Committee under the chairmanship of Mr. CHENG Hon-kwan has made good progress and will soon

be publishing its report. Meanwhile it is necessary to legislate for the formal establishment of the new institute. That is the purpose of the present Bill.

Sir, the concept of open learning is still quite new, but already widely accepted throughout the world. It has two main features. Firstly, it implies open access, in that students are not required to have specific qualifications to enrol for courses. Secondly, open learning is not limited in its teaching methods: students learn in a wide variety of ways and can choose the time, pace and place at which they learn. The OLI will offer our people a whole range of new opportunities for tertiary education to advance their careers, learn new skills or simply follow their own interests.

Given open entry to its programmes, the credibility of the OLI as an academic institution must be judged by the standards achieved by its students on graduation. The OLI will ensure high standards through carefully designed teaching packages, student counselling and tutorial support, continuous assessment and final examinations. External examiners will oversee both the continuous assessment and the final examinations. As a further safeguard, the degree level programmes to be offered by the OLI will be subject to independent assessment to ensure that they are up to international standards. This task will be performed by the Hong Kong Council for Academic Accreditation when it is set up, which is likely to be early next year. Meanwhile, the United Kingdom Council for National Academic Awards will be asked to advise the OLI on academic standards. On the basis of these quality assurances, the Government will recognize degrees to be awarded by the OLI as comparable to other degrees awarded in Hong Kong for the purpose of Civil Service appointments.

As recommended in the Second Report of the Education Commission, the OLI will operate as a consortium of the tertiary institutions funded through the University and Polytechnic Grants Committee (UPGC). All of these institutions have been giving the Planning Committee their full support over the past 15 months. They have also said that they will be happy to become members of the future consortium and, where appropriate, take part in the further planning of open learning programmes, developing new course materials and making available their physical facilities.

The Bill before us this afternoon has been drawn up on the advice of the Planning Committee, taking into account the features and special needs of open learning. The Bill provides for the necessary powers and organizational structure for a publicly accountable institution. It creates the framework for the operation of a consortium based on the existing UPGC funded institutions. It affords the necessary flexibility

to support a new system of further education designed to meet Hong Kong's needs.

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

Question on adjournment proposed, put and agreed to.

#### TRAFFIC ACCIDENT VICTIMS (ASSISTANCE FUND) (AMENDMENT) BILL 1989

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Traffic Accident Victims (Assistance Fund) Ordinance".

He said: Sir, I move that the Traffic Accident Victims (Assistance Fund) (Amendment) Bill 1989 be read the Second time.

The main purpose of this Bill is to extend the Traffic Accident Victims (Assistance Fund) Ordinance to light rail vehicles operated on the North-west Railway by the Kowloon-Canton Railway Corporation. This will enable all persons who suffer personal injury in an accident involving a light rail vehicle of the Light Rail Transit System to be eligible to apply for assistance from the Traffic Accident Victims Assistance Fund. In cases where persons are killed in such an accident, their dependants would be eligible for assistance from the fund.

The light rail vehicles of the LRT operate on tracks which are mainly segregated from road and pedestrian traffic. However, there are a number of integrated junctions which are used not only by light rail vehicles but also by other vehicles and pedestrians. The segregated sections of the track are restricted to the public but it is not difficult for persons to gain access to them, particularly in areas where the track is not enclosed. Thus, whilst the LRT is essentially a rail system, it has very similar characteristics to the tram system operated by Hong Kong Tramways Ltd.

At present, the integrated sections of the LRT track fall within the definition of "road" in the Traffic Accident Victims (Assistance Fund) Ordinance. As such, accidents involving light rail vehicles on these sections are deemed to be "traffic accidents", and victims are already eligible to apply for assistance under TAVAS. However, the segregated sections of the LRT track do not fall within the existing

definition of "road", and persons injured in an accident on these sections are currently ineligible to apply, although they may seek assistance from charitable funds if they are in financial difficulties.

Given the inherent openness of the LRT, and the fact that victims of all accidents involving trams are eligible for assistance under TAVAS, it is proposed that the ambit of TAVAS should be widened so as to extend eligibility to all victims of accidents involving light rail vehicles, irrespective of whether the accident takes place on the integrated or the segregated sections of the track. Clause 2 of the Bill therefore re-defines "road" so that all accidents which involve a light rail vehicle can be considered as traffic accidents for the purposes of the Ordinance. This clause also defines a "light rail vehicle".

We consider that it is appropriate that all persons who have suffered personal injury, or dependants in the case of death, in an accident involving a light rail vehicle since public trials of the system began should be eligible for assistance from the fund. The Bill therefore includes in clause 6 a declaration which provides that all accidents involving a light rail vehicle which have taken place since 1 March 1988 can be deemed as being traffic accidents for the purpose of awarding assistance from the fund.

Clause 3 provides that the Kowloon-Canton Railway Corporation shall pay an annual levy in respect of every light rail vehicle at the rate specified in Part 1 of the Schedule to the Ordinance with effect from 1 March 1988, the date at which public trials on the system began. It is proposed in clause 5 that the levy for each light rail vehicle should be the same as for any other vehicle using the road including tramcars, buses, and goods vehicles.

The opportunity is also taken to make a number of minor consequential amendments to sections in the Ordinance to update the reference to the present Road Traffic Ordinance and subsidiary legislation, Cap. 374 rather than the replaced Cap. 220. These proposed amendments are contained in clause 4 and relate to revised types of driving licence.

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

Question on adjournment proposed, put and agreed to.

## SECURITIES AND FUTURES COMMISSION BILL 1989

Resumption of debate on Second Reading which was moved on 18 January 1989

Question proposed.

MR. STEPHEN CHEONG: Sir, history is in the making in this Chamber this afternoon. In a few hours time, if the majority of honourable Members voted "aye" to the Securities and Futures Commission Bill after the Third Reading, it will become the first ever bilingual Bill to be passed in this particular Council that will have equal status on the text of both languages. As convenor of the ad hoc group charged with the responsibility of examining this Bill, may I, on behalf of group members, offer our sincere thanks to all those within and without the Administration who have either helped or contributed significantly to our deliberation over the past three months.

In particular, we would like to pay tribute to members of the OMELCO Secretariat who have worked very very hard to provide us with extremely valuable help. The quality of this work can best be described in one word -- "impeccable".

Sir, right from day one, the group realizes that we have taken on a heavy responsibility. We recognize the need for Hong Kong to continue to maintain and develop as one of the world's major financial centres. That means our financial securities market must remain active as well as having the necessary integrity to attract international institutional investors. Therefore, as the monitoring authority in Hong Kong, the new Securities and Futures Commission should be vested with the necessary power and resources to carry out the monitoring functions effectively. Yet, necessary checks and balances must be built in so as to guard against possible future excesses. The need to perform the right balancing act is particularly critical given that the very first draft of this Bill for consultation last September had unfortunately turned the already complex issues into emotional ones. For months, the market place thrived with speculative perceptions and worries that the new Securities and Futures Commission will flex their muscles by asking for powers of a drastic and draconian nature which, when used, would have a major stifling effect on the market activities. Perhaps it is timely now to assure all those who were concerned that their worries have been taken care of. The ad hoc group, working closely with the Administration and the new commissioner, has either installed the necessary checks and balances through amendments to this Bill or through reaching

an understanding with the Administration that they will address points of concerns through administrative means. We have been given to understand that in his speech this afternoon, the Financial Secretary will on behalf of the Administration, positively respond to points raised by Members.

At this juncture, Sir, allow me to plead that it is high time for most of us to try to erase from our minds whatever stigma that might still remain with regard to the events of 19 October 1987. That was an unfortunate situation precipitated as well as influenced by global events over which we had little control. It is arguable whether the existence of proper regulations then would alone have been enough to be able to save the day. Whilst the events were certainly catalytic to the birth of the new commission, we should not forget the fact that a lot of useful and hard work had been done by the old hands who did help to put Hong Kong onto the map of the world financial scene. I hope the new commission will take note of this and will undertake not to engage in too many excesses in their future deliberation and activities. After all, it must always be borne in mind that however valuable and necessary monetary rules may seem to be, it would not be conducive to Hong Kong's continued development as a world financial centre if the actual effect of such rules and regulations were to result in low level participation by investors in our market place.

Turning now to the Bill proper, Sir, I would like to report to honourable colleagues that the final count of the Committee stage amendments is around 270 of which about 80 deals with the Chinese text alone. In this debate, I will touch on the workings of the group and general principles. My colleague, as well as the deputy convenor, the Honourable Ronald ARCULLI, will deal generally with the legal issues of the Bill whilst the Honourable Mrs. Miriam LAU who was a pillar of the group in examining the Chinese text of the Bill will deal with points arising out of her experience in this aspect of the Bill.

Other members of the group will doubtless cover different specific areas when they speak either in the Second Reading or in Committee stage. Hence, there should only be few areas of overlap so that despite the daunting number of amendments, some of you might still be able to make the first race at Happy Valley, tonight.

To build in the necessary checks and balances in order to guard against possible future excesses, the ad hoc group took note of a lot of suggestions from representations, carried out discussion and finally agreed with the Administration on the following significant changes.

First: Board of Directors -- With regard to this issue, the Bill proposed that there should be an equal number of executive and non-executive directors and that the chairman shall have a casting vote in case of a tied vote [clause 5]. We consider that such an arrangement will in effect deprive the non-executives of the opportunity of actually counter-balancing the executives, who will inevitably be inclined to protect the decisions that they make as the staff of Securities and Futures Commission. Accordingly, we did recommend to the Administration that there should be a majority of non-executives on the board which will go some way towards alleviating the concern in the market about the dominance of the board by the executives.

The Administration, however, considers that the Securities and Futures Commission should be run by full-time professionals who are familiar with market situations if the Securities and Futures Commission is to command the respect of the market and therefore function effectively. Furthermore, they consider that there should be no question of domination by the executives since the non-executives are expected to be people of independent mind. We have noted the Administration's concern that the balance of the board should remain as proposed in the Bill, but to ensure that the executives would not be able to over-dominate the board, we have recommended, in the event of a tied vote, the chairman shall be required to consult the Financial Secretary should he wish to exercise his casting vote.

Also, administrative arrangements will be made to require the Securities and Futures Commission to record in its annual report all instances in which the chairman has exercised his casting vote.

As a means of ensuring that the non-executive directors can raise any issue for discussion by the board, we have also recommended that there should be a new provision for a requisition from not less than two directors to trigger a board meeting.

We have similarly made suggestions for any three members of the Advisory Committee to the Securities and Futures Commission to trigger a meeting of the advisory committee under clause 9 and have also recommended that the advisory committee should meet at least once every quarter in order that there will be no means for deliberately putting off meetings of the committee.

All these, by the way, Sir, have been accepted by the Administration.

Second: Directions of the Governor -- Clause 10 stipulates that the Governor may

give directions to the Securities and Futures Commission in policy matters only. We consider such a provision unnecessarily restrictive in that there may be instances where the Governor may wish to give directions on important operational matters, such as a decision of the Securities and Futures Commission to close the exchange. Accordingly, we have proposed to amend clause 10 to enable the Governor to give directions to the commission in a general sense.

Third: Budget of the Securities and Futures Commission -- There has been considerable concern as reflected in the submissions about the size of the Securities and Futures Commission budget which will have bearings on the magnitude of the burden on the market. We consider that the legislature should have the opportunity of looking at the budget of the Securities and Futures Commission in draft form as a safeguard against excessive spending. The Administration has, apart from agreeing that there will be administrative arrangements for the draft budget of the Securities and Futures Commission to be submitted to the Finance Committee before it is submitted to the Governor for approval every year, agreed to make a provision for the tabling of the Securities and Futures Commission budget in the Legislative Council after it is approved by the Governor. Furthermore, the portion of the Government's contribution to fund the commission will remain a matter for the consideration of the Finance Committee of the annual appropriation exercise.

Since the agreed formula for funding the Securities and Futures Commission from the market would depend a great deal on market situations, the Administration has agreed that the funding situation of the Securities and Futures Commission would be the subject of regular review by the Financial Secretary, in conjunction with the Secretary for Monetary Affairs and the chairman of the commission. We are in particular concerned that where the commission has accumulated a certain level of reserves, the level of the levies imposed on the markets should be reviewed promptly. Perhaps the Financial Secretary would like to reconfirm the agreed arrangements in his speech.

Fourth: Rights of Appeal -- Some concern has been expressed about the composition of the proposed Appeals Panel and the lack of provisions for appeals on the determination of the tribunal. As to the composition, it has been suggested that the presence on an appeal tribunal of a non-executive director of the Securities and Futures Commission is objectionable in that it may be seen as undermining the independence of the tribunal. The group gave this issue full consideration and concluded that the balance of the majority of the independent members together with

minority participation by a non-executive Securities and Futures Commission director is appropriate in order to ensure that the policy of the Securities and Futures Commission, as it develops, will be taken into account in decision on appeal. It is therefore desirable to leave the proposed compositions of the appeals tribunal as proposed in the Bill as it is: the tribunal should comprise of three members. One should be the legally qualified chairman or deputy chairman of the Appeals Panel, one should be a person with relevant market experience wholly independent of the Securities and Futures Commission whilst the third one should be a non-executive director of the Securities and Futures Commission.

As to provisions for appeals against determination of the tribunal, although we note the Administration's concern that such provision might encourage a proliferation of appeals, we consider that there should be an avenue of appeal on points of law. The Administration is, however, concerned that since cases involved are frequently highly complex in nature, it would still be fairly easy to make cases regarding disputes over points of law. After much discussions, the Administration agreed with us that the composition of the Appeals Tribunal is such that the interpretation of points of law would tend to fall heavily on the shoulders of the member with legal experience. This state of affairs is undesirable and therefore there should be provisions to enable the tribunal to seek clarification on points of law by way of case stated approach from the Court of Appeal.

In practice, both the appellant and the Administration can apply to the tribunal to have points of law clarified by the Court of Appeal through the case stated approach. In order to avoid frivolous appeals the tribunal should be vested with the decision to rule whether or not the matter should be referred to the Court of Appeal.

The Administration has also agreed that there should be provisions for appeal to the Governor in Council on a restriction notice served on the exchange companies and clearing house under clause 46 of the Bill. We also note that there are provisions for a separate channel of appeal in respect of the closure of the exchange companies by the commission under the Securities Ordinance and Commodities Trading Ordinance.

Fifth: Power of making financial resources rules -- We feel that since the financial resources rules in respect of the registered person will have significant bearing on the business of that registered person, such rules should be made in the form of subsidiary legislation. This has been agreed by the Administration but we also feel that the relevant representative market organizations should be consulted

when the rules are being drawn up. In this respect, we would appreciate the confirmation of the Administration's intention by the Financial Secretary.

Sixth: The Remuneration Committee -- We have also suggested that a special committee looking after the remuneration packages of Securities and Futures Commission staff should be established since the Securities and Futures Commission Board is to be composed largely of people who are also employees of the commission. The Administration has indicated that a committee to be chaired by a non-executive director of the Securities and Futures Commission will be set up for this purpose.

Other points, Sir, worthy of note which may not take the form of amendments but will be dealt with by future administrative measures with a positive spirit are --

First: Role of the commission -- In respect of the concern of the market organizations about the duplication of roles of the Securities and Futures Commission and the market organizations and the lack of a clear indication that the industries would be encouraged to move towards self-regulation, we have noted that the Administration indeed intends to encourage the industries to move towards self-regulation and where it can be demonstrated that the market organizations are capable of taking up the regulatory role in certain areas, the transfer of such functions to the market organizations is intended.

Second: Audit on the Listing Division of the stock exchange -- In respect of listing matters in the stock market, it is intended that six-monthly audits on the Listing Division of the stock exchange will be carried out with a view to determining whether the exchange is ready to take up the sole role of overseeing listing matters in the market. Confirmation by the Financial Secretary regarding the intention of the Administration will go a long way in assuring the industries of the direction in which the regulatory framework will move.

Third: Publicity -- In respect of the publicity of notices or orders made under the Bill, we consider that publication in the Gazette of such notices or orders is not adequate. We feel that to protect the interest of investors who may be affected one way or the other by such notices or orders, there should be suitable publicity arrangement. The Administration has accordingly agreed that a press release will be made whenever public notices are required.

Sir, before closing, may I report generally the methodology adopted by the group

in tackling this Bill. The ad hoc group first invited submissions from different market organizations and professional bodies on the Bill in recognition of their professional contributions to a subject matter that would have an effect on them. Fourteen written submissions have been received and the ad hoc group has had meetings with seven of these organizations which included the stock exchange, the futures exchange, the Stockbrokers Association, the Bar Association, the Law Society, the Hong Kong Society of Accountants and the Unit Trust Association. The ad hoc group has also had meetings with the Administration with a view to understanding further the rationale behind the provisions as proposed in the Bill. The proposed funding arrangements of the Securities and Futures Commission and its organizational structures were also deliberated at length.

Furthermore, the group derived great assistance from the report of the Security Review Committee whose various recommendations have played such important part in the impetus and principles of this legislation.

Although it is just about three months since the Bill was published, the amount of work devoted by Members on the Bill is self-evident. Allow me to quote some statistics: the ad hoc group has had a total of 31 official meetings which included meetings with the Administration and representatives of the various market and professional bodies; although the Chinese sub-committee of the ad hoc group officially met only three times, days of informal consultation work were carried out with the help of the OMELCO Legal and Translation Units. In short, the group has tried its best and we are satisfied that our efforts have produced the desired results and I can with full confidence commend this Bill to honourable Members this afternoon.

Sir, in declaring support for the motion, I would like to convey my deepest thanks to all members of the ad hoc group in their effort to help the group in discharging our responsibility smoothly and completely.

MR. ARCULLI: Sir, it was at an in-house meeting of Legislative Council on 6 January, 1989 that the Legislative Council 1989 ad hoc group to study the Securities and Futures Commission Bill was formed. I was not at that meeting as I was not in Hong Kong. At the meeting of the ad hoc group later that day I was elected deputy to my colleague the Honourable Stephen CHEONG. I have learnt one thing : try never to miss an in-house meeting. However, for me it has been a most educating and rewarding experience.

The Bill came to us against a fairly emotive background when words like : "draconian", "empire-building", "duplication", "over-regulation" and others were freely bandied about. It is never easy to establish a new regulatory authority let alone one that was to be outside the Civil Service. The complexities of the securities and futures markets in today's world did not make the task of implementing the recommendations of the Securities Review Commission any easier particularly as the Securities and Futures Commission Bill is the first and perhaps the most important phase of a general review of legislation in these markets. The very active participation by the one dozen or so interested bodies which made submissions was most encouraging and helpful for without their insight our task would have been almost impossible. There was, quite rightly, also a sense of urgency in reviewing the Bill as there can be no disputing that the sooner the new commission set about its job the better. This, however, did not mean that speed outweighed the most important objective of providing the necessary fair and equitable legislative framework for the Securities and Futures Commission properly and effectively to carry out its functions. The components of such a framework would include the powers, composition and accountability of the Securities and Futures Commission, the necessary checks and balances, the Securities and Futures Commission's role in the development of self-regulation in the securities and futures markets, the regulation of the securities and futures industries, the redress available in the event of the Securities and Futures Commission acting wrongly, the co-operation between the Securities and Futures Commission and other regulatory authorities or bodies here and elsewhere and last but not the least the funding of the operation of the Securities and Futures Commission. I believe that with all the efforts of all concerned we have before us today a Bill that is a significant improvement on that which was gazetted in January 1989. With these remarks, Sir, I should like to highlight what I believe to be some of the important features of the Bill.

#### The right of appeal

Under the Bill the appeal to the appeal tribunal is final and not appealable. There is one legal recourse, namely, judicial review of the decision of the appeal tribunal which meant that an appellant would effectively have to demonstrate to the High Court that the appeal tribunal properly directing itself could not (as opposed to might not) properly have come to the conclusion that it did. This remedy remains. However, the ad hoc group has persuaded the Administration and the Provisional Securities and Futures Commission that it is desirable to make provision for an appeal by way of case stated to the Court of Appeal on a point of law where the tribunal

did so on its own volition or granted an application made either by the Securities and Futures Commission or the appellant, the decision of the appeal tribunal in these latter respects not being appealable. This change, which will be introduced at Committee stage, is important not only in the context of clause 18 but also in respect of clauses 36, 37, 38, 39 and 40 which deal with the powers of the Securities and Futures Commission to, inter alia, impose prohibitions or requirements on a registered person, on assets belonging to or in the custody of a registered person and in the maintenance of adequate assets.

#### Record and other documents

The access to records and other documents of a registered person and therefore the access to premises at which such records or documents were kept caused an uproar when this matter was first mooted. Under the Bill a person authorized by the Securities and Futures Commission could at all reasonable times enter business premises to gain access to such documents. However, if access was refused or not possible the Securities and Futures Commission would have to apply for a warrant from a magistrate. The ad hoc group felt that if a registered person wished to keep such records or documents at home instead of, say, in a warehouse he should be allowed to do so provided he notified the Securities and Futures Commission and the Securities and Futures Commission accepts such arrangement. In so doing he would be made fully aware that his home would then be accessible in the same way as his office. The initiative rests entirely with the registered person. I mention this specifically so as to avoid any misunderstanding. Another change is the avoidance of duplicity of responsibility by registered persons in this regard. These changes, will be introduced at the Committee stage.

#### Supervision and information on transactions

It may be useful for the industry to appreciate the purpose of clauses 28 and 29 of Securities and Futures Commission Bill which, as I understand them, are for the purpose of enabling the Securities and Futures Commission to monitor compliance with the relevant Ordinances and other matters and to ascertain the principals to transactions. These powers are limited in scope and are quite separate and different from those under clause 31. Having said this I should like to observe that over-zealous exercise of these powers may nevertheless convey the wrong message as would an under or non-utilisation of such powers in proper cases.

## Investigations

Notwithstanding that the powers under clause 31 are exercisable in limited instances there is no disputing that such powers are wide and extensive including the power to require a person to answer questions which may tend to incriminate him. The only protection such a person is given is that he is told of the limitation as regards the inadmissibility of such questions and answers before he is questioned and where he claims that an answer or answers may tend to incriminate him. It is therefore important that the Securities and Futures Commission uses this power judiciously and in proper cases and circumstances for any unfair or improper use will lead to public outcry and perhaps a demand for change.

## Double jeopardy

Under the Bill a contravention of clauses 28 or 29 exposes a person to punishment for contempt of court and prosecution of an offence and the same was true of a contravention of clause 31. This will be changed at Committee stage in that whilst the alternatives of being punished for contempt or being prosecuted will still exist he cannot be punished for both.

## Preservation of secrecy

Under clause 31(10) the Attorney General may give his consent to the publication by the Securities and Futures Commission of a report to the Securities and Futures Commission and under clause 54 the Securities and Futures Commission may in the instances set out there disclose information to certain persons or bodies in Hong Kong and elsewhere. Investors (particularly overseas investors) not only expect that markets are well regulated but that their financial affairs will be well-kept secrets. We must therefore bear this in mind so that Hong Kong's status as a leading financial centre should not be jeopardized by unnecessary disclosures. In this context it is noteworthy that clause 54(2)(g) and (h) of the Bill which refers to disclosure to overseas authorities and organizations are to be amended at Committee stage so that such disclosures should only be made where it is desirable or expedient in the interest of the investing public or in the public interest and that this power of disclosure cannot be delegated. I also suggest that as a general rule the Securities and Futures Commission should not make disclosures to overseas authorities and organizations where there is no reciprocal treatment for any inquiry from Hong

Kong.

Sir, before concluding I would like to deal briefly with some points that arose during our scrutiny of the Securities and Futures Commission Bill which I believe will be reviewed in the next phase of the reform of securities legislation. These are:-

- (a) whether futures trading ought to be included in insider dealing changes;
- (b) whether guidelines to be issued under clause 4(2) should remain non statutory;
- (c) provision for notification of and approval of change of shareholdings under clause 21(6)(a)(iv);
- (d) whether clause 25 can be simplified in the light of operational experience;
- (e) the consolidation of provisions dealing with investigations under the relevant Ordinances;
- (f) to review clause 31(5) as it may encourage blanket claims in respect of self-incriminating statements;
- (g) provision regarding delivery of investigation notes under clause 31;
- (h) under clause 54 the form of the secrecy provision and to review under clause 54(2)(b) the disclosure in respect of "any investigation" in the light of operational experience.

Sir, during the past three months I have experienced nothing but a most constructive approach by the Administration, the Provisional Securities and Futures Commission, the market participants and the industry which brought about the Committee stage amendments. I would like to emphasize that with such amendments we have the proper framework in the Bill before this Council today. In passing the Bill into law we would have done our part but the more important part remains : the co-operation of all concerned in taking the Hong Kong securities and futures market into the next important phase of its development. If I may, one observation for the Securities and Futures Commission: it always falls on the regulator to set the scene.

Sir, in concluding I would like to extend my personal appreciation for the support and hardwork that the OMELCO Secretariat and the legal unit have given to the ad hoc group for without their help I doubt whether we would have been ready to-day.

MR. CHEUNG YAN-LUNG (in Cantonese): Sir, I wish to declare my interest as managing director of a stock investment company.

At the same time, I would like to express my gratitude to the various professional bodies who provided the Legislative Council ad hoc group with many constructive ideas when we examined the Securities and Futures Commission Bill 1989 in the past few months. However, it is regretful that views received mainly came from fund managers, bankers, brokers and listed companies, whereas the response of the general public, that is, the small investors, to the Bill was scanty. As a result, we fell short of views from small investors in the scrutiny of the Bill.

I welcome the Securities and Futures Commission Bill 1989. I believe it is essential for Hong Kong, as one of the international financial centres, to promote the effective operation of the securities and futures markets, protect the interest of the investors and safeguard against losses due to institutional inadequacy or negligence. After the global stock crisis in 1987, I am more convinced that there is a need for the government to improve and strengthen its control over the securities and futures markets and to prevent potential operational problems of the markets through a form of supervisory and institutionalized control.

Sir, to exercise active effective control, the commission must in the first place have comprehensive knowledge and experience of the operation of the markets, an impartial attitude that wins respect, and an ability to exercise control independently with a good sense of responsibility. We welcome the proposal in the Bill that a commission should be established outside the Civil Service because it is a wise move with due regard to the actual circumstances. Secondly, the success of this system of control depends very much on the appropriate delegation of power. As the saying goes "Let the powerful be just, do not let it be just powerful." Power should be exercised with justice. One should not abuse his power or strive for unrestricted power. So it is for the commission to carry out its functions in the right manner and not to become " a body with vested interests" that withholds from the markets their due rights and obligations. The commission should strike a balance

between its efforts to maintain the order of the markets on the one hand and the self-regulation of the markets on the other, so much so that it will assist the markets in operating freely without intervention. In this connection, I propose the introduction of an adequate reviewing system to examine the full development of the self-regulatory factors of the markets, so as to ensure that the commission will, at an appropriate juncture, return part of its supervisory duties to a sufficiently developed market capable of self-regulating.

Moreover, I would like to raise a few more points which have been brought up with the Administration in the process of deliberation and I would like to call upon the authorities concerned to pay close attention to them in the enforcement of the legislation.

Firstly, on the disclosure of the names of companies under investigation, I hope the authorities concerned will take into account the possible damage and loss that the companies may suffer. Unless there is concrete evidence, such a move will cause irreparable damage to the reputation of the companies concerned.

Secondly, privacy of individuals should be respected as far as possible. For example, information about clients of a company under investigation should be kept in strict confidence even if personal particulars of the clients are found to be relevant to other government departments.

Another point which I would like to bring out concerns the financial resources of the commission in future. The new commission is to rely on a levy to be charged on each transaction in the market for its income. This can hardly be a stable source of income. A proper arrangement should be devised well in advance on how the expenditure may be reduced and how the government may carry out its obligation financially in case of a downturn in investment activities in the stock market.

Finally, I have a few words to say about the small securities and futures brokers. They have been participating in and contributing to the securities and futures markets and have built up a relatively sound foundation in the business. Their credentials and experiences certainly deserve our respect. They should not be forced out of the market because of future rules especially modifications and amendments to the financial resources rules made under Clause 26 of the Bill. It is hoped that the Administration can provide them with a reasonable arrangement so that their competitiveness may be systematically improved.

Sir, with these remarks, I support the motion.

4.30 pm

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

4.50 pm

HIS EXCELLENCY THE PRESIDENT: Council resumes.

MR. PETER POON: Sir, before I begin my speech, I would like to declare my interest as a member of the Securities Review Committee.

I am very pleased to note that a lot of progress has been made in the reorganization of our stock exchange and futures exchange since the stock market crisis in October 1987 which affected most securities markets in the world. The Hong Kong securities markets were overheated at that time and consequently suffered heavy losses. As a result of the quick and resolved actions by Government, the markets have recovered significantly and there has also been improvement in the regulatory framework. The enactment of the proposed Bill will go a long way in restoring confidence of our own as well as overseas investors.

The new Securities and Futures Commission will be an independent watchdog of our securities markets. Though we should ensure that supervision of our markets is up to international standards, we should not follow slavishly all the complicated and draconian securities laws in the United Kingdom and United States of America. What we look for is a Hong Kong solution, a new commission staffed by professionals with sufficient power and resources to regulate our securities markets effectively.

I am sure that with the various committee stage amendments to be moved to the Bill, there will be sufficient checks and balances and safeguards to allay fears of undue interference of the new commission in our markets; the amendments are intended to strike a balance between the need for fair, efficient and orderly markets on the one hand and protection of investors on the other. The commission will have to be responsible and responsive to our own market needs. I am sure that the new commission will bear in mind its role and dispel the various concerns expressed over possible over-spending, unnecessary duplication of work with the exchanges, witchhunting or

over-regulation. The Governor, the Financial Secretary as well as Legislative Councillors will no doubt watch the new commission's work with great expectation and interest.

The Bill is the first piece of legislation to be enacted in bilingual form. Hong Kong laws are based on English common law whereas Chinese legal terms are based on a rather different legal system: it is sometimes difficult to find suitable equivalents in Chinese of some legal concepts. However, useful innovations have been adopted by our law drafters to overcome such difficulties. Consequently, I believe that efforts made in enacting this Bill in both languages have achieved satisfactory results.

With these remarks, Sir, I support the motion.

MR. MARTIN LEE: Sir, the Securities and Futures Commission Bill 1989 ("the Bill") is supposed to enable our stock and futures markets to undergo the metamorphosis in the aftermath of the October 1987 crash.

Members of this Council, and particularly those who have joined the ad hoc group to study the Bill under the chairmanship of the Honourable Stephen CHEONG, have been made to work against a time limit arbitrarily chosen by the Administration, presumably to restore its reputation among overseas investors who had called us the "Mickey Mouse Market" when both our stock and futures exchanges were closed for four days in October 1987. Members of the ad hoc group as well as the legal advisers of OMELCO have to work our hearts out in order to have the Bill passed into law today.

But I regret to say that the final product still has a gaping hole in it. For clause 4(1)(c) does not require the Securities and Futures Commission to report to the Financial Secretary the occurrence of any dealing in relation to futures contracts which it reasonably believes or suspects to be an insider dealing.

Two days ago, I showed the Bill to an eminent Queen's Counsel who specializes in company law, and pointed out to him this omission; and his comment was: "Surely, this is an oversight". And indeed, that was also my immediate reaction when the ad hoc group discovered this omission during one of its earlier meetings.

But when the point was raised with the Administration, it soon transpired that it was a deliberate omission. Quite a few reasons were advanced, but none convincing.

Indeed, one is at a loss to understand why one is not pushing an open door in this matter, since one is merely reminding the commission to arm itself with a power which on any view it should possess. Indeed, the very title of the Bill shows how incomplete its powers are if it can investigate into insider dealings involving securities, but not futures contracts.

The Administration has prepared a paper for the ad hoc group setting out five reasons why a congressional committee of the United States Congress had decided in September 1984 not to amend their law by prohibiting insider dealing in futures contracts in the United States.

The first two reasons given were clearly the most important ones; and they were summarized in the paper as follows:-

"(a) Futures transactions do not give rise to fiduciary duties which correspond to those which a securities insider owes to the company whose shares are concerned, and purchasers or sellers of those shares.

(b) Inside information about futures market does not generally relate to individual companies."

As to (a), it is necessary to understand the federal securities laws of the United States. They are far from easy to comprehend, even for lawyers. For there is no definition of insider dealing in securities as such in the Exchange Act of 1934 or anywhere else. To frame a charge of insider dealing in a criminal case or a cause of action in a civil suit, the designated authority, that is, the Securities and Futures Commission, has to plead section 10(b) of the Exchange Act of 1934 and Rule 10 b-5 of the Rules promulgated thereunder, as well as to rely on case law. In short, the Securities and Futures Commission will have to establish a fiduciary duty owed by the alleged insider dealer to the company whose shares were traded, or the people who had traded the shares with the alleged insider dealer. Indeed, in relation to the latter, the principle relied upon by the courts of the United States that somehow these people had been defrauded by the alleged insider dealer borders on a legal fiction. Sir, I have no desire to engage the Financial Secretary in an esoteric debate on the laws of the United States, but the point is that our laws are different. For in our definition of insider dealing in section 141B of the Securities Ordinance, Cap. 333, there is no reference to any fiduciary duty or any other duty imposed by trust at all and it therefore follows that it is not necessary to allege or establish

such fiduciary duty under our laws.

It is therefore clear that the first reason set out in the paper has no relevance to Hong Kong.

As to (b), again the position in the United States is totally different from ours, because in Hong Kong, the Hang Seng Index is only based on the prices of the shares of 30 companies. And experience has shown that any sensitive information pertaining to anyone of these 30 companies, particularly in the light of a rising or falling market, will most certainly cause the Hang Seng index to rise or fall even further.

If, therefore, there is no power for the Securities and Futures Commission to investigate into suspected insider dealing in futures contracts, a person possessed of sensitive information concerning the shares of one of the said 30 companies will simply buy futures contracts if he has good news, with a view to selling them after the Hang Seng Index has risen when the news has become public; and vice versa in relation to bad news. And so long as such a person does not buy or sell the shares of the company in question, he has nothing to fear.

Sir, there is simply no comparison between our small market in Hong Kong and the much larger markets in the United States where the news of a single company, no matter how large, simply does not bring the whole market up or down with it.

For these reasons, the second reason set out in the paper is not applicable to Hong Kong. Of course, I realize that there may be some problems in extending the powers of the commission. But these problems can be solved given the necessary resolve. And I regret to say that such resolve seems to be lacking.

Sir, it is no answer to say that even the United States do not have it, as was said to the ad hoc group. For we should be proud to take the lead, if necessary, in the fight against insider dealing, and should not wait cowardly for some other countries to take the lead, particularly when our need is much more pressing than that.

Sir, I have deliberated long and hard whether I should push the Administration into action by going ahead with the motion to amend or use gentle persuasive argument. I chose the latter because I believe it will be more effective. Sir, there is a Cantonese saying: " ", which I would translate as "you can't force a good civil servant to do anything against his will".

I hope that the Administration will realize that if we are to live up to our reputation of being an international finance centre, we must not allow a carriage and six to be driven through our law relating to insider dealing.

With these reservations, Sir, I support the Bill.

MR. DAVID LI: Sir, the legislation before us today is important to Hong Kong's future in two ways. In one way, it is an attempt to put right weaknesses in the supervision of our financial markets -- weaknesses which contributed directly and significantly to the disaster of October 1987.

In another, perhaps even more important way, this legislation shows what co-operation can achieve. The initial draft of this Bill generated considerable criticism not just because of specific measures, which many found draconian, but also because of its tone and its presentation. It almost seemed as if the Government wished to throw out the very principles of laissez faire and transform Hong Kong into a highly regulated, interventionist economy.

In the last few weeks such fears have receded. The Government and the Legislative Council ad hoc group set up to study the Bill have worked closely together scrutinizing and amending this Bill. The financial industry has stated its views frankly and in constructive detail.

As a result, the Bill before us today is a "different animal" from that of only a few weeks ago. The change is partly a matter of detail, partly of tone, partly of understanding. It is not perfect. There are still problem areas and once it comes into force other discrepancies will doubtlessly become apparent.

It is, therefore, important that in enacting this legislation, this Council makes clear to the Government and to the new Securities and Futures Commission the need for flexibility -- without such flexibility even Hong Kong's future as a financial centre may be in doubt. Hong Kong needs a watchdog for these vital financial markets, not a bull in a china shop.

The ad hoc group has tried to ensure that there are adequate checks and balances in this Bill. But it is only possible to hedge the power of a supervisory body so

much without affecting its ability to act effectively when it does, in fact, need to act. A great deal will depend on the quality and the judgement of the commission and its staff.

To the commission I would say, act the martinet, and our markets are doomed. Play the fool, and October 1987 may soon repeat itself. There has to be a middle ground between Mickey Mouse and the Prussian Guard -- and you have to find it. You must learn to be lenient when it is right to be lenient, strict when it is time to be strict. Above all, you must be responsive to the needs of the industry and the public.

The commission must remember, too, that Hong Kong wants and needs self-regulation to be the primary and principal method of regulation. This was the conclusion of the Hay Davison Report and it was the right conclusion.

Everyone must also keep in mind what actually brought about the disaster of October 1987. It was not the collapse of share prices. It was not the potential bankruptcy of share brokers. It was not malfeasance in the administration of the stock exchange. It was not even the many problems at the futures exchange -- a body created by the Government and tightly regulated by the Government.

No, what caused the catastrophe was the ignorance of key personnel in the Government about how these markets worked. When senior members of the Government needed advice, none was forthcoming. Therefore, another of the responsibilities of the new commission must be to keep the Government informed and in check. Such a blunder should never be permitted to happen again.

Given the large budget of the new commission this may seem a heavy price to pay to educate a comparatively small number of officials. But anyone who went abroad after October 1987, and spoke frankly with knowledgeable members of the international financial community will know that the acquiescence of the Government at the closure of what was thought to be a free market raised almost as many questions about Hong Kong's financial future as concern about 1997.

There is a popular belief in some parts of the Government that stability is the key to Hong Kong's continued economic success, and that order and structure are vital if financial markets are to grow. This is not quite accurate. As any businessman, broker or investor will point out, you need a measure of changeableness of

"instability" as it were -- to make money. The market moves -- you buy low and you sell high or at least you try. What is essential to Hong Kong's economic success and the growth of its financial markets, however, is credibility. People must believe Hong Kong is a place where we can and should try to make money.

Since the great post closure sell-off of 1987, foreign interest in our securities markets has revived. That is a good sign. It reflects international confidence in the strength of the Hong Kong economy and Hong Kong companies. No one here in this Chamber, however, should conclude that either the legislation debated today or the reforms that have already occurred at the stock exchange have had any meaningful impact on the investment decisions of the international financial community. The Securities and Futures Commission, in fact, is not likely ever to affect significantly Hong Kong's reputation as a financial market, unless the commission makes a mistake.

It is important, therefore, to make sure that the commission does not make a mistake. In implementing this legislation the Government has a particularly important responsibility. It must appoint as non-executive directors individuals who not only have the necessary expertise and personal integrity, but who are also not afraid to disagree with the Government itself, when they believe the Government is wrong.

Equally important, the non-executive directors must be -- and must be seen to be -- totally independent of any special point of view. The commission is not a private club -- Hong Kong had enough of that with the old stock exchange administration. Sir, conflict of interest must be assiduously avoided. Ultimately, the non-executive directors simply will not have the credibility they need to function effectively -- credibility with the public, the industry, the Government and officials in the commission -- if they are perceived to be representing any particular group or vested interest.

If the Government fails in meeting these requirements Sir, the chances of the Securities and Futures Commission succeeding in its task, over the long term, are significantly diminished.

This commission will have a large budget. Bureaucrats, especially conscientious bureaucrats, often feel the need to justify their budgets by proving their effectiveness. This is another reason why it is imperative to have intelligent, independently-minded

non-executive directors. Their's will be the task of reining in bureaucratic zeal and empire-building.

One point about this Bill needs to be made insofar as banks in Hong Kong are concerned. The ad hoc group has noted the submission from the Hong Kong Association of Banks concerning the implications of clause 28(4) and clause 31(12) in the context of the normal banking practice of informing customers of any official enquiry received in relation to their accounts. The group has been assured by the Administration that there is nothing in the Bill which interferes with banks' obligations to customers in this respect.

I would also like to make a point about the budget of the Securities and Futures Commission. The commission ought to submit to the same financial accountability as the Government itself. Although the Administration has not seen fit to make a provision in the Bill for the submission to the Finance Committee of the annual estimates of income and expenditure of the commission before they are presented to the Governor for final approval, they have agreed that such administrative arrangements will be made.

The commission's annual report will be tabled in this Council and should then be debated thoroughly. Having helped create this legislation, this Council has a responsibility to see to it that the letter and the spirit of the law are being carried out. We have a duty to help ensure that Hong Kong remains internationally competitive as a financial centre.

Sir, with these remarks, I support the motion.

MR. NGAI SHIT-KIT (in Cantonese): Sir, as highlighted earlier by my colleagues, this Bill is the first piece of legislation for bilingual enactment in Hong Kong. The formulation of its Chinese text as well as the legal terms adopted will serve as important references for other Bills to be enacted in Chinese. Members of the Chinese text Sub-Committee set up under the Legislative Council ad hoc group to study the Securities and Futures Commission Bill 1989 therefore carefully scrutinized the Chinese text of the Bill in a bid to avoid unnecessary misunderstanding in case of disputes over the meaning of the Chinese text of the Bill. I think this is a very important aspect in examining the Bill and am glad that I have the opportunity to take part in this work.

Sir, when formulating the Chinese text of a Bill for enactment, we have to pay attention to several points. First of all, the text should not be in colloquial Chinese. Nor should it be formulated in a linguistically awkward and fragmented manner and loaded with packs of words that carry double meanings. Several sections of the Chinese text of the Bill have been identified with these problems which may give rise to unnecessary disputes. Apart from an appropriate choice of words, we should also adopt a consistent style so that the spirit of the Bill may be fluently expressed and easily understood. And, of course, it is important that the language used must be capable of adequately reflecting the dignity and solemnness of the law.

Sir, I would like to take this opportunity to congratulate all those who have been involved in the drafting of the Chinese text of the Bill on their successful accomplishment of this historic task. The points that I have just mentioned are only some minor flaws. They will not affect or reduce the importance of this achievement.

Sir, with these remarks, I support the motion.

MR. BARROW: Sir, the maintenance of Hong Kong as a successful international financial centre is one of the key objectives on which the Administration and the private sector must work closely together. We must therefore welcome the setting up of the commission which can play a useful role in achieving this objective.

In ensuring that Hong Kong has a regulatory body with sufficient resources to maintain an adequate level of investor protection, we should, as the Financial Secretary said in January, strenuously avoid over-regulation which could stifle our markets.

Hong Kong did not grow into an important financial centre because it had the most comprehensive regulatory system. It grew because there were no significant rules inhibiting business. Whilst the events of October 1987 demonstrated certain inadequacies existed and you, Sir, took firm and decisive action in setting up the Securities Review Committee, there is a fine balance to be drawn and overreaction must be avoided.

I believe that as all sectors work together in ensuring the key objective is achieved, we must remember that the main thrust of the Hay Davison Report was supervised self-regulation. Care must be taken to ensure that we do not see

interventionism in all areas of securities dealings which could affect and could destroy the factors which give Hong Kong its special niche. We need clean markets honestly regulated by those involved in them. The role of the Securities Commission should be to monitor the exchanges, not to do their work for them. Insensitive or heavy-handed over-regulation must be avoided.

Healthy market have got to grow and we will need to keep an eye on other markets in the region to ensure that we do not get too far out of line in our regulatory practices.

Much progress has been made since the first draft Bill was discussed with interested parties in the Autumn of last year. At that time, it appeared that there was a huge gulf between the views of the Administration and the provisional commission on one hand and the financial community on the other. I believe, however, that following the very detailed review of the Bill over the past three months, the most important amendments before us today are those which introduce the checks and balances that are so essential if we are to keep the right balance between over-regulation and poorly controlled markets. The spirit of compromise which has existed between the ad hoc group, the Administration and the provisional commission has enabled us to come to this stage with the minimum possible delay. Perhaps I could take this opportunity to thank the Honourable Stephen CHEONG for his fine leadership as convenor of our ad hoc group.

Whilst the work over the past three months has primarily been concentrated on getting the Bill itself into the right shape, I believe it is essential that the wider issues remain clearly identified. At the end of the day, Sir, it is not going to be the nitty gritty contents of the Bill that are going to make or break Hong Kong as a financial centre. What is going to be important is the reality of the working relationship between the commission and the markets. How is it actually going to work in practice? One suggestion I would like to make is that the commission should, through the media, articulate their role as clearly as possible and describe how they see themselves relating to the exchanges. A well-presented public position by the commission would help gain the support of all concerned and ensure that they can move forward in a spirit of harmony.

It will be essential that an excellent working relationship develops between the

exchanges and the commission and that they iron out as quickly as possible any areas of possible duplication. For example, probably first and foremost will be the question of overseeing listing arrangements which should as quickly as possible be put in the hands of the stock exchange. I welcome the proposal that the Administration should review overall progress with a six-monthly audit.

I believe we must acknowledge that the stock exchange has made remarkable progress in the past 18 months. They have an entirely new management structure and first line responsibility should remain with them. We must ensure that the commission and the exchange are not tripping over each other on each and every issue and that, in a desire to be seen to be doing their job, they do not raise nit picking points with the financial community at every step. In conclusion, Sir, we must remember that the primary economic purpose of the stock market is to raise capital and we must ensure that compliance complexities do not discourage local entities, particularly smaller companies, from making use of the market. It is right that the Security and Futures Commission should be given the relatively strong powers allowed for in the Bill but in practice it must remain a lean and tightly managed organization.

I believe, Sir, if these points are borne in mind over the coming years Hong Kong can be well on the way to achieving its aim of being a pre-eminent capital market, alongside the major markets of the world.

With these words, Sir, I support the motion.

MR. PAUL CHENG: Sir, having participated as a member of the ad hoc group and whilst I fully agree that there is a need to establish a Securities and Futures Commission with the necessary powers to perform a watchdog function over the exchanges, I still have serious reservations concerning the overly elaborate proposed organizational structure and substantial budgetary provision being allotted to this body.

Although the ad hoc group has recommended amendments to ensure adequate check and balance relative to the powers of the commission, I still feel that there are far too many layers in the structure and the span of reporting scope far too narrow.

This unnecessarily top heavy and high head count structure can only lead to over-regulation because some of the staff will need to justify their existence.

For example, the commission chairman's office is slated to have a staff of eight people. I am not aware of any other chairman in Hong Kong's private sector with so many immediate assistants. I believe even Your Excellency does not have so many people in your immediate office. The Personnel and Administration Department is budgeted to have 25 people. Is there a real need to have so many staff for this function to support an organization of 229 people? These are just two examples. The other departments are also open to challenge and can easily be trimmed down without losing the commission's overall effectiveness.

If it is true that the Administration and the Securities and Futures Commission intend to encourage and promote self regulation then I see little justification in having such an elaborate organization, especially since the two exchanges themselves have recently been overhauled.

I have also noted that the top five executive directors are all expatriates recruited from abroad, some with no prior experience in Hong Kong. Is this designed deliberately to regain international confidence or is there really a total lack of qualified local talent, or maybe the exchanges have already recruited all the local talents? Despite the "brain drain", I cannot believe that we cannot at least fill one or two of these positions with Hong Kong executives. After all, Hong Kong is supposedly one of the leading financial centres in the world with qualified local executives in both the private financial and public sectors.

I would, therefore, urge the Administration to closely monitor the organizational build-up of the commission and encourage the commission to strive towards assembling a more balanced management team as soon as possible.

With these reservations, I support the motion.

MRS. LAU (in Cantonese) : Sir, in section I of Annex I to the Sino-British Joint Declaration 1984, it was clearly stipulated that "in addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region." Subsequent to the promulgation of the Sino-British Joint Declaration, we are all aware that bilingual legislation will be a natural development. However, what a formidable task it is in enacting the law in Chinese. Perhaps, it had never occurred to both the British and Chinese sides how difficult the job would be at the time when the Joint Declaration was signed. Yet fortunately, the Hong Kong

people are always prepared to accept challenge and face difficulties courageously.

In my view, the difficulties of enacting the law in Chinese lie mainly in the fact that both the English and Chinese texts are to enjoy equal legal status after their enactment. Hence, both texts should be identical in meaning, terms and format as far as possible. None the less, things are often easier said than done. The laws of Hong Kong mainly originated from those of the United Kingdom and have been enacted in English all along. The English laws are founded on the concepts of common law, and so are the laws of Hong Kong. In the process of formulating the Chinese text of local laws, references have to be made to the laws of the People's Republic of China and of Taiwan because to our knowledge, they are the only places where laws are drafted in Chinese. Though Mainland China and Taiwan enacted their laws in Chinese, their legal systems are not based on common law but on those of the continental legal system. There are marked differences in basic principles between the practices of the common law jurisdictions adopted by Hong Kong and those practised under the continental legal system. Therefore in drafting laws in Chinese in Hong Kong, there are few legal terms that we can adopt from those used in Mainland China and Taiwan. On top of this, the law draftsmen received law drafting training in English. It is not surprising that they are confronted with certain problems in the course of drafting the Chinese text. Moreover, we should not rely heavily on the law translation officers; after all, they are not trained in law drafting.

Though beset with difficulties, the first piece of bilingual legislation, that is, the Securities and Futures Commission Bill 1989 (hereinafter referred to as the new SFC Bill) will soon come into being. I am glad that I have the opportunity to take part in studying and scrutinizing this historic Bill which would have direct implications on the vested interests of thousands of investors. As a matter of fact, it has been a very challenging job.

In the course of scrutiny, the Chinese Text Sub-Committee set up under the Legislative Council Ad Hoc Group had made references to the Discussion Paper on the Laws in Chinese prepared by the Legal Department and to the Chinese translation of the Interpretation and General Clauses Ordinance (Cap. 1, Laws of Hong Kong). In addition, several meetings were held with the officer in charge of law drafting in Chinese to discuss ways to improve the Chinese text of the new SFC Bill. The sub-committee concerned itself with the following four principles in its study of the Chinese text:

(1) that no discrepancies in meaning should be allowed between the English and Chinese texts;

(2) that the legal terms and other terminologies in the Bill had to be easily understood by ordinary people and at the same time, adhering to the spirit of the legislation;

(3) that fluent and good Chinese should be used to reflect adequately the meaning of the English text and that word-for-word translation from the English text that results in an anglicized version of the Chinese text should be avoided; and

(4) that though it was necessary that the literary style and the diction in the Chinese text should be simple and clear and be easily understood, it should, as far as possible, follow a more refined and dignified style of the vernacular style and uncultured colloquialism should be avoided. With reference to these principles, I am going to quote a few examples of problems faced by the sub-committee in the scrutiny of the Chinese text.

First of all, on the semantic aspect, the sub-committee found that some of the terms adopted in the Chinese text failed to express the full meaning of the English text. For example:

(I) In Clause 4(1)(k), the English version reads "to perform any other functions conferred by or under any other Ordinance." In the Chinese version, it was translated as "執行憑藉或根據其他條例所委以的其他職能". The sub-committee considered that the term "憑藉" cannot correctly reflect the meaning of "conferred by". Thus it was proposed to amend this clause to read "執行其他條例所授予或根據其他條例授予的其他職能".

(II) The English text of the first part of Clause 20(5)(b) reads "The tribunal hearing the appeal may -- (i) receive such evidence as it considers relevant, whether it would be admissible in a court or not." The Chinese text rendered this clause as "聆訊上訴的審裁小組可收取它認為有關的證據(1)不論這些證據可否被法庭接納;". The Chinese Text Sub-committee considered that the term "收取" could not adequately reflect the meaning of "receive" in the English text, which carried the meaning of court hearing and receiving evidence. The term of "admissible" means "can be submitted to a court

and to be considered in the court." It seemed to be inappropriate to translate it as "接納". Thus, the Chinese Text Sub-committee proposed to replace the term "收取" by "聽取" and substitute the term "接納" by "接受".

(III) Clause 28(3) mentions about "access to such records or other documents". It was translated as "接觸紀錄或其他文件" in the Chinese text. Actually, the word "access" does not only mean "getting in touch with" but also has the meaning of "reading". The sub-committee therefore proposed to substitute the term "接觸" by "省閱", so as to bring the meaning of the Chinese and English texts closer together.

Furthermore, on the choice of words and technical terminology, the Chinese Text Sub-committee came across several terms which warranted deeper thoughts, for instance, the word "incapacity" was rendered as "無行為能力" in the Chinese text of the Bill. It was considered that such term could hardly be understood or accepted by ordinary people. The officer in charge of law drafting in Chinese explained to the sub-committee that the term "無行為能力" had been adopted in Mainland China and Taiwan to refer to the meaning of "incapacity". Nevertheless, the term "無行為能力" has a wider meaning. It refers to inability or ineligibility to start with as well as subsequent loss of ability or ineligibility.

Actually, the term "incapacity" within the context of the new SFC Bill refers to the latter which means "subsequent loss of ability or ineligibility". Basically, it is unnecessary to incorporate the meaning of "probably not having eligibility to start with".

Therefore, the Chinese Text Sub-committee considered that it would not be necessary to follow strictly the legal terms adopted by the People's Republic of China or Taiwan, hence it was proposed to use the amended version "喪失履行職務能力" which would be more in line with the meaning of "incapacity" in the English text.

Another example is "oath or affirmation." In the Chinese translation of the Interpretation and General Clauses Ordinance (Cap. 1, Laws of Hong Kong), "oath and affidavit" are rendered as "誓言", "誓章". These Chinese terms are interpreted as "對法例准許或規定以確認代替宣誓的人來說(1)包括確認". The term "oath" in the Chinese text of this Bill is also rendered as "宣誓" and the term "affirmation" as "確認". In fact, "oath or affirmation" as used in this Bill refers to oaths taken in a religious or in a non-religious manner. The Chinese Text

Sub-committee was satisfied that the term "宣誓" had both meanings. "確認" was therefore considered to be superfluous. The sub-committee thus proposed to have "確認" deleted.

On the use of newly created terms, the most notable example is the use of "信納" to render the meaning of "satisfied" in English. The sub-committee at first did not want to adopt this term for fear that too many newly created terms might make the Bill too difficult to comprehend. Terms like "滿意", "確信" were considered as possible substitutes. Nevertheless, they failed to convey the real meaning of "satisfied". In the end, the newly created term "信納" has been accepted.

Another interesting example is the term "權力體". It is a newly created term to render the meaning of "authority" in English. The Chinese Text Sub-committee found that the term "權力體" was not only unfamiliar but also difficult to be comprehended or to be accepted. Furthermore, it seemed to highlight "power" or "influence" and could not be aptly applied to the kind of organization which the term "authority" in English implied. The sub-committee therefore proposed to use "主管當局" instead.

According to the officer responsible for law drafting in Chinese, the Legal Department would, in the near future, compile a glossary on all the terms used in the Chinese legislation which would include common legal terms and newly created terms or expressions. Hence, it is hoped that the people of Hong Kong would not have too much difficulties in grasping the meaning of these newly created terms or expressions.

Thirdly, on the grammatical aspect, the Chinese Text Sub-Committee made detailed study on the use of Chinese in the Bill. Here are some of the examples.

The Chinese text of Clause 29(3) of the Bill reads, "凡根據第**カ**款作出要求(1)任何人有以下作為或不作為(1)即屬犯罪(4)ウ無合理解釋而未有向監察委員會披露根據第**カ**款的要求而須要披露並由他管有或控制的資料⑧或ウ看來是履行該項要求時(1)明知而向監察委員會提供在要項上失實或誤導的資料;" . The text would give rise to several problems. Firstly, it was not clear as to who made the requirement under subsection (1). Secondly, the

sub-committee was of the opinion that the phrase "作為與不作為" was a heavily anglicized expression making both the meaning too difficult to be comprehended and the expression too ridiculous to be accepted. Furthermore, to list the offences after "即屬犯罪" (commits an offence) was not compatible to the usage of Chinese both grammatically and semantically. After careful deliberation, the sub-committee suggested that this clause should be amended as follows: "凡監察委員會根據第(1)款作出要求(1)任何人(1)無合理解釋而未有向監察委員會披露根據第(1)款的要求而須要披露的(1)並且是他持有或控制的資料(1)看來是履行該項要求時(1)向監察委員會提供他知道在要項上失實或誤導的資料(1)..... (1)即屬犯法(1)". I believe all will agree that the amended version is better.

Another example is the explanation of the term "紀錄或其他文件" given in paragraph (b) of clause 2. The Chinese text reads: "文件(1)磁碟(1)錄音帶(1)聲帶或其他裝置(1)而它們是可能將聲音或其他數據(1)並非視覺影像的數據(1)收錄其中以便(1)藉(1)或不用藉(1)其他設備的幫助(1)將聲音或其他數據重播的(1)以及任何影片(1)包括微型影片(1)錄影帶或其他裝置(1)而它們是可能將視覺影像收錄其中以便(1)藉(1)或不用藉(1)其他設備的幫助(1)將視覺影像重播的;"

The Chinese Text Sub-committee was of the opinion that such an explanation seemed to be a direct translation from English and was not proper in terms of sentence structure because brackets should be used sparingly unless when necessary. The sub-committee therefore proposed that the said paragraph should be substituted by the following:- "文件(1)紀錄碟(1)紀錄帶(1)聲軌或其他器材(1)而它們是載有聲音或其他非視覺影像的數據(1)以便不論是否藉(1)其他設備的幫助能夠重播的(1)以及任何影片(1)包括微縮影片(1)錄影帶或其他器材(1)而它們是載有視覺影像以便不論是否藉(1)其他設備的幫助能夠重播的;"

Concerning the last principle, the Chinese Text Sub-committee has put forth many suggestions on literary style and diction of the Chinese text of the Bill. It was suggested that simple and dignified words should be used. Thus "那人" was amended to read "該人", "那些" as "該等", "個人" as "個別人士". Faulty wording was rectified as far as possible.

Generally speaking, the amendments proposed after detailed study and careful deliberation have made improvements on various aspects of the Chinese text of the Bill. The Chinese text of the new Securities and Futures Commission Bill, though it may not be perfect yet, is now acceptable in terms of diction, grammar and legal principles.

With these remarks, Sir, I support the motion.

(2)

MR. MCGREGOR: Sir, since most Scotsmen do not waste words or anything else I will try to be brief. I wish to pay tribute to the excellent leadership and dedication of my honourable colleagues Mr. Stephen CHEONG and Mr. Ronald ARCULLI for the many hours of patient organization and discussion which, as convenor and deputy convenor, they have co-ordinated over weeks of intensive work on one of the most complicated and important sets of legislation ever to be considered in this Chamber.

At the end of nearly one hundred hours of discussions, I personally felt like Marathon man.

My fellow ad hoc group members obviously feel as I do that the Bill could not have been taken forward so effectively without the total commitment of the convenor and deputy convenor. I must also add my voice to those who have remarked upon the high level of efficiency shown by the OMELCO Secretariat. As always, it has been of the highest order.

I compliment and thank the organizations which submitted their views to this Council and whose representatives took part in many hours of detailed discussion. Let me also thank the government and commission officials, effectively led by Mr. David NENDICK, who with great goodwill, helped us in our task of understanding, modifying and approving legislation which will enhance our status as one of the leading financial centres in the world.

We must not however forget the trauma and scandal that brought about the need for this important legislation with its new and greatly improved system of supervision of our financial markets. The instrument and organizations are now being provided. It will be up to the commission and the exchanges to make sure that they work together effectively in the long-term interest of Hong Kong. I have no doubt that the

commission will do a very good job.

Sir, with these remarks, I support the motion.

MR. PETER WONG: Sir, I rise to support the Second Reading of the Securities and Futures Commission Bill 1989. Here I must declare my interest as a member of the soon to be defunct Securities Commission as well as being director or auditor of various brokerage houses. I became a member of the commission in 1986, and by the time I found my feet in its workings, we were in the thick of the October 1987 crash.

The members of the Securities Commission and the Commodities Trading Commission fully supported the Hay Davison Committee in its enquiries into the reasons why the Hong Kong markets went wrong as did the staff of the Office of the Commissioner. Like others who contributed their opinions to the enquiry, we found many of our suggestions were taken up in the report.

I was appalled as a member of the Securities Commission as well as a member of the Hong Kong Society of Accountants Working Party looking into the initial draft of the Bill in the middle of 1988. The Hay Davison Report was used to produce an absolute travesty of a Bill which would have given the commissioner carte blanche to rule over the industry and have seriously compromised individual freedom. In retrospect I am surprised that the Legal Department could be the author of such a document.

Much of the initial sympathy and goodwill for reform that the securities industry and the professionals involved had had were lost. We had to resort to attack tactics to remove the worst of the excesses. By the time we got to discussing the size of the commission and its funding, we did so with antagonism and disbelief. Phrases such as empire-building and unnecessary duplication of functions were commonly used.

The stock exchange was not totally blameless in all this. Although it had a thorough overhaul in its constitution and a new slate of directors were voted in, it expected to be accepted as whiter than white overnight. When I was presented with the initial figures by the stock exchange on its accounts and budgets to substantiate the continuation or otherwise of the transaction levy in December 1988, I saw very little change in its methods from the "bad old days". The budget seemed only intent on spending all of the income.

Both sides had somehow managed to badly represent their own cases. There had been a virtual lack of communication and both were firing off salvos through the press on the other sides' inadequacies. I was privileged to be present at a meeting when Mr. DAVISON reviewed the result of his report and earnestly urged the two sides to sit down and talk the problems through.

I am pleased to say that reason prevailed and resulted in a resolution of the funding problem which proved to be the gordian knot. Everything flowed smoothly thereafter when communications were re-established. The rationales were then explained fully and I believe that we now have a workable solution for the markets. I think the ad hoc group has done more than its fair share of work to strike a balance between the needs of the new commission to effectively watch over the securities industry and intervene when it is absolutely necessary for which purpose it must have the requisite powers, and the legitimate rights of the market participants to carry on their activities free from over-regulation.

Time has not been on our side. The Bill was introduced in early January and we were asked to have it through by first of May, Chinese New Year and Easter intervening. It is also the first truly bilingual Bill. We are now in the age of the facsimile machines requiring instant response by return and I have made the point to the commissioner that this Bill has been done at warp speed and we really need time to reflect on this awful subject. How often have we slept on a matter and in the cold light of morning, have made changes to the solution proffered the night before. Changes that made a lot of sense.

I had originally asked that the Second and Third Readings should be deferred until the last possible moment, that is, 26 April, so that we have the necessary time to reflect on this Bill which has been so thoroughly amended. I also would like the industry and the professionals to see that we have indeed arrived at a workable solution and that we have not made some ghastly error or left something vital out.

I have just returned this morning from overseas so I am not aware of what the reaction has been and realize that we will not have the luxury of a second look the morning after. I would ask that we should and must heed any warnings expressed by interested parties and be ready to take prompt action if we have indeed left anything undone. Damage caused in an instant of unwatchfulness can take many years to undo.

Sir, with these words I give my full support to this Bill.

FINANCIAL SECRETARY: Sir, I am grateful to Mr. Stephen CHEONG and those Members of this Council who have spoken in support of this Bill.

After I introduced the Securities and Futures Commission Bill to this Council on 18 January, an ad hoc group under the chairmanship of Mr. Stephen CHEONG was established to study the Bill. As Mr. CHEONG said, an enormous amount of effort has gone into this task, not least because this is the first Bill to be introduced into this Council in bilingual form, and I would like to express my appreciation for all Mr. CHEONG, Mr. Ronald ARCULLI, the deputy convenor, and members of the ad hoc group have done. I might also add that the Bill was not easy to draft. I am deeply grateful to the Law Draftsman who often had to work under great pressure for all his hard work and dedication.

Sir, after receiving representations from a number of interested bodies, the group made many useful, and may I say, knowledgeable contributions. At the Committee stage a large number of amendments will be moved both by members of the ad hoc group and myself. I shall, as far as possible, attempt to be brief when moving amendments during the Committee stage, highlighting only the essential points and major amendments of special interest to the industry or this Council.

Mr. Peter WONG in his speech has just spoken of the background to this Bill and the working paper that was issued in the middle of last year. I have to emphasize that this working paper was produced at great speed and under great pressure. Mr. WONG may not fully recall the difficult, indeed, the emotional atmosphere that prevailed at the time. I would stress that the document was produced for the purposes of generating confidential discussions with interested parties. In no way was it intended as the Administration's last word on the subject. Although the document perhaps looked like a draft Bill, it was not one and we did, as we promised, take careful account of the views of those who were consulted in preparing the Bill that was eventually taken to the Executive Council and introduced into this Council in January.

Sir, I note that Mr. David LI has attributed all our problems in October 1987 to shortcomings in the public sector. The Securities Review Committee Report did not, and was not intended to apportion blame. But it is clear from that report that

the problems were far more complex than Mr. LI has suggested, not least because we were all caught up in an international crisis outside the experience of any of our life times. Having regard to the sometimes difficult and controversial climate preceding today's debate, the ad hoc group has produced remarkable results, and through its dedication and hard work, I believe that the Bill is now in a shape that will meet the requirements of all sectors of this community.

Over the last few months much has been said about the need for sufficient checks and balances to guard against any possible abuse of powers by the Securities and Futures Commission. Members have mentioned this important matter during the course of this debate. I believe the Bill in its present form does, indeed, contain within it sufficient checks and balances, but without eroding the authority and autonomy of the commission.

One example of balance is to be found in the provisions in relation to the constitution of the Securities and Futures Commission and its advisory committee. An amendment will be introduced to the effect that the chairman of a commission meeting will not be able to exercise his casting vote without prior consultation with the Financial Secretary. This amendment will, I hope, ensure that some of the wider policy implications will not be lost sight of in the event of a finely balanced division of opinion on the commission. Furthermore, the membership of the advisory committee is to be increased to enable a broader and fuller representation, particularly of those in the market place itself.

Concern has also been expressed by some regarding possible excessive delegation of powers by the commission. To meet the operational needs of the commission, it is necessary for its powers to be delegated to its staff and committees. During the course of discussion, agreement was reached on the need for safeguards against excessive delegation of powers. We have identified those powers which should not be delegated and propose to incorporate those powers into Schedule I of the Bill. Any changes to this particular list of powers should not be made without a resolution of this Council. In response to concern expressed by the ad hoc group, we will ensure that all powers will be exercised with great care and without excessive and unnecessary delegation. The commission will also have to establish its own procedures governing detailed arrangements for delegation, and these will be promulgated.

Lastly, Sir, in relation to checks and balances, there is the power of the Governor

to give directions. We had some debate about the practicality of limiting this power to policy matters and it has been agreed that the power should be general. I would emphasize, however, that the power to give directions will be exercised sparingly. This power should be regarded as a safeguard, and not as a normal operational requirement.

The provisions in relation to appeals against decisions made by the commission have been carefully examined. As suggested by various professional bodies and market operators an amendment will be moved to entitle parties to an appeal to a tribunal of appeal to all normal legal privileges and immunities. It will also be provided that appeals should be heard and determined as soon as reasonably practicable. This is of particular importance in relation to appeals against the exercise of powers of intervention.

In response to comments made by the Bar Association, the ad hoc group has proposed amendments to provide for an opinion to be sought from the Court of Appeal on a point of law subject to leave being given by a tribunal of appeal. We agree that this mechanism, together with judicial review, will provide sufficient channels for registered persons to pursue appeals against decisions by the commission.

The ad hoc group recommended certain further safeguards in the context of restriction notices and suspension notices issued to the exchanges and clearing houses by the commission. We agreed that, apart from the requirement for prior consultation with the Financial Secretary, decisions of the commission regarding changes in memoranda and articles of association or closure of exchanges or clearing houses should be capable of appeal to the Governor in Council. In view of the potential political sensitivity of such decisions, we consider that a separate channel of appeal is appropriate.

I have outlined some of the major amendments which will add to the list of safeguards built into this legislation. I must emphasize that whilst it is intended that the commission should have a high degree of autonomy in its day-to-day operations, any major changes to and developments in policy will still be subject to normal consultation with the industry and the Administration, and where necessary, the approval of the Governor in Council will be sought. Thus, I have no doubt that there is adequate public accountability on the part of the commission.

As to the functions of the commission, I am mindful of the need for the development and promotion of self-regulation in the markets. I touched upon this matter when

I introduced this Bill. Accordingly, I shall move an amendment that the commission should, as one of its statutory functions, be responsible for promoting and developing self-regulation by market bodies in the securities and futures industries.

Sir, a matter which has received much attention, particularly in the press, is the subject of the financing of the commission. I shall not go into all the history this afternoon. There is an existing levy on stock exchange transaction which finances operations of the stock exchange. Mr. WONG mentioned this. This levy was approved by the present Securities Commission in 1986 in the special circumstances at that time. The Securities Commission recommended in January of this year that this levy should be abolished, although the manner and timing of the implementation of this recommendation should be left to the Administration. This recommendation was accepted. After some discussions between the chairman of the Hong Kong Stock Exchange Council and myself, we reached an agreement that a new transaction levy equivalent to the current amount collected by the stock exchange should initially be shared equally between the exchange and the new commission. This arrangement subsequently received the endorsement of the Governor in Council.

The amendment that I shall be moving at Committee stage provides for the apportionment of the levy between the stock exchange and the commission and that this apportionment is to be specified by order of the Governor in Council from time to time. What we are doing follows the principle recommended by the Securities Review Committee to the effect that the commission should be financed largely by the market, but partly by the Government. The important point I wish to make is that there will be no increase in intermediation costs borne by investors. This has been a matter of concern to many market players, and also the Government. I can confirm, as Mr. Stephen CHEONG has asked, that there will be regular and indeed prompt reviews of the two portions of the levy to see if any revisions are appropriate in the light of market developments.

Much has also been said about over-regulation and duplication of effort. Mr. Martin BARROW has touched upon this in his speech. Let me repeat what I said when I introduced this Bill into this Council : "In putting together this Bill, we have been acutely conscious of the need to avoid over-regulation, which would stifle the vigour and innovation of our markets. At the same time, we must establish a regulatory body with sufficient authority and resources to maintain a level of investor protection which is broadly comparable to that in other international financial centres."

Sir, as far as duplication of effort is concerned, the areas where duplication could take place are quite limited. They are principally listing procedures and market surveillance. In the area of listing, we intend to follow the recommendations of the Securities Review Committee to reduce or eliminate in due course the duplication which at present exists. I have noted Mr. Stephen CHEONG's remarks about six-monthly audits on the Listing Division of the stock exchange. He may rest assured that the commission will pay careful attention to this matter along the lines he has mentioned. In market surveillance, we consider it necessary for both the stock exchange and the commission to maintain expanded capabilities, as is the practice in other markets. I do not believe there is any disagreement on this point. The commission and the stock exchange have common interests in all these areas and I can assure Members that the commission and the stock exchange will work together to ensure that their collective resources are used in the most efficient way, and that there is no unnecessary duplication.

Following the suggestion of the ad hoc group, we have agreed that the commission's annual budget will be submitted to the Finance Committee for information in January or February before it is submitted to the Governor for formal approval. This will enable the Finance Committee to have a better understanding of the commission's activities before it appropriates the annual government contribution to the commission. Furthermore, the approved estimates of the Securities and Futures Commission will now be tabled for information of this Council, and an amendment to provide for this new arrangement will be moved in Committee stage. This is all in addition to the commission tabling its annual report and audited accounts before this Council. Taken together, Sir, I believe that these arrangements will again provide ample accountability. Sir, I note Mr. Paul CHENG's concerns about the budget and the organizational structure of the commission. I certainly shall draw his remarks to the attention of the chairman-designate of the commission. But in assessing the adequacy of the manning structure of the proposed regulatory framework it must be remembered that the commission is a new body. It is the intention of the chairman-designate, and indeed myself, to monitor continuously developments in this area to ensure that we achieve the right structure for the future. Let me emphasize again that we are breaking new ground.

This Bill represents only the first phase of a continuous process of reform of securities and futures legislation. The Bill cannot be described as providing a complete solution. Together with the ad hoc group, we have already identified areas

for further improvements to be considered in the next phase of reform. These include, for example, the list mentioned by Mr. Ronald ARCULLI. As to the possible extension of the commission's function to cover insider trading in futures contracts, I can assure Mr. Martin LEE that we will give this point the earliest consideration following enactment of this Bill and I shall report to this Council during the course of this Session. I might add that I see some merit in extending our laws in relation to insider dealing in this way, but I want to give further thought to the matter in the light of experience not only in Hong Kong but also in other international markets.

We shall also consider the question of the commission's closer co-operation with overseas regulatory authorities and the further refinement of clauses relating to inspection and investigation requirements of the commission. But even leaving these matters aside, we are satisfied that, with the amendments to be moved at the Committee stage, the Bill will provide an adequate legislative framework for the commission to function effectively.

Sir, with the enactment of this Bill, the commission will be established on 1 May. People with appropriate background and experience will be appointed as non-executive directors and members of the Appeals Panel and the advisory committee. There will be rules, regulations and guidelines to be made under the Ordinance or its subsidiary legislation. They will be widely promulgated.

In formulating its proposals and in implementing its policies the commission will consult market bodies, paying special attention to Hong Kong's own circumstances and the needs of both international corporate players as well as local brokers. Naturally, the commission will have to establish priorities in relation to its activities and exercise its powers judiciously and with flexibility. We must remember, however, that the commission's task is to ensure that our regulatory systems are up to the standards prevailing in other major international financial centres. We are now part of one inter-related world market in which international investors are playing an increasingly important role and we cannot ignore the international dimension.

Sir, this Bill represents a significant step forward in the further development of a stable, fair and orderly market in Hong Kong, and we have reached this point within 18 months of October 1987. This reflects great credit not only on those members of the Administration who were directly involved, but also on the exchanges themselves, Members of this Council and those many members of the community who have given us the benefit of their help and guidance. I am grateful to them all.

Sir, I beg to move.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

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

6.00 pm

HIS EXCELLENCY THE PRESIDENT: It is now just on six o'clock and under Standing Order 8(2) the Council should now adjourn.

CHIEF SECRETARY: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be completed.

Question proposed, put and agreed to.

Committee stage of Bill

Council went into committee.

SECURITIES AND FUTURES COMMISSION BILL 1989

Clauses 7, 11, 12, 16, 24, 40, 49 and 60 were agreed to.

Clauses 1 and 8

MR. CHEONG (in Cantonese): Sir, I move that clauses 1 and 8 be amended as set out in the paper circulated to Members.

The ad hoc group considers that the way clauses 1 and 8 of the Chinese text of the Bill are worded indicated a much too literal approach to translation. It is, therefore proposed that the wording be amended to bring it in line with Chinese grammar and usage.

With these remarks, Sir, I beg to move.

Proposed amendments

Clause 1

That clause 1(2) be amended by deleting everything after "實施," and substituting --

"總督可為不同的條文或不同的目的(1)指定不同的實施日期⑨"

Clause 8

That clause 8 be amended, by deleting "為本條例的目的" and substituting "為施行本條例".

Question on the amendments proposed, put and agreed to.

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

Clauses 2 and 3

FINANCIAL SECRETARY: Sir, I move that clauses 2 and 3 be amended as set out under my name in the paper circulated to Members.

Proposed amendments

Clause 2

That clause 2 be amended --

(a) by deleting the definition of "the Board" (上訴委員會);

(b) in the definition of "data material" (數據資料), by adding "or produced by" before "data" where it secondly occurs;

(c) in the definition of "Exchange Company" (交易所) --

(i) by deleting "any of the following";

(ii) by adding "or" at the end of paragraph (a); and

(iii) by adding "and "Exchange Companies" means both of those companies;" after paragraph (b);

(d) in the definition of "executive director" (執行理事), by deleting "or a non-executive director thereof" and substituting "and a non-executive director thereof, respectively";

(e) by adding before the definition of "financial resources rules" (財政資源規則)--

"exempt dealer" (獲免註冊交易商) has the meaning assigned to it by section 2(1) of the Securities Ordinance (Cap. 333);";

(f) by deleting the definition of "investment arrangements" (投資安排);

(g) by adding after the definition of "officer" (高級人員)--

"Panel" (上訴委員會) means the Securities and Futures Appeals Panel established by section 17;";

(h) by deleting the definition of "property investment arrangements" (財產投資安排) and substituting --

"property investment arrangements" (財產投資安排), means investment arrangements as defined in relation to property other than securities by section 2 of the Protection of Investors Ordinance (Cap. 335);"; and

(i) in the definition of "trading in commodity futures contracts" (商品期貨合同買賣), by deleting "commodity" and "商品".

Clause 3

That clause 3 be amended --

(a) by deleting subclause (1) and substituting --

"(1) There is hereby established a body to be known as the Securities and Futures Commission."; and

(b) by adding after subclause (2) --

"(3) The receipts of the Commission shall not be subject to taxation under the Inland Revenue Ordinance (Cap. 112).

(4) (a) The Commission shall provide itself with a seal.

(b) The seal of the Commission shall be authenticated by the signature of the chairman or deputy chairman of the Commission or, if both the chairman and deputy

chairman of the Commission are absent from Hong Kong or unable to act, the signature of some other director of the Commission authorized by it to act in that behalf." Kong of

Question on the amendments proposed, put and agreed to.

MR. CHEONG (in Cantonese): Sir, I move that clauses 2 and 3 be amended as set out under my name in the paper circulated to Members.

In relation to the interpretation of "record or other document" under clause 2 of the Bill, the ad hoc group considers that the language of the Chinese text is not smooth enough and also heavily anglicized. Moreover, parentheses have been unnecessarily employed. The amendments proposed by the group are aimed at improving the grammar and fluency of language of the clause concerned to make it more easily understandable to the layman without detracting from the overall legislative intents and purposes of the clause.

Amendments to clause 3 of the Bill concern mainly the diction of the Chinese text. The group considers that "可" will be a better expression than "有權" to convey the meaning of "with power to".

Sir, with these remarks, I beg to move.

Proposed amendment

Clause 2

That clause 2 be further amended --

(a) In the definition of "結算所" (clearing house), by deleting "有關證券的結算所" and substituting "證券結算";

(b) in the definition of "紀錄或其他文件" (record or other document), by deleting paragraph (b) and substituting --

覺  
縮  
幫  
"(b)文件⑩紀錄碟⑩紀錄帶⑩聲軌或其他器材(1)而它們是載有聲音或其他非視  
影像的數據以便不論是否藉(6)其他設備的幫助能夠重播的(1)以及任何影片④包括微  
影片③⑩錄影帶或其他器材(1)而它們是載有視覺影像以便不論是否藉(6)其他設備的  
助能夠重播的⑧";

(c) by deleting the definition of "註冊人" (registered person) and substituting--

" "註冊人" (registered person)指根據《證券條例》④第 章③⑩  
《商品交 易條例》④第 章③或同時根據這兩 條條例 註冊為以下身分的人(1)  
即交易商⑩交 易合夥商行⑩交 易商代表⑩投資顧問⑩商 品交易顧問⑩投資顧 問  
合夥商行⑩投資代表 或商品交易顧問代表⑧";

(d) in the definition of "有關條例" (the relevant Ordinances), by deleting " 1988 年第 63 號" and substituting "63/1988".

Clause 3

That clause 3 be further amended--

in subclause (2), by deleting "有權" and substituting "可"; and

Question on the amendments proposed, put and agreed to.

Question on clauses 2 and 3, as amended, proposed, put and agreed to.

#### Clause 4

FINANCIAL SECRETARY: Sir, I move that clause 4 be amended as set out under my name in the paper circulated to Members.

To enable the SFC to take over the existing functions of the Securities Commission and the Office of the Commissioner for Securities to regulate property investment arrangements under the Protection of Investors Ordinance, the phrase "property investment arrangements" is included in various places in sub-clause (1) and also elsewhere in the Bill.

In response to the ad hoc group's request, the word "reasonably" is added to sub-clause (1)(c), as a safeguard to ensure that the SFC is aware that it must act reasonably.

The words "and monitoring" are added to sub-clause (1)(d) in response to the ad hoc group's request. As the role of the two exchanges as self-regulatory organizations develops, the SFC will perform to a decreasing extent direct supervisory functions and will gradually assume more of a monitoring role. It is therefore appropriate that the monitoring role should be highlighted in this paragraph.

When I introduced the Bill in this Council on 18 January, I mentioned my intention to introduce an amendment to add to the primary functions of the new commission the promotion and development of self-regulation by market bodies. This has been well received by the market and welcomed by the ad hoc group. The function is now stated explicitly in new paragraph (ja). Sub-clause (4) is added as a consequence.

The ad hoc group has expressed concern about the nature of guidelines to be made by the SFC under sub-clause (2). The guidelines will be non-statutory but will have a bearing on whether a registered person is fit and proper. The guidelines, which will be in the form of a code of conduct, will assist market users in understanding how the SFC performs its functions and how the various statutory requirements are to be complied with. Such guidelines have proved to be of great value to the banking industry. We will, nevertheless, keep under review the usefulness of the guidelines

as suggested by the ad hoc group.

Proposed amendment

Clause 4

That clause 4 be amended --

(a) In subclause (1)(a), by deleting everything after "securities," and substituting "futures contracts and property investment arrangements";

(b) in subclause (1)(b), by deleting "commodities and futures contracts" in both places where it occurs and substituting "futures contracts and property investment arrangements";

(c) in subclause (1)(c), by adding "reasonably" before "believes";

(d) in subclause (1)(d) --

(i) by adding "and monitoring" after "supervising"; and

(ii) by deleting ", the Unified Exchange, the Commodity Exchange";

(e) by deleting subclause (1)(e) and substituting --

"(e) to take all reasonable steps to safeguard the interests of persons dealing in securities or trading in futures contracts or entering into property investment arrangements";

(f) in subclause (1)(f), by deleting "Unified Exchange, of the Commodity Exchange and of clearing houses" and substituting "Exchange Companies and clearing houses, and other registered persons";

(g) by deleting subclause (1)(g) and substituting --

(g) to suppress illegal, dishonourable and improper practices in dealing in securities, trading in futures contracts, entering

into property investment arrangements, and the provision of investment advice or other services relating to securities, futures contracts and property investment arrangements;"

(h) in subclause (1)(i), by deleting "trading in commodity futures contracts and investment arrangements in relation to property other than securities" and substituting "futures contracts and property investment arrangements";

(i) by adding after subclause (1)(j) --

"(ja) to promote and develop self-regulation by market bodies in the securities and futures industries;" and

(j) by adding after subclause (3) --

"(4) Nothing in subsection (1)(ja) shall be regarded as limiting or otherwise affecting any other function of the Commission."

Question on the amendment proposed put and agreed to.

MR. CHEONG: Sir, I move that clause 4 be further amended as set out under my name in the paper circulated to Members. It simply deals with corrections in the Chinese text under the principles as already explained by the Honourable Mrs. Miriam LAU.

Proposed amendment

Clause 4

That clause 4 be further amended--

(a) in subclause (1) (h), by deleting "遵守規律" and substituting "行事持正";

(b) in the Chinese version, by deleting subclause (1) (k) and substituting -

"(k)執行其他條例所授予或根據其他條例授予的其他職能".

Question on the amendment proposed, put and agreed to.

Question on clause 4, as amended, proposed, put and agreed to.

Clause 5

FINANCIAL SECRETARY: Sir, I move that clause 5 be amended as set out under my name in the paper circulated to Members.

To permit a reduction in the size of the SFC as and when the SFC devolves some of its regulatory functions on the self-regulatory organizations, we propose to reduce the minimum size of the SFC from nine to seven. I shall move a corresponding amendment to clause 17 on the composition of the appeals panel.

Proposed amendment

Clause 5

That clause 5 be amended --

- (a) in subclause (1), by deleting "9" and substituting "7";
- (b) in subclause (3), by deleting "shall" and substituting "may";
- (c) by adding after subclause (3) --

"(3A) (a) If no appointment has been made under subsection (3) or if the office of deputy chairman of the Commission is vacant, the Financial Secretary may designate an executive director to act as chairman of the Commission during any period during which the chairman of the Commission is unable to act as chairman due to illness or other incapacity or is absent from Hong Kong.

(b) A designation under this subsection shall cease when revoked by the Financial Secretary or an

appointment is  
occurs.". and

made under subsection (3), whichever first

(d) in subclause (9), by adding "or an executive director designated under subsection (3A)" after "the deputy chairman".

Question on the amendment proposed, put and agreed to.

MR. CHEUNG YAN-LUNG: Sir, I move that clause 5 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 5

That clause 5 be further amended--

(a) In subclause (4), by deleting "職位的" and substituting "的任用"; and

(b) in the Chinese version, by deleting subclause (14) and substituting --

"ㄟ(2)即使理事職位出現空缺(1)監察委員會仍可執行職能㊸"㊸

Question on the amendment proposed, put and agreed to.

MR. BARROW: Sir, I move that clause 5 be further amended as set out under my name in the paper circulated to Members.

Sir, I beg to move.

Proposed amendment

Clause 5

That clause 5 be further amended --

(a) by deleting subclause (8) and substituting --

"(8) Meetings of the Commission shall be held as often as may be necessary for the performance of its functions, and may be convened by the chairman or the deputy chairman or any 2 other directors.";

(b) by renumbering subclause (13) as subclause (13)(a);

(c) in subclause (13)(a), by adding "subject to paragraph (b)" before "the chairman"; and

(d) by adding after subclause (13)(a) --

"(b) The chairman of a meeting shall not exercise a casting vote until after he has consulted the Financial Secretary as regards that exercise.".

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

Clause 6, Heading of Part III, clauses 17, 18, 19, 27, Heading of Part V, clauses 29, 32, 37, 38, 41 to 43, 45 and 52

FINANCIAL SECRETARY: Sir, I move that the clauses specified and the Headings of Part III and Part V be amended as set out in the paper circulated to Members.

Clause 18 - Appeals (registration, forfeiture and notices)

The present annual renewal system for registered persons will be abolished and all existing registered persons will be "grandfathered" when the SFC comes into existence. Provisions in existing Ordinances for new conditions to be imposed on registration at the time of annual renewal are to be repealed and new provisions are to be added to enable the SFC to impose conditions on registration at any time. These are in Schedule 2 to the Bill. Clause 18 has been expanded to provide for the imposition of such conditions.

## Clause 38 - Maintenance of assets

Sir, in response to the ad hoc group, I would like to assure Members that clause 38 will not enable the SFC to act in a way which is contrary to the law of insolvency. The clause simply provides that a registered person may be required to maintain a minimum holding of assets. In the event of bankruptcy or liquidation of the registered person, those assets would be available for distribution among creditors in the usual way.

## Proposed amendments

### Clause 6

That clause 6 be amended --

(a) by deleting subclause (2);

(b) in subclause (4) --

(i) by deleting "reference, assignment or delegation" in both places where it occurs and substituting "reference or assignment"; and

(ii) by deleting "or (2)"; and

(c) by deleting subclause (5).

### Part III

That Part III be amended in the heading, by deleting "BOARD OF APPEAL" and substituting "APPEALS PANEL".

### Clause 17

That clause 17 be amended --

(a) In subclause (1) --

(i) by deleting "board" and substituting "panel"; and

(ii) by deleting "Board of Appeal" and substituting "Appeals Panel";

(b) in subclause (2), by deleting "Board" and substituting "Panel";

(c) in subclause (2)(b), by deleting "5" and substituting "not less than 4";

(d) in subclause (3), by deleting "Board" and substituting "Panel"; and

(e) by deleting subclause (4) and substituting --

"(4) If the office of chairman of the Panel is vacant or the chairman of the Panel is unable to act as chairman of the Panel due to illness or other incapacity or is absent from Hong Kong, the deputy chairman of the Panel shall act as chairman in his place."

#### Clause 18

That clause 18 be amended --

(a) In subclause (1) --

(i) by adding after paragraph (c) --

"(ca) conditions are attached or amended under section 53A of that Ordinance and the registered person concerned is dissatisfied with the conditions or, as may be appropriate, the amendment; or"; and

(ii) after paragraph (d), by deleting "Board" and substituting "Panel";

(b) by adding after subclause (2)(c) --

"(ca) conditions are attached or amended under section 33A of that Ordinance and the registered person concerned is dissatisfied with the conditions or, as may be appropriate, the amendment; or";

(c) after subclause (2)(d) --

(i) by deleting "subject to section 20, a person aggrieved by the imposition of such conditions" and substituting "subject to subsection (4) and section 20, a person in relation to whom such conditions are imposed"; and

(ii) by deleting "Board" and substituting "Panel";

(d) in subclause (3), by deleting "Board" and substituting "Panel"; and

(e) by adding after subclause (3) --

"(4) An appeal under this section against the attachment or amendment of a condition referred to in subsection (1)(ca) or (2)(ca) shall not affect the coming into force of the condition to which the appeal relates.".

## Clause 19

That clause 19 be amended --

(a) In subclause (1) --

(i) by deleting "Board" wherever it occurs and substituting "Panel"; and

(ii) by deleting ", where he so directs, the deputy chairman," and substituting "the deputy chairman, together with";

(b) by deleting subclause (2) and substituting --

"(2) The chairman of the Panel or the deputy chairman of the Panel, when a member of a tribunal, shall preside at the hearing of an appeal by the tribunal."; and

(c) in subclause (3), by deleting "Board" and substituting "Panel".

Clause 27

That clause 27 be amended --

(a) by deleting subclause (2) and substituting --

"(2) Where a direction is given under subsection (1) -

effect in relation to the person to whom the direction  
relates in conformity with the direction and such  
direction shall take effect on the publication of the  
relevant notice pursuant to paragraph (b); and

(b) the Commission shall cause a notice stating that the  
direction has been given to be published in the  
Gazette.";

(b) by deleting subclause (4) and substituting --

"(4) (a) A direction under subsection (1) shall continue  
in force until withdrawn by the Commission, and where the  
Commission proposes to withdraw any such direction  
it shall give at least 7 days' notice in writing of its  
intention to the person concerned and such withdrawal  
shall take effect on the publication of the  
relevant notice pursuant to paragraph (b).

(b) Where the Commission withdraws a direction under  
paragraph (a), it shall cause a notice of the withdrawal  
to be published in the Gazette.". and

(c) by deleting subclause (5).

Part V

That Part V be amended in the heading, by adding ", ETC." after "BUSINESS".

Clause 29

That clause 29 be amended --

(a) by deleting subclause (1) and substituting --

"(1) The Commission or any person authorized in writing by the Commission for the purposes of this section may require --

(a) a person registered as the holder of any securities or futures contracts; or

or (b) a person reasonably believed by the Commission or the person so authorized to be the holder of any securities futures contracts or to hold any interest in property investment arrangements; or

(c) a person reasonably believed by the Commission or the person so authorized to hold any securities or futures contracts or to have an interest in property investment arrangements, as beneficial owner; or

(d) a person reasonably believed by the Commission or the person so authorized to hold, to have acquired or disposed of, purchased or sold, any securities, futures contracts or interest in property investment arrangements, or any interest therein, whether directly or through a nominee, trustee, or agent, and whether as beneficial owner nominee, trustee, agent or otherwise; or

(e) a registered person or an exempt dealer,

in relation to any acquisition, disposal, purchase, sale or holding of securities, futures contracts or interest in property investment arrangements to disclose to it or him the name (including any aliases), address and occupation of the person (or other particulars

that are capable of establishing the identity of the person) from, to or through whom, or on whose behalf, the securities or futures contracts or interest in property investment arrangements were acquired, disposed of, purchased, sold or were or are held, together with the quantity of securities or futures contracts or interests in property investment arrangements so acquired, disposed of, purchased, sold or held, and the instructions given to or by such last-mentioned person in respect thereof.";

(b) by deleting subclause (2) and substituting --

"(2) For the purpose of enabling this section to have effect, every investment adviser or commodity trading adviser and registered person who is a dealer within the meaning of section 25(9) shall keep, in such manner and form as may be specified in rules made for the purposes of this section by the Commission (which rules the Commission is hereby authorized to make), any record or other document as may be so specified.";

(c) in subclause (3)(a), by deleting "or" where it secondly occurs;

(d) in subclause (3)(b) --

(i) by deleting "knowingly";

(ii) by deleting "is" and substituting "he knows to be";

(iii) by adding ". or" at the end; and

(e) by adding after subclause (3)(b) --

"(c) fails to comply with any provision of rules made under this section which applies to him,".

Clause 32

That clause 32 be amended, by adding "and section 33" after "those sections" where it first occurs.

Clause 37

That clause 37 be amended --

(a) In subclause (a), by adding "to whom section 35 applies" after "a registered person"; and

(b) in subclause (b), by adding "such" after "require".

Clause 38

That clause 38(1) be amended --

(a) by adding "to whom section 35 applies" after "a registered person" where it first occurs; and

(b) by deleting "registered" where it secondly occurs.

Clause 41

That clause 41 be amended, by deleting "Board" in both places where it occurs and substituting "Panel".

Clause 42

That clause 42 be amended --

(a) by deleting subclause (1) and substituting -

"(1) If, in the case of a company which may be wound up by the High Court under the Companies Ordinance (Cap. 32), it appears to the Commission that it is expedient in the public interest that the company should be wound up, the Commission may, subject to subsection (2), present a petition for it to be wound up under that Ordinance on the ground that it is just and equitable that it should be so wound up."; and

(b) in subclause (2), by deleting everything after "Company" where it first

occurs and substituting -

"or a clearing house unless the Commission has given written notification of its intention to that Exchange Company or, as the case may be, that clearing house."

#### Clause 43

That clause 43 be amended --

(a) in subclause (1), by deleting "The Commission may, subject to subsection (2)," and substituting "If it appears to the Commission that it is expedient in the public interest to do so and subject to subsection (2) the Commission may"; and

(b) in subclause (2), by deleting everything after "Company" where it first occurs and substituting -

"or a clearing house unless the Commission has given written notification of its intention to that Exchange Company or, as may be appropriate, that clearing house."

#### Clause 45

That clause 45 be amended --

(a) In subclause (1), --

(i) by deleting "律".

(ii) by deleting "每一" before "交易所" and substituting "各"., and

(iii) by adding "or, in the case of an Exchange Company, the affairs of any of its members" after "affairs";

(b) in subclause (2) -

(i) by adding ", including information in its possession or under its

control which relates to the affairs of any of its members," after "information" where it first occurs;

(ii) by adding "without affecting the generality of section 52(2) and" before "notwithstanding"; and

(c) by deleting subclause (3).

Clause 52

That clause 52 be amended, by deleting clause 52 and substituting --

"Immunity, etc.

52. (1) No liability shall be incurred by any person in respect of anything done, or omitted to be done, by him in good faith in the performance or purported performance of any function under the relevant Ordinances.

(2) Subject to section 46(7), a person who complies with a requirement made under this Ordinance shall not incur any liability to any person by reason only of that compliance.

(3) A person who is a legal practitioner (whether or not he is qualified in Hong Kong to practise as a barrister or act as a solicitor) shall not be required under this Ordinance to disclose any information (other than the name and address of a client) or produce any record or other document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.

(4) A person who is not a legal practitioner shall not be required under this Ordinance to disclose any information or produce any document (whether an original or a copy) if the requirement to do so would not apply in the case of a legal practitioner by virtue of subsection (3)."

Question on the amendments proposed, put and agreed to.

Question on clause 6, Heading of Part III, clauses 17, 18, 19, 27, Heading of Part

V, clauses 29, 32, 37, 38, 41 to 43, 45 and 52, as amended, proposed, put and agreed to.

Clauses 9 and 53

MR. PETER POON: Sir, I move that clauses 9 and 53 be amended as set out in the paper circulated to Members.

In relation to subclause 9(1), the ad hoc group generally considers that while there should not be specific requirements on the matters that the advisory committee should be consulted on, the obligation of the Securities and Futures Commission to consult the committee from time to time should be explicitly expressed. The amendment to clause 9(1) specifies, among other things, that the role of the advisory committee shall be to "advise the Commission".

The ad hoc group also notes the Securities Review Committee's recommendation that the advisory committee should meet not less than once a month but that there is no provision regarding the frequency of meetings of the advisory committee in the Bill. It, however, considers that there should be specific provisions for the frequency of meetings to avoid the putting off of meetings of the committee. The new clause 9(1A) provides that the advisory committee shall meet at least once every three months.

The original clause 9(1), which provides for meetings of the advisory committee to be convened by the chairman of the Securities and Futures Commission only will unduly restrict the flexibility of the committee to meet and discuss issues of its own concern. To ensure that the committee may actively take up any issue of its own concern, subclause (1B) (b) is proposed to enable any three members of the committee also to convene a meeting.

Sir, I beg to move.

Proposed amendments

Clause 9

That clause 9 be amended --

(a) by deleting subclause (1) and substituting --

"(1) There shall be an Advisory Committee to advise the Commission which shall consist of the chairman and not more than 2 executive directors of the Commission, who shall be appointed by the Commission, and not less than 8 or more than 12 other members appointed by the Governor after consultation with the Commission.

(1A) The Advisory Committee shall meet at least once every 3 months.

(1B) A meeting of the Advisory Committee may be convened by --

(a) the chairman of the Commission; or

(b) any other 3 members of the Advisory Committee.

(1C) At a meeting of the Advisory Committee --

(a) the chairman of the Commission shall preside; or

(b) if the chairman of the Commission is not present, the members present shall choose one of their number to preside."; and

(b) by adding after subclause (2) --

"(3) Where a member of the Advisory Committee appointed by the Commission ceases to be an executive director of the Commission, he shall thereupon cease to be a member of the Advisory Committee.

(4) The Governor may by notice in writing remove a person from membership of the Advisory Committee."

Clause 53

That clause 53 be amended, by deleting "須在任何訴訟中接納" and substituting "可在任何訴訟中接受".

Question on the amendments proposed, put and agreed to.

Question on clauses 9 and 53, as amended, proposed, put and agreed to.

Clause 10

MR. PAUL CHENG: Sir, I move that clause 10 be amended as set out under my name in the paper circulated to Members.

Clause 10 provides for the Governor to give directions to the commission on policy matters only. Nevertheless, the ad hoc group believes that there will be instances where the Governor may need to give directions to the commission on important operational matters. The ad hoc group also notes that there is no such restriction in respect of the Securities Review Committee recommendation on the matter. The amendment to clause 10 deletes reference to "policy" and therefore enables the Governor the flexibility to give directions to the commission in a general sense.

Sir, I beg to move.

Proposed amendment

Clause 10

That clause 10(1) be amended, by deleting "as to policy in relation to" and substituting "as regards".

Question on the amendment proposed, put and agreed to.

Question on clause 10, as amended, proposed, put and agreed to.

Clauses 13, 56 and 58

MR. LAU WAH-SUM: Sir, I move that clauses 13, 56 and 58 be amended as set out under my name in the paper circulated to Members.

The Securities Review Committee recommended that the draft estimates of the Securities and Futures Commission should be submitted to the Finance Committee. Yet this is not adopted. A clause 13(2) provides that the estimates should be submitted direct to the Governor for approval. The ad hoc group considers that Members of this Council should have the opportunity to examine the estimates before they are finalized for submission to the Governor for approval. Accordingly the group has recommended that a budget review committee composed of Members of this Council should be consulted on the estimates. The Administration has, in response to such recommendation, agreed that administrative arrangements will be made for the draft estimates of the commission to be submitted to the Finance Committee before they are submitted to the Governor for approval. It has also agreed to make new provisions for the tabling of the estimates of the commission in the Legislative Council after they are approved by the Governor. The proposed section 13(3) gives effect to such an amendment.

Sir, I beg to move.

Proposed amendments

Clause 13

That clause 13 be amended, by adding after subclause (2) --

"(3) The estimates as approved under subsection (2) shall be laid on the table of the Legislative Council."

Clause 56

That clause 56 be amended, in the Chinese version, by deleting clause 56 and substituting --

"犯法的罰則

々 凡作出第 ⑩ 或 ⑩ ⑩ ⑩  
⑩ ⑩  
げ或 け條所定の犯法行爲の人(2)(4)

ウ(2)循公訴程序定罪後(1)可處罰款 \$ (1) (1) (1)如是個別人士犯法  
(1) 可另處監禁 年⑧

ウ(2)循簡易程序定罪後(1)可處罰款 \$ (1) (1)如是個別人士犯法(1)可  
另 處監禁 個月⑨".

Clause 58

That clause 58 be amended --

(a) in subclauses (2) and (4), by deleting "法據" and substituting "無形";

(b) in subclause (3), by deleting "列入" and substituting "列於"; and

(c) in subclause (5), --

(i) by adding "仍" after "成立日之前"; and

(ii) by deleting "債務" wherever it occurs and substituting  
"法律責任".

Question on the amendments proposed, put and agreed to.

Question on clauses 13, 56 and 58, as amended, proposed, put and agreed to.

Clause 14

MR. CHEUNG YAN-LUNG: Sir, I move that clause 14 be amended as set out under my name  
in the paper circulated to Members.

Sir, I beg to move.

Proposed amendment

Clause 14

That clause 14 be amended, by deleting "備置" and substituting "備存".

Question on the amendment proposed, put and agreed to.

Question on clause 14, as amended, proposed, put and agreed to.

Clauses 15 and 23

FINANCIAL SECRETARY: Sir, I move that clauses 15 and 23 be amended as set out under my name in the paper circulated to Members.

Clause 15 -- Auditors and audit

Clause 15 is amended to include new accounting and auditing provisions along the lines in the Companies Ordinances. Amendments are also made to permit the Director of Audit, as well as any public officer authorized by him, to inspect the books and records of the SFC.

Clause 23 -- Certificates of registration to continue in force

Clause 23 provides for the "grandfathering" of all existing registered persons. A new sub-clause is added to ensure that a registration does not lapse because it has not been renewed before the establishment day of the SFC, although renewal has been applied for.

Proposed amendments

Clause 15

That clause 15 be amended --

(a) by renumbering subclause (1) as subclause (1)(a);

(b) by adding after subclause (1)(a) --

"(b) The auditors' report shall include --  
income (i) a statement whether, in the auditors' opinion, the  
and expenditure account for the financial year to which the  
report relates gives a true and fair view of the Commission's  
surplus or deficit;  
sheet (ii) a statement whether, in such opinion, the balance  
for such financial year gives a true and fair view of the  
Commission's financial affairs at the end of that financial  
year.";

(c) by deleting subclause (3) and substituting --

"(3) The Director of Audit or any other public officer authorized  
by him for the purposes of this subsection may at any reasonable  
time examine any account, record or other document kept by the  
Commission and, if he thinks fit, make a copy of the whole or any  
entry in any such document."; and

(d) by adding after subclause (3) --

"(4) An auditor appointed under subsection (1) shall have a right  
of access at all reasonable times to the books, accounts, vouchers  
and other records of the Commission and shall be entitled to require  
from the officers of the Commission such information and  
explanations as he considers necessary for the performance of his  
duties as auditor.".

Clause 23

That clause 23 be amended --

(a) by renumbering it as subclause (1); and

(b) by adding after subclause (1) --

"(2) (a) Where an application for renewal of registration under Part VI of the Securities Ordinance (Cap. 333) or section 34 of the Commodities Trading Ordinance (Cap. 250) is made before the establishment day and is not determined before that day, notwithstanding anything contained in this Ordinance the application shall be taken over and determined by the Commission, and in case the application is allowed the renewal shall be deemed to take effect immediately before the establishment day.

(b) For the purposes of paragraph (a), and only for those purposes, section 34 of the Commodities Trading Ordinance (Cap. 250) and the provisions of the Securities Ordinance (Cap. 333) which are relevant shall be regarded as remaining in force, and that section and those provisions shall for those purposes be construed as if any reference therein to the Commissioner were a reference to the Commission."

Question on the amendments proposed, put and agreed to.

MRS. LAU: Sir, I move that clauses 15 and 23 be further amended as set out under my name in the paper circulated to Members. These amendments relate to the Chinese version and are necessary for reasons already elaborated by me earlier on.

Proposed amendments

Clause 15

That clause 15 be further amended, in subclause (1) (a), by deleting "將這些帳目編製報告" and substituting "就這些帳目編製報告".

Clause 23

That clause 23 be further amended, in subclause (1) --

(a) by adding "獲" after "第 條";

(b) by deleting "那人" and substituting "該人";

Question on the amendments proposed, put and agreed to.

Question on clauses 15 and 23, as amended, proposed, put and agreed to.

Clause 20

FINANCIAL SECRETARY: Sir, I move that clause 20 be amended as set out under my name in the paper circulated to Members.

In response to comments by market bodies and professional organizations, it has been agreed that several major amendments should be made to clause 20. First of all, it is to be stated that appeals should be heard as soon as is reasonably practicable. This is particularly necessary in relation to appeals against the imposition of conditions under clause 18 and the exercise of intervention powers under clauses 36 to 38 which will come into immediate effect. Secondly, either the appellant or the commission is to be entitled to legal representation. Thirdly, the parties to an appeal, as well as tribunal witnesses, legal representatives and any person who has an interest in the proceedings should have the same privileges and immunities as they would have in proceedings before the High Court.

A sub-clause is added to enable a tribunal to order any party to an appeal to pay the costs and expenses of the tribunal in respect of the appeal. Such costs and expenses will be determined in accordance with rules to be made by the Governor in Council.

Until new rules are made under clause 20 sub-clause (1), the Securities (Disciplinary Committee) Rules will govern the procedure and proceedings of a tribunal hearing an appeal.

In the event of a revocation of a registration, there is a need to balance the need to protect the interest of the investing public and the right of the registered person. Under the provisions in this clause, a revocation will not take effect until

after the time limit for lodging an appeal has expired, or a tribunal hearing an appeal has determined the case.

Proposed amendment

Clause 20

That clause 20 be amended --

(a) in subclause (1), by adding "section 19 and" after "Subject to";

(b) in subclause (2), by deleting "Board" and substituting "Panel";

(c) by renumbering subclause (3) as subclause (3)(a);

(d) in subclause (3)(a), by deleting "Board" and substituting "Panel";

(e) by adding after subclause (3)(a) --

"(b) An appeal under this section shall be heard and determined as soon as reasonably practicable.";

(f) in subclause (4) --

(i) by deleting "Board" and substituting "Panel"; and

(ii) by adding "or (ca) or (2)(a) or (ca)" after "'18(1)(b)";

(g) in subclause (5)(a), by deleting "make representations" and substituting

"be heard either in person or through counsel or solicitor and if the appellant is a company, through any of its directors or employees or if a partnership through any of the partners or, with the leave of the tribunal hearing the appeal. through any other person";

(h) in subclause (6), by deleting "A tribunal and its members, and witnesses, counsel and any solicitor," and substituting "Without affecting the generality of section 52(2), a tribunal and its members, and witnesses, counsel and any solicitor, and any other person who is a party to or who otherwise has an interest in the proceedings";

(i) in subclause (8), by deleting "The" and substituting "Subject to section 20A, the";

(j) by renumbering subclause (9) as subclause (9)(a);

(k) by adding after subclause (9)(a) --

"(b) A tribunal may order any party to an appeal to pay, in accordance with rules made under this section by the Governor in Council, the costs and expenses incurred by the tribunal in hearing and determining the appeal and the amount of such costs and expenses shall be determined by the tribunal in accordance with such rules, and any sum so ordered to be paid shall be recoverable by the person to whom they are payable under such rules as a civil debt." and

(l) in subclause (10)(c), by deleting "book, paper or".

Question on the amendment proposed, put and agreed to.

MR. CHEUNG YAN-LUNG : Sir, I move that clause 20 be further amended as set out under my name in the paper circulated to Members.

Sir, I beg to move.

Proposed amendment

Clause 20

That clause 20 be further amended --

(a) in subclause (5) (b) --

(i) in subparagraph (i), by deleting "收取" and "接納" and substituting "聽取" and "接受" respectively; and

(ii) in subparagraph (ii), by deleting "或確認";

(b) in subclause (5) (d), by deleting "執行宣誓或確認" and substituting "監誓".

Question on the amendment proposed, put and agreed to.

MR. CHEONG: Sir, I move that clause 20 be further amended as set out under my name in the paper circulated to members. These amendments are necessary to reflect in the Chinese text the amendments as proposed by the Financial Secretary.

Proposed amendment

Clause 20

That clause 20 be amended in the Chinese version, by deleting subclause (7) and substituting --

"(7) 審裁小組根據本部進行聆訊後(1)可確認(10)更改或推翻原來的決定(9)審裁小組須在每一項決定內(1)說明作出這項決定的理由(9)"

Question on the amendment proposed, put and agreed to.

Question on clause 20, as amended, proposed, put and agreed to.

Clause 21

MR. CHEUNG YAN-LUNG (in Cantonese): Sir, I move that clause 21 be amended as set out under my name in the paper circulated to Members.

In relation to the proposed amendment to subclause (4), we consider that "持有" reflects more clearly the meaning of "possession" in the context of the Bill: the word "possession" in common law could mean different proprietary interest in property, while in the context of the Bill, "possession" involves physical possession. We consider that, in general, different Chinese equivalents of the term should be used depending on the context in which it arises. We therefore propose that "管有" as originally proposed by the Administration under subclause (4) should be

amended.

Sir, I beg to move.

Proposed amendment

Clause 21

That clause 21 be amended --

(a) in subclause (2) (a), by deleting "個人" and substituting "個別人士";

(b) in subclause (3) (b), by deleting "教育及" and substituting "學歷或";

(c) in subclause (4), by deleting "管有" and substituting "持有".

Question on the amendment proposed, put and agreed to.

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

In relation to sub-clause (1), I would like to assure Members that section 53(2) of the Securities Ordinance and section 32(2) of the Commodities Trading Ordinance will continue to apply, that is, the SFC will not refuse to register an applicant without first giving the applicant an opportunity of being heard.

The new provisions in sub-clause (5) expressly state that the SFC may take into account decisions of the Commissioner of Banking and Insurance Authority, in addition to decisions taken by other similar local and overseas regulatory bodies with regard to authorization of applicants and application of the "fit and proper rule".

Sub-clause (6) provides that in examining an application, the SFC can take into account the affairs of any person who is a substantial shareholder in an applicant, i.e. a shareholder who controls more than 10% of the issued share capital or voting power of the applicant. The definition of "substantial shareholder" follows that in the Securities Ordinance, as set out in new sub-clause (8).

Proposed amendment

Clause 21

That clause 21 be further amended --

(a) in subclause (3)(a), by deleting "integrity and reliability" and substituting "status";

(b) by deleting subclause (3)(d) and substituting --

"(d) his reputation, character, financial integrity and reliability.";

(c) by deleting subclause (5) and substituting --

"(5) For the purposes of subsection (2), the Commission may take into account any decision relating to authorization made in relation to the applicant by the Commissioner for Banking or the Insurance Authority or by any other authority (whether in Hong Kong or elsewhere) which in the opinion of the Commission performs any function similar to a function conferred on the Commission by this section, section 51 of the Securities Ordinance (Cap. 333) or section 30 of the Commodities Trading Ordinance (Cap. 250).";

(d) in subclause (6)(a)(iii), by adding "substantial shareholder," after "any" where it first occurs; and

(e) by adding after subclause (7) --

"(8) In subsection (6) "substantial shareholder", in relation to a company, means a person who has an interest in shares in the company --

(a) the nominal value of which is equal to more than 10% of the issued share capital of the company; or

(b) which entitle the person to exercise or control the exercise of more than 10% of the voting power at any general meeting

of the company."

Question on the amendment proposed, put and agreed to.

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

Clause 21

That clause 21 be further amended --

(a) in the Chinese version, by deleting subclause (3) (c) and substituting -

-

"(c)(2)他能否有效率及竭誠公正地執行職能⑧及";

(b) in subclause (6) (a) (i), by deleting "一起共事" and substituting "有聯繫";

Question on the amendment proposed, put and agreed to.

Question on clause 21, as amended, proposed, put and agreed to.

Clause 22

MRS. LAU: Sir, I move that clause 22 be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 22

That clause 22 be amended, in paragraph (b), by deleting "一起共事" and substituting "有聯繫".

Question on the amendment proposed, put and agreed to.

Question on clause 22, as amended, proposed, put and agreed to.

Clause 25

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

In response to the ad hoc group, provisions have been made for registered persons to keep documents at premises other than their respective offices, including their homes, provided that the registered premises are subject to entry and inspection by staff of the commission at any time.

Proposed amendment

Clause 25

That clause 25 be amended --

(a) by deleting subclauses (1) and (2) and substituting --

is  
before such  
under the relevant  
whom this section

"(1) (a) Every person who on the commencement of this section a person to whom this section applies or who commencement applied to be registered Ordinances and who becomes a person to applies shall --

(i) if immediately before such commencement he was a registered person described in subsection (9), within the period of 30 days beginning on such commencement:

in  
by

(ii) if he becomes so registered on or after such commencement, within the period of 30 days beginning on the date of his registration, notify the Commission writing of the location of the premises at which any record or other document relating to the business in respect of which he is registered is, or is to be, kept him and in case every such record or other document is

so not, or is not to be, kept at a single premises he shall notify the Commission of the location of each of the premises at which any such document or record is, or is to be, so kept.

(b) Every person who applies to be a registered person and who, if his application is allowed, will be a person to whom this section applies shall in his application specify the location of the premises at which any record or other document relating to the business in respect of which he applies to be registered is to be kept by him and in case every such record or other document is not to be kept at a single premises, he shall so specify the location of each of the premises at which any such document or other record is to be so kept.

(2) A person to whom this section applies shall give to the Commission not less than 30 days' notice in writing, or such shorter period of such notice as the Commission may in a particular case allow on an application made in that behalf, of any intended change in the location of premises at which any record or other document referred to in subsection (1) is to be kept by him.

(2A) Every person referred to in subsection (1) or (2) shall, as regards any premises referred to in his notification or application state whether or not those premises are used or are to be used partly or wholly for residential purposes."

(b) by deleting subclause (3) and substituting --

"(3) A person to whom this section applies shall not keep any record or other document relating to the business in respect of which he is registered at --

(a) any premises the location of which has not been notified to the Commission under this section; or

(b) any premises which are not regarded by the Commission

as suitable:

a            Provided that this subsection shall not operate as regards  
person to whom subsection (1)(a) applies until the period mentioned  
in subparagraph (i) or, as may be appropriate, subparagraph (ii) of  
that subsection has expired."; and

(c) by adding after subclause (6) --

"(7)    The Commission shall maintain a register and shall  
record therein the location of any premises notified to it in  
accordance with subsection (1) or (2).

(8) In this section, "data equipment" means any equipment  
which --

(a) automatically processes information;

(b) automatically records or stores information;

(c) can be used to cause information to be automatically  
recorded, stored or otherwise processed on other  
equipment (wherever situated);

(d) can be used to retrieve information, whether the  
information is recorded or stored in the equipment  
itself or in other equipment (wherever situated).

(9) (a) This section applies to any person who is a registered  
person and who is also --

(i) a dealer but who is not a dealing director; or

(ii) a dealing partnership, investment adviser,  
investment advisers' partnership or commodity trading  
adviser.

(b) In this subsection --

"commodity trading adviser" has the meaning assigned to it by section 2(1) of the Commodities Trading Ordinance (Cap. 250);

"dealer" means any person who is a dealer within the meaning of section 2(1) of the Commodities Trading Ordinance (Cap. 250) or section 2(1) of the Securities Ordinance (Cap. 333) but who, in either case, is not a director or employee accredited to, or a partner in, a corporation or firm which is itself a dealer;

"investment advisers' partnership" assigned to them, of the Securities  
"dealing director", "dealing partnership",  
adviser" and "investment  
have the meanings  
respectively, by section 2(1)  
Ordinance (Cap. 333).".

Question on the amendment proposed, put and agreed to.

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

Sir, I beg to move.  
Proposed amendment

Clause 25

That clause 25 be further amended, in subclause (4), by deleting "備置" and substituting "備存".

Question on the amendment proposed, put and agreed.

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

Sir, I beg to move.

Proposed amendment

Clause 25

That clause 25 be further amended, by deleting subclauses (5) and (6) and substituting --

"(5) The Commission may require any registered person or applicant for registration who notifies a location of premises under this section to notify it in respect of other premises for the purpose of complying with this section if, in the opinion of the Commission, the first-mentioned premises are unsuitable.

(6) (a) Where premises are, or are to be, used partly or wholly for residential purposes, the Commission shall not regard the premises as being suitable unless it is satisfied by the registered person or applicant concerned that the use by him of the premises to keep a record or other document referred to in subsection (1) will not affect the exercise in relation to the record or other document of any power under Part V.

(b) Where the Commission decides that premises referred to in paragraph (a) are suitable, it shall inform the registered person or applicant concerned of its decision by letter and the letter shall also state that the premises may be entered pursuant to section 28 or 33.

(c) Where the Commission decides that premises are unsuitable, it shall inform the registered person or applicant concerned of its decision by letter."

Question on the amendment proposed, put and agreed to.

Question on clause 25, as amended, proposed, put and agreed to.

Clause 26

FINANCIAL SECRETARY: Sir, I move that clause 26 be amended as set out under my name in the paper circulated to Members.

In response to comments by the ad hoc group, I would like to assure Members that the SFC will consult concerned market bodies and professional organizations in drawing up new financial resources rules under this clause. Furthermore, such rules will have to be tabled as subsidiary legislation in this Council.

Proposed amendment

Clause 26

That clause 26 be amended --

(a) by deleting subclause (1) and substituting --

"(1) The Commission may, after consultation with the Financial Secretary, make rules requiring registered persons to have and maintain, in respect of the businesses as regards which they are registered, such financial resources as are required by the rules."; and

(b) by adding after subclause (3) --

"(4) (a) On the commencement of the rules first made under this section, section 65B of the Securities Ordinance (Cap. 333) shall cease to have effect.

(b) On and from the commencement referred to in paragraph (a), sections 65C and 65D of the Securities Ordinance (Cap. 333) shall each be construed and have effect as if for each of the references in those sections to section 65B there were substituted a reference to financial resources rules."

Question on the amendment proposed, put and agreed to.

MRS. LAU: Sir, I move that clause 26 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 26

That clause 26 be further amended --

(a) in the Chinese version, by deleting subclause (2) (b) and substituting -

-

"(b) 施加規定(1)而該等規定是顧及有關的人連同第(1)款所述業務一起進行的業務者;"

(b) in the Chinese version, by deleting subclause (2) (c) and substituting -

-

(1)須考 (c) 訂立條文(1)規定在為本規則的目的確定任何人的財政資源時慮的資產(1)負債和其他事宜(1)及考慮的程度和方式(9)";

(c) in subclause (3), by deleting "權力體" wherever it occurs and substituting "主管當局";

Question on the amendment proposed, put and agreed to.

MR. LAU WAH-SUM: Sir, I move that clause 26 be further amended as set out under my name in the paper circulated to Members.

Clause 26 of the Bill relates to the making of financial resources rules by the Securities and Futures Commission. Clause 26(1) stipulates that the commission may make financial resources rules after consultation with the Financial Secretary. Nevertheless, the ad hoc group considers that in view of the importance of the financial resources rules to the business of the registered person, such rules should be made in the form of subsidiary legislation. The new section 26(5) makes this

absolutely clear. The Administration has also agreed that the industry will be consulted when the rules are being formulated.

Sir, I beg to move.

Proposed amendment

Clause 26

That clause 26 be further amended, by adding at the end --

"(5) Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) applies to financial resources rules."

Question on the amendment proposed, put and agreed to.

Question on clause 26, as amended, proposed, put and agreed to.

Clauses 28, 30 and 48

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

Clause 28 -- Supervision

The purpose of clause 28 is for the SFC to ascertain whether registered persons are complying with the statutory requirements. The powers conferred by this clause, as with all the other statutory powers, must be exercised properly and pursuant to statutory purposes. Any excessive use of power will, of course, be subject to judicial review and, in suitable cases, will be restrained by the Courts.

In response to the ad hoc group's request, a test of reasonableness is included in sub-clause (3) as regards the inspection of records by the SFC.

Members of the ad hoc group have expressed concern about banks' obligations to notify their customers of investigations by the SFC. I would like to confirm that under sub-clause (4), banks are not restrained from notifying their customers that

the SFC has obtained information concerning the customers' accounts. Indeed banks should not be so restrained. It would be unreasonable to subject banks to such a difficult conflict of duties.

Clause 30 -- Certification to High Court relating to non-compliance under section 28 or 29

In response to submissions from the Hong Kong Bar Association, clause 30 sub-clause (2) is amended so that a person who has been punished for contempt by the High Court for failure to produce records or disclose information to the SFC should not also face the double jeopardy of prosecution for the same failure. I shall move a similar amendment to clause 31 sub-clause (15) regarding failure to assist in an investigation.

Amendments are made to clause 48 to cover those newly listed issues which are not recorded on, but notified to the stock exchange. The intention is to cover those, and only those, transactions which are caught by the existing SEHK levy under rules approved by the Securities Commission. The provision will not affect current exemptions, such as bulk transfer of shares by means of contractual arrangements.

Proposed amendments

Clause 28

That clause 28 be amended --

(a) in subclause (1)(a), by deleting "business";

(b) in subclause (1)(b) --

(i) by adding a comma after "document" where it first occurs; and

(ii) by adding "in either case" after "relating";

(c) in subclause (3), by adding "reasonably" after "may" in both places where it occurs;

(d) by adding after subclause (3) --

"(3A) Where --

a (a) a copy of any record or other document is supplied by registered person in compliance with a requirement made under this section; or

(b) a copy of any record or other document is made in the exercise of a power conferred by this section and a photocopying machine or other facility of a registered person is used to make the copy,

the Commission shall reimburse the photocopying or other expenses which, in the opinion of the Commission, have been reasonably incurred by the registered person in making the copy."

(e) in subclause (6), --

(i) by adding "or misleading" after "false";

(ii) by deleting "犯罪" and substituting "犯法"; and

(f) in subclause (7), by deleting "business".

Clause 30

That clause 30 be amended, by deleting subclause (2) and substituting --

"(2) A person shall not be punished under subsection (1) and section 28 or 29 in respect of the same failure."

Clause 48

That clause 48 be amended --

(a) in subclause (1), by adding "or notified to it under its rules" after

"Unified Exchange";

(b) by deleting subclause (3) and substituting --

" (3) (a) The Stock Exchange Company shall collect and account to the Commission for the levy referred to in subsection (1).

to (b) The Stock Exchange Company shall retain the proportion of the levy collected under paragraph (a) that is equal to the as the amount of the levy to be retained by it, and shall pay to the Commission the balance of such levy.

(c) The Governor in Council may by order specify the percentage of the levy collected under paragraph (a) which is to be the amount thereof to be retained by the Stock Exchange Company pursuant to paragraph (b).".

Question on the amendment proposed, put and agreed to.

MR. CHEUNG YAN-LUNG: Sir, I move that the clauses specified be further amended as set out under my name in the paper circulated to Members.

Proposed amendments

Clause 28

That clause 28 be further amended --

(a) in subclause (2), by deleting "管有" and substituting "持有";

(b) in subclause (5), by deleting "犯罪" and substituting "犯法";

Clause 30

That clause 30 be further amended, in the section heading, by deleting "第 或 條的不履行" and substituting "不履行第 或 條的".

Clause 48

That clause 48 be further amended, in subclause (8) (c) --

(a) by deleting "備置" and substituting "備存"; and

(b) by adding "兩間" before "交易所".

Question on the amendments proposed, put and agreed to.

Question on clauses 28, 30 and 48, as amended, proposed, put and agreed to.

Clause 31

MR. CHEUNG YAN-LUNG: Sir, I move that clause 31 be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 31

That clause 31 be amended, in the Chinese version, by deleting subclause (1) (a) and substituting --

"(a) 有人可能已作出有關條例下的犯法行爲<sup>⑧</sup>或"<sup>⑧</sup>

Question on the amendment proposed, put and agreed to.

MRS. LAU: Sir, I move that clause 31 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 31

That clause 31 be further amended --

(a) in subclause (1) (b), by deleting "不法" and substituting "不當";

(b) In subclause (2), --

(i) by deleting "那人" and substituting "該人";

(ii) by deleting "受調查的人" and substituting "受調查人";

(c) in subclause (3), by deleting "成本" and substituting "費用"

(d) in subclause (4) --

(i) by deleting "受調查的人" and substituting "受調查人";

(ii) by deleting "懷疑管有" and substituting "懷疑持有";

(iii) by adding "本條所指" after "可能載有與";

(e) in subclause (4) (a), by deleting "管有" and substituting "持有";

(f) in subclause (4) (c), by deleting "要求" and substituting "指定";

(g) in subclause (8) (b), by deleting "管有" and substituting "持有";

(h) in the Chinese version, by deleting subclause (13) and substituting --

○し(2)任何人(2)(4)

其他文

ウ 無合理解釋而未有出示根據第ぎウ款的要求須出示的紀錄或  
件⑧

ウ 無合理解釋而未有履行第ぎウ款所指的任何要求⑧

問⑧

エ 無合理解釋而未有依第ぎエ款所指的要求出席接受調查員查

或在答  
或魯莽地作

工 無合理解釋而未有答覆調查員根據第ㄟ工款所提出的問題(1)  
覆這些問題時(1)說出明知在要項上失實或誤導的說話(1)  
出失實的陳述⑧

才 無合理解釋而未有履行第ㄟ工款的規定⑧

指明的

才 無合理解釋而未有履行第ㄟ款所指的要求(1)或未有在該要求  
期間內予以履行(1)

即屬犯法⑨” ⑧

Question on the amendment proposed, put and agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 31 be further amended as set out under my name in the paper circulated to Members.

Members of the ad hoc group have expressed concern about the publication of an investigation report under sub-clause (10). I would like to emphasise that the Attorney General's consent is required prior to such publication in order to ensure that publication would not infringe any law or prejudice current or future legal proceedings.

In response to comments by the ad hoc group, we shall consider in the next phase whether provisions regarding delivery of investigation notes should be added.

Proposed amendment

Clause 31

That clause 31 be further amended --

(a) in subclause (1)(b)(i), by deleting "commodity";

(b) by deleting subclause (1)(b)(iii) and substituting --

"(iii) in making property investment arrangements; or";

(c) in subclause (1)(c), by deleting "within the meaning of section 141B" and substituting "for the purposes of Part XIA";

(d) in subclause (1)(d), by deleting "activities mentioned in paragraph (b)" and substituting "following activities referred to in paragraph (b) namely, the dealing or trading mentioned in subparagraph (i) thereof, the management mentioned in subparagraph (ii) thereof, the making of property investment arrangements or the giving of advice described in subparagraph (iv) thereof";

(e) in subclause (4), by adding ", or who is so believed or suspected of otherwise having such information in his possession or under his control," after "this section";

(f) in subclause (4)(a) --

(i) by adding "reasonably" after "may"; and

(ii) by adding ", or may be," before "relevant";

(g) by deleting subclause (5) and substituting --

"(5) A person shall be obliged to answer questions put to him under this section by the investigator, but if the answers might tend to incriminate him, and he so claims before answering the question, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings for an offence under subsection (13) or section 36 of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer; the investigator shall, before asking any question under this section, inform the person concerned of the limitation imposed by this subsection in respect of the admissibility in evidence of the question and any answer given.";

(h) by deleting subclause (6);

(i) in subclause (8)(a), by adding "(which may be taken and received by the investigator)" after "declaration";

(j) in subclause (8)(b), by adding "(which may be so taken and received)" after "declaration";

(k) by deleting subclause (11); and

(l) by deleting subclause (15) and substituting --

"(15) A person shall not be punished under subsections (13) and (14) in respect of the same failure.

(16) (a) Where the person under investigation or any other person is convicted by a court or magistrate on a prosecution instituted as a result of an investigation under this section, the court or magistrate may order him to pay to the Commission the whole or part of the costs or expenses of the investigation.

(b) Where an amount is paid to the Commission pursuant to an order under this subsection in respect of the costs or expenses of an investigation and the costs or expenses of that investigation are paid out of moneys provided by the Legislative Council, the Commission shall pay to the Financial Secretary an amount equal to the amount of those moneys or, if the amount paid pursuant to the order is less than the amount of those moneys, an amount equal to that so paid."

Question on the amendment proposed, put and agreed to.

MR. PAUL CHENG: Sir, I move that clause 31 be further amended as set out under my name in the paper circulated to Members.

Clause 31(4A) as proposed expressly provides a right for a person under investigation to have legal representation which has not been originally provided for under clause 31.

Sir, I beg to move.

Proposed amendment

Clause 31

That clause 31 be further amended, by adding after subclause (4) --

"(4A) A barrister or solicitor acting for the person under investigation may --

(a) attend an examination of that person; and

(b) to the extent that the investigator shall reasonably permit --

(i) examine that person; and

(ii) address the investigator,

in relation to matters in respect of which the investigator has questioned that person."

Question on the amendment proposed, put and agreed to.

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

Clauses 33, 35 and 36

MR. HO SAI-CHU (in Cantonese): Sir, I move that clauses 33, 35 and 36 be amended as set out under my name in the paper circulated to Members.

The Securities and Futures Commission Bill 1989 is the first bilingual legislation ever to be enacted in Hong Kong. Being the first of its kind, the Bill's Chinese text has yet to demonstrate greater readability and fluency where legal terminologies are involved. In some cases, expressions in use in Mainland China and Taiwan, seldom used in the territory, have been employed. Moreover, terms have occasionally been coined in an effort to convey accurately a particular concept. All

these may have made the Bill not too readily understandable to the public. Nevertheless, we have taken the first step towards bilingual legislation. The amendments to the Chinese text my colleagues and I are proposing have, as far as possible, taken into consideration both the accuracy of legal concepts thus expressed and general readability of the text. Amendments to clauses 33, 35 and 36, which I now propose, are obvious examples of this. Finally, I hope that the experience gained in drafting this bilingual Bill will facilitate future formulation of other legislation in Chinese. It is hoped that continued improvement can be made to bring drafting of legislation in Chinese here in Hong Kong closer to perfection. I still have a number of amendments to propose. All concern the way the Chinese text is phrased or worded. I will not repeat as I go along.

With these remarks, I beg to move.

Proposed amendments

Clause 33

That clause 33 be amended --

(a) in subclause (1), by deleting "以及可能需要協助該令狀的其他人" and substituting "以及任何在執行該令狀時需其協助的其他人";

(b) in subclause (1) (a), by deleting "採用武力" and substituting "強行進入";

(c) in subclause (2) (a), by deleting "管有" and substituting "持有"; and

(d) in subclause (5), by deleting "管有" wherever it occurs and substituting "保管".

Clause 35

That clause 35 be amended, in subclause (1) (b), by adding "該" before "註冊人".

Clause 36

That clause 36 be amended, in subclause (1) (a) (i), by deleting "參與" wherever it occurs and substituting "進行".

Question on the amendment proposed, put and agreed to.

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

Proposed amendments

Clause 33

That clause 33 be further amended --

- (a) In subclause (2)(a), by deleting "being" and substituting "which is, or which has been,";
- (b) in subclause (2)(c), by deleting "them" wherever it occurs and substituting "it"; and
- (c) in subclause (6)(b), by deleting "or otherwise hinders".

Clause 35

That clause 35 be further amended --

- (a) In subclause (1), by deleting "shall be exercisable in relation to any registered person" and substituting "may be exercised in relation to any registered person if he is a registered person to whom this section applies and";
- (b) in subclause (1)(c), by adding ", in a material particular," after "which";
- (c) in subclause (3), by deleting everything after "Company" where it first occurs and substituting --

"or a clearing house unless the Commission has given written notification of its intention to that Exchange Company or, as the case may be, that clearing house."; and

(d) by adding after subclause (3) --

"(4) This section applies to any registered person who is a dealer, a partner of a dealing partnership, an investment adviser, a commodity trading adviser or a partner in an investment advisers' partnership; and for the purposes of this subsection "dealer", "dealing partnership", "investment adviser", "commodity trading adviser" and "investment advisers' partnership" have the meanings assigned to them respectively by section 25(9).".

Clause 36

That clause 36 be further amended --

(a) In subclause (1)(a), by adding "to whom section 35 applies" after "a registered person" where it first occurs;

(b) in subclause (1)(b), by adding "such" after "require";

(c) in subclause (2)(a), by adding "to whom section 35 applies" after "a registered person"; and

(d) in subclause (2)(b), by adding "such" after "by".

Question on the amendments proposed, put and agreed to.

Question on clauses 33, 35 and 36, as amended, proposed, put and agreed to.

Clause 34

MR. HO SAI-CHU: Sir, I move that clause 34 be amended as set out under my name in the paper circulated to Members.

Sir, I beg to move.

Proposed amendment

Clause 34

That clause 34 be amended, by deleting "犯罪" and substituting "犯法".

Question on the amendment proposed, put and agreed to.

Question on clause 34, as amended, proposed, put and agreed to.

Clause 39

MR. MCGREGOR: Sir, I move that clause 39 be amended as set out under my name in the paper circulated to Members.

Clause 39(2) of the Bill provides that a notice served by the Securities and Futures Commission under this clause "shall take effect at such time as is specified in the notice not being earlier than the date of the notice". The ad hoc group considers that under the proposed arrangements, it is possible to require immediate compliance despite the notice being served in the late hours of a day. The proposed amendments to clause 39(2) provide that the notice shall take effect at such time as specified in the notice or at the time when it is served, whichever is the later, to avoid the possibility of unfair retrospectivity.

Sir, I beg to move.

Proposed amendment

Clause 39

That clause 39 be amended, in subclause (2), by deleting everything after "in the notice" and substituting "or the time when it is served, whichever is the later".

Question on the amendment proposed, put and agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 39 be further amended as set out under my name in the paper circulated to Members.

New provisions are made in sub-clause (7) to enable parties dealing in good faith with a registered person against whom an intervention power has been exercised to

enforce their contracts. It must, however, be made clear that if such a party chooses to enforce the contract, he should be bound by the obligations under the contract; and if he chooses not to enforce the contract, he should be obliged to restore any money or other benefit he may have thereby received.

Proposed amendment

Clause 39

That clause 39 be further amended --

(a) in subclause (3), by deleting "state" and substituting "be accompanied by a statement in writing of";

(b) by deleting subclause (5) and substituting --

"(5) The Commission may cause to be published in the Gazette a prohibition or requirement imposed under section 36, 37 or 38 or a withdrawal, substitution or variation under section 40 of any such prohibition or requirement and where any such prohibition or requirement is so published, the Commission shall also cause to be so published any subsequent withdrawal, substitution or variation of the prohibition or requirement." and

(c) by adding after subclause (6) --

as                   "(7)     (a) Nothing in sections 35 to 41 or any notice served under section 36, 37 or 38 shall render any contract unenforceable by any party thereto if he proves that in entering into the contract he acted in good faith and, regards any notice so received, was unaware of the notice.

(b) Where by virtue of anything contained in a section or notice referred to in paragraph (a) a person rescinds a contract, he shall restore to any other party to the contract any money or other benefit received or obtained by him under the contract from that party."

Question on the amendment proposed, put and agreed to.

MR. HO SAI-CHU: Sir, I move that clause 39 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 39

That clause 39 be further amended --

(a) in subclause (4), by deleting "特別" and substituting "明確"; and

(b) in the Chinese version, by deleting subclause (6) and substituting --

"(6) 如監察委員會認為適當(1)可在任何依第 $\times$ 款刊登的通知書內(1)說明施加禁止(1)作出要求(1)或撤回(1)取代或更改禁止或要求的理由(1)".

Question on the amendment proposed, put and agreed to.

Question on clause 39, as amended, proposed, put and agreed to.

Clause 44

MR. NGAI (in Cantonese): I move that clause 44 be amended as set out under my name in the paper circulated to Members. These amendments are necessary to bring about greater fluency of language. Sir, I beg to move.

Proposed amendment

Clause 44

That clause 44 be amended --

(a) by deleting "移轉" wherever it occurs and substituting "移交"; and

(b) in subclause (6), by deleting "給".

Question on the amendment proposed, put and agreed to.

FINANCIAL SECRETARY: I move that clause 44 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 44

That clause 44 be further amended, in subclause (1), by adding before the full stop --

"or transfer the functions in so far as they or it applies to the members or applicants for membership of that company".

Question on the amendment proposed, put and agreed to.

Question on clause 44, as amended, proposed, put and agreed to.

Clause 46

MRS. FONG: Sir, I move that clause 46 be amended as set out under my name in the paper circulated to Members.

One of the instances under which clause 46(1) comes into play is in a situation where the commission considers it appropriate "for the protection of investors against financial loss". The ad hoc group is concerned that the protection of a certain group of investors from financial loss could be at the expense of another group of investors. The group considers that the Commission should not be involved in the protection of sectoral interest. The proposed deletion of the words "against financial loss" from clause 46(1) is intended to address such concern.

The ad hoc group also shares the concern of the stock exchange that there is no provision for appeal in respect of a restriction notice served by the commission under clause 46. The addition of the new clause 46(2A) provides an avenue for appeal to

the Governor in Council against a restriction notice relating to the amendment of the Memorandum of Association or Articles of Association of an exchange company or clearing house.

Sir, I beg to move.

Proposed amendment

Clause 46

That clause 46 be amended --

(a) in subclause (1) --

(i) by deleting "and (3)" and substituting ", (3) and (8)";

(ii) by deleting "against financial loss";

(b) by adding after subclause (2) --

"(2A) (a) Where a restriction notice requires an Exchange Company or clearing house to amend, withdraw or revoke any provision of its memorandum of association or articles of association, the Exchange Company or clearing house may appeal to the Governor in Council against the notice.

(b) An appeal under paragraph (a) shall not affect the coming into force of the restriction notice to which the appeal relates.";

(c) by adding after subclause (4) --

"(4A) Where a restriction notice is issued or extended under this section, the Commission may cause to be published in the Gazette a copy of the notice or, as may be appropriate, particulars of the extension.";

(d) in subclause (7), by deleting "or through negligence"; and

Question on the amendment proposed, put and agreed to.

MR. NGAI: Sir, I move that clause 46 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 46

That clause 46 be further amended --

(a) in subclause (1) --

(i) by adding "某一 " after "適當地規管";

(ii) by deleting "一項 ";

(b) in subclause (1) (a), by adding "該" before "交易所";

(c) in subclause (1) (a) (i) --

(i) by adding "該 " before "交易所"; and

(ii) by deleting "法律文件" and substituting "文書";

(d) in subclause (1) (a) (ii), by deleting "進行" and substituting "處理";

(e) in subclause (1) (b) --

(i) by adding " 該" before "交易所"; and

(ii) by deleting "進行" and substituting " 處理";

(f) in subclause (6), by deleting "法律文件" and substituting "文書"; and

(g) in subclause (7), by deleting "交易所⑩結算所或它的任何成員" and substituting "任何 交易所或結算所(1)或交易所或結算所的任何會員".

Question on the amendment proposed, put and agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 46 be further amended as set out under my name in the paper circulated to Members.

In response to concern expressed by the ad hoc group, I would like to assure Members that of the four factors in sub-clause (1) to be taken into consideration by the SFC, "public interest" will be of paramount importance although each case will be decided on individual merits.

Proposed amendment

Clause 46

That clause 46 be further amended --

(a) by adding after subclause (6) --

"(6A) Where --

in (a) a restriction notice includes a requirement described  
subsection (1)(a)(i) and the requirement relates to the  
memorandum of association or the articles of  
association of a company; and

to (b) by virtue of subsection (6) the provision to which the  
requirement relates has effect as if the requirement had  
been complied with or, as the case may be, has ceased  
have effect,

the Commission shall, as soon as may be, deliver to the Registrar of Companies a copy of the notice, and if there is an appeal under subsection (2A) against the notice and the appeal is not withdrawn, the Commission shall, as soon as may be, inform such registrar in writing of the outcome of the appeal."; and

(b) by adding after subclause (7) --

"(8) Nothing in this section shall be construed as enabling the Commission to do under this section anything which may be done by the Commission by direction or order under section 26 or 27 of the Securities Ordinance (Cap. 333) or section 21 of the Commodities Trading Ordinance (Cap. 250).".

Question on the amendment proposed, put and agreed to.

Question on clause 46, as amended, proposed, put and agreed to.

Clause 47

MRS. FONG: Sir, I move that clause 47 be amended as set out under my name in the paper circulated to Members.

The proposed deletion of "against financial loss" from clause 47(1) is made for the same reason that I explained in moving the amendment to clause 46(1).

Clause 47(4) provides that a suspension order shall "come into operation immediately on the making of the order". The ad hoc group considers that to avoid the possibility of unfair retrospectivity, the order should not take effect before it is served. A new clause 47(4) is proposed so that a suspension order shall take effect only when it is served on the exchange company or clearing house, and that copies of the order or notice of extension should be served not only on the exchange company or clearing house, but also on the directors, committee members or chief executive officers concerned.

Clause 47(6) only provides for the making of a notice in the Gazette of the "fact" of a suspension order made. It does not, however, require the "terms" of the order to be published. The amendment to clause 47(6) stipulates that the actual suspension order should be published in the Gazette rather than "that fact" alone as is provided in the original clause 47(6).

Sir, I beg to move.

Proposed amendment

Clause 47

That clause 47 be amended --

(a) in subclause (1), by deleting "against financial loss";

(b) in subclause (2)(a), by deleting "Exchange Company, clearing house, board, governing body, committee or officer concerned" and substituting "Exchange Company or clearing house to which it relates or any board, governing body, committee or officer thereof";

(c) by deleting subclause (2)(c) and substituting --

"(c) a person referred to in paragraph (a) shall not, by act or omission, either directly or indirectly, affect the manner in which functions therein referred to are performed.";

(d) by deleting subclause (4) and substituting --

"(4) (a) A suspension order or an extension thereof under subsection (5) shall take effect when a copy of the order or notice of the extension is served under subsection (6)(a) on the Exchange Company or clearing house to which the order relates.

(b) (i) Where a suspension order is made or such an order is extended under subsection (5), the Commission shall, if it is practical so to do, as soon as may be give a copy of the order or, as may be appropriate, notice of its extension to the chief executive officer of the Exchange Company or clearing house to which the order relates and to such directors or members of the committee thereof (if any) as the Commission may consider appropriate in the circumstances.

(ii) Nothing in this paragraph shall affect paragraph (a).";

(e) by deleting subclause (6)(b) and substituting --

"(b) cause the suspension order or, as may be appropriate, notice of such extension to be published in the Gazette.";

(f) in subclause (7), by adding "reasonably" before "incurred"; and

(g) in subclause (8), by adding "knowingly" after "who".

Question on the amendment proposed, put and agreed to.

MR. PETER POON: Sir, I move that clause 47 be further amended as set out under my name in the paper circulated to Members.

Sir, I beg to move.

Proposed amendment

Clause 47

That clause 47 be further amended --

(a) in subclause (1), by adding "信納" before "為(6)保障";

(b) in subclause (1)(a), by adding "該" before "交易所";

(c) in subclause (1) (d), by adding "該" before "交易所";

(d) in subclause (3), by adding "不超過" before " 個月";

(e) in subclause (7), by deleting "成本" wherever it occurs and substituting "費用".

Question on the amendment proposed, put and agreed to.

Question on clause 47, as amended, proposed, put and agreed to.

Clause 50 and 51

MR. PETER POON: Sir, I move that the clauses 50 and 51 be amended as set out under my name in the paper circulated to Members.

I beg to move.

Proposed amendments

Clause 50

That clause 50 be amended --

(a) in subclause (1), --

(i) by deleting "規定監察委員會就以下項目收取費用" and substituting "就向監察委員會繳付關於以下事項的費用作出規定"; and

(ii) in the renumbered paragraph (b), by deleting "放棄追究" and substituting "寬免".

(b) in the Chinese version, in subclause (2), by deleting paragraph (b) and substituting--

"(b) 根據本條訂明的各項費用(1)不得單以監察委員會提供某項服務④指 根據有關條例就某人提供服務或以其他方式執行職能(1) 或提供某一 類的服務③而承擔或可能承擔的行政費或其他費用 的數額為限⑨".

Clause 51

That clause 51 be amended --

(a) in subclause (1), by deleting "採取行動" and substituting "辦理".

(b) in subsection (2), by deleting "屬於交易所成員" and substituting "身為交易所會員".

Question on the amendments proposed, put and agreed to.

FINANCIAL SECRETARY: I move that clauses 50 and 51 be further amended as set out under my name in the paper circulated to Members.

Proposed amendments

Clause 50

That clause 50 be further amended, in subclause (1) --

(a) by renumbering paragraph (a) as paragraph (c);

(b) by renumbering paragraph (b) as paragraph (a);

(c) by renumbering paragraph (c) as paragraph (b); and

(d) in the renumbered paragraph (c), by adding "other" after "any".

Clause 51

That clause 51 be further amended, in subclause (1), by deleting "concerned" and substituting "involved"; and

Question on the amendments proposed, put and agreed to.

Question on clauses 50 and 51, as amended, proposed, put and agreed to.

Clauses 54, 57 and 59

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

Clause 54 -- Preservation of secrecy, etc.

In response to concern expressed by market bodies about the confidentiality of their clients' data, sub-clause (1) is reworded to extend the secrecy provisions to the other relevant Ordinances and to past employees of the SFC.

Proposed amendments

Clause 54

That clause 54 be amended --

(a) by deleting subclause (1) and substituting --

"(1) Except in the performance of a function under any of the relevant Ordinances, or in carrying out a provision of any of those Ordinances, a person who is appointed under any of those Ordinances or who performs or assists any other person in the performance of a function under any of those Ordinances --

after  
of

(a) shall, at all times subsequent to his appointment or he has performed or so assisted in the performance any such function (and whether or not his appointment continues or he may again perform or so assist in the performance of any such function), preserve and aid in preserving secrecy with regard to any matter coming to his knowledge in the performance of, or assisting in the performance of, any function under any of the relevant Ordinances;

(b) shall not at any such time communicate any such matter to any other person; and

(c) shall not at any such time suffer or permit any other person to have access to any record or other document which is in his possession or under his control by virtue of his being or having been so appointed or his performing or having performed, or assisting or having assisted any other person in the performance of a function under any of the relevant Ordinances.";

(b) in subclause (2), by deleting "Subsection (1) shall not apply to a disclosure by the Commission of information" and substituting --

"Notwithstanding subsection (1) the Commission may disclose information";

(c) in subclause (2)(a), by deleting "to a requirement";

(d) in subclause (2)(c), by deleting "arising out of the relevant Ordinances" and substituting "to which the Commission is a party";

(e) in subclause (2)(f)(iii), by deleting "or" at the end;

(f) in subclause (2)(f)(iv), by adding "or" at the end;

(g) by adding after subclause (2)(f)(iv) -

"(v) a clearing house,".

(h) in subclause (2)(g), by adding "in the interest of the investing public or the public interest" after "expedient";

(i) in subclause (2)(h) --

(i) by deleting "or trading in commodity futures contracts" and substituting ", trading in futures contracts or entering into property investment arrangements,".

(ii) by deleting "條文規定" and substituting "保密條文監管"; and

(iii) by adding "in the interest of the investing public or the public interest" after "expedient";

(j) by deleting subclause (4) and substituting --

"(4) Subject to subsection (5), the chairman or any other

director of the Commission or any person employed in the administration of any provision of the relevant Ordinances shall not directly or indirectly effect or cause to be effected, on his own account or for the benefit of any other person, any transaction regarding securities, a futures contract or property investment arrangements --

proceedings  
considered by the

(a) which he knows to be the subject of an investigation or proceedings by the Commission under any of the relevant Ordinances or to be the subject of other proceedings under this Ordinance or is being otherwise considered by the Commission;

(b) which he knows to be connected with a matter which is either the subject of an investigation or proceedings mentioned in paragraph (a) or is being otherwise considered by the Commission; or

(c) in respect of which a prospectus or any take-over document is to his knowledge, being considered by the Registrar of Companies for registration under the Companies Ordinance (Cap. 32)."; and

(k) in subclause (6), by deleting "this Ordinance" and substituting "any of the relevant Ordinances".

Clause 57

That clause 57 be amended, in subclause (1), by deleting "this Ordinance" and substituting "any of the relevant Ordinances".

Clause 59

That clause 59 be amended, by adding after subclause (6) --

"(7) Any licence or exemption granted, certificate issued,

recognition or permission given, declaration made, suspension or condition imposed or attached or other thing done by the former Securities Commission, the former Commissioner for Securities, the former Commodities Trading Commission or the former Commissioner for Commodities Trading in the performance of a function similar to a function of the Commission shall, if that thing was in force, subsisting or effective immediately before the establishment day, be regarded as having been granted, issued, given, made, imposed, attached or done by the Commission in performing the function and for the purposes of this subsection the function shall be regarded as having been performable by the Commission at the time the thing was granted, issued, given, made, imposed, attached or done.

(8) Any application under Part VI of the Securities Ordinance (Cap. 333) to the former Commissioner for Securities or any notification given to the former Commissioner for Securities or any application under Part IV of the Commodities Trading Ordinance (Cap. 250), or any notification given to the former Commissioner for Commodities Trading which was pending or effective immediately before the establishment day shall, unless it is withdrawn after that day, be determined by or, as may be appropriate, be regarded as having been given to, the Commission as if it had originally been made or given to the Commission by virtue of this Ordinance.

(9) In subsections (7) and (8) "former" means existing immediately before the establishment day."

Question on the amendments proposed, put and agreed to.

MR. LAU WAH-SUM: Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

Under clause 54(5) (d), "抵押" is currently used as the original Chinese equivalent of "to charge or pledge". The ad hoc group, however, considers that "抵押" can only reflect the concept of "charge" but not "pledge". The Administration has proposed to use "質押" to express the concept of "pledge". This term is derived from the Taiwanese usage of "典權" and "質權" which are used to express the concept

of rights attached to a pledge. The proposal has the support of the ad hoc group. The amendment to clause 54(5) (d) proposes to substitute "抵押或質押" for "抵押" to reflect the concept of "to charge or pledge". The group also notes that the new term "質押" will be included in the glossary of Chinese legal terms compiled by the Legal Department for future reference.

Sir, I beg to move.

Proposed amendments

Clause 54

That clause 54 be further amended --

- (a) in subclause (5) (d), by adding "或質押" after "抵押";
- (b) in subclause (6) (b), by adding "內" after "公司" where it secondly occurs;
- (c) in subclause (6) (c), by deleting "共事" in both places where it occurs and substituting "有聯繫"; and
- (d) in subclause (7), by deleting "犯罪" and substituting "犯法".

Clause 57

That clause 57 be further amended --

- (a) in subclause (2) --
  - (i) by deleting "對第**ㄉ**款所述罪行提起檢控" and substituting "就第**ㄉ**款所述犯法行為提出檢控"; and
  - (ii) by deleting "答辯" and substituting "申辯"; and
- (b) in subclause (3), by deleting "在檢控刑事罪行方面" and substituting "就

刑事犯法行 為提出檢控".

Clause 59

That clause 59 be further amended --

- (a) by deleting "裁決" wherever it occurs and substituting "解決";
- (b) in subclause (3), by deleting "移轉給" and substituting "移交"; and
- (c) in subclause (4), by deleting "須".

Question on the amendments proposed, put and agreed to.

Question on clauses 54, 57 and 59, as amended, proposed, put and agreed to.

Clause 55

MR. MCGREGOR: I move that clause 55 be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 55

That clause 55 be amended, by deleting clause 55 and substituting --

"Service of notices

55. (1) A notice or direction required to be served under any of the relevant Ordinances shall be properly served if --

- (a) in the case of an individual, it is delivered to him or, where it cannot conveniently be so delivered, it is --

or  
at  
(i) left at the address at which he ordinarily resides carries on business or, if such an address is unknown, his last known address; or

(ii) sent by post to him at any such address;

(b) in the case of --

(i) a company, it is delivered to an officer of the company or, where it cannot so be conveniently delivered, it is left at, or sent by post to, the company's registered office;

(ii) an oversea company within the meaning of the Companies Ordinance (Cap. 32), it is left with, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on behalf for the purposes of Part XI of that

its  
Ordinance;

(c) in the case of a partnership, it is delivered to any partner or where it cannot be conveniently delivered, it is left at, sent by post to, the address at which the partnership carries on business;

or

(d) in the case of a body corporate other than a company or an unincorporated body of persons other than a partnership, it is delivered to an officer of the body, or where it cannot be conveniently delivered, it is left at, or sent by post to, the address at which the body carries on business.

the

(2) For the purposes of subsection (1), every other body corporate other than a company and every unincorporated body of persons not being a partnership shall be deemed to carry on business at its principal office or place of business."

Question on the amendment proposed, put and agreed to.

Question on clause 55, as amended, proposed, put and agreed to.

New clause 8A Delegation and sub-delegation of Commission's functions

New clause 31A Returns

New clause 45A Notice of closure or re-opening

New clause 52A Liability of directors, etc.

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

FINANCIAL SECRETARY: Sir, in accordance with Standing Order 46(6), I move that new clauses 8A, 31A, 45A and 52A as set out in the paper circulated to Members be read the Second time.

New clause 8A -- Delegation and sub-delegation of Commission's functions.

The Administration is well aware of the need to guard against over-delegation by the SFC of its functions which include its powers and duties. New clause 8A deals not only with delegation to committees, but also delegation to individual SFC directors or staff. Not all functions can be delegated. Those that cannot be delegated are set out in Schedule 1 to the Bill. Amendments to this Schedule can only be effected by a resolution of this Council. The SFC will also produce internal procedures governing the level of delegation in order to ensure that functions are performed at the appropriate level.

New clause 45A -- Notice of closure or re-opening

New clause 45A is based on the former clause 45(3) of the Bill to require an Exchange Company to inform the SFC of its intention to close or re-open the market, otherwise than in accordance with the rules of that company.

Question proposed, put and agreed to.

Clauses read the Second time.

FINANCIAL SECRETARY: I move that new clauses 8A, 31A, 45A and 52A be added to the Bill.

Proposed additions

New clause 8A

That the Bill be amended, by adding after clause 8 the following --

"Delegation and sub-delegation of Commission's functions

8A. (1) Subject to subsection (2), the Commission may delegate any of its functions, other than its power under this section to delegate or a function specified in Schedule 1, to --

(a) any of the directors of the Commission;

(b) any committee established under section 6; or

(c) any employee of the Commission.

(2) (a) A delegation under this section shall not prevent the concurrent performance by the Commission of the function delegated.

(b) The Commission may revoke a delegation under this section.

(3) Where the Commission makes a delegation under this section, it may at the same time authorize the person or committee to whom the delegation is made to sub-delegate the function delegated and such authorization may contain restrictions or conditions as regards the exercise of the power to sub-delegate under the authorization.

(4) Where any person or committee purports to act pursuant to a delegation or sub-delegation under this section, he or it shall be presumed, until the contrary is shown, to be acting in accordance with the terms of the delegation or sub-delegation.

(5) The Legislative Council may by resolution amend Schedule 1."

New clause 31A

That the Bill be amended, by adding after clause 31 the following --

"Returns

31A. (1) The Commission may make rules requiring any registered person to whom the rules apply to make annual returns to the Commission.

(2) Rules made under this section may --

(a) apply to registered persons generally or to registered persons of a particular class or description specified in the rules, and different rules may be made in respect of different classes or descriptions of registered persons;

(b) specify the form of the return and the particulars it is to contain and the persons by whom such returns are to be made; and

(c) specify the time by which a return required by the rules is to be received by the Commission."

New clause 45A

That the Bill be amended, by adding after clause 45 --

"Notice of closure or re-opening

45A. An Exchange Company shall give to the Commission such written notice as is reasonable in the circumstances of its intention to close its exchange for the transaction of business otherwise than in accordance with the rules of that company and, where it has so closed it, of its intention to re-open it."

New clause 52A

That the Bill be amended, by adding after clause 52 the following --

"Liability of directors, etc.

52A. (1) Where an offence under this Ordinance committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the corporation, or any person who was purporting to act in any such capacity, he, as well as the corporation, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Subject to subsection (3), for the purposes of this section, a person is deemed to be a director of a corporation if he occupies the position of a director by whatever name called or is a person in accordance with whose directions or instructions the directors of the corporation or any of them act.

(3) A person shall not, by reason only that the directors of a corporation act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

(4) Where an offence committed by a partner in a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the offence and liable to be proceeded against and punished accordingly."

Question on the additions of the new clauses proposed, put and agreed to.

New clause 20A Case stated

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

MR. MCGREGOR: Sir, In accordance with Standing Order 46(6) I move that the new clause 20A as set out in the paper circulated to Members be read a Second time.

Clause 20(8) stipulates that the determination of an appeal by a tribunal hearing an appeal shall be final and shall not be appealable. While the ad hoc group shares the Administration's view that since the cases involved are frequently highly complex in nature, the provision of appeals on the determination of a tribunal would encourage a proliferation of appeals, it considers that there should be safeguards in the Bill allowing the clarification on points of law by way of a case stated to the Court of Appeal. This is because the composition of the appeal tribunal is such that the interpretation of laws would fall heavily on the shoulder of either the chairman or deputy chairman of the appeals panel, whoever is presiding at the hearing. The new clause 20A provides the appeal tribunal with the discretion to refer to the Court of Appeal by way of a case stated on a point of law, either on its own motion or on the application of either party to the relevant appeal. Relevant procedural rules are also made.

Sir, I beg to move.

Question proposed, put and agreed to.

Clause read the Second time.

MR. MCGREGOR: Sir, I move that new clause 20A be added to the Bill.

Proposed addition

New clause 20A

That the Bill be amended, by adding after clause 20 --

"Case stated

20A. (1) The tribunal hearing an appeal under this Part may by way of a case stated refer to the Court of Appeal, for its opinion

thereon, any question of law relating to the appeal.

(2) A case may be stated under this section by a tribunal either of its own motion or on the application in accordance with subsection (4) of any party to the relevant appeal.

(3) (a) A case stated under this section by a tribunal of its own motion shall be stated before the tribunal determines the relevant appeal and be signed by the person presiding at the hearing of such appeal.

(b) Where a case is stated under this section by a tribunal of its own motion, the tribunal shall not determine the relevant appeal until after the opinion of the Court of Appeal on the case has been given.

(4) The following provisions shall apply to any application under subsection (2) --

(a) the application shall be in writing and, subject to paragraph (b), shall be sent to the chairman of the Panel after the determination of the relevant appeal and be accompanied by the fee specified in an order made for the purposes of this subsection by the Governor in Council;

(b) the application shall be received by the chairman of the Panel before the expiration of the period of 14 days beginning on the day on which such appeal is determined;

(c) the party making the application shall at the same time send a copy thereof to any other party to such appeal;

(d) on receipt of the application the chairman of the Panel shall re-convene the tribunal by which such appeal was determined; and

(e) the tribunal shall, as soon as may be, consider the application and may allow or refuse it, and its decision shall be final and shall not be appealable.

(5) (a) A case stated under this section shall include a statement of facts and, where appropriate, the decision of the tribunal

appointed under section 19 on the relevant appeal and shall be signed by the person presiding at the hearing of such appeal.

(b) The person by whom it is signed shall, as soon as may be, transmit a case stated under this section to the Court of Appeal.

(6) The Court of Appeal may require the tribunal by which a case is stated under this section to amend the case in such manner as the court shall specify.

(7) Where the Court of Appeal determines a case stated under this section it shall cause a copy of the case, together with a copy of its opinion thereon, to be sent to the person by whom the case was signed and that person shall, where appropriate, re-convene the relevant tribunal which, when re-convened, shall determine the relevant appeal or, as may be appropriate, revise its previous determination having regard (in either case) to the opinion of the court."

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

Schedule

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

Under item 6(ka), amendments are made to section 60 of the Securities Ordinance to enable the Commission to revoke a declaration of exempt dealer status at any

time. This serves to pave the way for the eventual abolition of exempt dealership as recommended by the Securities Review Committee. Members may be assured that this provision will only be implemented after extensive consultation with those concerned.

Proposed amendment

Schedule

That Schedule, para. 1 be amended --

(a) in subparagraph (1), by deleting "Ordinances" and substituting "enactments";  
and

(b) in subparagraph (2), by deleting "Ordinances" and substituting "enactments".

That Schedule, para. 3 be amended --

(a) in item 6(f)(v), in new subsection (5), by adding "(1)(b)" after "25";

(b) in item 6(i)(i)(A), in new subparagraph (v), by deleting "for the purposes of inspection under" and substituting "having regard to the purposes of";

(c) in item 6(i)(i)(B), in new subparagraph (v), by deleting "for the purposes of inspection under" and substituting "having regard to the purposes of";

(d) in item 6(i)(i)(C), in new paragraph (c)(iii), by deleting "for the purposes of inspection under" and substituting "having regard to the purposes of";

(e) by adding after item 6(i) --

"(ia) Add after section 53 --

"Amendment of conditions of certificate of  
registration

53A. Without affecting the generality of section 51(2), the Commission may at any time, by a notice in writing served on the holder of a certificate of registration, attach to the certificate such reasonable conditions as the Commission considers necessary or, if it considers it necessary, amend or cancel any condition to which the certificate is then subject.".";

(f) in item 6(j), in new section 56(1)(a)(i) --

(i) by adding "or the Securities and Futures Commission Ordinance 1989 ( of 1989)" after "this Ordinance" where it first occurs;

(ii) by deleting "this Ordinance" where it secondly occurs and substituting "either of those Ordinances".

(g) by adding after item 6(k) --

"(ka) In section 60(5), repeal "subsection (4)" and substitute "this section".";

(h) by adding after item 7(f) --

"(fa) Repeal section 25 and substitute --

"Appeals

25. Where --

(a) a licence is revoked under section 18 or 20; or

(b) the Exchange Company is directed to close the Commodity Exchange under section 19 or 20,

the Exchange Company may appeal to the Governor in Council against decision of the Commission, and the Governor in Council may confirm, vary or reverse the

decision and give such other directions as it thinks just and equitable."

(i) in item 7(h), in new subsection (6), by deleting "section 21" and substituting "sections 21, 23 and 25(1)(b)";

(j) in item 7(i)(i)(A), in new subparagraph (iv), by deleting "for the purposes of inspection under" and substituting "having regard to the purposes of";

(k) in item 7(i)(i)(B), in new subparagraph (v), by deleting "for the purposes of inspection under" and substituting "having regard to the purposes of";

(l) in item 7(i)(i)(C), in new subparagraph (v), by deleting "for the purposes of inspection under" and substituting "having regard to the purposes of";

(m) by adding after item 7(j) --

"(ja) Add after section 33 --

"Amendment of conditions of certificate issued under section 30(2)

under conditions, or certificate is

33A. Without limiting the generality of section 30(2), the Commission may at any time, by a notice in writing served on the holder of a certificate issued that section, attach to the certificate such amend or cancel any condition to which the then subject, as it shall think fit."";

(n) in item 7(k), in new section 36(1)(a)(i) --

(i) by adding "or the Securities and Futures Commission Ordinance 1989 ( of 1989)" after "this Ordinance" where it first occurs; and

(ii) by deleting "this Ordinance" where it secondly occurs and substituting "either of those Ordinances"; and

(o) by deleting item 9(d)(ii).

That Schedule, para. 4 be amended --

(a) in item 1(b), by adding "60(3)," after "59,"; and

(b) in item 4(b), by deleting "30, 31, 35 and 38" and substituting "28, 30, 31 and 38".

Question on the amendment proposed, put and agreed to.

Question on schedule, as amended, proposed, put and agreed to.

New Schedule 1

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

FINANCIAL SECRETARY: Sir, in accordance with Standing Order 46(7) I move that new Schedule 1 as set out in the paper circulated to Members be read the Second time.

This Schedule sets out all the functions in the Bill and the other relevant Ordinances which are not to be delegated under new clause 8A.

Question proposed, put and agreed to.

Schedule read the Second time.

FINANCIAL SECRETARY: Sir, I move that new Schedule 1 be added to the Bill.

Proposed addition

New Schedule 1

That the Bill be amended, by numbering the Schedule as Schedule 2 and by adding before Schedule 2 --

"SCHEDULE 1

[s. 8A]

FUNCTIONS OF COMMISSION TO WHICH  
SECTION 8A DOES NOT APPLY

1. Any power of the Commission to make subsidiary legislation.
2. A function of the Commission under section 4(2), 8(d), 9(1), 11, 13(2), 14, 30(1), 31(10), 36, 37, 38, 40(1), 42(1), 43(1), 44, 46(1) or (4), 47(1) or (5) or 54(2)(g) or (h), the power of the Commission under section 15(1) to appoint auditors and the Commission's power of appointment under section 31(1).
3. A function of the Commission under section 14(3), 26(1), 27, 65B(6), 74(3), 100(2), (3), (4) or (7), 110 or 130(5) of the Securities Ordinance (Cap. 333), the Commission's power of appointment under section 127(1) of that Ordinance in so far as it is exercisable as regards a person who is not an employee of the Commission, the making by the Commission of an order described in section 134(1) of that Ordinance and the Commission's power to apply to the High Court under section 144 of that Ordinance for an order described in subsection (1) of that section.
4. A function of the Commission under section 14(1), 15, 16, 18(1), 19(1), 21(1) or (2), 60A(3), 78 or 113(4) of the Commodities Trading Ordinance (Cap. 250) and the Commission's power to prescribe by virtue of section 13(3)(j) of that Ordinance.
5. A function of the Commission under section 3(1), 3(4), 10A, 34(2), 35(1), 36(1) or 44(3) of the Stock Exchanges Unification Ordinance (Cap. 361)."

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

Long title

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

Proposed amendment

Long title

That the long title be amended, by deleting "commodity".

Question on the amendment proposed, put and agreed to.

Question on the long title, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

The ATTORNEY GENERAL reported that the

SECURITIES AND FUTURES COMMISSION BILL 1989

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

Question on the Third Reading of Bill proposed, put and agreed to.

Bill read the Third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: I congratulate the Council on picking its way with such skill through so many amendments and on enacting for the first time a piece of bilingual legislation. It is a historic event. In accordance with Standing Orders

I now adjourn the Council until 2.30 pm on Wednesday, 19 April 1989.

Adjourned accordingly at eight minutes to Seven o'clock.

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