

1 HONG KONG LEGISLATIVE COUNCIL -- 24 April 1991

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 24 April 1991

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

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

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, J.P.

THE ATTORNEY GENERAL

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

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

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

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

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

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

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

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

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

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

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

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

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

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

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

THE HONOURABLE POON CHI-FAI, J.P.

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

THE HONOURABLE SZETO WAH

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

THE HONOURABLE TAM YIU-CHUNG

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

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

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

THE HONOURABLE PAUL CHENG MING-FUN

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

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

THE HONOURABLE RONALD CHOW MEI-TAK

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

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

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, O.B.E., 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 YEUNG KAI-YIN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE MARTIN JOHN LEWIS, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

ABSENT

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

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

THE HONOURABLE TAI CHIN-WAH, J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation

L.N. No.

Public Revenue Protection Ordinance Public Revenue Protection (Dutiable Commodities) (Amendment) Order 1991.....	136/91
Public Revenue Protection Ordinance Public Revenue Protection (Dutiable Commodities) (Amendment) (No. 2) Order 1991.....	137/91
Aerial Ropeways (Safety) Ordinance Aerial Ropeways (Operation and Maintenance) (Amendment) Regulations 1991.....	138/91
Film Censorship Ordinance Film Censorship (Amendment) Regulations 1991.....	139/91
Public Health and Municipal Services Ordinance Designation of Libraries (Urban Council Area) (No. 2) Order 1991.....	143/91
Public Health and Municipal Services Ordinance Public Health and Municipal Services (Amendment of Fifth Schedule) Order 1991.....	144/91
Public Health and Municipal Services Ordinance Public Health and Municipal Services (Public	

Pleasure Grounds) (Amendment of Fourth Schedule) (No. 3) Order 1991.....	145/91
Public Health and Municipal Services Ordinance Public Health and Municipal Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 4) Order 1991.....	146/91
Public Health and Municipal Services Ordinance Public Swimming Pools (Designation) Order 1991.....	147/91
Registration of Persons Ordinance Registration of Persons (Application for New Identity Cards) (No. 6) Order 1991.....	148/91
Public Health and Municipal Services Ordinance Commercial Bathhouses (Urban Council) (Amendment) By-Laws 1991.....	149/91
Public Health and Municipal Services Ordinance Cremation and Gardens of Remembrance (Urban Council) (Amendment) By-Laws 1991.....	150/91
Public Health and Municipal Services Ordinance Exhumation (Fees) (Urban Council) (Amendment) By-Laws 1991.....	151/91
Public Health and Municipal Services Ordinance Food Business (Urban Council) (Amendment) By-Laws 1991.....	152/91
Public Health and Municipal Services Ordinance Frozen Confections (Urban Council) (Amendment) By-Laws 1991.....	153/91
Public Health and Municipal Services Ordinance	

Funeral Parlour (Urban Council) (Amendment) By-Laws 1991.....	154/91
Public Health and Municipal Services Ordinance Milk (Urban Council) (Amendment) Bylaws 1991.....	155/91
Public Health and Municipal Services Ordinance Offensive Trades (Urban Council) (Amendment) By-Laws 1991.....	156/91
Public Health and Municipal Services Ordinance Places of Amusement (Urban Council) (Amendment) Bylaws 1991.....	157/91
Public Health and Municipal Services Ordinance Public Cemeteries (Urban Council) (Amendment) By-Laws 1991.....	158/91
Public Health and Municipal Services Ordinance Slaughterhouses (Regional Council) Bylaws 1991.....	159/91
Public Health and Municipal Services Ordinance Swimming Pools (Urban Council) (Amendment) Bylaws 1991.....	160/91
Public Health and Municipal Services Ordinance Undertakers of Burials (Urban Council) (Amendment) By-Laws 1991.....	161/91
Dutiable Commodities Ordinance Dutiable Commodities (Liquor Licences) (Specification of Fees) (Urban Council Area) Notice 1991.....	162/91
Places of Public Entertainment Ordinance	

Places of Public Entertainment (Licences)
(Specification of Fees) (Urban Council Area)
Notice 1991..... 163/91

Hong Kong Letters Patent 1917 to 1990
Authorization by the Governor..... 164/91

Import and Export (Amendment) Ordinance 1991
Import and Export (Amendment) Ordinance 1991
(Commencement) Notice 1991..... 165/91

Tate's Cairn Tunnel Ordinance
Tate's Cairn Tunnel Regulations 1991..... 166/91

Road Traffic Ordinance
Road Traffic (Public Service Vehicles)
(Amendment) Regulations 1991..... 167/91

Sessional Papers 1990-91

No. 67 -- Mass Transit Railway Corporation
Annual Report 1990

No. 68 -- Occupational Safety and Health Council
Annual Report for the period from 1 April 1989 to 31
March 1990

Miscellaneous

Report of the Working Party on Primary Health Care
December 1990

Addresses by Members

Mass Transit Railway Corporation Annual Report 1990

FINANCIAL SECRETARY: Sir, in accordance with section 16(4) of the Mass Transit Railway Corporation Ordinance, the Annual Report and Accounts of the Mass Transit Railway Corporation for the year ending 31 December 1990 are tabled today.

The Corporation carried some 719 million passengers in 1990, an increase of 4.6% over 1989. Fare revenue in 1990 grew by 15% to \$2.7 billion. Together with recurrent revenue from other sources such as estate management, shop rentals and advertising, total revenue for 1990 was \$3.2 billion, 15.7% higher than that in 1989. Total operating costs were up by 20%. This was mainly due to rising wages and increases in railway maintenance costs.

The Corporation earned a profit of \$1.27 billion before interest charges, representing an increase of 21% over that in 1989. However, interest charges in 1990 amounted to \$1.58 billion, resulting in a loss of \$312 million. With non-recurrent profits from property developments at \$204 million, the Corporation incurred a net loss of \$108 million in 1990, compared with a profit of \$56 million in 1989.

The Corporation's loans and finance liabilities at the end of 1990 stood at \$18.5 billion. The year-end debt to equity ratio was 2.8 to 1, compared with 2.9 to 1 in 1989. A prudent financing programme is necessary for refinancing maturing debts at a reasonable cost. In a period of considerable fluctuation in the world capital markets, I am pleased to note that the MTRC remains well respected in the international financial community. The respectable credit ratings enjoyed by the Corporation demonstrate confidence in the economic well-being of the Corporation as a principal public transport company in Hong Kong.

The Corporation's results in 1990 are consistent with the forecasts underlying its long-term financial strategy. In two to three years, the Corporation is expected to make a profit after interest charges without recourse to earnings from property developments. The Corporation's current financial strategy is sound and its revenue growth sufficient to meet its obligations.

During the year, the Corporation has continued to liaise with the Government over potential extensions to the MTR system. It has worked closely with Government on the technical feasibility of the New Airport Railway. Other possible extensions will be examined in the context of Government's Railway Development Study to be undertaken

later this year. No decisions have been taken on any of these potential extensions.

Looking to the future, I am encouraged by the Corporation's commitment to further enhancing the safety, reliability and efficiency of its services. The Corporation has made long-term plans to upgrade continually the running of the railway and to invest further in assets to increase cost-efficiency and customer satisfaction.

Finally, I would like to thank the Board, management and staff of the Mass Transit Railway Corporation for the efficient and responsible manner in which they have run the Corporation.

Occupational Safety and Health Council

Annual Report for the period from 1 April 1989 to 31 March 1990

MR HO SAI-CHU (in Cantonese): Sir, this Annual Report of the Occupational Safety and Health Council for the period from April 1989 to March 1990, the second that I shall present to this Council, is now made available together with its financial statements for your perusal.

It has been two and a half years since the establishment of the Occupational Safety and Health Council (OSHC) on July 21, 1988. During this period, the OSHC has become more widely known. In the past year, the OSHC was approached by organizations big and small from different quarters of the industrial sector (including a request from a large public utility company in Hong Kong) for information and posters on occupational safety as well as consultancy services provided by the OSHC consultants. Members of the public also made telephone enquiries to the OSHC and visited its library to borrow books, journals and training aids. Beginning from January last year, the OSHC has been organizing a number of training courses on occupational safety. These courses have been well-received. The OSHC will therefore continue to organize more training programmes in the coming years to cater to the need of the community in its endeavour to work hand in hand with the Labour Department in augmenting the enforcement, inspection and prosecution functions of the Department for the prevention of occupational risks in Hong Kong. Other areas of work of the OSHC include publicity and education which the Council has always attached great importance, and the provision of consultancy services, the supply of information, the carrying out of surveys and researches, all of which are conducted with the support and assistance from the Education and Manpower Branch, the Labour Department and other

government departments, business associations, trade unions and the insurance industry. The Annual Report has given a full account of these activities, and I do not intend to go into further details. I would like to reiterate that in the years ahead, the OSHC will continue to devote itself to enhancing the occupational safety standard in Hong Kong through the tripartite cooperation of the Government, the employers and the employees.

All along the OSHC has been doing a great deal of work in its publicity programmes. Apart from promoting the awareness of occupational safety, the dissemination of knowledge on occupational health has also been given due emphasis. It is the hope of the staff of the OSHC to secure the continuous support of the Government and the general public to develop and extend the OSHC's scope of work, especially in the provision of training courses and consultancy services and in the carrying out of research programmes and so on. It is hoped that by doing so, the OSHC can help provide a safer and healthier working environment for local employees, and thus go beyond its present limited sphere of activities to introduce new and more comprehensive concepts on occupational safety and health for the well-being of the employees.

From the statistics of the past years, it can be seen that the number of occupational accidents reported last year was slightly lower than that of the previous year, 94 694 cases in 1990 as compared to 97 450 cases in 1989, showing a drop of 2 756 cases. "The Statistics on Occupational Accidents in 1990" released by the Labour Department just the day before also indicated a drop of 4.8% and 8% respectively in the number of accidents in the construction and manufacturing industries. This has been achieved through the concerted efforts of government departments, various sectors of the community and the OSHC. It is evident that the safety and health conditions of employees have been improved. These achievements, though not particularly outstanding, are nonetheless encouraging.

Last year, in response to the demands from the public, especially from trade unions and concern groups, and after consultations with interested parties, the OSHC set up the "Transport and Physical Distribution Industry Safety and Health Committee" in May. The objective of this Committee is to upgrade the safety and health standards of the transport and physical distribution industry and to reduce the number of injuries and deaths cause by accidents in work. Statistics show that since the establishment of the Committee, the number of accidents and casualties in the container services industry has fallen to less than 130 cases in 1990 as compared to more than 200 cases in 1989. Consideration will be given to applying this

successful experience gradually to other accident-prone industries.

Sir, the battle to raise the occupational safety and health standards in Hong Kong to reach the objective of "zero accident" is indeed a strenuous and protracted one. However, I firmly believe that if all parties concerned are united in minds and efforts, we will eventually succeed. May I take this opportunity to pay tribute to the Education and Manpower Branch, the Labour Department and other relevant government departments which have given the OSHC their full support during the past year, as well as to members and staff of the OSHC for their dedication and hard work.

Report of the Working Party on Primary Health Care
December 1990

SECRETARY FOR HEALTH AND WELFARE: Sir, laid on the table today is the Report of the Working Party on Primary Health Care, entitled "Health for All: The Way Ahead".

Introduction

The Working Party was appointed by you, Sir, in August 1989 to review primary health care in Hong Kong. It comprises mainly non-officials drawn from organizations and institutions involved in primary health care and other areas in the private sector. This report sets out the Working Party's vision for the future development of primary health care and is the crystallization of shared expertise and experience of members of the Working Party. I would like here to record my gratitude for their dedicated effort.

I would also like to take the opportunity of referring to the Dental Sub-Committee of the Medical Development Advisory Committee which has in parallel reviewed oral health services in Hong Kong. In thanking them for their report, I would mention that a synopsis of the relevant recommendations of the Sub-Committee has been incorporated into a separate document for consultation.

Present position

For years Hong Kong's health system is highly hospital-oriented. Primary health care with its strong emphasis on health promotion, disease prevention, continuity of care and rehabilitation in the community, with due involvement of individuals and

families, has neither been fully understood, nor appreciated nor developed: that is to say, the concept of primary health care as a basis of a health care system, distinguished from the more expensive and more specialized medical services, has not received adequate attention in Hong Kong. The appointment of the Working Party to conduct this review is our first step towards redressing this imbalance and enhancing public awareness through health promotion and education.

Recommendations of the Working Party

The recommendations contained in the report fall broadly into two categories: those which build on the existing infrastructure and emphasize the need to improve quality of services; and those which require a major revamping of the current system or initiate a new approach altogether.

Sir, I would like to highlight the themes and underlying principles of the Working Party's main recommendations.

First, the Working Party reaffirms Government's belief in the need to redress the imbalance between hospital care and primary health care in Hong Kong's health policy. It also commends the Government for its firm commitment to the cardinal principle of equity -- that no one should be prevented, through lack of means, from obtaining adequate medical treatment.

The need for collaboration and co-ordination is another recurring theme. The Working Party highlights the importance of collaboration between the public and private sectors, better interface between hospital and health services and closer co-ordination amongst various providers of services.

Of equal importance is the concept of participatory care. This calls for participation of individuals, families, professionals and the community at large, all having an important role to play in the health care process. Let me perhaps dwell a little on this. We believe in the important central role of the people. Participatory care is a system of care which stresses the importance of protection and health promotion by the individual: it looks for realistic implementation of programmes; it calls for the utmost flexibility of an integrated approach and it reflects the need for continuum of care.

The Working Party has not lost sight of the cost element. It defines primary

health care as essential health care made universally accessible to members of the community but at a cost that the community can bear. Indeed, the Working Party, in making its recommendations, has adopted a practical approach. On the one hand, pragmatism dictates that we should look at our resource situation before we decide on the modalities of primary health care. On the other hand, we must have regard to the importance of the community investing in primary health care so as to better respond to our epidemiological and demographic needs and optimize available manpower and financial resources.

The Working Party calls for changes to the existing system, but on a cautious and gradual basis. This could be achieved by the initiation of pilot schemes and implementation of the proposal in phases. This will leave room for evaluation, adjustment and consolidation.

Consultation

As the question of health and the health care system touches upon the lives of every member of the community, we aim to give the report the widest possible coverage through extensive consultation. A co-ordinating group specifically for this exercise has been set up jointly by the Health and Welfare Branch and the Department of Health to collate public opinion until the end of July. We welcome views from all.

Concluding remarks

Public health is public wealth. The World Health Organization has been advocating that primary health care is the key to health development. Its target is "Health for All by the Year 2000."

Sir, for us, the way ahead is to achieve health for all.

Oral answers to questions

Port and Airport Development Strategy

1. MR PANG asked (in Cantonese): In view of the public's concern about the port and airport development scheme, will Government inform this Council:

(a) what progress has been made so far on various major projects?

(b) whether the Chinese Government's attitude towards the scheme has been made known to the Administration, and if so, what it is?

CHIEF SECRETARY: Sir, since October 1989, considerable progress has been made on the implementation of the Port and Airport Development Strategy. I have tabled an up-to-date progress report on the new airport and related key projects for Members' information. (Annex I)

On the building of the new airport, the Airport Master Planning is now well under way and advance site preparatory work has commenced at Chek Lap Lok in February 1991. Prequalification submissions for the main site preparation contract are currently being called for. Meanwhile, detailed design work is in progress on various airport-related key projects such as the North Lantau Expressway, the Lantau Bridge, the West Kowloon Reclamation, the Airport Railway and the Central and Wan Chai Reclamation. One initial reclamation contract has been let for the West Kowloon Reclamation and further contracts will be awarded in the course of the year.

As regards port development, we have recently disposed of Container Terminal No. 8 by way of a private treaty grant to a consortium comprising existing operators and new interests including Chinese interests. A series of studies on port development in Tsing Yi, Lantau, Western Harbour, Tuen Mun and Tseung Kwan O are in progress.

Sir, Mr PANG also asked to know the Chinese Government's attitude towards the airport project. In broad terms, the Chinese Government clearly sees the need for a new international airport in Hong Kong and at the same time they have expressed concern about the financial implications of such a project. This much is public knowledge. However, it would clearly not be appropriate for the Administration at this stage to discuss or reveal details of the Chinese position conveyed to us in confidence during the talks. There is an agreement between both sides that the contents of the talks should be kept confidential and I do not believe that it would be helpful to the prospects of reaching agreement if we were to publicize the position

now reached by both sides.

Sir, as I have reassured Members, the Administration is clear that, if an understanding on the airport project can be reached with the Chinese, we will tell this Council and the people of Hong Kong exactly what it contains.

MR PANG (in Cantonese): Sir, will the Government inform this Council whether the tender for the construction of the Tsing Ma bridge will be issued as scheduled?

CHIEF SECRETARY: Yes, Sir, the preparatory work is on schedule. The final work on the tender documents is now in hand and we should be ready to issue the tender within the next month or so.

MR POON CHI-FAI (in Cantonese): Sir, will the Government inform this Council whether it will, for the benefit of the understanding of and comparison by the public, consider disclosing the new proposal recently mentioned by the Chinese and Hong Kong sides; and whether the relevant authority has to await response from the Chinese, British or Hong Kong side in respect of that proposal?

CHIEF SECRETARY: Sir, as you have made it clear in a recent statement, the proposal from the British side has been tabled and we are now awaiting a Chinese response.

MR ARCULLI: Sir, having regard to the penultimate paragraph of his answer, will the Chief Secretary please inform this Council whether it will be appropriate for the Administration to have a second look, and perhaps a second think, about the airport proposals that have been put forward by Mr Gordon WU of Hopewell Holdings?

CHIEF SECRETARY: Sir, we have previously given a detailed response to the proposals made by Mr WU and our position on those is a matter of public record. If since then Mr WU had modified his proposals, we would be happy to consider them in due course. Sir, in the meantime we do not believe it would be wise to divert our efforts from our main objective which is to reach agreement with the Chinese side on government

proposals which we firmly believe will serve the best interests of Hong Kong.

MR MARTIN LEE: Sir, when will the Administration release more information on the new airport to Members of this Council, or must we rely on the Honourable Kingsley SIT to do so?

CHIEF SECRETARY: Sir, we have a programme of briefing, which is being worked out now, to inform Members of the Council as information becomes available.

MR MCGREGOR: Sir, for the record, can the Chief Secretary confirm the Hong Kong Government's total commitment to the construction of the new airport at Chek Lap Kok? And can he confirm that if an alternative proposal is put forward it should be processed in the same time frame as Chek Lap Kok?

CHIEF SECRETARY: Sir, we remain committed to our proposal at Chek Lap Kok. The Chek Lap Kok proposal came as a result of some 27 months of exhaustive study which was based on previous studies going back some 10 years. If we were to study any further proposals, clearly a long timescale would be required.

MR SIT (in Cantonese): Sir, will the Government inform this Council whether Hong Kong has sufficient fund to build the airport by itself? As the President said in his policy address in 1989, Hong Kong does have enough fund to build an airport?

HIS EXCELLENCY THE PRESIDENT: Can I remind Members that questions should be questions rather than statements?

CHIEF SECRETARY: Sir, I would comment on two points. Firstly, the original concept of forwarding the airport was based upon the private sector participation in the airport; that has always been a fundamental part of our strategy and that was part of the strategy which you announced, Sir, in this Council in October 1989. As to the question of what might or might not happen if we do not have agreement with the Chinese side, I do not think it would be helpful for me to speculate.

MR ALLEN LEE: Sir, will Government advise this Council as to the truth of today's newspaper report on the secret document handed over to the Chinese during the airport negotiations and released by my colleague, Mr Kingsley SIT? And will Government make a statement on the financial aspect of the planned airport?

CHIEF SECRETARY: Sir, it does appear that the extracts of the paper which appeared in the press today were extracts from a confidential paper which was passed to the Chinese side during the course of the discussions. As I have made clear during the debate last week, it is an agreement with the Chinese side that the contents of the talks will be kept confidential. We take a serious view of the leakage of secret documents and I have today asked for an inquiry to be instituted into the matter. Clearly, if Mr SIT can throw any light upon the source of the document or give any other information, we would be pleased to receive that information. Sir, as to the content of the document, I will defer to the Financial Secretary.

HIS EXCELLENCY THE PRESIDENT: Financial Secretary, can you help?

FINANCIAL SECRETARY: Sir, this is a lengthy document and I do not think it would be helpful to comment on the details of it. But I think it would be useful to comment on one particular point which has been the subject of some recent publicity and comment, and that is the forecast that the fiscal reserves in 1997 would be only \$5 billion.

I think the particular point to bear in mind is that this is only one of a number of possible approaches which have been identified. It is not the chosen approach; it is one of a number of options. For a project of the scale and complexity of the airport, of course one can identify a whole range of possibilities. Each has its own costs, its own benefits -- both financial and economic -- and its own effect on the Government's financial position, whether in 1997 or earlier.

It is worth also commenting that even the approach in question, that is to say, the approach which produces a figure of around \$5 billion in fiscal reserves, is not the end of the story. The financial position of the SAR Government at that time would in fact be extremely strong, because in addition to the fiscal reserves it would inherit first of all an infrastructure in which a heavy investment had been made, an infrastructure which would give rise to continued economic growth in Hong Kong,

which would in turn bring considerable revenue to the Government from a range of sources: land sales, tolls, dividends by the Airport Authority and so on. And finally of course, the SAR Government will have the Land Fund under its control.

HIS EXCELLENCY THE PRESIDENT: I already have the names of another seven Members who wish to ask supplementary questions which is rather a long list for a subject which was well aired last week. I will draw the line at that point.

MR CHOW (in Cantonese): Will the Government shelve the new airport project because the Chinese Government requests to have the powers of deliberation and veto over the airport issue?

CHIEF SECRETARY: Sir, I think I made very clear the Government's position in the debate on this matter last week, and I have nothing further to add on that subject.

MR MARTIN LEE: Sir, in the absence of any agreement yet between the Chinese and British and Hong Kong Governments on the proposed new airport, is it the intention of the Administration to go on with the PADS project with or without China's blessing or does it have any contingency plan to stop these projects if such blessing should not be forthcoming within a reasonable time?

CHIEF SECRETARY: Sir, as we have said on many occasions, we would like to have Chinese support for the airport project and we will be working hard to try to seek agreement on that basis over the days and weeks ahead. I do not think it would be helpful for me to speculate on what might or might not happen should that agreement not be reached.

MR LAM (in Cantonese): Will the Government inform this Council what will happen to the development in north Lantau if the airport project is shelved?

CHIEF SECRETARY: Sir, we seem to be into an afternoon of "what if?" questions. The same applies; I am not prepared to speculate on what might or might not happen if

we do not reach agreement.

MRS CHOW: Sir, given the negative effect that speculation on the recent talks has had and is likely to have on Hong Kong, would the Government please inform this Council whether a deadline has been imposed on the date of a decision regardless of whether an agreement can be reached?

CHIEF SECRETARY: Sir, the target date for the completion of the first runway rests in early 1997 and that is our target date. In order to achieve that target date we would need to go to tender around the middle of this year on the two major projects which take the longest period of time, that is, the Lantau bridge and the airport platform construction. Too clearly, there are time constraints if we wish to meet the timescale involved. If we were not to reach agreement with the Chinese Government, Sir, clearly we would have to make a decision as to whether or not we proceeded with those tenders at those times.

MR TAM (in Cantonese): Sir, can we interpret the answers provided by the Secretary today as "the Government does not intend to shelve the new airport project in Chek Lap Kok"? And are recent reports of shelving the project pure speculation of the media?

CHIEF SECRETARY: Sir, as I have said, we believe that the airport project is in the long-term interests of Hong Kong, and particularly the long-term interests of Hong Kong people. We would very much like to go ahead with the airport. We will continue to try to seek agreement with the Chinese to make that possible.

DR LEONG: Sir, for the record, can the Administration assure this Council that in the final analysis whether or not the building of the airport at Chek Lap Kok will go ahead will entirely be the decision and the prerogative of the Hong Kong Government and the Hong Kong Government alone?

CHIEF SECRETARY: Sir, clearly the decision as to whether to go ahead is a matter for the Hong Kong Government. We have made it clear, however, on a number of occasions that we would like to have the support of the Chinese Government in making that

decision. Whether we should or should not go ahead if that support is not forthcoming is another matter, Sir, which I am not prepared to speculate about.

MR MCGREGOR: Sir, I am following up the question by Mr Martin LEE who asked the Chief Secretary if, in the event that China does not approve of the Chek Lap Kok project, there is a possibility at least that the Government can go it alone?

CHIEF SECRETARY: Sir, it is another "what if?" question, I am afraid, and I am not prepared to speculate on that eventuality.

Vehicles solely for advertising purpose

2. MR LAU WAH-SUM asked: Will the Administration inform this Council of its policy on "special purpose vehicles" used solely for advertisement purposes, and explain in particular why such vehicles are permitted given the limited road space and constantly heavy traffic flow in Hong Kong?

SECRETARY FOR TRANSPORT: Sir, under the Road Traffic Ordinance and its subsidiary legislation, a vehicle owner may apply for a permit to carry advertisements on his vehicle. Provided that the registration and licensing requirements are met, an advertisement permit may be issued on payment of a fee. The permit may stipulate certain conditions governing the operation of the vehicle, such as restricting the vehicle from entering certain busy roads, and at certain times.

The Government is aware of the potential road safety and transport problems caused by certain vehicles recently used solely for advertising purposes and is reviewing the conditions for issuing such permits to restrict their operation.

We intend also to introduce legislative amendments to strengthen control on the number and operation of these vehicles as soon as possible. Our policy objective is to prevent a proliferation of vehicles carrying large billboards on our roads.

MR LAU WAH-SUM: Sir, will the Secretary for Transport inform this Council how many

permits have been issued for special purpose vehicles solely used for advertisement purposes and when amendments can be made to the relevant regulations to disallow all road vehicles to be operated solely for advertisement purposes?

SECRETARY FOR TRANSPORT: Sir, with regard to the first part of the question, there are at present 32 such vehicles carrying large billboards on our roads. As regards the laws that would require to be amended, we have just issued drafting instructions and, subject to the drafting being smoothly done, we hope to enact legislation during the rest of this Session.

MR POON CH- FAI (in Cantonese): Will the Administration inform this Council whether its policy is contradictory in that the Highways Department rejects applications for advertisements to be put up along and near the roads on the one hand -- because these advertisements will attract drivers' attention and may thus put their safety at risk -- while the Government allows such trucks carrying billboards on our roads on the other?

SECRETARY FOR TRANSPORT: Sir, I am not aware of any large advertising approved by the Highways Department but the difference is quite clear between these types of advertising -- one is the stationary type of advertising along the roads and on buildings and the other one concerns billboard trucks which are quite large vehicles carrying large billboards which, firstly, would obstruct the sight of drivers on the road and, secondly, cause congestion while they are touring our busy roads. Therefore the nature of these vehicles is different and we intend to amend the law to tighten our control.

MR TIEN: Sir, will the Administration inform this Council whether a quota will be set to limit the number of these vehicles?

SECRETARY FOR TRANSPORT: Yes, Sir, the purpose of amending the law is to impose a fixed number on operational vehicles on our roads.

MR EDWARD HO: Sir, if the law already requires vehicles to have permits to carry advertisements, why are these permits given in view of the serious congestion of the roads?

SECRETARY FOR TRANSPORT: Sir, the main reason is because the law is unclear at the present time and there is a loophole which does allow some vehicles to apply for such advertising purposes.

Electoral provisions

3. MR CHOW asked: Sir, the election of the Shun Lee Constituency of Kwun Tong District Board has to be postponed to 21 April 1991 following the death of a candidate. In the light of the inconvenience caused to both voters and candidates by the incident, will Government inform this Council whether it will re-examine the Electoral Provisions (Procedure) Regulations to avoid postponement of an election in such a situation?

SECRETARY FOR HOME AFFAIRS: Sir, there are good reasons for countermanding an election on the death of a candidate, as prescribed by Regulation 5 of the Electoral Provisions (Procedure) Regulations.

It is important in an election to ensure that candidates representing all viewpoints have the opportunity to stand and that the electorate have the opportunity to vote for a candidate that best represents their views and preferences. The death of a candidate after the close of nominations could mean that the viewpoints held previously by the deceased candidate and/or that of the organization supporting him would be deprived of representation.

Sir, in addition, there is the danger that the death of a candidate close to election day would engender confusion among the voters and thus cast doubts on the validity of the outcome of the election.

Sir, Hong Kong is not alone in having such a regulation. As far as I am aware, electoral laws in well-developed democracies such as the United Kingdom and Canada also require that nominations be reopened and the election be countermanded on the

death of a candidate after the close of nominations. In common with these countries, the Government holds the view that such a regulation is necessary to safeguard the fairness and credibility of the electoral process.

MR CHOW (in Cantonese): As a matter of fact, the death of a candidate in the course of an election and a person's withdrawal of candidacy after the close of nominations would have the same effect on the election in a constituency. Could I ask why relevant electoral legislation does not provide for by-elections in case a candidate withdraws his candidacy after the close of nominations?

SECRETARY FOR HOME AFFAIRS (in Cantonese): We cannot make comparisons like that. Withdrawal of candidacy is a voluntary act while the death of a candidate is an act of God; to compare in such a way is therefore improper.

MRS TU: Sir, as the other candidates in Shun Lee had already registered and, I believe, had spent money on an election which was later aborted, will the candidates be compensated for financial loss through no fault of their own?

SECRETARY FOR HOME AFFAIRS: Sir, the short answer is no. I think it is important to compare the troubles and expenses incurred by a candidate on the one hand and the need to ensure that all viewpoints are represented on the other hand. And I think the latter consideration must outweigh the former.

MR CHOW (in Cantonese): My question is similar to that of Mrs TU. As candidates have already spent money on an election, it would be unfair to those who could not afford much on electioneering if the election was later countermanded. Could it be said to be God's will? Has the Government ever considered finding a solution to this problem?

SECRETARY FOR HOME AFFAIRS: Sir, as I said, I think the situation is one which I, as a Christian, might describe as an Act of God. It is unfortunate that candidates might have incurred expenses, but the expenses so incurred, unless the material on

which the money is spent is reused in the by-election, would not count against the ceiling of expenditure incurred. But as to compensation, Sir, I am afraid this Administration is not able to take that into account.

MR PETER WONG: Sir, I am not sure whether the Secretary has answered the question I am going to ask. I might just repeat it. In case a candidate in the first series of elections has already spent up to his limit and as a result of the by-election has to incur further expenses, will he be penalized for this?

SECRETARY FOR HOME AFFAIRS: Sir, the expenditure in an election which is countermanded is not counted because no election has actually taken place, unless, as I have said, the same material is reused in the by-election, in which case the expenditure on that material would be counted against the election expenditure ceiling.

MR ANDREW WONG: Sir, there are two sorts of situations and the Government wishes to intervene only in the case of Acts of God, but not to intervene in the case of acts of men withdrawing their candidacy. Could I be advised whether or not this is the present government position?

SECRETARY FOR HOME AFFAIRS: Yes, Sir.

MR MARTIN LEE: Sir, in the example given by the Honourable Peter WONG, we have, say, Candidate A who has already spent the \$30,000 before the death of another candidate and now if he cannot reuse the material, if he cannot take advantage of that and send more letters, then it is unfair to him because further time would elapse before the date of the next election. So will the Government address that problem? He cannot just sit idle.

HIS EXCELLENCY THE PRESIDENT: Can I repeat what I said earlier, that questions should be questions rather than statements?

SECRETARY FOR HOME AFFAIRS: Sir, I think we are getting into the finer points of what regulations apply and how to interpret the regulations. I gave an example of a

billboard being used in the earlier part of the election, and the same billboard being used in a by-election, and the cost for that billboard would certainly count against the expenditure ceiling. Candidates are allowed to send letters to their constituencies, I think, free of postage charges, and since in a by-election the process can be repeated he would not be incurring further expenditure.

Written answers to questions

Water leakages in Long Ping Estate

4. MR TAI asked: A large number of tenants of Long Ping Estate in Yuen Long has reported water leakages in their units, bathrooms in particular. Will the Administration inform this Council:

(a) of the cause and the extent of the defect;

(b) of the remedial measures so far taken by Government and their effectiveness; and

(c) whether legal action will be taken against the contractor, and if not, why not?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, there are 8 483 flats in Long Ping Estate. In response to a survey conducted by the Housing Department between April and July 1990, a total of 778 reports of water leakage were received.

Subsequent investigations indicated that the water leakages occurred in the toilets, mainly around the pipes passing through the slabs, resulting in dampness to the ceilings of the flats below. This defect appears to have been caused by a combination of factors, such as poor workmanship in pointing the pipe sleeves, no water proofing layer on the toilet floor and no provision for a bath tub or shower tray to receive the water.

Remedial works commenced immediately after the survey. By the end of March this year, all the remedial works for these flats, including an additional water proofing layer and skirting to the toilet/bathing area, were completed. Tenants appear

satisfied with these measures. Works will be carried out wherever similar defects are reported.

The Housing Authority is considering whether legal action should be taken against the contractor of Long Ping Estate.

Airfare pricing

5. MR PETER WONG asked: In view of the shorter alternative flight routeing from Hong Kong to Europe via China, Mongolia and the USSR adopted by some airlines on a contingency basis, will the Administration inform this Council whether there will be a reduction in airfares on direct routeings to Europe?

SECRETARY FOR ECONOMIC SERVICES: Sir, during the outbreak of military hostilities in the Gulf, three airlines operating services from Hong Kong namely, Cathay Pacific Airways, British Airways and Lufthansa, were granted permission by the relevant authorities to divert their flights between Hong Kong and Europe along a new air route which tracks over China, Mongolia and the USSR. Access to this route, which was made available on a contingency basis only, has now been withdrawn and the airlines concerned required to revert to the former longer routeings since 1 April.

Apart from the temporary nature of the re-routeing, certain factors made it very difficult for airlines to assess the impact of the use of the route on their operating costs :

- (a) volatile fuel prices and a dramatic drop in passenger traffic, due to the impact of the Gulf war, affected both operating costs and revenues;
- (b) the three countries overflown had not yet decided what en-route navigation charges they wish to levy; and
- (c) extra costs were incurred by airlines in establishing temporary stopover stations for some flights.

In the circumstances, the Civil Aviation Department did not receive, and did not

expect to receive, any request for tariffs adjustment from the airlines concerned as a result of this temporary re-routeing.

In the longer term we hope it will be possible to secure access for Hong Kong airlines to the shorter routeing on a permanent basis. This will require agreement to be reached at inter-governmental level with the Soviet, Mongolian and Chinese authorities.

Tobacco duties

6. MRS FAN asked: Will Government inform this Council

(a) whether duty on cigarettes is collected from tobacco traders on a monthly basis or at the time when the cigarettes arrive in Hong Kong;

(b) of the amount of duty collected from cigarettes every month in the past three years; and

(c) of the amount collected in March 1991, how much was collected before the Financial Secretary made his Budget speech?

FINANCIAL SECRETARY: Sir, duty on cigarettes imported for local consumption is paid before they are removed from warehouses, or the ship, aircraft, vehicle on which they were imported or, as the case may be, from railway premises. A similar system operates where imported tobacco is made into cigarettes locally. No duty is levied on cigarettes for re-export.

A monthly breakdown of revenue collected from duty on cigarettes in the past three years is given below:

Revenue Collection

Month/Year	(HK\$)
Apr/1988	25,415,656.63
May	64,053,346.35

Jun	81,902,586.90
Jul	93,996,620.50
Aug	108,206,710.85
Sep	103,696,836.45
Oct	99,351,746.43
Nov	106,020,805.73
Dec	135,352,181.40
Jan/1989	240,108,729.25
Feb	181,369,393.10
Mar	5,700,753.75
88/89 Total	1,245,175,367.34

Apr/1989	29,820,138.60
May	64,924,676.25
Jun	85,061,268.65
Jul	110,141,110.22
Aug	121,232,405.85
Sep	112,118,496.75
Oct	115,221,576.50
Nov	133,870,165.80
Dec	158,508,370.45
Jan/1990	176,757,493.10
Feb	254,303,094.45
Mar	40,044,220.56
89/90 Total	1,402,003,017.18

Apr/1990	15,455,798.20
May	52,136,004.96
Jun	92,467,252.10
Jul	136,251,141.60
Aug	145,230,541.50
Sep	140,368,653.40
Oct	147,913,603.70
Nov	188,148,957.80
Dec	153,872,323.40
Jan/1991	317,836,906.02

Feb	216,467,807.54
Mar	53,825,471.28
90/91 Total	1,659,974,461.50

Of the HK\$53,825,471.28 collected from duty on cigarettes in March 1991, HK\$51,926,470.50 was collected before the Budget speech was made.

Utilization rate of district community halls

7. MRS TU asked: Will the Government inform this Council:

(a) of the usage rate of the hall facility of all District Community Halls and District Community Centres;

(b) of the number of Halls/Centres that will be handed over to the other organizations; and

(c) after their handover what measures can be taken to ensure fairness in the allocation of usage of the hall among different organizations in the district?

SECRETARY FOR HOME AFFAIRS: Sir, the answers to Mrs TU's questions are as follows:

(a) There are two distinct types of community facilities operated by the City and New Territories Administration. First are the 31 self-standing Community Halls. Second are the 33 Community Centres which include an integral hall and a welfare block. Excluding free play sessions, the average utilization rate of the self-standing Community Halls is 35%, but several individual halls are below 20%. The rate for the halls within the Community Centres is 54%.

(b) A pilot scheme is being carried out under which non-government charitable organizations may take over the management of some of the newly completed self-standing community halls by way of a tenancy agreement. They will be required to manage the facility and actively promote its utilization by local community organizations and individuals. The objective is to promote increased utilization of community halls and at the same time achieve the most effective use of resources. One new community hall in Tsing Yi has been handed over to the Children's Club for management under a tenancy agreement. Two other community halls, in Tuen Mun and

Kwai Tsing are being considered for similar management arrangements. If the pilot schemes prove successful, consideration will be given to extending the scheme to other self-standing community halls.

(c) The tenancy agreement provides that the tenant will actively promote the use of the community hall amongst local community organizations. Applications for bookings will continue to be made to the District Officer, who will continue to ensure fair allocation of usage and act as a final arbiter.

Motions

TATE'S CAIRN TUNNEL ORDINANCE

THE SECRETARY FOR TRANSPORT moved the following motion:

"That the Tate's Cairn Tunnel By-laws 1991 made by the Tate's Cairn Tunnel Company Limited on 4 April 1991 be approved."

He said: Sir, I move the motion standing in my name on the Order Paper. The motion seeks this Council's approval of the Tate's Cairn Tunnel By-laws.

The Tate's Cairn Tunnel will be open to traffic by the end of June this year. Under section 35 of the Tate's Cairn Tunnel Ordinance, the Tate's Cairn Tunnel Company Limited is empowered to make by-laws for the day-to-day operation and management of the tunnel. The Government has examined the proposed by-laws and commend them to this Council for approval.

These by-laws are similar to those governing the operation of the Eastern Harbour Crossing Road Tunnel. If passed, they will enable the company to control, operate and manage the Tate's Cairn Tunnel effectively, and ensure the efficient passage of motor vehicles through the tunnel. They cover such aspects as the control of traffic, payment of tolls, and restriction of certain types of vehicles in the tunnel area. Motorists who contravene certain of these by-laws which are regulatory in nature shall be guilty of an offence and liable, on conviction, to a fine of \$2,000.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

TELEPHONE ORDINANCE

THE SECRETARY FOR ECONOMIC SERVICES moved the following motion:

"That the Schedule to the Telephone Ordinance be amended -

(a) in Part V -

(i) by adding after item 24 -

"25. Surcharge for Cable \$9 per direct
Diversity Service exchange line/leased circuit per
month (see Note 8)";

(ii) by adding after Note 7 -

"8. The service is only available at this rate for those
buildings where lead-in/duct route diversity facilities
have been planned and provided for by the Company.
Where such facilities are not available a charge
calculated in accordance with a costing formula agreed
from time to time by the Postmaster General will be levied on
a case by case basis.";

(b) in Part VI, by adding after item 7 -

"8. Surcharge for making \$2 per call".
outward IDD calls using
a Personal Identification
Number allocated by the
Company to holders of its
International Calling Card

She said: Sir, I move the motion standing in my name on the Order Paper.

Under section 26(1) of the Telephone Ordinance the Hong Kong Telephone Company may only levy charges not exceeding those specified in the Schedule to the Ordinance. Section 26(2) of the Ordinance empowers this Council to approve amendments to the Schedule of charges, including additions, by means of a resolution.

The Company wishes to add two new services to the Schedule of charges: Cable Diversity Service and Automatic Calling Card Service (Outbound).

The Cable Diversity Service will allow Hong Kong Telephone Company customers to specify that their telephone lines be routed through different cables and ducts connected to the building in which they are located. The benefit of the service is that it provides customers with additional security of supply. The charge proposed by the Company for this service, to be added to the normal monthly line rental charge, is \$9 per month per line requiring different routing. This charge will only apply where alternative cables and ducts serving the customers' premises already exist. For customers in buildings which do not already have alternative facilities, the Hong Kong Telephone Company proposes to levy charges according to costs incurred on a case by case basis. The costing formula to be applied by the Company in such cases will be agreed with the Postmaster General.

For the Automatic Calling Card Service (Outbound), The Hong Kong Telephone Company will introduce a personal identification number system for holders of its calling cards. Such cards are issued free to the Company's customers and their relatives on request. By keying in the allocated personal identification number on any touch-tone telephone connected to a digital exchange, a calling card holder will be able to make an IDD call, which will then be billed to the calling card holder's own account. Moreover, the telephone used does not need to be registered for IDD calls. For this facility, the Company proposes a surcharge of \$2 per IDD call made using the personal identification number, to cover the cost of the extra equipment and administrative effort involved.

The resolution before this Council seeks to add to the Schedule to the Telephone Ordinance the charges I have mentioned for these two new services. The proposed charges have been thoroughly examined by the Administration and are considered to be a reasonable reflection of the cost of providing the services.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

URBAN COUNCIL (AMENDMENT) BILL 1991

REGIONAL COUNCIL (AMENDMENT) BILL 1991

HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1991

OFFICIAL SOLICITOR BILL 1991

APPRENTICESHIP (AMENDMENT) BILL 1991

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 1991

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1991

SUMMARY OFFENCES (AMENDMENT) BILL 1991

TELEVISION (AMENDMENT) BILL 1991

IMMIGRATION (AMENDMENT) BILL 1991

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

Second Reading of Bills

URBAN COUNCIL (AMENDMENT) BILL 1991

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Urban Council Ordinance."

He said: Sir, I move that the Urban Council (Amendment) Bill 1991 be read a Second

time.

The object of the Bill is two-fold: first, to remove the existing anomaly which bars candidates for the office of the Chairman or Vice-Chairman of the Urban Council from voting in the election to those offices; and secondly, to remove the unnecessary requirement to hold a secret ballot even if only one candidate is nominated for election to the office of the Chairman or Vice-Chairman of the Urban Council or for election as district board representative on the Urban Council.

Sir, the Chairman and Vice-Chairman of the Urban Council are each eligible for a special allowance by virtue of their respective offices. Candidates for these offices would therefore be deemed to have a pecuniary interest and would accordingly be barred from voting in the election to those offices by section 19 of the principal Ordinance. To remove this anomaly, clause 2 of the Bill seeks to amend section 19 to provide that the receipt of, the right to receive, or the possibility of receiving an allowance, special allowance, or honorarium will not be treated as pecuniary interest.

The fifth schedule to the principal Ordinance prescribes that the Chairman and Vice-Chairman of the Urban Council and district board representative members on the Urban Council shall be elected by secret ballot regardless of the number of candidates. Clause 3 of the Bill seeks to add a provision to the fifth schedule to provide that, where only one candidate is nominated in such an election, that candidate shall be deemed to be elected.

The amendments proposed in the Bill have been agreed with the Urban Council.

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

Question on the adjournment proposed, put and agreed to.

REGIONAL COUNCIL (AMENDMENT) BILL 1991

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Regional Council Ordinance."

He said: Sir, I move that the Regional Council (Amendment) Bill 1991 be read a Second time.

The object of this Bill is identical to that of the Urban Council (Amendment) Bill 1991 on which I just spoke. So are the amendments proposed to the corresponding section and schedule of the Regional Council Ordinance. They have been agreed with the Regional Council.

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

Question on the adjournment proposed, put and agreed to.

HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend The Hong Kong Association of Banks Ordinance."

He said: Sir, I move that The Hong Kong Association of Banks (Amendment) Bill 1991 be read the Second time.

The main purpose of this Bill is to amend The Hong Kong Association of Banks Ordinance to provide clear statutory backing to the rules on negative interest rates made by the Hong Kong Association of Banks (HKAB). These rules were made with the intention to deter currency speculation which could disrupt the proper conduct to banking business in Hong Kong. I would like to stress that the proposed amendments are precautionary in nature. Given that the mere threat of imposing negative interest rates has proved to be effective in deterring speculation on a revaluation of the Hong Kong dollar, it is unlikely that there will be a need to implement these rules.

Members may remember the period of persistent speculation about a revaluation of the Hong Kong dollar against the US dollar in the last quarter of 1987. Despite repeated statements by Government that the exchange rate link between the Hong Kong dollar and the US dollar would not be changed, speculative buying of the Hong Kong dollar continued and there were signs of intensification.

In order to discourage further inflow into the Hong Kong dollar, the HKAB

Committee successively cut interest rates on five occasions between October 1987 and January 1988, widening considerably the interest rate differentials between Hong Kong dollar deposits and deposits in a number of foreign currencies, including the US dollar. In the normal course of events, these large differentials should, in time, have led to a corrective outflow from the Hong Kong dollar. However, rumours of an imminent revaluation were so strong that such an outflow did not occur.

Speculation became severe enough to exert pressure on our currency and disrupt the proper conduct to banking business and genuine commercial activity. The remedy identified was to provide the potential for a much further widening of the interest rate differentials by introducing the concept of negative interest rates. In this connection, the Specified Rate Rule was made by the HKAB Committee on 19 December 1987, after consultation with the Financial Secretary, to provide for the charging of interest on large Hong Kong dollar clearing balances maintained by banks licensed in Hong Kong. The Rule also provided that all funds collected should be given to the Financial Secretary as Controller of the Exchange Fund.

In order to ensure that banks adopted a uniform practice in passing on this interest charge to their customers, the HKAB Committee, again after consultation with the Financial Secretary, made certain amendments to the Rules on Interest Rates, later retitled Rules on Interest Rates and Deposit Charges. These amendments were made on 14 January 1988, to empower the Committee to specify practices to be adopted by banks. This provided that deposit charges might be imposed on large Hong Kong dollar credit balances maintained by their customers, if there was a need to do so.

Since the announcement of the rules, the mere threat of the imposition of negative interest rates has, as expected, proved to be effective in deterring speculation on a revaluation of the Hong Kong dollar, and there had not been any need to introduce these rules.

However, doubts were expressed at that time by the Hong Kong Law Society, amongst others, as to the legality of the mechanism for implementing negative interest rates. These doubts centred on whether the HKAB Committee had the necessary powers to make the relevant rules, bearing in mind that negative interest rates were intended primarily to influence the exchange value of the Hong Kong dollar. Queries were also raised as to whether the passing of the funds collected by HKAB to the Financial Secretary under the Specified Rate Rule constituted an indirect tax and, therefore, could not be made under the Ordinance.

The legal opinion of HKAB's own Counsel at that time was that the Ordinance afforded sufficient authority for HKAB to adopt the rules concerning negative interest rates because they did relate to "the conduct of the business of banking" and were for the genuine banking purpose of curbing speculation which would otherwise create chaos and disorder in the banking system. The legal advice the Government obtained concerning the passing of funds to the Financial Secretary was that the interest charges, if imposed, would be imposed by HKAB under its own rules and it would be HKAB's decision to pay the amount collected to the Financial Secretary as Controller of the Exchange Fund as a gift and not as a levy imposed by Government.

In view of the Law Society's doubts, HKAB had intended to seek a judicial review on whether its adoption of the rules was valid. Proceedings were issued but later dropped because the Law Society did not wish to proceed with defending the case. Whilst we think it likely that declarations, if made, would be in favour of the validity of the two sets of rules, a renewed challenge may undermine the effectiveness of these rules. In these circumstances, it would be preferable to enact legislation to put matters beyond doubt. This is best done now, when there is no imminent prospect of negative interest rates having to be implemented.

In sum, the Bill seeks to amend the HKAB Ordinance to provide the Association with express powers to make rules for the imposition of deposit charges and interest charges in respect of Hong Kong dollar deposits and the transfer of the interest charges to the Exchange Fund. To ensure that the existing rules fall within such powers, clause 8 seeks to provide that the rules have been made under the HKAB Ordinance as amended by the Bill.

In addition, the opportunity is taken to introduce amendments to empower the HKAB Committee to give notifications to members of new or amending rules by facsimile, and to reinstate references to the terms "unincorporated banks" and "principal place of business" in the Schedule to the Ordinance which were inadvertently deleted when the Banking (Amendment) (No. 3) Ordinance 1990 was enacted.

The proposals in this Bill are supported by the Hong Kong Association of Banks.

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

Question on the adjournment proposed, put and agreed to.

OFFICIAL SOLICITOR BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to provide for the appointment of an Official Solicitor and for related purposes."

He said: Sir, I move that the Official Solicitor Bill 1991 be read a Second time.

The Bill seeks to rationalize the present arrangements associated with the office of Official Solicitor.

Before dealing with those arrangements it may be helpful to this Council and to members of the public if I first explain, briefly, the practical importance and public benefit of the office of Official Solicitor. Essentially he (or she) is an officer of the court available, in appropriate circumstances, to act for those who cannot act for themselves because of some legal or mental disability. By way of practical illustration, in the case of children the Official Solicitor acts for those who have no one to represent them in legal proceedings, for example a child who has lost both parents in an accident. In the case of mental patients the Official Solicitor will represent their interests in a variety of, often complex, situations involving the administration of their legal affairs. These illustrations are by no means exhaustive of the functions of the Official Solicitor, but they should serve to demonstrate that the subject matter of this Bill deals not with mere legal bureaucracy (as its title might at first sight suggest!) but rather with positive legal welfare.

I now turn to the rationalization of the current arrangements of the "Official Solicitor" duties.

The present position is that the Registrar General is empowered (under section 3 of, and the second schedule to, the Registrar General (Establishment) Ordinance) to exercise the powers and perform the duties conferred or imposed upon the holder of the office of Official Solicitor. However the duties of Official Solicitor do not blend readily with the other legal and commercial functions of the Registrar General's Department and this has prompted the Government to review the current arrangements. That review has identified two aspects of the present arrangements which are not entirely satisfactory. First, the ambit of the Official Solicitor's duties is not described in existing legislation. Secondly, it is desirable that there should be

a single public officer who can be clearly identified as the Official Solicitor but that is not the case at present: while some of the duties and responsibilities usually associated with the office are provided by the Registrar General, others are provided by the Crown Solicitor and the Director of Social Welfare.

To improve upon the present arrangements, the Bill provides for the appointment of an Official Solicitor, whose duties are set out in clause 4 of, and the first schedule to, the Bill. The Official Solicitor is empowered under clause 6 to charge for his services and recover costs.

The Director of Legal Aid is to be appointed the first Official Solicitor under clause 7 of the Bill. The Official Solicitor will take over the work hitherto carried out by the Registrar General as Official Solicitor, Judicial Trustee and Official Trustee and certain duties previously undertaken by the Crown Solicitor and the Director of Social Welfare. This arrangement will relieve the Registrar General of duties incompatible with the main functions of his department and will make the Official Solicitor and his duties and responsibilities clearly identifiable.

I commend this Bill to Members as a positive and practical legal welfare measure.

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

Question on the adjournment proposed, put and agreed to.

APPRENTICESHIP (AMENDMENT) BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Apprenticeship Ordinance."

He said: Sir, I move that the Apprenticeship (Amendment) Bill 1991 be read a Second time.

This Bill is one of four that are required to give effect to the Government's decision to transfer responsibility for delivering apprenticeship training and vocational training for the disabled from the Technical Education and Industrial Training Department to the Vocational Training Council (VTC). I shall give a brief account of the events that have led to this decision and describe these related Bills,

but I shall move the Bills one by one.

When the VTC was established in 1982, it took over most of the functions of the Hong Kong Training Council, the Technical Education Division of the Education Department and the Industrial Training Branch of the Labour Department. Two services, however, remained outside the scope of the VTC, namely, apprenticeship training and vocational training for the disabled. In order for these services to be delivered, a new department, called the Technical Education and Industrial Training Department, was created. The Director of that Department was also made the Executive Director of the VTC.

The VTC was initially staffed by civil servants posted to it on secondment, and later by staff directly employed on the Council's terms. This mixed staff situation has given rise to a number of intractable management problems. Following a recent review, the Government decided to invite the civil servants involved to transfer to the employment of the VTC. Assuming that the majority of the civil servants involved would take up this invitation and cross over to the service of the VTC, it would make sense for those services that are not currently vested in the VTC to be vested in the VTC. The VTC has agreed to assume responsibility for providing these services. Hence these four amending Bills. Of course, those civil servants who do not wish to transfer to the employment of the VTC may choose to remain as civil servants. On the assumption that at least some would elect to remain as civil servants, it will be necessary to retain the Technical Education and Industrial Training Department, but only for residual personnel management functions.

Sir, the Apprenticeship (Amendment) Bill 1991 seeks to replace references to the Director of Technical Education and Industrial Training with references to a Director of Apprenticeship to be appointed by the Governor. The intention is to appoint the Executive Director of the VTC as the Director of Apprenticeship.

When the VTC was formed in 1982, its enabling Ordinance provided that the Director of Technical Education and Industrial Training shall be the VTC's Executive Director. Since the future Director of that Department will be responsible only for the routine management of the remaining civil servants and not for the delivery of vocational training, it will be necessary to enable the VTC to appoint its own chief executive and directorate team, who should not be associated with the Technical Education and Industrial Training Department. Accordingly, the Vocational Training Council

(Amendment) Bill 1991 seeks to create posts of Executive Director, Deputy Executive Director and Assistant Executive Director of the VTC, in place of the posts of Director, Deputy Director and Assistant Director of Technical Education and Industrial Training. Secondly, given his present involvement in policy formulation, the new Executive Director is to be made a member of the VTC. Thirdly, the Bill enables the VTC to establish, operate and maintain skills centres for the purpose of providing vocational and vocation-related training for disabled people aged 15 and over, and to assume responsibility for apprenticeship training.

Sir, the opportunity has also been taken to amend the Vocational Training Council Ordinance to allow the VTC to appoint its own auditor and to empower the Director of Audit to carry out value-for-money examinations into its operations. To prepare for the transfer of sub-degree level courses from the two polytechnics, the Bill provides for the establishment, operation and maintenance of technical colleges by the VTC.

At the present time, there are four public officers on the Construction Industry Training Authority and three public officers on the Clothing Industry Training Authority. In each Authority, two of the public officers represent the Director of Technical Education and Industrial Training who, as I mentioned earlier, also serves the VTC as its Executive Director. Since the future Director will be responsible only for routine personnel management functions, it will no longer be appropriate to appoint either the Director or his representatives to sit on the two Authorities. It will be necessary, however, to continue allowing the Executive Director of the VTC to be represented on the Authorities in his own right. The Industrial Training (Construction Industry) (Amendment) Bill 1991 and the Industrial Training (Clothing Industry) (Amendment) Bill 1991 provide for these changes.

Sir, subject to the Bills being enacted, it is intended that the transfer of responsibility to the VTC for delivering apprenticeship training and training for the disabled be effected in June.

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

Question on the adjournment proposed, put and agreed to.

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Vocational Training Council Ordinance."

He said: Sir, I move that the Vocational Training Council (Amendment) Bill 1991 be read a Second time.

My remarks relating to the Apprenticeship (Amendment) Bill 1991 also apply to this Bill.

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

Question on the adjournment proposed, put and agreed to.

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Industrial Training (Construction Industry) Ordinance."

He said: Sir, I move that the Industrial Training (Construction Industry) (Amendment) Bill 1991 be read a Second time.

My remarks relating to the Apprenticeship (Amendment) Bill 1991 also apply to this Bill.

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

Question on the adjournment proposed, put and agreed to.

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Industrial Training (Clothing Industry) Ordinance."

He said: Sir, I move that the Industrial Training (Clothing Industry) (Amendment) Bill 1991 be read a Second time.

My remarks relating to the Apprenticeship (Amendment) Bill 1991 also apply to

this Bill.

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

Question on the adjournment proposed, put and agreed to.

SUMMARY OFFENCES (AMENDMENT) BILL 1991

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: A Bill to amend the Summary Offences Ordinance."

He said: Sir, I move that the Summary Offences (Amendment) Bill 1991 be read a Second time.

The object of the Bill is to amend section 4(17) of the principal Ordinance to provide a new arrangement for the issue of permits for the collection of money in public places. Under the proposed arrangement, permits for such collections for charitable purposes will be issued by the Director of Social Welfare and for any other purposes by the Secretary for Home Affairs.

At present, the Director of Social Welfare is the lawful authority for issuing permits for collection of money in public places, but he normally only issues permits for collections for charitable purposes. This arrangement has worked well for a number of years.

However, developments in our system of representative government, particularly the advent of direct election to the Legislative Council, have highlighted the need for change. Specifically, such developments have stimulated the growth of political groups and organized election campaigns, and these in turn require funds which have to come mainly from donations. Political funds raised is therefore a legitimate and inevitable consequence of Hong Kong's political development and acceptable outlets need to be provided for them.

Sir, a wide variety of such outlets already exist. Political groups and individuals are free to raise funds in privately owned premises and through the mail and the printed media, for example. Nevertheless, the Administration is mindful of the need for additional outlets in suitable public places. In so doing, however,

we must take account of the crowded conditions of our streets and thoroughfares, and the need to avoid competition with charitable fund raising which is highly dependent on income from street donation. All things considered, the best arrangement in our view is for political fund raising to be allowed in confined public places such as stadia, civic centres, and community centres, where attendance would not be incidental but would be for a specific purpose.

To this end, the Bill will authorize the Secretary for Home Affairs to issue permits for the collection of money for non-charitable purposes in public places. In exercising the authority, the Secretary for Home Affairs will have regard to a set of guidelines, copies of which have already been annexed to those of my speech before Members today (Annex II). Among other things, the guidelines set out, first, that normally I will wish to be satisfied that the funds raised will be used in ways which contribute directly to the development of representative government in Hong Kong, and secondly, that the fund raising activities are to be held in confined public places.

The Bill also seeks to clarify the scope of section 4(17) of the principal Ordinance. There have been questions as to whether the section covers the exchange of badges, tokens, and similar articles for donations in public places. The Bill makes clear that it is applicable to such exchanges.

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

Question on the adjournment proposed, put and agreed to.

TELEVISION (AMENDMENT) BILL 1991

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: A Bill to amend the Television Ordinance."

He said: Sir, I rise to move the Second Reading of the Television (Amendment) Bill 1991.

The purpose of the Bill is to provide a statutory framework that will permit shares in television licensee companies to be transferred to and held in the names of nominees whilst at the same time ensuring that individuals ordinarily resident in Hong Kong

over a seven-year period and companies, a majority of whose board of directors is so resident in Hong Kong, retain the potential to control such licensees.

Since the first Hong Kong legislation dealing with television in 1964, one of our aims has been to ensure that television should be provided by private enterprise firmly linked with Hong Kong, and that the influence of the people who are not long-standing local residents should be restricted. Such restrictions on broadcasters are common in most developed economies.

Until now we have attempted to restrict the influence of "unqualified" persons (essentially non local residents) by restricting their ownership of shares in licensees. To ensure effectiveness it has also been necessary to prohibit the ownership of shares by nominee companies lest unqualified persons attempt clandestinely to acquire shares in excess of that permitted. However, this means of control has two major drawbacks. First, from a regulatory perspective, it is not wholly satisfactory to target the ownership of shares because the control of a licensee company (and that is what we actually seek to restrict) may not be dependent on the ownership of shares alone, but may be exercised through legal, family and other relationships with the actual registered shareholder or beneficial owner. Secondly, the restrictions on owners, including nominee shareholders, have proved to be an impediment to the trade in shares of licensee companies. Shareholders in the name of nominees is a routine means of investment in public companies in Hong Kong and it is not the wish of the Government artificially to inhibit the transfer of shares in Hong Kong registered companies.

This Bill repeals the restrictions on the ownership of shares by unqualified persons and removes the prohibition on nominee shareholders, but retains restrictions on non-local influence in television licensee companies by targeting the control exercised by unqualified voting controllers rather than the ownership of shares by such persons. We believe this has the advantage of more effectively regulating what our legislation has always sought to regulate.

The legislative amendments required to achieve this are rather complicated, but the result is simple: at any poll on a resolution conducted at a licensee's general meeting, voting controllers who satisfy the seven- year statutory residency requirements ("qualified" voting controllers), and who exercise their votes, either in person or by proxy, will have the potential to determine the result of the poll. Thus section 17D of the Bill provides that unqualified voting controllers should not

have in aggregate more than 49% of the control exercisable at any poll conducted at a general meeting of a licensee, and gives a formula for the scaling down of such control if necessary, so that the potential to control a television licensee company will always be in the hands of qualified voting controllers. To ensure that this potential may be realized, the Broadcasting Authority is given the right to demand a poll on any resolution if it considers this necessary.

So when the Television Ordinance was last amended in 1988 it was recognized that the holding of large blocks of shares could put unqualified persons in a powerful position as regards a licensee, which may lead to de facto control of a licensee. Thus in 1988 this Council restricted individual unqualified persons to the ownership of no more than 10% of a licensee, and the prior permission of the Broadcasting Authority was required for them to take their shareholdings to the thresholds of 2%, 4%, 6% and 8%. The Government believes that these restrictions are still valid and they have been retained in the Bill except that, in line with the other restrictions in the Bill, the limits now apply to the voting control of a licensee rather than the ownership of shares in a licensee.

Finally I would like to mention that the Bill gives the Broadcasting Authority the power to undertake, or require a licensee to undertake, detailed investigations to ascertain the residential status of the controllers of the voting rights attached to shares in the licensees. The Broadcasting Authority may take into account voting control in the hands of associated persons when considering or investigating such control, and is given the power to require any unqualified voting controller to effect a cesser of any contravention of the limits. The Authority, in section 17M of the Bill, may also "freeze" the shares controlled by an unqualified voting controller if any person has been convicted of any offence under Part IIIA of the Ordinance and such offence appeared to be related to any voting share controlled by the unqualified voting controller, or where the Authority had encountered difficulty in ascertaining certain facts during an investigation. Such powers, and the penalty provisions for breaches of the Ordinance, will ensure the effective regulation of unqualified voting controllers.

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

Question on the adjournment proposed, put and agreed to.

IMMIGRATION (AMENDMENT) BILL 1991

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the Immigration Ordinance."

He said: Sir, I move that the Immigration (Amendment) Bill 1991 be read a Second time.

The Bill will make a number of amendments to the Immigration Ordinance to ensure our ability to implement the arrangements agreed internationally for the treatment of asylum seekers from Vietnam, as set down in the Comprehensive Plan of Action.

The Bill has five principal aims. The first is to ensure that, where a person is detained pending determination of his status as a refugee or not, the reasonableness of the length of detention should be considered in the light of all the circumstances, including the number of persons waiting to be screened, and the available resources. The second is to ensure that, where a person who is not a refugee is detained pending removal from Hong Kong, the reasonableness of the length of detention should be considered having regard to the available arrangements for repatriation, and the extent to which such a person has availed himself of those arrangements. The third is to ensure that any Vietnamese person who arrives in Hong Kong without a visa and therefore requires permission to remain cannot avoid detention simply by refusing to co-operate with normal immigration examination requirements. The fourth is to put beyond doubt our power to transfer people between centres, including for reasons of order or good management in the detention centres. Finally, the Bill will make clear that all the decisions of the Refugee Status Review Board, and not only its decision on an appellant's status, are not in themselves judicially reviewable.

I should like to explain in greater detail the need for adequate powers of detention, and for the transfer of persons between centres in the interest of good order and management.

I should like first to make clear that detention is not of itself our objective. Quite the contrary: our objective is resettlement or repatriation as appropriate in accordance with internationally agreed and accepted arrangements. This objective would be frustrated if persons who have not established a claim to refugees' status, or who have been found not to be refugees, were to be released to live and work in the community. We would in those circumstances have lost control de facto over

immigration into Hong Kong from Vietnam.

The first requirement of immigration control over undocumented arrivals from Vietnam is to determine status, and hence eligibility for resettlement or not. It is our wish to complete screening as soon as practicable after arrival. We devote very considerable resources to this: over 300 staff are employed full time on this work, and the total annual cost is some \$64 million. But our resources are not without limit; the workload is very large, with over 53 000 asylum seekers having arrived from Vietnam since status determination was introduced in June 1988; and the wish for speed must be balanced against the need for a fair and thorough consideration of each case and each claim. We have so far completed screening of about 21 000 persons, and there are some 29 000 persons awaiting screening. The average waiting time at present is two years from date of arrival. It is, however, our wish to reduce this time, if possible to a maximum of 18 months. We are now assessing the resource implications of achieving this improvement, which will of course also be dependent upon the numbers arriving from Vietnam in future.

For those who are found not to be refugees, there is no alternative but return to Vietnam. It is frustrating that the normal arrangements for the return of persons to their country of origin do not yet apply between Hong Kong and Vietnam. If they did, there would be no need for special provisions in the Immigration Ordinance concerning the detention of former residents of Vietnam pending removal. But there are arrangements for persons to return voluntarily to Vietnam, and it is our wish and that of the international community as a whole that such persons should face the reality of their situation and agree to return to Vietnam, rather than wasting their lives in detention in Hong Kong.

As regards the transfer of persons between detention centres, it is important that, for the good order of all in the detention centres, there should be no doubt as to our power in this regard. It is regrettably an inevitable part of human nature that in the detention centres there will be frictions, disputes, attempts by the strong to prey upon the weak, and a minority of persons who are set on being disruptive. It is sometimes necessary that such persons should be transferred, and that the Director of Immigration, under whose authority all Vietnamese migrants are detained, needs therefore to be empowered to order such transfers. A right of appeal against transfer in such circumstances will be provided. Since the power to transfer is in practice delegated to, and exercised by, the senior staff of the Correctional Services Department, the Police and the Civil Aid Services who manage the centres, it is

considered appropriate that appeal should lie to the Commissioner of Police, the Commissioner of Correctional Services or the Chief Staff Officer/Civil Aid Services, who are the authorities appointed for the management of the detention centres.

Sir, each of the provisions contained in this Bill is, we believe, implicit in the present legislation. But we need to make them explicit in order to reinforce the operation of the Comprehensive Plan of Action and our policy on the persistent and intractable problem of illegal immigration from Vietnam.

I move that the Second Reading debate be now adjourned.

Question on the adjournment proposed, put and agreed to.

Member's motion

SPECIAL EXEMPTION FOR LISTED COMPANIES

MR STEPHEN CHEONG moved the following motion:

"That this Council strongly urges the Government to ensure that when requests by groups of publicly listed companies for special exemption from statutory, regulatory or listing requirements governing all listed companies in Hong Kong are considered, the important principles of investor protection, fairness and equity be upheld without fear or favour."

MR CHEONG: Sir, in rising to move the motion standing in my name on the Order Paper, allow me first to declare an interest that my family has been and still holds substantial equity investment in the group of listed companies seeking exemption from Hong Kong regulatory rules.

For the past decade, the economic development of Hong Kong has been quite momentous. Our per capita GDP has advanced from US\$5,441 in 1980 to US\$12,086 last year. The structure of the economy has also undergone tremendous changes. For example, in our trade and industry sectors, whereas 10 years ago Hong Kong was very much dependent on domestic exports and tourism, we now have been able to reap the benefits of China's economic open door policy and made great strides in entrepot trade. In our service sector, geographically, Hong Kong provides a link between North America and Europe, together with acting as the window of the world looking into China. Hong

Kong has developed into one of the world's important financial centres.

One of our major financial markets is the stock market, which attracts both local as well as overseas investors. It is noted from recent government publication that at the end of 1990, 299 public companies, with a total market capitalization of \$650 billion, were listed on the Hong Kong Stock Exchange. It is of no surprise to note that Hong Kong has made the third largest stock market in Asia, just after Japan and South Korea. It is therefore of paramount importance for Hong Kong to remain an attractive place for both local and overseas investors. Sir, I must reiterate that this is one vital contributing factor to our territory's present and future prosperity and stability. Towards this end, the integrity and reputation of our financial market must be maintained. Our regulatory authorities have been tasked with this responsibility. Any proposed drastic change to our present regulatory frameworks must be thoroughly examined, in order to safeguard the macro interest of Hong Kong. In any case, the important principles of investor protection, fairness and equity must be upheld. It is with these principles in mind that I decide to move this motion.

In the past few years, the Government has already made significant improvements in safeguarding the integrity of our banking system. Government has also embarked on a programme to underpin the integrity of our equity and futures markets. With the establishment of the Securities and Futures Commission (SFC) and the introduction of a range of legislation covering the areas of insider dealing, disclosure of interest, and so on, Hong Kong certainly is moving in the right direction. Recently, the move by the Stock Exchange to attract world renowned corporations such as, perhaps, IBM and Sony to consider secondary listings in our equity market is a positive move towards further developing Hong Kong as a world financial services centre. Unfortunately, this move has been taken advantage of, rather unfairly in my view, by one powerful group of locally based companies just for their own convenience. It has been alleged by this group that they need exemption from Hong Kong securities regulations in order to protect their shareholders' interest against possible future abuse of the authority of the SFC and Stock Exchange. They have announced their intention to move the primary listing for regulatory purposes from Hong Kong to London, whilst at the same time seeking to retain here the primary trading market for their shares and seeking exemptions from some of our existing regulatory requirements such as the Stock Exchange Listing Rules, the Takeover Code and the Share Repurchase Code. They also would not agree to abide by any future regulations unless their approval is sought and obtained. The purported rationale for such an exemption was to provide an insurance policy so that the company can have enough confidence to remain in Hong

Kong to continue to do business and make big money out of Hong Kong.

Sir, I would like to make it clear from the start that I have no qualms over any company doing what they think is right and therefore I am not against any company deciding to move its primary listing from Hong Kong if they think that is in their shareholders' interest. They have their freedom and I respect it. Nevertheless, I feel very strongly that the exemptions being sought at the same time are potentially damaging to the market and, if granted, would offend against the principle of fair play.

Everyone knows very well that regulations such as the Takeover Code have been established in order to protect the integrity of the equity markets and the interest of small shareholders, particularly against potential abuse by controlling shareholders. Such rules apply to all listed companies in Hong Kong. To ask to be exempted from such rules, whilst at the same time knowing full well that if they move their primary listing from London, the London takeover rules cannot be applied to them, is tantamount to asking for a blank cheque for the management to do what they like without having to observe any rules in this area at all. If the exemptions sought are granted to them, where does it leave all the other listed companies in Hong Kong? Why should only one or even 10 or 20 big and powerful groups of companies whose business, and the trading of whose shares, are primarily in Hong Kong enjoy a special privilege of being above the rules and regulations?

Sir, if the Administration were to allow SFC and the Stock Exchange to grant these special privileges to only a handful of listed/public companies, our reputation and the integrity of Hong Kong as a financial centre would definitely suffer. According to what I can learn so far, no other markets in the world with similar standing to Hong Kong would seriously consider exemptions of the type suggested. The Chairmen of the SEC of the United States and of the Australian Securities Commission, both recently in Hong Kong, have publicly stated that they would not even entertain such requests for exemption. Why should Hong Kong be different? Yes, there will be uncertainties about the change of sovereignty after 1997, but such uncertainties are applicable to all of Hong Kong. Why should one or just a handful of groups of companies be above the others and obtain exemption from regulatory controls? If the confidence factor precipitates a decision to move primary listing away from Hong Kong, that is a quite separate issue from seeking exemptions from the rules. If one has no confidence in the future regulatory authorities, by all means, when 1997 comes, move primary listing away, sell assets, and do whatever the company board thinks is fit. But why should exemption from regulatory rules be sought between now and 1997? The

message to me is clear. The company still wants to make money out of Hong Kong, but at the same time do not want to observe any general regulatory rules. It is easy to ask for a cake and eat it. But in the business world, Sir, I feel, nowadays, profit has to have some regard to community obligations as well. For example, Exxon was reported to have spent over US\$1 billion in order to clean up pollution damage caused by one of its oil tankers in Alaska. If all listed companies are under regulatory control, why should a relatively advantageous position be granted to a company or group of companies which does not seem to have any intention to provide basic commitment to the community of Hong Kong?

Sir, if the company is not seeking exemption -- as it says is the case -- from any Hong Kong legislation, much of which has criminal sanctions attaching to it, why does it feel a need to be exempted from non-statutory regulations which exist primarily to protect its own shareholders and which carry as their maximum sanction a delisting or public censure? I am led to believe that when this question was put by our regulators here, the company's answer was quite startling. They said they recognized that they could not get away with the exemption from statutory rules, yet they felt the company is big and powerful enough to force our regulatory authorities to accede to their demand on the Takeover Code and so on. With this kind of attitude and motive in mind, is it fair and honest for the company to claim that all their proposals have merely been prompted by fears of possible future excesses of the SAR regulatory authorities? Is the company not simply trying to force Hong Kong into submitting to their demands now so that they can have an immediate advantage over most of the other listed companies in Hong Kong irrespective of what may happen in 1997? What utter disregard and contempt for the regulatory agencies who are only trying to do a job for the good of Hong Kong? Sir, should Hong Kong bow to such pressures and dismantle major parts of our regulatory structure just to serve the interests of some directors of one group of companies? The question is put to this Council. I am sure colleagues of this Council would say a resounding "no".

Sir, the company has publicly indicated that they are willing to compromise by abiding voluntarily for three years by the Takeover Code. If Hong Kong agrees to it, who is compromising, may I ask? If Hong Kong allows the rules to be waived from an arbitrary date in the future, then Hong Kong as a territory is compromising because the issue of principle remains exactly the same -- investors lose their protection after three years and the regulatory system is no less undermined. May I therefore suggest to the Administration that they should stand firm and should not even contemplate acceding to such a request. Sir, there were threats of possible

delisting by the company from the Hong Kong stock market. Naturally, such a move undermines investor confidence in Hong Kong, for the group does represent a sizable chunk of the total market capitalization of Hong Kong listed companies. In addition to needlessly hurting Hong Kong, a delisting would also be damaging to the interests of

that company's own shareholders by removing what has been the principal market for their shares -- a market that cannot be quickly replaced. The company has in the past enjoyed tremendous benefits out of the Hong Kong stock market. Given that their assets are over 50% based in Hong Kong and that over 60% of their net earnings are derived from Hong Kong, if they were to delist, they would be unlikely to raise capital in future from Hong Kong investors and the group's operations in this market would certainly suffer. The threat to delist simply reflects the arrogance of a big and powerful group of companies whose board believes, in my view, it can force Hong Kong into submitting to unreasonable demands. For the sake of Hong Kong's future, for the sake of maintaining Hong Kong's place in the world's financial markets, we cannot afford to be seen to bow to such pressure and I strongly urge the Administration as well as my colleagues in this Council to ensure that such unreasonable requests are not submitted to, whether now or in the future.

Sir, I beg to move.

Question on the motion proposed.

MRS FAN: Sir, during the Budget debate, I spoke of the need for a level playing field in our market place and the protection of investors' interest. Today, Mr Stephen CHEONG's motion offered me a further opportunity to expound on these important principles which are fundamental to Hong Kong's position as an international financial centre.

Like any other financial centres, Hong Kong needs business. The larger the number of listed stocks, and the higher the turnover, the more attractive the market is to traders and investors. It is however equally important, if not more, for people to have confidence in the market through the knowledge that it is properly regulated, and that fair play prevails. The integrity of the market cannot afford to be compromised, or perceived to be compromised, by any measures that attempt to keep certain business here through bending the rules or by giving special treatment. The reward that could be gained by the latter course of action is probably the retention

of a sizeable chunk of trading in the Hong Kong market in the short term. However, the same special treatment will have to be extended to any of the larger companies with primary listing in Hong Kong, which applies for similar exemption because to do otherwise is simply indefensible. This may well result in the phenomenon whereby only the smaller companies in Hong Kong are subject to regulatory measures. If the larger companies manage to obtain more relaxed rule and are thus placed in a favourable position, then the level playing field is at risk. This is certainly a high price to pay. If we are not cautious, this can be the beginning of a slippery path.

It can be argued that special exemption from non-statutory requirements does not necessarily bring about less stringent regulatory measures. Some would indeed point out to us that it is nonsensical for any of us to think that the world renowned markets like the London Stock Exchange can possibly be less well regulated than the Hong Kong Stock Exchange. It therefore follows that there is no reason for the regulatory bodies of Hong Kong to refuse applications for exemptions from non-statutory trading rules when the applicant is prepared to subject itself to an even better regulated market like the one in London. On the face of it, this line of argument is very persuasive. The question that has to be asked is when the London rules and the Hong Kong rules are applied to the same applicant, do they yield the same regulatory results? The answer I got and Mr Stephen CHEONG has explained very fully is "no". The applicant by virtue of its status as an overseas company will not be subject to the London takeover code. The Hong Kong rules however require the applicant to comply with the Takeover Code. If the applicant's request for exemption from non-statutory rules in Hong Kong is acceded to, then, to all intents and purposes, the applicant is not subject to any takeover code either in London or in Hong Kong. The possibility then exists for the de facto controlling shareholders to adopt administrative measures, such as low dividend policy and higher plough-back of profit into the company, thereby allowing the shares to change hands through private arrangement, and depriving the small shareholders of a reasonable share of the profit in the worst scenario. Moreover, takeovers and mergers become the play of the major shareholders, and small investors are effectively barred from being offered the same terms and conditions. Do we want our market to be the play of only larger investors? The answer must be in the negative. Our aim must be to protect the interests of investors regardless of their size. If anything, the small investors are more in need of protection from the regulatory bodies than their larger counterparts.

Sir, it is not for me to speculate on the intentions of any companies, and it is also their right to apply for any exemptions should they so wish. What I have done

today is simply to sound a warning of the pitfalls that may occur if the basic principles of investor protection, fairness and equity are not vigilantly upheld.

Sir, I support the motion.

MR CHENG HON-KWAN: Sir, Hong Kong has laboured long and hard to earn the status, respect, affluence and influence it currently enjoys as one of the world's major international financial centres.

In striking and maintaining the most delicate of balances between market freedom and regulation, the territory provides a "level playing field" for all market participants -- large and small, local and overseas. Seldom has Hong Kong's fairness as a financial centre been questioned.

The territory is also unique in that a large number of the companies listed locally have their principal business activities and management in Hong Kong, trade most of their shares in Hong Kong and hence have a majority of their shareholders in Hong Kong, but -- for their own reasons -- have acquired "brass plate" incorporation outside the territory.

At present, the stock exchange of Hong Kong does grant regulatory exemptions to genuine multinational corporations which seek a secondary trading listing on the Hong Kong market. These corporations, however, carry out the trading activities of their shares primarily in recognized overseas stock exchanges.

To afford similar treatment to companies which are truly local in focus and scope, and wish to maintain their primary trading listing in the territory, would not only threaten Hong Kong's standing as a major international financial centre, but would also do a great disservice to local investors.

Why should shares which -- for all practical purposes -- are "Hong Kong" shares be governed by the rules of another market?

If companies -- large or small, "brass plate" or no "brass plate" -- wish to have a primary trading listing in Hong Kong, they must be willing to accept and abide by the rules and regulations of the Hong Kong market.

The arguments in favour of granting exempt status smack of the old concept of

extra-territoriality, which applied to the former treaty ports.

Surely, the last thing Hong Kong would want to do at this stage would be to exhume this kind of mentality.

My honourable colleague, Mr David LI, who is not here today shares my views.

Sir, with these remarks, I support the motion.

4.32 pm

HIS EXCELLENCY THE PRESIDENT: There are still a number of Members who wish to speak. Members may appreciate a short break at this point.

5.00 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume.

MR CHUNG

MR HUI

MR MARTIN LEE: Sir, the motion before this Council today is phrased in such non-controversial language that to support it is a little like voting in favour of motherhood or showing filial piety to one's parents. Yet, beneath the innocuous language lie several very difficult issues, and it is important that Members of this Council grapple with these issues during this debate.

Several months ago Jardine Matheson requested that the Securities and Futures Commission (SFC) give its approval to the creation of a new "exempt" or "trading-only" category for companies. Under such a category, companies which were regulated by a recognized foreign stock exchange -- such as London -- would not be subject to exchange regulations in Hong Kong except by their consent -- even if, as in the case

of Jardine's, the majority of a company's stocks were traded in Hong Kong and the majority of the company's business was conducted in the territory.

I understand that the SFC is in the process of preparing a consultative paper on this subject, and it is hoped that the consultative paper will be ready by late June or early July. At that time, Members of this Council will have an opportunity to scrutinize the proposals and offer their advice to the Commission on what path it ought to follow.

The crucial issues involved in any decision on the creation of such an "exempt" category must be: the protection of the interests of shareholders in Hong Kong; fairness to all companies which are listed on the exchange; and the long-term maintenance and development of Hong Kong's status as an economic centre of the region. In short, while we very much would like to see Jardines and other major companies in Hong Kong continue to have their shares traded here, we must not compromise the integrity of the system and the interests of shareholders here.

On the issue of listing requirements, Jardines has argued that the listing regulations in London are at least as stringent, if not more so, than those in Hong Kong. While there are certain technical problems relating to the time difference between Hong Kong and London and the lack of knowledge of regulators in London of market conditions in Hong Kong, it seems that the listing requirements in London subject to a few additional safeguards would offer reasonable protection to shareholders in Hong Kong.

The more fundamental question is whether shareholders in Hong Kong of a company with trading-only status would be adequately protected in case of a takeover bid. It is important to emphasize that takeover regulations are not statutory requirements which the Government might use to intrude upon companies; rather, they are non-statutory regulations that are designed to protect a company's own shareholders. The takeover code is particularly important to protect individual shareholders from possible abuse or oppression by controlling shareholders.

Yet, the most severe problem of creating a new exempt category is that it threatens to leave shareholders of companies in this category without any protection at all in respect of takeovers. For, according to the proposal of Jardines, if the company were to be regulated only in London, it would not be subject to the United Kingdom takeover code as a Bermuda-domiciled company, nor would it be subject to the takeover code in Hong Kong.

Such a situation would be very damaging to the interests of its shareholders in Hong Kong. For then a shareholder could acquire more than 35% share in a public company and thus acquire effective control over it without having to make a similar offer to all the other shareholders as currently required under Hong Kong's takeover code. The proposal by Jardine would adversely affect individual shareholders, who would not receive as favourable a price for their shares as they would if the company were subject to the existing takeover code.

Jardines has stated that it would voluntarily abide by the takeover code in Hong Kong for three years after it was granted a "trading-only" listing, yet such temporary protection is inadequate. I understand that the Commission is currently examining if there are alternative methods of ensuring that companies in an exempt category would still be subject to certain takeover regulations, for example, if new directives in the European Community on takeovers might also apply to foreign-domiciled companies that have their primary listing on a market in Europe. I will defer to the Commission as to the best way to provide for takeover regulation, yet I believe it is imperative that shareholders in Hong Kong continue to receive this essential protection.

We must remember, moreover, that this issue is not limited only to Jardines, for if a new trading-only category is created, it is likely that many companies in Hong Kong will wish to take advantage of it. If all of these companies are not subject to takeover regulations or have the opportunity to choose what regulations they will abide by, then they will have an important advantage over competing companies. And, with a large number of companies not being subject to the takeover code, the effectiveness of the whole code will be destroyed.

It is clear that the Commission faces a formidable task in seeking to devise a solution that will protect the interests of local shareholders while at the same time allowing for Jardines' shares to continue to be traded locally. I urge them to explore all possible angles, and to consult extensively with the experts in the other major stock exchanges.

Recently, one honourable Member has stated to the press that if Jardines does not publicly express confidence in Hong Kong's post-1997 future, then it ought to stop doing business entirely in the territory. This is a remarkable statement. Have we now reached the point where companies have to take a certain political stance in

order to be allowed to do business in the territory? Will all companies in Hong Kong from now on have to pass a political litmus test in which they give the approved answers to sensitive questions?

Rather than engage in such political theatrics, we need to face realistically the challenges brought on by the change in sovereignty in 1997. The change of sovereignty is very troubling to many companies, and many have taken steps to protect themselves by moving their domicile and otherwise protecting their assets. While none of us wishes to see any company or any individual leave Hong Kong, we must not in any way compromise their freedom to do so.

Rather than interfere with the essential freedom of movement of individuals and companies, we ought to take constructive steps that will encourage them to stay. We need to address the fundamental political doubts that are causing companies to have economic doubts about their future in Hong Kong. We cannot avoid the issue any longer: we need to confront the fact that the political and economic futures of Hong Kong are inextricably linked.

If one looks rationally at the decision by Jardines to seek a primary listing in London, one realizes that such a move does little to minimize the potential harm that might be suffered by the company after 1997. For, even with the creation of an exempt category, Jardines would still be subject to any statutory controls the SAR Government wished to impose, and these controls potentially could be far more onerous and intrusive than the non-statutory regulations that Jardines is now seeking to escape. Or, just as easily, the SAR Government could order Jardines to abide by all non-statutory regulations in Hong Kong regardless of the site of its primary listing, or simply remove Jardines from the exempt category.

Examined realistically, then, it is clear that a solution to the problem of lack of confidence in the post-1997 Government does not lie in asking for privileges which could be withdrawn. Far more fundamental is the necessity of ensuring that the SAR Government will indeed act in the public interest. And, I need not remind Members that as long as Hong Kong has a government that is not democratically elected and not accountable to the people of Hong Kong, there can be little confidence that that government will indeed act in the public interest.

Realistic business leaders have long realized that the so-called "political" provisions in the Basic Law will have a great impact on their businesses. For example,

the granting of the final power of interpretation to the Standing Committee of the National People's Congress will directly affect the confidence of business in the independence of the judiciary; and the lack of accountability of the executive to the legislature raises serious questions regarding the potential for abuse of executive power in the post-1997 SAR. In light of such realities, I hope that the business sector will join the rest of the community in seeking to have the Basic Law amended to conform with the Joint Declaration so as to ensure that Hong Kong will continue to thrive economically.

For these reasons, if one were to approach the problem purely on principle, one is unlikely to be sympathetic to Jardines' proposal. But we cannot ignore the stated intention of Jardines that it would pull out of the Hong Kong stock exchange if its proposal were to be rejected. Whether Jardines would really pull out is entirely a matter for its board of directors. But, whether the Government should bow to pressure or risk a reduction of more than 10% of the total value of shares traded in Hong Kong is a matter for the community as a whole, including in particular the stock exchange and the SFC. I hope some sensible and workable solution can be worked out by the SFC and I look forward to seeing a copy of the consultation paper in July.

Sir, I support the motion.

MR NGAI

MR POON CHI FAI

PROF. POON: Sir, it has been proposed that a new category of listing be created which would allow an overseas registered company with substantial operations and a considerable number of local investors to be exempt from the regulations of the Stock Exchange. This, to me, raises two questions -- does it allow an unfair advantage to the companies in such a category and is it detrimental to the interests of the local investors? Before examining whether either the companies or the investors will be prejudiced by the proposed new category of listing I think we must first clarify exactly what is meant by the term of an "exempt listing".

The proposed new category of listing relates only to exemption from the Exchange's listing rules -- and it is important to understand that it does not exempt a company from complying with either company law or securities law.

In this debate it is therefore essential to first make a clear distinction between company law, securities law and regulation.

Company law regulates the constitution, organization and operation of companies and their relationship with shareholders and directors. Throughout the world such jurisdiction is premised upon a company's place of registration. Thus a company registered in Hong Kong is bound by Hong Kong company law, irrespective of where it conducts its business or the location of its shareholders.

Conversely, a company which is registered overseas but is listed in Hong Kong does not have to comply with the majority of the provisions contained in the Companies Ordinance. They are governed by the company law in their own place of registration.

Securities law and regulations are necessary whenever and wherever securities are traded in public markets. Its prime concern is to protect the investors and to regulate the trading in the securities of listed or public companies within the local jurisdiction. Thus trading in a company's securities is principally governed by the securities regulations applying in the jurisdiction where they are traded.

The securities laws and regulations governing listed companies in Hong Kong, irrespective of where those companies are registered, are essentially:

- (1) the Companies Ordinance in respect of the content of prospectus and investigations into the affairs of a company by the Financial Secretary,
- (2) the Securities Ordinance and, when they are brought into force, the Securities (Disclosure of Interests) Ordinance and the Securities (Insider Dealing) Ordinance,
- (3) the Stock Exchange listing rules,
- (4) the statutory rules, administered by the Securities and Futures Commission, and
- (5) the Code on Takeovers and Mergers.

The proposed new "exempt listing" category would, as I understand it, comprise companies which although exempt from the securities regulations still, in all respects, comply with the securities laws. The only reason they are exempt is because they are bound by securities regulations in other jurisdictions which are as equal or even more onerous than those applying in Hong Kong.

Why has this situation arisen? To answer this we must now consider why the concept of a primary and a secondary listing has developed.

A secondary listing avoids a duplication of compliance with securities regulation, which is not only time consuming but is also expensive, and it hinders the growth of securities markets.

Historically a primary listing has been synonymous with the place where the most substantial trading in a company's securities occurs and invariably this will be the place where the majority of its shareholders are located. A secondary listing enables the securities of the relevant company to be traded on the second market but governed by the securities regulation of its primary market. Duplication of compliance with regulations is thereby avoided.

It is however difficult to apply the concept of primary and secondary listing to multinational companies and it may well be necessary to grant them some form of exemption from securities regulation to prevent duplication.

At the present time, certain companies have chosen to redomicile. They maintain that they have not abandoned Hong Kong, and that they continue to play a major role in our economy. However, they are seeking further protection for their investors by listing on other securities markets but in doing this they suffer by having to duplicate their compliance with securities regulation.

If the Government is to resolve this problem by amending our regulations to allow for this exemption, the Hong Kong Exchange would comprise three different categories of companies:

- (1) companies registered in Hong Kong and primarily listed in Hong Kong,

(2) companies registered overseas, whose assets and shareholders, for the most part, are outside of Hong Kong who have a secondary listing in Hong Kong,

(3) companies registered overseas whose assets and shareholders, for the most part or at least a substantial part, are in Hong Kong but who have a primary listing on some other reputable exchange with an "exempt listing" in Hong Kong.

However, all these companies will all be bound by securities regulation either in Hong Kong or elsewhere. We must however consider whether investors will be prejudiced by this new category of "exempt listing".

It should be noted that, firstly, both company law and securities law contain provisions designed to protect investors. These provisions are upheld by the courts. Secondly, the Hong Kong Code on Takeovers and Mergers also seeks to protect investors. The purpose of the code is to ensure that sufficient information is provided to shareholders, and that shareholders are treated fairly and equally when control of the listed company changes or is consolidated.

The code, in contrast with the law, is however voluntary and depends for its success on the willingness of market practitioners to comply with its rules. On the one hand the code only applies to companies whose primary listing is on the Hong Kong Exchange; a company which is granted an "exempt listing" would therefore not be bound by this code. On the other hand, as an overseas registered company which obtains a primary listing on, for example, the London Stock Exchange, it would not be bound by its code because the United Kingdom exempts foreign companies from its code. In other words, an "exempt listing" company is not bound by a Code on Takeovers and Mergers here in Hong Kong or overseas.

In my opinion, the Government should seriously consider the above implication. Local shareholders and prospective investors should decide whether they feel disadvantaged by the lack of a Code on Takeovers and Mergers.

With these words, Sir, I support the motion.

MR TIEN: Sir, firstly, I would like to declare an interest as my private company owes about 40 000 shares in Jardine Matheson plus many other stocks traded locally.

This motion strongly urges the Government to put the interests of investors above those of any group, company or sectional interest.

When a group calls for exemption from any rules which are common to all, it must have exceptional reasons. Explanations given to support the desire of Jardine Matheson to be exempted from the rules of the local Stock Exchange are quite unconvincing. In fact, no true explanation has been given at all. We are simply told by that company that they will be covered by London's rules and that that should be good enough for us. It is quite patronizing.

We are told that because London's securities market is one of the most sophisticated in the world, that that situation should be good enough for us. We are told that Jardines wants "to establish its right of abode so that it can remain in Hong Kong with complete confidence". That justification makes little sense. It argues that, by being somewhere else, they can more effectively be here. Besides, London Exchange so far has not agreed to regulate Jardines, since Jardines is actually a Bermuda company. In the meantime, Bermuda has no listing rules at all. So the question becomes that if Jardines is given the exemption in Hong Kong, and London does not agree to regulate them whilst Bermuda has no such listing rules, Jardines in reality will be abiding by no rules but their own. I do appreciate that Jardines offered to abide by our rules for three more years. If that is the case, why not simply remain status quo for three more years and ask for exemption then.

Jardines' another alternative is to delist. On this point I would like the appropriate authority to review the delisting requirements. It does not seem equitable to me that the board of directors of any listed company in Hong Kong, themselves controlling only a minor share, can decide to delist. The interest of the majority of small shareholders are neglected. I feel that the decision to delist should rest with all shareholders, not the directors.

Sir, we will all clearly recall how Jardines caused a stir, when, no sooner was the ink dry on the pages of the Sino-British Agreement, than that particular company astounded Hong Kong by switching its domicile to Bermuda. We were assured then, as we are assured now, that it was a simple matter -- a legal technicality.

Now, that company tells us that it should take this further drastic step, that of being relieved from the so-called, non-statutory rules of our Stock Exchange. On the surface this all looks perfectly innocent.

Jardines now intends to seek to secure exemption, from the takeover and merger codes of our Stock Exchange. Of course, this request does not cover breaches of law, although this is a useful red herring here. Only the non-statutory rules are of concern -- so we are told.

For myself, I find this convenient distinction unconvincing, as it merely sets out "good intentions". We all know sometimes where "good intentions" lead.

Sir, the crux of the matter, as I see it, is that Jardines indeed wishes to claim some special privileges. It may also be the case that Jardines might persuade London to see it as a special case there also -- though that is not entirely relevant to this particular issue here.

Jardines themselves, and the Honourable Martin BARROW, claimed that "the exempt listings concept is analogous to a foreign passport". I still respect my friend Martin's claim but I do not accept this.

I feel that a more interesting comparison would be to see Jardines as asking for something like diplomatic immunity. Everybody knows that diplomats constantly request immunity from payment of fines for illegal car-parking.

We should note, moreover, that stock exchanges as far apart as New York, London, and Tokyo do not allow businesses that sort of exemptions being claimed by Jardines. Striving to be an international financial centre, as we are, we should follow their lead.

After all, there are about 300 other firms on the Hong Kong Stock Exchange, especially local firms who only seek equity and fairness. They want listing here, and nowhere else. These are the companies whose needs and support are paramount to Hong Kong and who will not leave Hong Kong. Why should our own local listed companies be placed in an inferior position against this class of special foreign companies?

Sir, I gather from the comments of the Secretary for Monetary Affairs that a final decision has not yet been reached.

However, if the Government takes a soft line on that Jardine proposal, and create what amounts to a new class of limited companies, then it will encourage others. The trickle will turn into a flood, as firms ask for similar treatment by threatening to delist from Hong Kong. They will ask to be exempted from local rules, but abide by London, New York, or Tokyo's exchange rules, and so on. And by 1997, companies might even ask to be exempted locally in favour of Beijing exchange rules. How, then, could our average investor figure out which company is abiding by which exchange's rules?

For example, what rules will apply when a company abiding by the London exchange's rules makes a takeover bid against a company who abides by the Singapore exchange's rules, while both trading on the Hong Kong Stock Exchange.

The suggestion of setting up a second exchange is quite different and acceptable. In this new exchange, we could have Jardines, IBM, Sony and this group of special companies, competing equally among themselves on takeovers, mergers and other areas. All the other Hong Kong listed companies will not be involved or affected.

Sir, we must avoid becoming a laughing stock in the financial world because we want the business. By business I mean the turnover of our stock exchange. For the individual investor, we can easily dial IDD or fax an instruction to London to buy or sell Jardines shares on the London Exchange. I hardly see the difficulty that can be caused by the threat or act of delisting here in favour of London, other than the brokerage fees and stamp duty.

I consider that the situation is serious and I hope Government will not take the line of least resistance in this important matter.

The question is political and ethical, and not merely commercial as seen in the eyes of the Hong Kong Stock Exchange.

Sir, with these words, I support the motion.

MR PETER WONG: Sir, first I would like to declare my interest as a shareholder in various listed companies in Hong Kong including Jardines; and also my firm is the auditor of a number of Hong Kong listed companies. The proposal which honourable Members have been discussing during this motion debate is without precedent in any

of the established financial centres in the world. But Hong Kong's circumstances are unique and this is the reason that this extraordinary proposal has to be conscientiously considered.

As a non-executive director of the Securities and Futures Commission, I am pleased that there have been opportunities before this debate for Members to hold meetings with representatives from the relevant branches of Government and responsible regulatory bodies to discuss the background to this motion and the issues involved. These meetings and subsequent contacts with a number of honourable Members, including some of the speakers today, have given me the impression that there is still some uncertainty as to the proposal that is being put forward, so it may be helpful if I first explain in brief the basic elements in the exempt listing proposal which is currently being considered by the Administration, the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong (SEHK). I hope to identify and analyse some key regulatory and other considerations which will be useful to this debate.

The proposal put simply is that the London authorities would assume primary regulatory responsibility and the Hong Kong regulatory authorities would waive their requirements. The key elements of the proposal appear to be that:

(i) the company's primary listing for purely regulatory purposes would be transferred to London where it would be treated as a foreign company with a primary listing (that is, the International Stock Exchange of London (ISE) replaces the SEHK as the primary regulator and the company is subject to the ISE's listing rules);

(ii) a new category of listing would be created as part of the SEHK's listing rules including a special listing agreement. This would contain the exempt company's limited obligations in respect of its Hong Kong listings and exempt the company from all other listing requirements including any new listing rules that may be adopted in the future;

(iii) the Hong Kong Code on Takeovers and Mergers would be amended so that it did not apply to companies granted exempt listing by the SEHK (that is, the Hong Kong Takeovers Committee would have no jurisdiction to regulate takeovers and mergers in respect of exempt companies); and

(iv) the recently implemented Share Repurchase Code would be amended so that it did not apply to exempt companies (but share repurchases would be regulated by listing rules of the ISE).

I should point out at this stage that the proposal is still evolving and many details remain to be worked out.

The SFC does not endorse the view that non-statutory requirements found in the Listing Rules and Takeover Code (which exist primarily to protect shareholders) could pose a real threat to companies in the context of 1997. Furthermore, even if one accepts the hypothesis that such rules could be abused, the SFC has difficulty in agreeing with the logic of the view that this exempt listing proposal would be helpful in minimizing any risks companies might face as a result of the 1997 constitutional changes. The statutory regulations that will continue to apply would seem to be at least as significant as non-statutory regulation. An exempt listed company would, for example, remain subject to investigations and compliance under the Companies and Securities Ordinances.

Notwithstanding this, as the statutory regulator of the Hong Kong market, the SFC must take seriously and give due consideration to any matter that is said to affect the development of, and confidence in, the Hong Kong market. In addition to the universally adopted rules, it must carefully study whether a uniquely Hong Kong solution is advisable (and indeed possible) that promotes commercial confidence without undermining investor protection or weakening the credibility of the Hong Kong market, both with local investors and internationally.

Although London's regulatory framework was designed for providing a very effective level of regulation for United Kingdom-based companies, there are issues to be resolved as to whether that level of effectiveness can be maintained or enforced in relation to companies with a substantial part of their operations in Hong Kong, with the major proportion of the trading in their securities taking place on the Hong Kong market and which are geographically and time zone remote from the primary regulator-to-be. I hardly need remind Members that there are considerable cultural as well as ethical differences between these two markets. Significant gaps exist in the regulation of overseas-domiciled companies -- most significantly the United Kingdom Takeovers Code would not apply to such companies.

The current proposals therefore pose problems in relation to:

- the principle of exempting companies which trade actively and largely in Hong Kong from Hong Kong investor protection requirements in reliance on regulation by a foreign authority;
- the prospective lack of takeover controls if the Hong Kong Code is amended to exempt such companies;
- the practicabilities of administering and regulating companies granted such exempt listing; and the means by which the local regulators will co-operate with the ISE and other securities regulatory bodies in the United Kingdom (or other jurisdiction that might become involved);
- the establishment of objective entry criteria so that exempt listing is equally available to listed companies on a non-discriminatory basis, without this opening the door to regulatory arbitrage or shopping by listed companies;
- the implications of the proposal for the integrity of the regulatory framework which Hong Kong has invested substantial resources in establishing. If one creates an exempt listing category with a significant regulatory gap (such as lack of takeover or merger regulation) there will be a strong incentive for listed companies to take advantage of such a gap. Further, the legitimacy of the operation of the investor protection rules to listed companies still caught by such rules will be effectively undermined.

The SFC is studying possible ways of resolving these problems and will release a public discussion paper on the options this summer. No decision will be made on the approach to be adopted until there has been full public consultation.

Any new regulatory category should in principle be equally applicable to all listed companies that meet the required criteria. If we are to create an exempt category of listed companies, it is important to consider and establish acceptable parameters for exempting companies from compliance with securities requirements since the local and international credibility of the market hinges on the result.

Normally, investors subscribe for equity capital in a company and buy and sell

shares on the basis that the company is subject to the rules of a particular market. So, if for any reason those "goal posts" are moved by the controllers of the company, then the investors' interests must be taken fully into account before any such move occurs.

Sir, throughout its history, Hong Kong has survived and progressed by finding and adapting its own flexible solution to the challenges that it has faced. Many of these challenges, as indeed is the case here today, have stemmed from Hong Kong's unique circumstances.

In my view there can only be one sensible approach in relation to this proposal -- the Hong Kong approach. This means remembering the realities of Hong Kong's political position, assessing the possible implications of the proposition in relation to the future direction and perceptions of the market, examining the role of Hong Kong regulators in relation to the administration of the proposal, and trying to identify a practical solution that is in the best interests of Hong Kong.

There are a large number of difficult issues to be resolved and there must be full and thorough public consultations before the SFC comes to any decision. It is clear, however, that the essential ingredients of any solution are that it applies as equitably as possible to all companies listed in Hong Kong, is based on objective criteria and does not diminish the level of investor protection. All this will need time and for once, we can and must make use of the available time to get it right. A hasty decision will not be in Hong Kong's best interest.

Sir, with these comments, I support the motion.

FINANCIAL SECRETARY: I have listened with great interest to the views expressed in this debate. I believe the predominantly thoughtful and rather sombre speeches reflect the importance and the complexity of the issue. Let me begin by showing Members that our policies in relation to the financial markets are indeed, as urged in the motion under debate, formulated and executed without fear or favour, and the Administration and the regulators place great importance on ensuring that the interests of investors are adequately protected and the integrity of the market is preserved. This is essential if we are to maintain Hong Kong's status as a leading international financial centre, an aim we share with Mr Stephen CHEONG and, I believe, all other Members who have spoken in this debate.

I have taken careful note of the concern expressed by many Members over the concept of creating a special exempt status for certain companies. These comments will be carefully considered as the SFC and the Stock Exchange consider the concept further. The basic concept is designed to allow some degree of flexibility in regulatory matters thus making it possible for companies that are subject to regulation in another centre, which has a regulatory framework no less comprehensive and effective than in Hong Kong, to be listed here. As far as we are aware, there are no precedents in the field of securities regulation for companies with their principal focus of activity in one centre to be subject to the regulatory regime of another centre. But the concept can be found in banking. Thus we are conscious of the need to proceed cautiously, objectively and coolly. Nevertheless, the fact that the Hong Kong situation is in many ways unique may justify being prepared to look at innovative solutions provided always that these do not compromise investor protection, the principles of fairness and integrity of the regulatory system. As many Members have pointed out, the particular issue which will have to be addressed is the application of takeover rules. It will be premature for me at this stage to go into the details of the concept. The SFC and the Stock Exchange are still developing their thinking and many aspects clearly remain to be worked out. But I can assure Members that when details have been finalized, there will be extensive public consultation in advance of any decision being reached. The public and interested parties will then have ample opportunity to consider the implications of any proposals and the effect their adoption might have on the integrity of the Hong Kong market and on its international credibility.

Finally, I would reiterate that the Administration fully accepts the importance of not prejudicing Hong Kong's regulatory system in order to meet the wishes of any particular party or parties. As I have already indicated, we will wish to be fully satisfied that any proposal that emerges provides adequate protection to investors, confers no unfair advantage and maintains the credibility of our regulatory system. At the end of the day, it must then be for the companies concerned to decide whether or not they wish to continue with their listing in Hong Kong on the basis identified as acceptable by the regulators.

Sir, with these remarks, I support the motion.

MR CHEONG: Thank you, Sir. May I also thank Members who have spoken in this particular

debate. Originally I thought of sparing my colleagues the strain of staying in this Chamber for another five to ten minutes. Nevertheless, having regard to the Honourable Ronald ARCULLI's wish that I should state for the record my position on the tiered market in Hong Kong, I feel I am obliged to reply and I would ask for the indulgence of my colleagues.

Sir, in principle I am not against the development of the tiered market structure at all. However, I think that the rules have to be applied so that regard will be had to the internationally acceptable practice. For example, the chairman of the SEC of the United States and the chairman of the Australian Securities Commission have said publicly that the exemption so sought by the company would not necessarily be entertained in their respective jurisdictions because with the company being based in Hong Kong -- most of their business based in Hong Kong, their management based in Hong Kong, their major trading activities being in the Hong Kong market -- if that particular criterion were to be applied on an international basis, I do not think that New York, Tokyo, Sydney or even London would consider it as the company's secondary listing -- hence not bound by the rules of their respective regulatory authorities.

Sir, I would simply like to reiterate one thing and that is: there is no suggestion whatsoever from me or from anybody else in Hong Kong that the company must not do whatever they think fit or that we should fetter their freedom of moving their primary listing. The main theme that I would like to bring to their attention and to that of this Council and the Administration is that the exemptions sought from regulatory authorities between now and 1997 form a totally separate issue from that of whether or not a company in Hong Kong should have confidence to stay in Hong Kong after 1997. Sir, from what I have read and from what I have been given to understand, there were tremendous pressures being brought to bear on the Administration so that it would bow to that sort of demand. Why are they seeking exemptions from regulatory rules between now and 1997? What will become of 1997; will there be excesses by the SAR Administration? Nobody knows.

Sir, could I draw the attention of this Council to one paragraph in the speech that I made earlier. It is to this effect: when the question was asked by the regulators here why the company were seeking only exemptions from regulatory rules and not exemptions from statutory rules -- I know that they are not seeking exemptions from statutory rules; there is no suggestion that they are seeking to be above the law; they are simply seeking to be above the regulations -- the reply they gave was

that they knew they could not get away with it from seeking exemptions from statutory rules. But they are big and powerful enough to force our regulatory agencies to change the rules of the game for them with respect to the regulatory rules. That, to me, Sir, is indeed tremendous pressure being brought to bear on the Stock Exchange, the SFC or perhaps even on the Administration or our colleagues here so that they will submit to a demand. At least I cannot understand why they are losing confidence in the Hong Kong Administration's regulatory agencies to enforce properly the rules as laid down between 1991 and 1997. They say they are going to voluntarily abide by the rules until 1994. Now what will happen in 1994?

Hong Kong will still be under British rule; Britain will still be administering the territory until 1997. What will happen then? What will happen then to our protection of investors principle?

Sir, I do not want to go against any company. I wish that all companies did well in Hong Kong, just as I wish Hong Kong would do well. But we cannot, as an Administration, accede to unreasonable demands otherwise we will be easily accused by my learned friend, the Honourable Martin LEE, of being a lame duck again -- this time, not being a lame duck to China but a lame duck to big and powerful businesses.

Sir, I am very happy that we have the opportunity of debating this particular issue this afternoon. Although I respect some of the views of my colleagues -- for example, the Honourable Paul CHENG who said that the subject is far too technical for us to understand or the Honourable Jimmy MCGREGOR who said that we should debate it when the SFC and the Stock Exchange come out with something -- I do not necessarily agree with them. But I respect their views, because if the SFC and the Stock Exchange were pressurized into making a certain decision it would be extremely difficult even for this Council to overturn it.

Sir, I beg to move.

Question on the motion put and agreed to.

Private Bill

First Reading of Bill

THE HONG KONG INSTITUTE OF PLANNERS INCORPORATION BILL 1991

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

Second Reading of Bill

THE HONG KONG INSTITUTE OF PLANNERS INCORPORATION BILL 1991

MR CHENG HON-KWAN moved the Second Reading of: "A Bill to make provision for the incorporation of The Hong Kong Institute of Planners and for matters connected therewith."

MR CHENG HON-KWAN: Sir, I move that The Hong Kong Institute of Planners Incorporation Bill 1991 be read the Second time.

The object of the Bill is to make provision for the incorporation of the Hong Kong Institute of Planners.

When the Institute was formed in 1979, it was registered under the Societies Ordinance and this is still the case today. The Institute wishes to improve its stature by becoming an incorporated body.

In seeking incorporation by statute instead of by the normal procedures under the Companies Ordinance, the Institute wishes to ensure its existence and independence. When this Bill is passed into law, the Institute can only be dissolved by legislative process.

Incorporation by an Ordinance also implies statutory recognition of the Institute as the body representing the town planning profession in Hong Kong.

The Institute is now working with the Government on a proposed Planners Registration Bill. The Registration Bill will govern the registration and disciplinary control of the professional activities of planners in Hong Kong. It is contemplated that a Registration Board will be established and most of its members will be appointed by the Council of the Institute. The Institute hopes to have this present Bill passed into law before the Planners Registration Bill is formally introduced.

If the system of registration, qualification and disciplinary control of Professional Registered Planners as proposed is established, the Institute will be vested with certain powers.

Under this Bill, the powers of the Council of the Institute are clearly defined. The authorities of the Council are guaranteed and its powers and activities are controlled and regulated.

By virtue of this Bill, the existing Constitution of the Institute is adopted as the Constitution of the incorporated Institute. However, important matters such as the objects and powers of the Institute and the powers of the Council of the Institute are set out in this Bill. These objects and powers will be binding on the Institute as if they were part of the Constitution except that they will not be able to be amended other than by an amendment Ordinance. Other provisions of the Constitution, which are not enacted as law, can be amended in accordance with the Constitution but they cannot conflict with the provisions of this Bill which after enactment will prevail.

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

Question on the adjournment proposed, put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 1 May.

Adjourned accordingly at fifteen minutes to Seven o'clock.

Annex I

Progress on the New Airport and related Key Projects

1. Chek Lap Kok Airport

The Airport Master Plan is well advanced and is expected to be completed by the end of 1991. Advance site preparation works for the new airport commenced in February 1991 and prequalification for the main site preparation contract is now underway.

2. Tung Chung Development (Phase One)

North Lantau Development study and design are well underway.

3. North Lantau Expressway

Detailed design work is in progress.

4. Lantau Fixed Crossing

Prequalification for the bidding on the Tsing Ma and Kap Shui Mun bridges has been substantially completed. Preparation of design and contract documents is well advanced and should be ready in May.

5. Route Three (Tsing Yi and Kwai Chung Sectors)

Detailed design work is in progress.

6. West Kowloon Reclamation

The Project is in final design and tender phases with one initial reclamation contract underway. It is expected that further contracts will be awarded during the year.

7. West Kowloon Expressway

The Project is now at the preliminary design stage.

8. Western Harbour Crossing

Preliminary feasibility study has been completed and is being studied. A financial adviser for the project is in the process of being appointed.

9. Airport Railway

Feasibility study completed at the end of 1990. Various implementation scenarios and their resulting financial implications are being examined in conjunction with the Mass Transit Railway Corporation.

10. Central and Wanchai Reclamation

The project is now in detailed design stage.

Annex II

Guidelines for the issue of Public Fund Raising Permits for Non-Charitable Purposes

Applications for permission under section 4(17) of the Summary Offences Ordinance (Cap. 228) to raise funds by any collection of money or sale or exchange for donations of badges, tokens or similar articles in a public place should, where the funds are to be used for a charitable purpose, be referred to the Director of Social Welfare.

2. Where the funds are to be used for any other purpose, such applications should be referred to the Secretary for Home Affairs. When considering an application for a public fund raising permit under section 4(17) of the Summary Offences Ordinance, the Secretary for Home Affairs will normally wish to be satisfied that :

(i) (a) the organization or group on behalf of which the permit is sought, and the organization or group to benefit from the collection if different, is where applicable properly registered under the laws of Hong Kong;

(b) if the applicant is an individual, he should be aged 21 or above, should be either a permanent resident of Hong Kong within the meaning of the Immigration Ordinance or has been ordinarily resident in Hong Kong for a minimum of seven years;

(ii) the funds collected will not be used to finance any profit-making or commercial ventures or activities;

(iii) the funds collected will be used in Hong Kong;

(iv) the funds collected will be used in ways which in Secretary for Home Affairs's view would contribute directly to the development of representative government in Hong Kong;

(v) no person will benefit improperly from the collection;

(vi) the fund raising activities will be held only in confined public places such as stadia, civic centres and community centres where attendance is for a specific purpose;

(vii) no nuisance will be caused to the general public by the collection; and

(viii) the manner and frequency of collections, appeals, and so on, is not such as to be likely to produce a reaction generally against public fund raising activities.

3. The permit should include suitable conditions to give effect to the above guidelines. Other than the standard general conditions, the Secretary for Home Affairs may impose additional conditions where appropriate. In special circumstances, where it is in the interest of the community to do so, the Secretary for Home Affairs might exceptionally waive certain conditions in the permit.

Public Fund Raising Permit for Non-Charitable Purposes

Summary Offences Ordinance

Section 4(17), Chapter 228, Laws of Hong Kong

I hereby permit _____ (name of organization or person)
whose address is _____ to organize a public
fund raising on _____ (date) at
(venue) _____ for the purpose specified in this permit.

The purpose for which the public fund raising may be held shall

be

The permit is, unless exceptionally waived in writing by the Secretary for Home Affairs, subject to the following conditions or any other conditions which the Secretary for Home Affairs may impose and notify in writing addressed to the permit holder at the above address.

General Conditions

- (1) The fund raising activities shall be held within the premises of the venue specified above and permission has been obtained from the relevant authority responsible for the management of the venue;
- (2) The funds collected will be used only for the purpose as specified above;
- (3) The funds collected will not be used to finance profit-making or commercial ventures or activities;
- (4) The funds collected will be used only in Hong Kong;
- (5) No person will benefit improperly from the collection;
- (6) All donations or exchanges are to be purely voluntary;
- (7) When trying to persuade the public taking part in the fund raising activities to make donation, purchase or effect an exchange, the permit holder or his agents should act reasonably and there should be no coercion or compulsion.
- (8) No nuisance will be caused to the general public by the collection;
- (9) Within one hundred and eighty days of the last date specified in the permit, the permittee shall cause the money received from the public, less any reasonable expenses incurred, to be applied for the purpose for which this permit is issued; and
- (10) Within one hundred and eighty days of the last date specified in the permit, the permittee shall cause to be prepared a statement, certified by an accountant or

firm whose name appears in the List of Professional Accountants or in the list of firms of Certified Public Accountants and Public Accountants, published in the Gazette by the Registrar of the Hong Kong Society of Accountants under Section 32(1) of the Professional Accountants Ordinance, Cap. 50, of all monies received from the public and every disbursement made from the money so collected or received. A certified copy of the audited accounts shall be forwarded to the Secretary for Home Affairs within one hundred and eighty days of the last day specified in the permit. This copy of the audited accounts shall be open to inspection by the public.

Additional Conditions

(
for Secretary for Home Affairs)

Date :