

1 HONG KONG LEGISLATIVE COUNCIL -- 15 November 1989

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 15 November 1989

The Council met at half-past Two o'clock

PRESENT

HIS HONOUR THE DEPUTY TO THE GOVERNOR (PRESIDENT)

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE FRANK STOCK, Q.C., 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 HOME AFFAIRS

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.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.

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

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

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

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE CHUNG PUI-LAM, 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 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 PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE GEOFFREY THOMAS BARNES, C.B.E., J.P.  
SECRETARY FOR SECURITY

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 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.

THE HONOURABLE MRS. ANSON CHAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

ABSENT

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

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

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

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

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

THE HONOURABLE YEUNG KAI-YIN, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

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.

Antibiotics Ordinance

Antibiotics (Amendment) (No. 2)

Regulations 1989.....

364/89

Merchant Shipping (Safety) Ordinance

Merchant Shipping (Safety) (Signals of

Distress and Prevention of Collisions)

(Amendment) Regulations 1989..... 365/89

Public Health and Municipal Services Ordinance

Public Health and Municipal Services

(Amendment of Second Schedule) Order 1989..... 366/89

Boilers and Pressure Vessels Ordinance

Boilers and Pressure Vessels (Exemption)

(Consolidation) (Amendment) (No. 3)

Order

1989..... 367/89

Antiquities and Monuments Ordinance

Antiquities and Monuments (Declaration of

Monument) (No. 2) Notice 1989..... 368/89

Interpretation and General Clauses Ordinance

Change of Title (Colonial Treasurer

Incorporated) (Transfer of Businesses

(Protection of Creditors) Ordinance)

Notice

1989..... 369/89

Sessional Papers 1989/90

No. 16 -- Ocean Park Corporation Annual Report 1988/89

No. 17 -- Annual Report of the Director of Accounting Services and the  
Accounts of Hong Kong for the year ended 31 March 1989

No. 18 -- Report of the Director of Audit on the Accounts of the Hong Kong  
Government for the year ended 31 March 1989 and the results of  
value for money audit October 1989

Director of Audit Report No. 14

Address by Member

Ocean Park Corporation Annual Report 1988/89

MR. ARCULLI: As a member of the Ocean Park Corporation I am happy to table the Annual Report for 1988-89. In the financial year ended 30 June 1989, the Ocean Park welcomed a further 2 million visitors, including 590 000 from overseas. This attendance represented a 7% increase over the previous year and the highest annual attendance since the Park opened to the public in 1977.

The operating income also reached a record level of HK\$160.3 million. Inclusive of interest and dividends from the Ocean Park Trust Fund, there was a surplus of \$38.5 million.

These excellent results have enabled Ocean Park to fund new attractions for the benefit of the public, including the imaginative Middle Kingdom development which is due to open in January 1990. This is but one excellent example of Ocean Park's commitment to provide a world-class recreational and entertainment complex for local and foreign visitors at affordable prices. The provision of new attractions when capital and operating costs have risen sharply prompted Ocean Park to submit to the Government in June 1988 outline proposals for the development of the carpark at the Lowland and the Tai Shue Wan site. These proposals if approved by the Government will provide Ocean Park with a new source of income plus the additional advantage

of allowing visitors access to indoor facilities. We hope that the Government would give sympathetic consideration to these proposals so that we can proceed with further planning and studies as soon as possible.

Oral answers to questions

Phase III of Tseung Kwan O Development

1. MR. TAM asked (in Cantonese): In view of the need to identify and commit land for public housing in 1989 to ensure sufficient production of flats by 1996-97, will Government inform this Council when a decision will be taken on whether Phase III of the Tseung Kwan O Development will be implemented?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, as I said in this Council last week, in view of our heavy investments in the port and airport and elsewhere, it is unlikely that Government will be able to fund, for some years at least, the general urban development in Phase III of Tseung Kwan O. However, the Housing Authority is looking at the possibility of taking on itself the redevelopment of Tiu Keng Leng Cottage Area to provide housing for some 40 000 people. As I also mentioned last week this decision does not affect the eastern side of Stage III, including the industrial estate, which is expected to be funded from other sources.

MR. TAM (in Cantonese): Sir, has the Government considered that such a decision will bring problems to the supply of public housing six years later, and also cause great disappointment to the Sai Kung District Board and the Housing Authority?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, Government has given every consideration to all the factors surrounding this estate. As I say, it is hoped that we may yet achieve this estate, even though the funding for the works around Stage III, which is related to Tiu Keng Leng Estate, is not by the Government.

MR. HUI: Sir, could the Secretary inform this Council whether Government will have no objection if the Housing Authority is willing to put up its own funds to develop Phase III of Tseung Kwan O? If so, will the Government develop the necessary

infrastructure, like Mass Transit Railway extensions, for the total development of the area?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, it is most unlikely that the Government will have any objection, in principle, to a scheme for the Housing Authority to develop the cottage area at Tiu Keng Leng. But the Housing Authority is looking at the possibility of paying for supporting infrastructure that is necessary to support the housing estate alone.

As regards the Mass Transit Railway Corporation, that is part of a separate negotiation. No doubt if the Housing Authority is able to proceed with the cottage area, this will add more population and this will be looked at by the MTRC in relation to the commercial decision which it has to make before it commits itself to a line to Junk Bay. At present, if I understand the position rightly, it is not so committed.

MR. TIEN: Sir, will Government inform this Council whether the planned third industrial estate project will be affected by the decision to delay the Phase III Development of Tseung Kwan O?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: No, Sir.

MR. MCGREGOR: Sir, could the Secretary indicate the source of the funding for the industrial estate; is it one source or a number of sources?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I would have liked to refer this one to the Financial Secretary but I have not warned him about it. I think it is from the Development Loan Fund.

MR. MICHAEL CHENG (in Cantonese): Sir, as the Government has the problem of resource allocation, the Housing Authority itself needs to finance the land formation project for Phase III of the Tseung Kwan O Development. How will the Government avoid passing such a financial burden on to the estate tenants?



SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Housing Authority is not under any compunction to go ahead with this estate. Government has simply made clear that it cannot at the present time finance the land formation and infrastructural development. The Housing Authority, which is clearly anxious to maintain its programme and to have Tiu Keng Leng as an estate, is looking at this of its own accord.

MR. EDWARD HO: Sir, in view of the decision not to proceed with Phase III of Tseung Kwan O, and Tiu Keng Leng Cottage Area is only part of that area, can the Secretary confirm that land supply for public housing from 1996 onwards will be met from other sources?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, there is an on-going land supply from all kinds of different sources to the housing programme, which goes throughout the whole of the '90s decade. There are shortfalls in almost every year but at the same time we are looking at new areas such as the additional housing in Tin Shui Wai where there are new areas which will be opened up by the decision to provide fixed crossings to Lantau. I think in the end most of the shortfalls will be made up, though perhaps the most difficult time will be the middle of the decade at the time when Tiu Keng Leng would come on stream. So it is important to the Housing Authority to have that particular production at that time.

MR. MICHAEL CHENG (in Cantonese): Sir, will the Government inform this Council whether, apart from Phase III of the Tseung Kwan O Development, other public housing projects are also delayed due to the need for infrastructural development?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, it depends on what one means by delay. There are plenty of projects which the supporting departments would wish to have financed in the present five years' allocation which are not going to be so financed. And I would refer Members to the Financial Secretary's speech last week in the policy debate which fairly clearly explained the position.

Alleged rough handling of Hong Kong students at Gatwick Airport

2. MRS. CHOW asked: Sir, will Government inform this Council what action the Administration has taken in response to a recent press report regarding rough handling of Hong Kong students entering the United Kingdom through Gatwick Airport?

SECRETARY FOR SECURITY: Sir, we have tried to obtain the facts of this incident from the Foreign and Commonwealth Office and through the Hong Kong Government Office in London drawing on the usual contacts in the United Kingdom such as the Telephone Advisory Service, the Chinese community, student bodies and so on.

Despite the press report in September we have received no complaints either in London or here in Hong Kong.

The press report mainly alleged two things: the long waiting time for immigration and medical examinations, and the rude treatment of Hong Kong students at Gatwick. The reasons given by the United Kingdom authorities for the delays are:

- (a) the large number of returning and new students in September, all arriving within a short period of time;
- (b) the bunching of flights from Hong Kong in the early morning; and
- (c) the staffing levels and facilities of the immigration control unit and in the health control unit which are set to cope with normal passenger numbers rather than exceptional peaks.

As a result of an approach by the Hong Kong Government at the end of September, a few days after the newspaper report, we have now been assured that :

- (a) the United Kingdom Department of Health are reviewing staffing levels at Gatwick to reduce the waiting time; and
- (b) immigration control and health unit waiting times are already much less than they were in September.

As regards the allegation of rough treatment of Hong Kong students, including abuse as mentioned in the newspaper report, the United Kingdom authorities have pointed out that immigration officers and health authority personnel are expected

to observe the highest standards of conduct when dealing with the travelling public, and that any specific complaints are investigated. On the latter aspect, no complaint relating to the alleged incident has been received.

MRS. CHOW: Sir, with reference to the specific incident reported, did the Government ask the United Kingdom authorities whether the Gatwick airport authorities advised the students that they could complain to more senior duty officers or ask for the assistance of the Hong Kong Government Office?

SECRETARY FOR SECURITY: Sir, that particular point was not put by us to the United Kingdom authorities, but the existence of the Telephone Advisory Service in the United Kingdom is made known, from time to time, to travellers.

MRS. CHOW: Sir, may I remind the Administration that this sort of complaints have actually recurred from time to time over the last year or so, and that in fact the United Kingdom Government has undertaken to advise students or visitors, who might have complaints, to resort to more senior officers or the Hong Kong Government Office. Could that point be put to the United Kingdom authorities in future?

SECRETARY FOR SECURITY: Sir, I think that point probably can be put to the United Kingdom. I should like to remind Members again of the existence of the Telephone Advisory Service which was introduced on 1 November 1988. Up to October this year, 65 calls had been received for information. Of these, 16 calls were for assistance and 49 were miscellaneous enquires.

Emissions from factories

3. MR. CHENG HON-KWAN asked: Sir, will Government inform this Council what progress has been made in reducing air pollution caused by emissions from factories since the enactment of the Air Pollution Control Ordinance in 1983?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, in spite of approximately 6 000 government communications to factories, 600 legal notices and just over 1 000

prosecutions initiated since the enactment of the Air Pollution Control Ordinance in 1983, there is no evidence from government monitoring stations that the overall level of air pollution has actually fallen.

This is not to say that the six years was time wasted. Air control zones have been declared. Air quality objectives have been set and new regulations to control air polluting industries made, all actions prerequisite to control under any system of enforcement. There have also been local success stories in advice-giving and legal action and the monitoring system has been improved, with 10 air pollution monitoring stations now operational compared with four in 1983. But above all it is most unlikely that the Administration would now be in a position to justify approval of regulations to restrict the sulphur content of fuel oil to 0.5% if it was not able to show that a system of licensing prosecution and appeals of individual factories had failed to produce the reduction in pollution levels needed. This is the single piece of action which will reduce air pollution levels most and it should enable me to answer a similar question very differently in the future.

MR. CHENG HON-KWAN: Sir, despite what the Secretary has said, what more effective measures will the Government take to improve the system of licensing, prosecution and appeal of factories to ensure the reduction in pollution levels ?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Air Pollution Control Ordinance is under review to produce improvements which will make the Administration's task in enforcing air pollution control a bit easier and will not load the cards so heavily in favour of the polluting factory.

PROF. POON: Sir, does the Government feel that the mere actions of communications to factories, initiating prosecutions and building more sophisticated monitoring systems are good enough to reduce air pollution in factory areas? Has the Government attempted to offer any cost-effective technical advice and assistance to many small and medium size factories to help them reduce their emission levels? If yes, can the Government cite some examples?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, may I answer the first part

separately, which asks whether the system of prosecutions and advice is sufficient. No, it is not. And even given a much more comprehensive advice system, it still would not be. In Hong Kong, with so many factories and chimneys, it is totally necessary to reduce the sulphur content in fuel oil if we are really going to make any impact.

With regard to the second point, the question of assistance to small industries, I have mentioned numerous times in this Council the various avenues for aid. The Environmental Protection Department do make suggestions but normally if there is a technical problem to be dealt with they do refer it either to consultants, or the Hong Kong Productivity Centre. There are other means being developed at present, too.

MR. PETER WONG: Sir, should we not admit that the Air Pollution Control Ordinance 1983 has been a total failure and that we should start again? And secondly, is the Secretary aware that the figures quoted by the Environmental Protection Department for the differential between high and low sulphur liquid fuels is not 48% but more like 20%?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I would have thought that to admit that the Air Pollution Control Ordinance was a total failure and should be scrapped and start again would be a massive waste of time. It has taken a very long time to build up where we have got to. We believe that with the additional amendment and with the reduction of sulphur content in fuel, there will be a good impression on the air of Hong Kong. Finally, I was not aware of the figures Mr. WONG raised.

MR. MICHAEL CHENG (in Cantonese): Sir, since Tsuen Wan is the district most seriously affected by air pollution and in view of the number of complaints recently made by residents of the district against emissions from the neighbouring factories posing health hazards, will Government take any effective improvement measures to reduce the air pollution levels in this particular district?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the action taken in Tsuen Wan has been similar to the action elsewhere. In the opening paragraph of my original answer I listed the action which had been taken over the whole field and I said that

the overall level of air pollution had not fallen in consequence. Similarly, the position in Tsuen Wan remains very much the same: it started with filthy air; it still seems to have it.

MR. CHEONG: Sir, is it true that the air quality has been affected by pollutants from exhausts, largely from motor vehicles?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the air quality at ground level is seriously affected by exhausts of motor vehicles. Generally speaking, though, the air quality which is measured in monitoring stations is affected more from industrial aerial pollution than from the exhausts of cars.

MR. CHEONG: Is it correct to separate the overall air quality into two components, one at the ground level and one at the higher level?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I do not know what Mr. CHEONG means by "correct" in this context. It is obviously realistic to look at the ground level concentrations on a fairly local basis and to look at the overall pollution on a rather wider basis, which is what in fact the monitoring station does.

MR. EDWARD HO: Sir, would the Secretary inform this Council what the timetable is for completing the review that he referred to in order to render the Air Pollution Ordinance more effective, and also when the regulations for controlling or reducing sulphur content in fuel oil will be introduced?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I cannot give a month by month schedule but all within 1990.

MR. CHENG HON-KWAN: Sir, does the Government have any plan of setting up more than just 10 air pollution monitoring stations to cover the whole of the territory as more air control zones are to be declared?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I understand there are plans for more but I must, I am afraid, provide details in writing. (Annex I)

MR. MCGREGOR: Sir, in order to assess the economic damage which the introduction of lower sulphur fuel may cause to industry, could the Secretary examine the relative cost, for each principal industry in Hong Kong, of the introduction of the lower cost fuel, in other words, Sir, the proportion of the ex-factory cost of the product attributable to the cost of fuel?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Yes, Sir, that examination is being done.

MR. PAUL CHENG: Will the Administration advise this Council how many of the 1 000 prosecutions resulted actually in penalties, the range of these penalties and whether the Secretary feels that these penalties have been effective deterrents to this problem?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I will provide the figures in writing. (Annex II) With regard to the last part of the question, I think probably not.

MR. TIEN: Sir, is the Secretary aware of the fact that the increase in budget for the Hong Kong Productivity Council next year is minimal and did not allow for any increase in funding at all for the Environmental Protection Division of the HKPC? If so, where do the small factories expect to receive assistance?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I was so aware, but nevertheless the Productivity Council has done very well to keep up with demand. And there is also the possibility of any small factory going to the private sector in which there are plenty of consultants around.

MR. CHEONG: Sir, could the Secretary confirm that it will be the Administration's intention to flexibly apply the criterion for sulphur content in fuel oil should

industries be successful in proving that using the "scrubber methods" to improve air quality is acceptable? This is especially in relation to new factories in industrial estates where the "scrubber method" could have been introduced right from the start.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, that is not our present intention.

#### Use of Chinese in the Magistrate's Courts

4. MRS. SO asked (in Cantonese): Will Government inform this Council whether the working party on the greater use of Chinese in the Magistrate's Courts has completed its study and, if so, what the recommendations are?

ATTORNEY GENERAL: Sir, on 15 January 1987 the then Chief Justice appointed a working party to consider the extent to which greater use could be made of Chinese language in courts and court procedure, and to make recommendations accordingly. It looked at all courts, not just the magistracy, and submitted a report in January 1988.

The working party acknowledged that each level of court has a different need, and accordingly it made separate recommendations in respect of each court and tribunal. It also dealt with documents used by the courts, and urged that priority be given to ensuring that all documents concerning court proceedings, or otherwise used or issued by the courts, be bilingual. In addition, the working party made certain recommendations about the priority to be accorded to translating legislation.

The question posed today makes particular reference to the Magistrate's Courts, although, as I have said, the remit of the working party was wider than that, and perhaps I might for the purpose of this answer restrict myself to the principal recommendations in relation to the Magistrate's Courts. It was upon the growing use of Chinese in these courts that the working party placed prime importance because these courts represent the judicial system at its point of maximum contact with the public, and because, of course, the vast majority of the community speak Chinese.

Broadly speaking, the working party recommended that at the outset of proceedings the magistrate, each lawyer and any unrepresented party, should make an initial choice of language which each would respectively speak during the proceedings. It also



recommended that, save in certain circumstances, all documents in either language be translated prior to the proceedings and that documents in a language other than Chinese or English should be translated into both of those languages prior to the commencement of the proceedings.

Further recommendations included were that the magistrate be permitted to choose the language of the record of the proceedings, and that this language should be the official record; that the brief judgment or verdict should be recorded bilingually at the end of the record; and that in the event of an appeal, the party should be entitled upon application to have a translation of the transcript of the proceedings.

Other tribunals and courts were considered. These were the Small Claims and Labour Tribunals, the Coroner's Court, the Immigration Tribunal, the District Court, the Labour Tribunal and the Supreme Court. The recommendations vary of course according to the particular court or tribunal, and are detailed.

Although the report fully recognized that the implementation of its recommendations would require, amongst other things, an increase in the recruitment of skilled interpreters and translators to the Judiciary, and also an extension of their training programme, it did not specifically address the questions of cost and resources, which questions fell outside its terms of reference.

In 1988, therefore, a sub-committee was formed to consider the practical consequences and resource implications of the recommendations. It comprised members of the Judiciary and was assisted by officers of Finance Branch. This sub-committee considered that the recommendations relating to the lower courts could be implemented relatively simply by manpower increases, largely of interpreters and translators, but that the High Court proposals were more complex.

Confining itself to the lower courts, the sub-committee was of the view that the working party's recommendations would entail extra work in relation to pre-trial and post-trial periods, comprehending in particular translation of documentary evidence, pleadings, and lengthy judgments, and transcripts of proceedings for appeal.

For these extra functions the sub-committee calculated the required increase in interpreters and translators for the Magistracy in a ratio of three new posts for every two courts. It estimated that extra typist and calligraphist posts would also be required and the annual recurrent cost was calculated at \$19.6 million.

Estimates of posts required were also made for the District Court and the Small Claims and Labour Tribunals. The total cost for all courts considered in the exercise (excepting High Court, and Coroner's Court hearings with a jury) was estimated at \$39.7 million, of which staff costs would be \$33.94 million.

Quite apart from the fact that expenditure on such a scale would significantly curtail the resources available for other areas, very real doubt has been expressed as to the availability of sufficient persons possessed of the skills essential for the implementation of the recommendations.

I am advised that in view of this problem it was felt necessary to form another working party whose job it is to consider from a practical point of view which of the recommendations might be implemented given these questions of cost and of the availability of skills.

I understand that its report is expected before the end of this year.

MRS. TU: Sir, since it is in the Magistrate's Court that an accused person most frequently has no legal representation, would the Acting Attorney General agree that justice requires that the defendant should have the right to speak in his own language and be heard directly in his own language and that an interpreter is not a substitute for this human right? Will this matter be addressed in the Human Rights Bill?

ATTORNEY GENERAL: Sir, I am sure that everybody would agree that the scenario which Mrs. TU paints is obviously desirable and no doubt it is a matter which the working party, which is mainly in the control of the Judiciary, had well in mind. That is particularly so in the magistracies which, as I have said, are the point of greatest contact with the vast majority of the people. Perhaps more so in the higher courts one should bear in mind that there is also a balance to be struck. In so far as this is a common law jurisdiction, particularly when points of complex law are to be argued and decided, a certain degree of English may be required. As to the Bill of Rights and the matters to be addressed in it as far as language is concerned, I will certainly undertake to bear in mind Mrs. TU's point and to look at it.

MRS. LAU: Sir, bearing in mind that the real problem appears to lie in the availability of sufficient persons possessed of the necessary skills, would the Attorney General agree that there is a need to provide more training of interpreters and translators and to improve their terms of service, so that such posts will become more attractive?

ATTORNEY GENERAL: Sir, it is not only a question, as I understand it, of finding the right people and training them. That, of course, is a prerequisite. There are also matters, of course, relating to the cost of so doing. I am sure the Financial Secretary would not be pleased with me if I committed this Government in that regard.

MR. MARTIN LEE: Sir, as a large number of criminal cases in Hong Kong are disposed of by pleas of guilty in Magistrate's Courts, why does the Administration not implement forthwith a recommendation made some years ago that all pleas in Magistrate's Courts should be taken either in English or Chinese, rather than wait for the report of yet another working party?

ATTORNEY GENERAL: Sir, the recommendation made some years ago, to which Mr. LEE refers, is not one that is familiar to me. I will look into it and perhaps write to him in due course with an answer. (Annex III)

MR. TAI: Sir, may I ask how many Chinese speaking magistrates we have in our magistracies?

ATTORNEY GENERAL: Sir, the present situation in the Magistrate's Courts is that most hearings before a lay magistrate, as opposed to stipendiary magistrates, are conducted in Cantonese. There are at present 11 lay magistrates sitting in nine out of 10 magistracies. These lay magistrates, all of whom are Chinese speaking, hear criminal cases of a minor nature including miscellaneous departmental summonses, offences with fixed penalties, for example, hawking and littering offences and minor traffic offences. As nearly all of the defendants who appear before a lay magistrate are unrepresented, their pleas are entered in Chinese and they may defend themselves in Chinese and the verdicts and sentences, I am informed, are also given in Chinese without English interpretation. I am not in a position to say how many stipendiary magistrates there are who do speak Chinese; that is information that I can provide

in due course. (Annex IV)

MRS. FAN: Sir, this is the third working party that has been appointed to look at this and the last working party, or the sub-committee, consisted of members of the Judiciary and they were assisted by officers of the Finance Branch. May I ask the Attorney General what the composition of the present working party is which ensures that it can take a practical point of view in implementation?

ATTORNEY GENERAL: Sir, I am afraid the blunt answer to that is: I do not know. But I will let Mrs. FAN know. (Annex V)

MR. MARTIN LEE: Sir, even without a copy of the earlier recommendation I made reference to in my earlier question, to which I was a party, can the Administration not immediately deal with the question of pleas in Magistrate's Courts rather than wait for the other more complicated issues to be resolved?

ATTORNEY GENERAL: I rather thought, Sir, that I had answered the question. If I gave the impression that I was dismissing that idea out of hand, it is an impression I should not have been giving. What I said, and what I now repeat, is that I will certainly look into that recommendation. I will bring the matter to the attention of the Judiciary, to the fact that it is obviously a matter about which Members feel strongly, and I will correspond with Mr. LEE and with Members as to the response (Annex VI). I do not know at this point in time whether there are any difficulties with that suggestion, but I will certainly pass on that message.

Police powers of seizure

5. MRS. LAU asked: In view of the wide powers conferred on the police by the Police Force Ordinance and in the light of the recent seizure of video tapes from the two television stations by the police, will the Administration inform this Council:

(a) what consideration is given to civil rights such as privacy of the individual and freedom of the press before the police exercise their powers of seizure under

the said Ordinance; and

(b) whether the Administration will consider amending the Police Force Ordinance in line with the Police and Criminal Evidence Act 1984 of the United Kingdom to define the rights of the police in relation to seizure of information and records maintained by the media?

SECRETARY FOR SECURITY: Sir, in exercising powers under the Police Force or any other Ordinance, the police aim to ensure that any action taken is legal and justified, having regard to the provisions of the relevant legislation, rules of evidence and the circumstances of the situation itself. In considering an application by the police for a warrant, a magistrate will be mindful of the need to protect the civil rights of those who may be directly affected by police action on the one hand, and those of other members of the community on the other. Before issuing the warrant the magistrate has to have reasonable cause to suspect, upon the oath of the applicant, that a document, article or thing may throw light on the character or activities of a person suspected of an offence.

It would be inappropriate for me to comment at this stage on the details of this particular case as the matter is sub judice pending court hearings next month. However, I am informed that the warrant in this instance was only sought after the rejection by the television companies concerned of requests to allow investigating officers to view the video tapes.

The Royal Hong Kong Police Force have always upheld the principle of a free, independent and responsible press. They have never deliberately sought to infringe upon or to restrict the freedom of the press. Nor is it their intention to do so in the future.

As regards amendment of the Police Force Ordinance to bring it into line with the Police and Criminal Evidence Act of 1984, Members may be aware that, in November 1988, the Law Reform Commission was invited to examine, amongst other things, the existing law and practice governing the powers and duties of the police in relation to entry, search and seizure, and arrest and detention. In particular, the Commission was invited to make recommendations as to whether the provisions contained in the Police and Criminal Evidence Act of 1984, and the Codes of Practice thereunder, should be adopted in Hong Kong, with or without modification.

MRS. LAU: Sir, in relation to paragraph 3 of the Secretary's reply which states that the police have never deliberately sought to infringe upon or to restrict freedom of the press, can the Secretary inform this Council whether the police have carefully considered the likely response of the media before commissioning the action taken on 3 October 1989?

SECRETARY FOR SECURITY: Sir, I do not think the police in all their wisdom can ever be sure what the likely response of the media will be to any given situation. But I can say that in dealing with situations of this sort, they do take into account in general the reaction of the media, and of the public, and of the convenience of the public at large, as well as the rights of the individual who might perhaps be the object of control.

MR. MARTIN LEE: Sir, will the Administration inform this Council whether, pursuant to the seizure of the video tapes in question, any copies were made by or on behalf of the police of these tapes?

SECRETARY FOR SECURITY: Sir, I am not aware that any such copies were made. If this is something which does not come out in the course of the judicial proceedings at the Magistrate's Court next month, I shall undertake to let Mr. LEE have a reply. (Annex VII)

MR. ARCULLI: Sir, will the Secretary for Security inform this Council whether there is any policy or directive for the police to accede to a request by the person on whom the warrant is served for the police and such person to attend before the Magistrate to obtain a discharge of such warrant provided steps have been taken to ensure that materials referred to in the warrant are preserved in the meantime?

SECRETARY FOR SECURITY: Sir, I am afraid I would like to see that in writing if possible. Unless my honourable and learned friend the Attorney General is able to give an immediate answer to that, I would suggest an answer should be given to Mr.

ARCULLI in writing. (Annex VIII)

ATTORNEY GENERAL: I cannot answer that question because, if I understood it correctly, it was addressed to the question of police practice and policy.

MRS. CHOW: Sir, will the Administration accept that the seizure in this case has in fact had the effect of restricting the freedom of the press by taking away the right of the media to protect their source of information and therefore such action should not be repeated in future?

SECRETARY FOR SECURITY: No, Sir, I do not accept that at all and I would like to remind Members that judicial review is always a course of action open in the event that the grounds of the issue of any warrant, such as in this particular case, have been questioned.

MR. SZETO (in Cantonese): Sir, will the Administration inform this Council, if the Bill of Rights is enacted in July next year, whether the Bill will be used as a criterion and priority will be given to the review and revision of the existing legislation concerning police powers?

SECRETARY FOR SECURITY: Sir, the review of police powers is, as I have said, going on at the moment in two particular directions by the Administration, firstly, in connection with matters which might arise in the course of the Bill of Rights, and secondly, by the Law Reform Commission in respect of a range of police powers connected with arrest, search, seizure, detention, questioning, disposition of seized property, and so on. In the event of, to take an example, article 17, shall we say, of the International Covenant on Civil and Political Rights, finding its way into Hong Kong law, there would thereafter exist in Hong Kong law a legal basis for privacy. That would clearly be relevant when considering, for instance, powers of search and seizure in Hong Kong legislation.

MR. CHOW (in Cantonese): Sir, this is a follow-up on Mr. ARCULLI's supplementary. Before the enactment of any legislation, would the Administration think it necessary

to lay down some procedural provisions so that any person served with a warrant will be informed of his right to appeal to the Court for a discharge of such warrant whereupon the Court will make a ruling as to the validity of the warrant?

SECRETARY FOR SECURITY: Sir, I will see that this particular point is looked into and replies given to Members. (Annex IX)

MR. MARTIN LEE: Sir, who made the decision to have these tapes seized, and who made the subsequent decision to have them returned?

SECRETARY FOR SECURITY: The police is the answer to the first part of the question, Sir. I do not know whether Mr. LEE is suggesting that perhaps anybody outside the Administration might have been involved. If that is the case, I can give a categorical assurance that there was no outside source, pressure, or request for these tapes to be seized, or for people to be arrested or for charges to be laid. As regards the second part of the question, I do not know exactly the answer to that, but I presume it was by the police in both cases. I can certainly find out. (Annex X)

MR. PETER WONG: Sir, on a more practical note, do the police have their own filming teams, or are they so restricted financially that they must borrow the work of others?

SECRETARY FOR SECURITY: Sir, the police do have their own filming teams. They are restricted financially. But on this occasion it was thought that perhaps there might be additional evidence which in the public interest should be viewed by them.

MR. ARCULLI: Sir, will the Secretary for Security inform this Council whether the powers under the Police Force Ordinance have been used to prove the innocence as opposed to the guilt of a person?

HIS HONOUR THE PRESIDENT: That question goes outside the context of the original question and I would like to have it put down at a subsequent meeting, Mr. ARCULLI.



## Monitoring of the two rail services

6. MR. TAI asked: Will Government inform this Council of the merits and demerits of bringing the two rail services within the scrutiny of the Transport Advisory Committee (TAC), bearing in mind the inter-modal transport co-ordination policy; and under the existing arrangement, apart from controlling the appointment of directors to the two railway corporations, how does Government ensure that these corporations adequately fulfill their statutory duties to the public whilst operating on prudent commercial principles?

SECRETARY FOR TRANSPORT: Sir, a distinction should be drawn between rail services developments in general and rail management, including fares, in particular. The latter is the responsibility of government-appointed boards on the two rail corporations and TAC's involvement would be duplicating this role.

The broader aspects of rail services and development in the overall transport strategy are already taken care of by TAC. Subjects discussed in recent years include the effects of the Mass Transit Railway peak hour congestion fare on public transport services, services and safety of the Light Rail Transit system, and currently detailed comments on the Green Paper, including future rail developments, their timing and alignments.

As regards Government's monitoring of the two rail corporations to ensure that they fulfill their statutory duties, there are detailed provisions in the legislation empowering the Governor in Council, the Chief Secretary and the Financial Secretary to give directions on issues of public interest, including safety and financial affairs of the corporations. The enforcement of these provisions is monitored by the Transport Branch assisted by the Transport Department whose staff are in close and regular touch with the rail managements concerned.

MR. TAI: Sir, how does Government ensure a fair and balanced development of all modes of transport facilities to cater for the needs of our community, if TAC can only advise on development and services in the widest sense, whilst the development of other modes of transport, apart from the two rails, is subject to the control of the TAC?

SECRETARY FOR TRANSPORT: Sir, as I said in my main reply, the inter-modal co-ordination policy is part and parcel of current policy in respect of which we do consult with the TAC from time to time. In particular, the review of the existing policy in the Green Paper did take fully into account the interface between the rail and road system and the various interplay of transport modes. So I do not think, Sir, that the terms of reference of the TAC or its existing role will preclude it from monitoring the rail services and development overall.

MR. MCGREGOR: Sir, has the Government considered the establishment of one railway authority which would assume overall responsibility for all rail services in Hong Kong? If not, what direct co-ordination exists at present between the two railway corporations?

SECRETARY FOR TRANSPORT: Sir, I think the present arrangement is satisfactory. Each corporation operates under its own Ordinance and is managed by its own board. This has proved successful and has achieved good results over the years as we all appreciate. I do not see, Sir, at the present time any merits in having one single body to control and operate two rail services. As regards the question of co-ordination, the Transport Branch is the one to co-ordinate these services overall, not just rail services, but also the overall transport services which we monitor very closely.

MR. POON CHI-FAI (in Cantonese): Sir, although the two rail corporations are currently being monitored by their respective boards of directors, many people and relevant groups still request the Government to consider including the monitoring work on rail services under the scope of the Transport Advisory Committee. Will the Government inform this Council whether this indicates that the public do not generally accept the present arrangements? If so, will the Government reconsider and make appropriate arrangements to put the rail services under the scope of the Transport Advisory Committee which has been well-known and acceptable to the public?

SECRETARY FOR TRANSPORT: Sir, as I said in my main reply, the TAC does and can look at rail services in general. There is no exclusion of rail services under its terms of reference. What we are now concerned about, and probably some members of the public are concerned about, is the detailed monitoring of the rail services on a day-to-day basis. The two corporations are very conscious of this particular

response to the public. They have taken great pains to explain to the public particular areas of concern from time to time, and this has achieved some results over the years, in particular, in relation to services and quality and the frequency of rail services. I think this should continue to be operated in the way that we have been operating so successfully.

MR. BARROW: Sir, while recognizing that the public interest must be protected, would the Secretary confirm that in carrying out the monitoring role referred to in his answer the Administration will avoid introducing excessive bureaucracy and controls which could hamper the effectiveness of these corporations?

SECRETARY FOR TRANSPORT: Sir, this is precisely why we have to take a broad view of the monitoring of rail services, and not hamper the efficient monitoring and the day-to-day operation of rail services by the corporations themselves. In maintaining this balance, we are really conscious of the need to balance public concern on the one hand and the commercial viability of the corporations on the other. We think, Sir, we have been successful so far in achieving this balance.

MRS. CHOW: Does the Government intend the phrase "prudent commercial principles" to mean self-sufficiency or maximum profits? If the latter, is there a ceiling to the percentage of profits, and if not, how is the interest of the travelling public protected?

SECRETARY FOR TRANSPORT: Sir, I think the Ordinances of the two corporations make it very clear that they are not after maximum profits. There are no shareholders to force them to maximize profits, and they are operating mainly on a self-sufficiency basis.

MR. TIEN: Sir, on the subject of monitoring the performance of our public corporations, would the Administration consider signing a performance contract with the two rail corporations as suggested by the Finance Branch in its consultative paper, that is, the Public Sector Reform issued in February this year?

SECRETARY FOR TRANSPORT: Sir, we are reviewing the existing arrangements on the

general monitoring machinery, and this is one area which we will be covering in our present review.

MR. MARTIN LEE: Sir, in relation to the powers given to the Governor in Council, the Chief Secretary and the Financial Secretary to give directions to the corporations concerned, will the Administration inform this Council how many times these powers were used in the last three years?

SECRETARY FOR TRANSPORT: Sir, there have been some examples where the day-to-day correspondence does use such powers. I can give Mr. LEE a detailed answer in writing if he wishes me to do so. (Annex XI)

MRS. FAN: Sir, I had the same question as Mr. Martin LEE, but could I follow up on that? Would the review of the working relationship between the Government and the two rail corporations involve amending or changing certain provisions in the legislation that empower the Governor in Council, the Chief Secretary and the Financial Secretary to give directions?

SECRETARY FOR TRANSPORT: Sir, as I said, the review is now going on. I do not wish to pre-empt the conclusions of the review, but clearly every aspect of the monitoring system is being looked into at the present time.

MR. MCGREGOR: Sir, in answering my previous question regarding a rail authority, has the Secretary had regard to the fact that two very substantial additional rail services will be required to connect the new airport?

SECRETARY FOR TRANSPORT: Yes, Sir, I am fully conscious of this and indeed we are now working on the planning of the rail to the airport, taking account of existing machinery and existing systems.

Unleaded petrol

7. MR. PAUL CHENG asked: Will the Administration inform this Council when unleaded petrol is expected to be made available in Hong Kong for motor vehicles, and whether plans are being made to enact legislation to help enforce conversion and compliance?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, we presently hope to have unleaded petrol available in Hong Kong in about 12 to 15 months from now.

As stated in the White Paper on Pollution the Government wishes to have unleaded petrol available as soon as possible. We are presently discussing the specifications of the fuel with the oil companies, and the estimate of 12 to 15 months, which originated with the oil companies, is the time when we expect the grade of petrol to be chosen and arrangements made for its supply.

Yes, Sir, it is certainly planned to enact legislation to enforce conversion and compliance over a period. I expect to have a detailed proposal on this matter shortly.

MR. PAUL CHENG: Sir, will the Secretary for Planning, Environment and Lands confirm whether this means that the supply problem originally raised by the oil companies has now been resolved, and that unleaded petrol will indeed be made available by the end of 1990? The reason why I am seeking reconfirmation is that I have read somewhere else that 1992 was the target date.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the problems which are being resolved at present are the logistical difficulties of introducing unleaded petrol, in terms of fuel storage, transport, and distribution systems in Hong Kong which are basically designed for only one grade of petrol. So the solution which we are discussing with the oil companies is to produce a grade of unleaded petrol which will satisfy not only new vehicles produced in the future, but also the vast majority of vehicles currently on our roads. I can confirm the figures 12 to 15 months which I gave in my original answer.

MR. PETER WONG: Sir, has the Administration been monitoring the price differential between lead and unleaded petrol so that it is in a position to combat unfair pricing

by the oil companies, and if the answer is in the negative, will it do so?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I believe some work has been done on this, but it certainly will be in the future at the time of introduction.

MR. MARTIN LEE: Sir, when unleaded petrol is available in Hong Kong, is it the intention of the Administration to require all motor vehicles using such petrol to be fitted with catalytic convertors?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Yes, Sir, that is the intention. In fact that is the main purpose of introducing unleaded petrol in Hong Kong. Having persuaded the oil companies and had their co-operation in reducing lead in petrol down to a very low level at present, the principal problem is not lead; it is other pollutants which are in the petrol, which can only be sorted out through catalytic convertors, which in turn can only be fitted if unleaded petrol is used.

MR. PAUL CHENG: Sir, I am delighted to hear that legislation is planned and can the Secretary advise us when the detailed proposal will indeed be ready, and what "over a period" in his original answer really means? Enacting legislation can take time, and since availability of unleaded petrol is only a year away, we really do not have the luxury of time on our side.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, in my answer I informed the Council that I would be shortly receiving detailed proposals. I understand that they are fairly complex, but not excessively so. I expect to produce and prepare legislation over the course of this year and, with a bit of luck, at least to introduce it at the end of the year. When referring to "over a period" in my answer, I was not in fact referring to the preparation of legislation; I was referring to the fact that the effect of such legislation must be brought in over a period to allow people to adapt motor vehicles and other equipment which is going to use unleaded petrol to its use in a proper way.

MRS. LAM (in Cantonese): Will Government inform this Council whether, in addition to motor vehicles, the use of unleaded petrol will apply to other vehicles such as

goods vehicles or dual-purpose vehicles in the future?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the present aim of our proposed legislation is that all vehicles which are presently using petrol are to use unleaded petrol. But the majority of such vehicles as that Mrs. LAM was talking about, that is, the big passenger vehicles and the big goods vehicles, all actually use diesel which is a great deal worse polluter than the petrol vehicles, and that is why to a certain extent our pollution problem from lead at present is not really a serious problem. But if we introduce unleaded petrol and get all vehicles using petrol onto using it, that will facilitate pressure being put through subsequent legislation on the use of diesel so as to make people change over to petrol which will by that time be lead-free and also free of the other pollutants which petrol carries.

MR. ARCULLI: Sir, will the Secretary please explain to this Council why we have allowed the oil companies to virtually dictate the pace of bringing in unleaded petrol when other industries such as the ivory trade are treated somewhat differently?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, it was a matter of policy, whether it derived originally from the persuasion of the oil companies or otherwise, that we should go for progressive deleading of petrol. And year by year progressive reductions in the lead content of petrol have been introduced into Hong Kong. At the time, this seemed the most expedient policy, and it has in fact, as I have said, virtually cured the lead problem in Hong Kong anyway.

MR. PAUL CHENG: Sir, since the Secretary indicated that emission from diesel engines is even more of a serious problem than unleaded petrol, will the Secretary tell us what he is going to do about it?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, similarly, prepare legislation for the consideration of the Members of this Council.

MR. MCGREGOR: Sir, in regard to the last question, is the Secretary aware of the enormous cost of converting a diesel engined vehicle into a petrol engined vehicle?

This may run into, in fact, hundreds of millions of US dollars?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I cannot anticipate the legislation the advice for which I have not yet seen and which is not yet actually there. But in my answer regarding the introduction of unleaded petrol and enforcement of it, I said that we would have to introduce it over a period. I would imagine that such legislation to wipe out the use of diesel would also have to be introduced over a period and we would have to take the effects on the economy into consideration. I am sure this Council would, anyway.

MR. PETER WONG: Sir, would it not be more effective to enforce the existing legislation against smoky diesel exhausts, which is not being applied?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I would not say it is not being applied. The fact that it is not being very effective is largely because the infringement of the legislation is so very widespread and the manpower needed to really do effective enforcement is so considerable.

Dedicated telephone line

8. DR. IP asked: Is Government aware that some members of the public are under the wrong impression that it is mandatory for them to apply for a dedicated telephone line for facsimile machines, and if so, whether it will take steps to ensure that the Hong Kong Telephone Company corrects this misconception in order to protect the interests of subscribers?

SECRETARY FOR ECONOMIC SERVICES: Sir, the Government has up to now received no complaints or public comment indicating misunderstandings on the question of whether a dedicated telephone line is required for facsimile machines. I am grateful therefore to Dr. IP for bringing this matter to my attention. I can confirm that there is no legal requirement for a dedicated telephone line to be used for a facsimile machine, nor is this a requirement under the Hong Kong Telephone Company's own conditions of service. I will be seeking assurances from the Hong Kong Telephone Company that it will take action to ensure that subscribers understand that a dedicated telephone line is not mandatory for a facsimile machine.



Written answers to questions

Public transport facilities for Tin Shui Wai

9. MR. TAI asked: In view of the Kowloon-Canton Railway Corporation's disclosure that its plan to extend the rail to Tin Shui Wai will be delayed, will Government inform this Council what steps will be taken to ensure the adequate provision of public transport facilities for future residents in Tin Shui Wai?

SECRETARY FOR TRANSPORT: Sir, when the Kowloon-Canton Railway Corporation was first invited to take on the Light Rail Transit (LRT) project in the northwest New Territories, it was envisaged that the full network would be built in stages in accordance with the progress of developments, leading to the eventual completion of the various regional extensions in the mid-1990s.

According to the present programme, population intake in Tin Shui Wai new town would start in December 1991. Population is estimated to be around 46 000 by the end of 1992, building up eventually to over 135 000 by the end of 1996. The KCRC is now conducting a detailed study to ascertain the implementation date of the LRT extension to Tin Shui Wai in the light of more accurate population projections and a more in-depth analysis of LRT patronage growth and financial performance.

In the interim period, the KCRC is planning to run bus services from the new town to Yuen Long and Hung Shui Kiu where passengers can change to other modes of transport. For services outside the Transit Service Area, the Kowloon Motor Bus Company will operate four new external bus routes from Tin Shui Wai to Tsuen Wan and Sham Shui Po where passengers can change to the MTR or to buses for other destinations. Green minibus services would also be introduced. All these services are planned to tie in with the population intake and will be expanded and improved as passenger demand increases.

The Government will be monitoring the situation closely to ensure that the travelling needs of the residents of Tin Shui Wai are adequately catered for.

Utilization of hospital services by Vietnamese boat people

10. MR. NGAI asked: Will the Government inform this Council how many Vietnamese boat people were admitted to hospital for treatment as a result of injuries sustained at fightings or upon contraction of disease over the past two years; and has the use of casualty services and hospital beds by these Vietnamese boat people seriously affected the availability of hospital services or caused delays in the provision of such services to local residents who need hospital care?

SECRETARY FOR HEALTH AND WELFARE: According to statistics kept by the four regional hospitals, namely, Queen Elizabeth Hospital, Queen Mary Hospital, Princess Margaret Hospital and Prince of Wales Hospital, the number of Vietnamese boat people and refugees (VBP and VR) admitted in 1988 and 1989 into one of these hospitals were as follows:

Year	No. of VBP & VR admitted to hospital	Total no. of hospital admissions	% of hospital admissions occupied by VBP & VR
1988	2 965	400 099	0.74%
1989 (Jan-Sept)	5 870	279 279	2.1%

The numbers attending the Accident and Emergency Departments at these hospitals were:

Year	No. of VBP & VR attending A&E departments	Total no. of A&E attendances	% of A&E attendances by VBP & VR
1988	3 368	600 478	0.56%
1989 (Jan-Sept)	7 007	484 110	1.45%

There are no available statistics that enable me to identify how many of these admissions and attendances are due to injuries sustained in fighting or upon contraction of disease. Nor has it been possible in the time available to identify VBP and VR admissions or attendances at all public hospitals in Hong Kong.

It would seem from the available evidence that the Vietnamese boat people and refugees account for only a very small percentage of the overall utilization of public hospital beds and casualty services. Their use of these facilities is not known to have adversely affected the availability of such services to local residents or caused serious delays to local residents seeking treatment.

Ivory workers affected by trade ban

11. MR. TAM asked: In view of the adverse effect the ban on trade in existing ivory stock will have on the livelihood of ivory workers, will the Government inform this Council what action it will take to assist ivory workers?

SECRETARY FOR ECONOMIC SERVICES: Sir, the ban on international trade in ivory, imposed on Hong Kong by the international community, will cause difficulties to both ivory traders and workers.

To assist workers who may wish to take up alternative employment, the Local Employment Service (LES) of the Labour Department has opened a special register. Ivory workers may approach any of the 16 LES offices for assistance. Staff of the LES are already canvassing suitable job vacancies from various trades and industries. In addition, the Labour Relations Service will advise the workers of benefits due to them under the Employment Ordinance and will assist them in resolving problems which they may have with their employers in relation to wages, long service payments or severance payments on redundancy. In case an employer is unable to pay benefits due to his employees, as a result of insolvency, the workers affected will be assisted in applying for relief from the Protection of Wages on Insolvency Fund.

As for ivory workers who may seek retraining the Government will ask the Vocational Training Council (VTC) to arrange suitable courses. The Council already operates a number of short courses whose graduates are in great demand. The VTC may have to expand the capacity of these courses or modify their contents to suit the

needs of the carvers. Some additional funds may well be necessary to finance this programme though we do not anticipate problems in this regard.

## First Reading of Bills

CUSTOMS AND EXCISE SERVICE (AMENDMENT) BILL 1989

STAMP DUTY (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

CUSTOMS AND EXCISE SERVICE (AMENDMENT) BILL 1989

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Customs and Excise Service Ordinance."

He said: Sir, I move that the Customs and Excise Service (Amendment) Bill be read the Second time. The proposed amendments seek to improve further the efficiency and effectiveness of the Customs and Excise Service.

I shall highlight the salient proposals in this Bill. Clause 3 of the Bill requires a member of the service to carry his warrant card at all times, so that he is always able to establish his identity and prove his authority in exercising his lawful powers or duties. This is important because the existing section 17 provides, perhaps somewhat extraordinarily, that a member who is off duty shall be deemed to be on duty wherever he encounters circumstances which would require his involvement in his official capacity.

Clause 7 introduces a proposed new section 17BA, which provides members of the service with general powers of search and examination without a warrant. The Customs and Excise Service enforces 19 Ordinances which have their own search and seizure provisions. During routine checks, members of the service are not normally exercising powers under any particular Ordinance. As a result, an offender caught at one of the checkpoints might have a legal defence to any charge subsequently brought.

To ensure that this new search power is limited in scope, it is intended that this power may be exercised only at entry or exit points, or where cargo is stored prior to collection.

The proposed new section 17BB gives officers not below the rank of Inspector the power to request production of a travel document. This will allow more senior members of the service to ascertain a traveller's status for the purpose of enforcing any statutory powers.

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

Question on the adjournment proposed, put and agreed to.

#### STAMP DUTY (AMENDMENT) BILL 1989

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

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

This Bill seeks to grant stamp duty relief for transactions which involve the borrowing and lending of Hong Kong stock for the purpose of settling a legitimate sale.

Under the law as it now stands, any person who borrows or lends stock is required to pay stamp duty at the rate of 0.3% of the value of the stock for each transaction. The total stamp duty payable for each completed stock borrowing transaction, including the return of the stock to the borrower, is therefore 1.2% of the value of the stock. This is the same duty as that payable in relation to two out and out transfers of stock.

In May 1988, the Securities Review Committee pointed out that stock borrowing was a well-tried and internationally used method to resolve temporary settlement problems. The committee went on to recommend a concession on stamp duty for transactions which were used as a means of expediting settlement. The Administration accepted this recommendation, and I indicated in my Budget speech earlier this year that I would introduce a Bill into this Council providing for the exemption from stamp duty of specific stock borrowing and lending transactions, and nothing more. Hence,

this Stamp Duty (Amendment) Bill 1989 before Members today.

Since stock borrowing exposes the lender to risk and imprudent stock lending undermines market integrity, it is necessary for such transactions to be properly controlled. It is intended that the status of "approved borrower" as defined for the purposes of the concession should in general be restricted to members of the Stock Exchange, and that as approved borrowers they would be required to keep records and furnish returns relating to their stock borrowing activities.

The Securities and Futures Commission and the Stock Exchange are currently discussing the essential features of a proper regulatory system for stock borrowing activities. If this Bill is passed its provisions will not be brought into operation until a system of control has been established.

Turning to the main provisions of the Bill, clause 3, which seeks to amend section 19 of the principal Ordinance, provides for the exemption of stock borrowing and stock return from stamp duty and sets forth the controls and regulatory framework necessary to make the system work. And clause 4 seeks to add a new section 58A, which will afford any person, against whom the Collector of Stamp Revenue intends to invoke civil sanctions, an opportunity of giving an explanation to the Collector as to why such action should not be taken.

The Stock Exchange of Hong Kong, the Securities and Futures Commission and the Joint Liaison Committee on Taxation have been consulted, and have endorsed the proposals. The full year cost to the revenue in 1990-91 of implementing these proposals has been estimated to be some \$40 million.

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

Question on the adjournment proposed, put and agreed to.

CONTROL OF EXEMPTION CLAUSES BILL 1989

Resumption of debate on Second Reading which was moved on 31 May 1989

Question proposed

DR. IP: Sir, the Bill before us today is a piece of legislation which would enable us to move one step forward in our efforts at according better protection to our consumers in our law. It is highly technical and complex. However, despite that, the Administration has arranged to put through the Bill within a relatively short period of time after the Law Reform Commission has published its Report on the Control of Exemption Clauses in December 1986. Sir, I would like to take this opportunity to pay my tribute to the Law Draftsman and the others involved in drafting the Bill for their dedication and good work.

As this Bill is technical and complex, I would like to quote two examples to illustrate just how consumers would be better protected by the provisions of the Bill. First, if a consumer's clothes are burnt by a negligently manufactured hairdrier, an exemption clause in a guarantee of the hairdrier could not relieve the manufacturer of liability for that damage; second, if a consumer agrees to buy or hire a well-known make of television set but a different make of set is delivered, again an exemption clause could not relieve the dealer of liability for breach of contract. Sir, although these examples only illustrate part of the features of the Bill, they have already highlighted its social significance. I would like to see, therefore, that the legislation be given the widest publicity by the Administration when it is implemented.

Turning to the work of the ad hoc group, the group has held eight meetings, including one with the Administration, to examine the Bill. The group has also considered in detail submissions to the Administration from interested organizations, including the National Mutual Insurance Company Limited and the Hong Kong Association of Banks. In the course of scrutinizing the Bill, the group has made reference to relevant legislation in the United Kingdom.

Sir, I should like to highlight some of the key issues which have been considered by the ad hoc group.

Arbitration clauses: Under clause 15 of the Bill protection is provided to a consumer in that he is not bound by a contract term requiring him to submit a difference to arbitration unless he has given written consent to submit differences to arbitration after the difference has arisen. The ad hoc group considered that it was not clear under clause 15(1) whether a consumer would be bound by his written consent to submit future differences which arose at a later stage to arbitration, and was given to understand that clause 15(1) deprives the consumer of the protection

if he consents in writing "after the differences have arisen". In comparison, section 1(1)(a) of the United Kingdom Consumer Arbitration Agreements Act 1988 only deprives the consumer of the protection if he consents in writing to the enforcement of the arbitration clause "after the differences in question have arisen". Clause 15 therefore accords less protection to the consumer than the United Kingdom Act.

Accordingly, the ad hoc group suggests that clause 15(1)(a) should be amended along the lines of the United Kingdom Act. Consequential amendment would also be made to clause 15(1)(b). The Administration has agreed to the ad hoc group's proposal and clause 15 will be amended accordingly.

Exclusion of Insurance Contracts from the Control of Exemption provisions: Schedule 1 of the Bill contains a list of contracts which would be excluded from the control of exemption provisions. The ad hoc group was in particular concerned about the proposed exclusion of insurance contracts from the provisions, bearing in mind the fact that insurance contracts have all along been an area of considerable dispute between insurers and the insured and it has been the Law Reform Commission's view that legislative control should be applied to insurance contracts. According to the Administration, it was difficult, in the context of insurance, to distinguish between terms that define the scope of risk and exemption clauses. An effective self-regulation system, rather than legislation, was considered to be a better solution to the peculiar problem of insurance contract law. The Administration also advised the ad hoc group that the insurance industry had been making good progress towards self-regulation. It is expected that the proposed self-regulation package would be finalized for implementation in the middle of 1990.

Although the ad hoc group generally considers that insurance contracts should not be excluded from the control of exemption provisions, we are none the less prepared to accept the line of the Administration that the industry should be given the opportunity to implement the self-regulation package.

The ad hoc group, however, would like the Attorney General to confirm that after the implementation of the self-regulation scheme, its effectiveness would be closely monitored by the Insurance Authority; and if self-regulation proved to be unsuccessful, legislative amendments would be made to include contracts of insurance within the statutory control of exemption clauses.

Definition of "securities": The ad hoc group has also considered whether the term



"securities" under Schedule 1 should be defined, with a view to limiting exceptions and thereby providing greater protection to consumers. After discussion with the Administration, the group has agreed that it is difficult to contemplate a satisfactory definition for "securities". Since the Administration has confirmed that there have not been any difficulties in the United Kingdom arising from the absence of a definition for "securities" in similar legislation, the ad hoc group has agreed that the point should not be pursued but should be kept under review in the light of practical application of the Bill in future. In this connection, I would appreciate it if the Attorney General would confirm in his speech that this is the intention of the Administration.

The ad hoc group has also devoted much attention to the Chinese text of the Bill, and has recommended a number of amendments. Mrs. Miriam LAU, one of our group members, will later move the proposed amendments at the Committee stage.

I understand that the Bill, if enacted today, will not be implemented until at least 12 months later so as to allow the business community to consider their use of contracts and to make any necessary amendments. Given the social importance of the legislation, I would like to urge the Administration to take every possible measure to ensure that there would not be any unnecessary delay in the implementation of the legislation and where possible, to try to advance the date of operation of the legislation.

Sir, with these remarks, I support the motion.

ATTORNEY GENERAL: I am most grateful to Dr. Henrietta IP and to all members of the ad hoc group for the time and effort they have spent in considering this complex Bill.

The Committee stage amendments that Dr. IP and Mrs. LAU will be moving have the support of the Administration.

Sir, I fully appreciate the desire to ensure that consumers are given sufficient protection. I understand that the concern expressed by Dr. IP in relation to the absence of a definition of the term "securities" stems from this desire. However, close consideration of the merits of defining "securities" in the Bill revealed potential difficulties in attempting to do so. One problem was that an exhaustive definition would be difficult since banks and financial institutions continually

create new types of securities documents. Another was that a restrictive definition might undermine certain business transactions.

The Administration concluded that there was merit in leaving the Bill as it is, thus giving the term "securities" its everyday meaning. This approach will also allow the courts to follow United Kingdom judicial precedents. Furthermore, we are not aware of any difficulties that have arisen in the United Kingdom from the absence of a definition in the Unfair Contract Terms Act 1977 of the term "securities". In answer to Dr. IP's concern, we shall, indeed, keep the matter under review and should any problems arise once the Ordinance has been enacted and brought into effect, we will be prepared to reconsider the position.

I acknowledge also Dr. IP's concern over the exclusion of insurance contracts from the ambit of the Bill. As Dr. IP has indicated, the Administration considers that effective self-regulation is a better solution than legislation to the peculiar problems of insurance contract law. It is noteworthy that the legislative route has not been followed in the United Kingdom and that instead, a self-regulatory framework has been established and has worked well. I am glad to say that commendable efforts have been made by the local insurance industry to develop proposals for self-regulation and an Insurance Claims Complaints Board is expected to be established soon. The Administration is closely monitoring developments to ensure that the interests of policy holders are protected. Again I can confirm that if self-regulation fails to achieve its objective, the Administration will consider making legislative changes to control insurance matters.

It is also correct to say that if the Bill is enacted today it will not be brought into effect for at least 12 months and this will allow time for the business community to study the Bill and to amend the contractual documents they use in their dealings. I can also announce that it is the Administration's intention that the commencement date for the Ordinance will be 1 December 1990.

Finally, Sir, I can confirm that the Bill if enacted will be widely publicized before it is implemented.

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).

## RECOGNITION OF TRUSTS BILL 1989

Resumption of debate on Second Reading which was moved on 25 October 1989

Question proposed.

MR. PETER WONG: Sir, I have learnt from experience that in matters of trust law, you find the most respected equity lawyer and you listen to him. Regrettably, the collected wisdom of the Legal Department seems to go against the advice of Hong Kong's most renowned practitioner of trust law.

In the ordinary use of the word "trust" by lawyers, a trust is an equitable obligation, and it is of the essence of a trust that it is an equitable obligation enforceable only in a court of equity. Where there is a court of equity, a trust will be enforced without the need for any international convention by force of the ordinary principles of equity. Where there is no court of equity having jurisdiction, an equitable obligation cannot be enforced, because, of its nature, it is only enforceable in a court of equity. Thus, in relation to a trust properly so called, there is no need for the Convention in jurisdictions where there is a court of equity, and in jurisdictions where there is no court of equity, a convention cannot make an equitable obligation enforceable, unless it also establishes a court of equity in that jurisdiction which this Convention does not purport to do. If it relates to trusts properly so called, where it can operate there is no need for it, and where there is a need for it, it cannot operate.

The Convention purports to overcome this problem by defining as a trust, something which is not a trust, and then purporting to make rules relating to these non-trusts which it calls trusts. The kind of relationship to which it applies is the relationship created between the customer and a drycleaner to whom he takes his suits to be dry cleaned. And that, Sir, is not the reason for this Convention.

Confusion is heaped upon confusion by clause 2(3) of the Bill. If this is given any meaning it is only consistent with the whole of the existing trust law including

several hundred years of carefully thought-out decisions of courts of equity being replaced by a few provisions in an obviously questionable convention. This result could be disastrous, but is unlikely to follow, because if the matter is properly argued in a court, it is likely to hold that no rational meaning can be given to the Convention or this legislation.

There is another problem in article 2 of the Convention, because on examination that provision will be seen to be circular and illogical and no sensible meaning can be given to it. If its purpose is, as is suggested by Mr. HAYTON (in Underhill and Hayton Law of Trusts and Trustees 14th Edition), to identify what is the proper law (that is, the law which governs the relationship of the parties and the law which governs the title to property) of a trust, then it does this by first of all defining a trust and then stating what law governs the trust, but the definition of the trust requires one to ascertain the proper law of the relationship. If the proper law has been determined there is no room for any operation of the article for determining the proper law as that has already been determined. If it has not been determined, then it cannot be said that the relationship is a trust as defined in the Convention, and until it can be said to be such a trust the provisions of the Convention do not apply and the Convention has no operation. The circularity and illogicality of the provisions must be evident on the face of the legislation as my speech has been totally incomprehensible to those people.

There are other defects in the proposed legislation and it is likely to cause loss and expense except to those lawyers who will make money arguing about what meaning can be given to what has, on the face of it, no rational meaning.

Sir, the Legal Department has been wrong before. In this particular case, I believe that the Legal Department has shirked its responsibility by relying on the authorship of the United Kingdom legislation by Mr. HAYTON. Sir, for these reasons, I must vote against the Bill.

ATTORNEY GENERAL: Sir, I might be correct at least in one thing and that is in supposing that few lawyers could resist answering criticisms of that kind. But they are criticisms which suggest that the Bill is fundamentally flawed. So in all seriousness I wish to deal with Mr. WONG's points and I shall do so, if I may, in the order in which he takes them.

Sir, it is first contended that in a common law jurisdiction with rules of equity, and we of course are such a jurisdiction, there is no need for the Convention. It is further contended that in jurisdictions without courts of equity the Convention will not assist.

I think it might be helpful if I were to remind Members of the purpose of the Convention and of this Bill by quoting the Lord Chancellor of Great Britain when he moved in the House of Lords the Second Reading of the Bill for the Recognition of Trusts Act 1987, which is largely in the same terms as the Bill now before us.

"The purpose of the Convention is to establish common principles between states on the law of trusts and to deal with the most important issues concerning their recognition.... Trusts are not, in general, a concept familiar to the civil law countries. Their systems of law are not designed to accept that one individual may hold assets on behalf of another. To give an extreme example, at present if there are trust assets in a foreign civil law jurisdiction, and the trustee incurs debts in his personal capacity, the assets of the trust are liable to be seized to meet the debts incurred by the trustee.

It was to avoid this and other difficulties that the United Kingdom promoted the negotiation by the Hague Conference of a convention which, in effect, allows us to export to civil law countries, first the concept of a trust; secondly, our rules laying down the law which governs such a trust, and thirdly, the circumstances in which it should be recognized. The Convention will thus principally be of benefit to the common law countries such as England and Wales". (Obviously for England and Wales we substitute, for present purposes, Hong Kong.)

Perhaps we might pause to reflect that if we have it as wrong as is suggested, by reference to the speech of the Lord Chancellor of the day we are in illustrious company indeed.

This explains the utility of the Convention for common law countries. Furthermore the courts of those civil law countries without courts of equity who are parties to the Convention will by virtue of the Convention recognize and enforce trusts to which the Convention applies.

I may now turn to the second point taken. It is said that a trust is inappropriately defined in the Convention and the example is given of a customer

entrusting his suits to a dry cleaner. But in so doing title to the suits does not stand in the name of the dry cleaner and the relationship does not therefore have the characteristic of a trust under article 2 of the Convention.

The next criticism, as I understand it, is that our existing trust law and hundreds of years of it is replaced by the Convention. I gather that this argument proceeds upon the premise that the enactment of the Bill will significantly affect substantive domestic Hong Kong Law by providing a comprehensive codification of the Law of Trusts which will replace all existing trust law.

But, that argument, with respect, ignores the provisions of chapter II of the Convention to which this Bill gives the force of law.

Whilst it could be argued that article 1 of the Convention is ambiguous if read in isolation, chapter II of the Convention makes it quite clear that the phrase "the law applicable to trusts" means the law by which the trust is governed, and that the Convention does not purport to be an exhaustive statement of the law itself.

The Convention specifies under article 6 that a trust shall be governed by the law chosen by the settlor so that, for example, if a settlor expresses a trust to be governed by English law then in any Convention country, the applicable law of that trust will be English law.

In the criticisms which have been leveled, there is then reference to a suggested circularity. I gather that the argument is that whether the Convention applies depends upon identification of the proper law, but that the proper law cannot be determined until it has been ascertained whether the Convention applies.

The scheme of the Convention is first to identify the essential elements of a trust. If this prevails, the Convention applies. Once the Convention applies, the rules for determining the proper law are those set out.

I think I should point out, Sir, that the Convention has been considered by the Bar Association, the Law Society, the Hongkong Bank Trustee, and all are in favour of its extension to Hong Kong. None of these bodies, so far as I am aware, has voiced the concerns expressed today. I think it bears repeating that the Bill is largely in the same terms as England's Recognition of Trusts Act 1987. Again, when moving in the House of Lords the Second Reading of the Bill for this Act, the Lord Chancellor

of the day said "the Convention will thus principally be of benefit to common law countries such as England and Wales... the Bill will involve little change to the substance of existing law in the United Kingdom. It will however serve to clarify a number of issues where existing law has not yet been fully developed."

The criticisms which have been put forward have provided much food for thought, but I hope that Mr. WONG might be comforted, to some degree at least, by the arguments and information which I have provided.

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).

#### MERCHANT SHIPPING (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 25 October 1989

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

Bill read the Second time.

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

#### HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 25 October 1989

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

Bill read the Second time.

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

Committee stage of Bills

Council went into committee.

CONTROL OF EXEMPTION CLAUSES BILL 1989

Clauses 1, 5 to 8, 11, 13, 19 and 20 were agreed to.

Clauses 2 to 4, 9, 10, 12, 14 and 16 to 18

MRS. LAU (in Cantonese): Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

In scrutinizing the Securities and Futures Commission Bill 1989 by this Council some time ago, Members considered that it was inappropriate to translate the English term "authority" into "權力體" since the term "權力體" seemed to highlight "power" or "influence" and could not be aptly applied to denote the kind of thing which the term "authority" implied. Thus, the term "權力體" used in the Bill was eventually replaced by "主管當局". In order to maintain consistency for terms used in various Ordinances as far as possible, the ad hoc group proposed to make corresponding amendments in the Chinese text of clauses 2(1) and 18 by substituting "主管當局" for "權力體".

Furthermore, the ad hoc group also considered that in the Chinese text of clause 3(5)(b), the phrase "在保險方面" should be added at the beginning of the sentence so that it can express fully the meaning of "受保" (covered by insurance). Although the term "受保" is generally accepted as an expression in the context of insurance, the meaning of this provision will obviously become clearer and more understandable after adding the said phrase.

Amendments should also be made to clauses 3(6) and 4(3) because the word "show" in the English text of the Bill may cause confusion in interpretation. This word was originally translated as "表明" (which means express clearly). Yet in what way can a person be considered to "have expressed clearly" (表明)? There is no clear criterion given for "clear expression". The ad hoc group therefore proposed that the word "show" should be replaced by "proof" and corresponding amendment should be made in the Chinese text to substitute "表明" by "證明".



The purpose of clause 4(1) was to provide a definition to the English expression of "deals as consumer", giving a specific meaning to this phrase. In the Chinese text, this phrase was rendered as "以消費者身分" without mentioning the term "交易" (which means "deals...."). Thus, the meaning of "deals as consumer" implied in the English text could not be fully expressed. The ad hoc group therefore proposed to amend the phrase to read "以消費者身分交易".

Regarding the proposed amendments to clause 10(2)(a), the ad hoc group opined that since the word "business" had already been defined in clause 2 to include certain non-commercial activities and thus rendered as "業務", the translation of the English term "business" in clause 10(2)(a) should also be changed from "商業" to "業務" in order to maintain consistency in the choice of words.

As regards clause 14, the ad hoc group considered that the diction used in the legal provisions should be, as far as possible, simple and clear and be readable and easily understood by the general public. Thus, the ad hoc group suggested that the phrase "對該等權利不利" in the Chinese text be deleted and substituted by the expression "損及", which seems to be more simple and appropriate, and the meaning of the provision will become more explicit.

Sir, with these remarks, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended, in the definition of "業務" (business), by deleting "公共權力體" and substituting "公共主管當局".

Clause 3

That clause 3 be amended --

(a) in subclause (5) (a), by deleting "該人預計可動用" and substituting "該人可預計能動用";

(b) in subclause (5) (b), by adding "在保險方面" before "該人"; and

(c) in subclause (6), by deleting "show" and substituting "prove".

#### Clause 4

That clause 4 be amended --

(a) in subclause (1), by deleting "即屬 "以消費者身分" 與立約的另一方交易" and substituting "與立約的另一方交易時(1)即屬 "以消費者身分交易";

(b) in subclause (1) (c), by deleting "轉手" and substituting "移轉"; and

(c) in subclause (3), by deleting "show" and substituting "prove".

#### Clause 9

That clause 9 be amended, in the Chinese version, by deleting subclause (2) and substituting --

"(2) 無論有關的法律責任是 --

(a) 可獲彌償者直接引致的(1)或因別人作為引致而亦須由他承擔的(8)

(b) 須向以消費者身分交易的人負的(1)或須向其他人負的(1)本條均適用(9)

".

#### Clause 10

That clause 10 be amended --

(a) in subclause (2) (a), by deleting "商業" and substituting "業務"; and

(b) in subclause (3), by deleting "轉手" and substituting "移轉".

Clause 12

That clause 12 be amended, in the heading and in subclause (1), by deleting "轉手" and substituting "移轉".

Clause 14

That clause 14 be amended, by deleting "對該等權利不利" and substituting "損及".

Clause 16

That clause 16(3)(a) be amended, by deleting "轉手" and substituting "移轉".

Clause 17

That clause 17(2)(a) be amended, by deleting "該條款在法庭或仲裁人看來(1)" and substituting "法庭或仲裁人認為該條款".

Clause 18

That clause 18 (3) be amended, in the definition of "competent authority" (具合法裁判權的權力體), by deleting "權力體" and substituting "主管當局".

Question on the amendments proposed, put and agreed to.

Question on clauses 2 to 4, 9, 10, 12, 14 and 16 to 18, as amended, proposed, put and agreed to.

Clause 15

DR. IP: Sir, I move that clause 15 be amended as set out in the paper circulated to

Members.

Proposed amendment

Clause 15

That clause 15 be amended --

(a) in subclause (1) (a), by deleting "differences" and substituting "the differences in question"; and

(b) in subclause (1) (b), by adding "in respect of any differences" after "agreement".

Question on the amendment proposed, put and agreed to.

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

Schedules 1 to 3 were agreed to.

RECOGNITION OF TRUSTS BILL 1989

Clauses 1 to 3 were agreed to.

Schedule

MRS. LAM (in Cantonese): Sir, I move that amendments be made to the Schedule as set out in the paper circulated to Members. The text and wording as amended will be more precise and appropriate, and more in line with the meaning of the English text.

When scrutinizing the Chinese text of the Bill, Members of this Council pointed out that amendments should be proposed in accordance with the following three principles:

First: The meaning conveyed in the Bill will be more precise after amendments are made to the wording. For example, in the first paragraph of Article 2 "生前" is deleted and substituted by "在世時". This is because the former gives one the

impression that the person in question has already passed away while the English expression "inter vivos" covers a wider meaning, which includes the time during which the person in question is alive. Also in subparagraph (d) of Article 11, "法院地" is deleted and substituted by "訴訟地". This is because in English, the term "forum", apart from denoting "courts", can also be taken to mean a place where arbitration of a cause between two litigating parties takes place. Thus, it is more appropriate to adopt the term "訴訟地".

Another example for illustration is the substitution of "效力" by "影響" in subparagraph (b) of the first paragraph of Article 15. Since the term "effects" refers to the legal effects of the marriage on an individual and his property, thus, the term "影響" is more precise than "效力" in this context.

Second: The agreed terminology used before in other Bills should continue to be adopted as far as possible for the sake of consistency.

For example, in Article 6, "暗示" is deleted and substituted by "隱含" because the latter has already been used in the Control of Exemption Clauses Bill. Moreover, "隱含" reflects more accurately what the English word "implied" stands for in law.

Another example is subparagraph (a) in the second paragraph of Article 8, where "作為受託人的行爲能力" is deleted and substituted by "擔任受託人的資格". Also, in subparagraph (d) of the same paragraph and Article, "利益" is deleted and substituted by "權益". The purpose of these amendments is to achieve lexical consistency with the Bills passed before.

Third: The wording of this Bill will be more fluent and appropriate after amendments are made. For example, in subparagraph (f) in the second paragraph of Article 8, "積累" is deleted and substituted by "累積"; in the second paragraph of Article 11, "(6)" is added after "須意味"; in Article 12, "證明對資產的產權"

gives way to "產權證明"; in Article 18, "不配合" is replaced by "抵觸". With

these amendments, the wording of the Bill is more fluent and appropriate than before.

Sir, I beg to move.

Proposed amendment

Schedule

That Schedule be amended --

(a) in the first paragraph of Article 2, by deleting "生前" and substituting "在世時";

(b) in Article 6, by deleting "暗示" and substituting "隱含";

(c) in the second paragraph of Article 8 --

(i) in subparagraph (a), by deleting "作為受託人的行為能力" and substituting "擔任受託人的資格";

(ii) in subparagraph (d), by deleting "利益" and substituting "權益" and

(iii) in subparagraph (f), by deleting "積累" and substituting "累積";

(d) in Article 11 --

(i) in the second paragraph, by adding "(6)" after "須意味"; and

(ii) in the third paragraph --

(A) by deleting "意味" and substituting "須意味(6)"; and

(B) in subparagraph (d), by deleting "法院地" and substituting "訴訟地";

(e) in Article 12, by deleting "證明對資產的產權的" and substituting "產權證明";

(f) in the first paragraph of Article 15 --

(i) by deleting "法院地" and substituting "訴訟地"; and

(ii) in subparagraph (b), by deleting "效力" and substituting "影響";

(g) in Article 16, by deleting "法院地" and substituting "訴訟地連"; and

(h) in Article 18, by deleting "不配合" and substituting "抵觸".

Question on the amendment proposed, put and agreed to.

Question on schedule, as amended, proposed, put and agreed to.

#### MERCHANT SHIPPING (AMENDMENT) BILL 1989

Clauses 1 to 8 and 10 to 13 were agreed to.

Clause 9

SECRETARY FOR TRANSPORT: Sir, I move that clause 9 be amended as set out in the paper circulated to Members. The amendment is simply to correct an error of reference.

Proposed amendment

Clause 9

That clause 9 be amended, in new section 107M (7) by deleting "subsection (8)" and substituting "subsection (6)".

Question on the amendment proposed, put and agreed to.

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

New clause 6A -- Bankruptcy, etc., of insured persons not to affect certain claims by third parties

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

SECRETARY FOR TRANSPORT: Sir, in accordance with Standing Order 46(6) I move that new clause 6A as set out in the paper circulated to Members be read the Second time. The purpose of the new clause is to give added protection to third parties seeking to claim directly against an overseas insurer when the insured, that is, the vessel owner, becomes bankrupt or insolvent. By virtue of this new clause, third parties will not be required to obtain leave of the Court before serving proceedings on an overseas insurer who is not within the jurisdiction of the Court.

Question on the Second Reading of the clause proposed, put and agreed to.

Clause read the Second time.

SECRETARY FOR TRANSPORT: Sir, I move that new clause 6A be added to the Bill.

Proposed addition

That the Bill be amended, by adding after clause 6 --

"Bankruptcy, etc., of insured persons not to affect certain claims by third parties

6A. Section 107G is amended --

(a) by being renumbered as subsection (1); and

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

"(2) Where the rights of an insured person against an authorized insurer under a contract of insurance issued for the purpose of section 107C(1) are by virtue of section 2 of the Third Parties (Rights against Insurers) Ordinance (Cap. 273) transferred to and vested in a third party, the High Court has power to hear and determine a claim by the third party against the authorized insurer under the contract of insurance notwithstanding that the authorized insurer is not within the jurisdiction of the Court."

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



HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION (AMENDMENT) BILL 1989

Clauses 1 to 3 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

CONTROL OF EXEMPTION CLAUSES BILL 1989

RECOGNITION OF TRUSTS BILL 1989 and

MERCHANT SHIPPING (AMENDMENT) BILL 1989

had passed through Committee with amendments and the

HOSPITALS, NURSING HOMES AND MATERNITY HOMES REGISTRATION (AMENDMENT) BILL 1989

had passed through Committee without amendment. He moved the Third Reading of the Bills.

Question on the Third Reading of Bills proposed, put and agreed to.

Bills read the Third time and passed.

Member's Motion

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR. TAM YIU-CHUNG moved the following motion:

"That, in relation to the Animals and Plants (Protection of Endangered

Species) (Exemption) (Amendment) Order 1989 (Legal Notice No. 335 of 1989) laid on the table of the Council on 18 October 1989, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance for amending subsidiary legislation be extended under section 34(4) of that Ordinance until 6 December 1989."

MR. TAM (in Cantonese): Sir, I move the motion standing in my name on the Order Paper.

The Animals and Plants (Protection of Endangered Species) (Exemption) (Amendment) Order 1989 tightens the control on ivory trade by extending the licensing requirements to cover possession of raw and worked ivory and export of worked ivory. The purpose of the motion is to extend the periods for amending the Order so that the ad hoc group formed to study the Order can have more time to consider submissions received from the ivory traders and workers and to discuss with the Administration the relevant issues.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 22 November 1989.

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

Note: The short titles of the Bills/motion listed in the Hansard, with the exception of the Control of Exemption Clauses Bill 1989 and the Recognition of Trusts Bill 1989, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.