HONG KONG LEGISLATIVE COUNCIL -- 15 July 1992 1

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 15 July 1992

The Council met at half-past Two o'clock

PRESENT

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

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, C.B.E., J.P.

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

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

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

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

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

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

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

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.
THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E.

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

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

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

PROF THE HONOURABLE EDWARD CHEN KWAN-YIU

THE HONOURABLE VINCENT CHENG HOI-CHUEN

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE MISS EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT
THE HONOURABLE GILBERT LEUNG KAM-HO

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

PROF THE HONOURABLE FELICE LIEH MAK, O.B.E., J.P.

THE HONOURALBE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

ABSENT

THE HONOURABLE SIMON IP SIK-ON, J.P.

IN ATTENDANCE

MR DAVID ALAN CHALLONER NENDICK, C.B.E., J.P.
SECRETARY FOR MONETARY AFFAIRS

THE HONOURABLE EDWARD BARRIE WIGGHAM, C.B.E., J.P.
SECRETARY FOR THE CIVIL SERVICE

MR YEUNG KAI-YIN, J.P.
SECRETARY FOR THE TREASURY

MR JOHN CHAN CHO-CHAK, L.V.O., O.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

MR MICHAEL SUEN MING-YEUNG, J.P.
SECRETARY FOR HOME AFFAIRS

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

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

MR CHAU TAK-HAY, J.P.
SECRETARY FOR TRADE AND INDUSTRY

MR JAMES SO YIU-CHO, O.B.E., J.P.
SECRETARY FOR RECREATION AND CULTURE

MR MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR ROBERT CHARLES WILSON
SECRETARY FOR ECONOMIC SERVICES

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.

Film Censorship (Amendment) Regulation 1992..... 217/92

Administrative Instructions for Regulating
Admittance and Conduct of Persons.....
227/92

Hong Kong Royal Instructions 1917 to 1991
Standing Orders of the Legislative Council
of Hong Kong
Ending of 1991/92 Session.....
228/92

Public Health and Municipal Services (Public
Pleasure Grounds) (Amendment of Fourth
Schedule) (No. 5) Order 1992.....

Sessional Papers 1991-92

the Results of Value for Money Audits June 1992
PAC Report No. 18

No. 97 -- Sir David Trench Fund for Recreation Trustee's Report 1991-92

No. 98 -- Report on the Administration of the Immigration Service Welfare Fund from 1 April 1991 to 31 March 1992 prepared by the Director of Immigration

No. 99 -- Hong Kong Trade Development Council Annual Report and Accounts 91-92

No. 100 -- J.E. Joseph Trust Fund Report for the period 1 April 1991 to 31 March 1992

No. 101 -- Kadoorie Agricultural Aid Loan Fund Report for the period 1 April 1991 to 31 March 1992

No. 102 -- The Fourth Annual Report of The Commissioner for Administrative Complaints Hong Kong June 1992

No. 103 -- The Statement of Accounts for the Customs and Excise Service Welfare Fund for the year 1991-92

Addresses by Members

Annual Report by the Commissioner of the Independent Commission Against Corruption

MR RONALD ARCULLI: Mr Deputy President, as a member of the Advisory Committee on Corruption, I am pleased to introduce the 1991 Annual Report by the Commissioner of the Independent Commission Against Corruption, which is tabled in this Council today.

Mr Peter ALLAN, the present Commissioner, took over from Mr David JEAFFRESON only at the end of 1991. I feel it is appropriate to repeat Mr ALLAN's tribute in this report to Mr JEAFFRESON's leadership of the Commission over the years from 1989 to 1991. Mr JEAFFRESON was, and is, held in high regard by those who work in the

Commission and it came as no surprise to Mr ALLAN to find that the organization which he took over is highly professional, efficient and effective.

Mr ALLAN has referred to just how much the Commission depends on the trust, confidence and goodwill of the community. That such exists and in very high measure is reflected in many ways: the willingness with which busy and highly respected members of the community accept invitations to take on yet more and participate in the Commission's advisory committees; the large number of those who participate in educational functions which in turn are designed and implemented with the voluntary assistance of community groups; and in the provision of reports of activities which are perceived by those reporting as being appropriately the subject of investigation by the Commission.

The Operations Department of the Commission meets its obligations by investigating, regardless of their origin, all allegations of corruption where such investigation is practicable. The number of reports in 1991 which were capable of classification as pursuable was 1 759, the highest recorded in the Commission's history. This figure reflects the fact that members of the public, in a display of confidence in the Commission, are increasingly willing to identify themselves and assist to the extent possible in the pursuit of those engaging in corrupt activity. The number of pursuable reports received also led to the Operations Department having a case load of 930 at the end of the year. Of the 1 759 pursuable reports received in 1991, 224 related to election offences under the Corrupt and Illegal Practices Ordinance. Overall, private sector reports accounted for 57% of all reports received by the Commission but, excluding alleged election offences, this showed a small decrease compared with the 1990 figures for the private sector.

The number of persons prosecuted in 1991 was 334. The conviction rate, at around 80%, remained most satisfactory. In addition a further 86 persons were formally cautioned.

In addition to the normal assignment and monitoring studies, the Corruption Prevention Department, through its Advisory Services Group, continued to provide a confidential and free internal audit service, on request, to private sector organizations in relation to the prevention of corruption and fraud. During the year, 205 enquiries were received and assistance was given to 193 organizations. The clients included industrial, commercial, welfare and educational organizations, with manufacturing and trading forming the largest categories. The advice given to these organizations typically dealt with purchasing, inventory control, cash collection,

sales and accounting controls.

The Community Relations Department conducted an intensive education programme during the year directed both generally and at selected sectors of the community. The commercial and industrial sectors were given particular emphasis in view of the fact that the private sector corruption reports represented half of all reports in recent years. Through visits, meetings, workshops, seminars and direct mail the Department focussed on the role of the chief executives of companies in taking the lead for corruption prevention within their working environment. Another special programme during the year was a multi-media campaign and a series of briefing sessions to advise candidates, their agents, and voters against election malpractices. In addition, a telephone hotline was set up to handle public enquiries in the election period.

Mr Deputy President, in his Review Chapter the Commissioner has paid a warm tribute to the staff of the Commission who by their plain old-fashioned industry, loyalty and application, achieved so much during the year. On behalf of the members of this community who assist the ICAC in so many ways I wish to join Mr ALLAN in this tribute.

Hong Kong Provisional Airport Authority Annual Report 1991-1992

FINANCIAL SECRETARY: Mr Deputy President, in accordance with section 10 of the Provisional Airport Authority Ordinance, the annual report and accounts of the Provisional Airport Authority for the year ending 31 March 1992 are tabled today.

The Authority has had an extremely active and successful year which has seen the airport plan progress from concept to detailed design and, in some cases, to implementation on site. In particular:

- The Airport Master Plan was completed in January this year;

- The original scope of the advance works at Chek Lap Kok was completed and the scope of works extended so that any gap between these advance works and the main site preparation works is kept as small as possible;

- The contract for the detailed design of the passenger terminal complex was awarded.

The consultants concerned have just completed a comprehensive review which confirmed the acceptability of the principles adopted in the Master Plan and set, with the Board's agreement, a control budget for construction which is within the budget originally set by the Board;

- Tenders for the main site preparation contract are being evaluated. The majority of the bids are now within budget as a result of revisions to the original tender approach. This reflects the determination of the Authority to keep its costs within budget; and

- Pre-qualification has started of those interested in the private sector in developing the aircraft maintenance and engineering and air cargo facilities.

All of this has been achieved by a young but growing organization which had approximately 200 full-time staff by the end of March this year. All this could not have been achieved in so short a timeframe were it not for the enthusiasm with which both the management and Board have approached the challenges such a major project presents.

This report should be the last issued by this provisional body since we aim to introduce the Airport Authority Bill into this Council in the next legislative Session. The Airport Authority will inherit an experienced management team and a project already well under way.

Report of the Public Accounts Committee on Report No. 18 of the Director of Audit on the Results of Value for Money Audits June 1992
PAC Report No. 18

MR STEPHEN CHEONG: Mr Deputy President, on behalf of the Public Accounts Committee, I would like to put it on record that the Committee was very sorry to have lost one of its members -- the late Mr NG Ming-yum. Although he was not involved when we deliberated the issues in this Report, he did make contribution to the work of the Committee in the past.

The 18th Report of the Committee, tabled today, covers the conclusions reached by the Committee in considering the Director of Audit's Report on the results of value for money studies completed between October 1991 and February 1992.

Mr Deputy President, I wish to re-emphasize that our function as a Committee is not vindictive or punitive, but to examine with the Administration issues raised in the Director of Audit's Report, to draw lessons from the past and to arrive at recommendations for the more efficient use of public funds in future. In this connection, I wish to highlight the following issues which are of particular concern to the Committee.

First, the Committee noted that the Administration has experienced great difficulty in implementing the policy of suspension of pensions for pensioners on the Old Pension Scheme and re-employed by public service organizations because, under the law, these pensioners could refuse to give consent to the suspension of pension. However, those on the New Pension Scheme or re-employed in the Civil Service were not given such right. We consider that the present disparity of treatment should be removed as soon as possible, and would like to urge the Administration to liaise with the subvented organizations concerned with a view to introducing effective measures to fully implement the current policy of suspension of pension.

We would also like to express our concern over the Labour Department's failure to realize the manpower savings originally envisaged through computerization of the daily routines of its Employees' Compensation Unit. The Committee considers that during the planning and design stage of computerization projects, the Information Technology Services Department should work closely with the user departments to provide adequate expert advice to them so that appropriate projects which are able to achieve maximum manpower savings can be worked out. On the other hand, the Finance Branch has to take full account of the user departments' requirement, and should not trim, unilaterally, the scope of the projects just for short-term objectives. After all, in the end, whatever money saved in any current financial year may create more spending in the future financial year. Before accepting the proposal for the computerization, the user departments should also first satisfy themselves that the estimated manpower savings are realistic and achievable. Once the projects are approved for implementation, all parties concerned should be fully committed to achieving the expected manpower savings.

Notwithstanding the above, Mr Deputy President, having served over 10 years as a member of the Public Accounts Committee, it is my considered view that the Administration, compared with the previous years, has steadily improved a lot in its drive for more efficiency and better administration. Whilst no one can ever claim

that any administration anywhere else in this world does not need further improvements, we can be reasonably proud of the standard we have achieved so far. We just hope that the Committee, the Audit Department, and the Administration will work closely together in the quest for continued improvements in cost-effectiveness and efficiency of the Government. I trust that the recommendations in our Report No. 18 will be accepted. Thank you.

Oral answers to questions

PADS projects

1. MR MARTIN LEE asked: Will the Government inform this Council whether every piece of financial and technical information relating to the Port and Airport Development Strategy (PADS) projects that has been released to the Chinese Government has been released to Members of this Council?

SECRETARY FOR THE TREASURY: Mr Deputy President, it has been our aim during the formulation of financing plans for the Airport Core Programme to share with Honourable Members all essential information we share with the Chinese Government. The same information is also shared with the Airport Consultative Committee. The Chinese and British sides of the Airport Committee have supported this practice.

Accordingly, I can confirm that all financial and technical information relating to the Airport Core Programme that has been released to the Chinese Government following the announcement of the Memorandum of Understanding on 4 July last year has also been released to Members of this Council.

MR MARTIN LEE: Mr Deputy President, in relation to the first sentence in the reply of the Secretary for the Treasury, namely, "it has been our aim during the formulation of financing plans for the Airport Core Programme to share with Honourable Members all essential information we share with the Chinese Government", does it mean that the Chinese Government has been supplied with more information than Members of this Council? And if so, will the Administration inform this Council what constitutes the non-essential information which has been supplied to the Chinese Government but which has not been supplied to Members of this Council?

SECRETARY FOR THE TREASURY: Mr Deputy President, I can say that all essential information of a financial and technical nature that has been shared with or put to the Chinese Government has in one form or another been shared with Honourable Members.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, in relation to the reply given by the Secretary just now, I understand that Sir John COLES, Personal Emissary of the British Prime Minister, recently disclosed after the Sino-British talks on 6 July that a new proposal on the contingent liabilities of the airport had been presented to the Chinese side. Can the Administration inform us whether Members of this Council have been advised of the contents of the said proposal?

SECRETARY FOR THE TREASURY: Mr Deputy President, the negotiating position of the British and Chinese sides during the talks must, I am afraid, remain confidential.

MR ERIC LI: Mr Deputy President, the original question refers to the Port and Airport Development Strategy, but in the reply only information relating to the Airport Core Programme is given. Can the Government confirm that only information relating to the ACP is passed to the Chinese Government and hence the answer will still be the same if the term ACP is replaced by the term PADS?

SECRETARY FOR THE TREASURY: Mr Deputy President, unlike the Airport Core Programme, we have not established formal contacts with the Chinese Government on port development matters. But I can say that the Economic Services Branch has briefed the Legislative Council Economic Services Panel on port development matters, and Members have been consulted on these matters, including for example, the development of Container Terminal No. 9.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, the Chinese Government has been repeatedly complaining in public about the inadequacy of information on the financing

of the Airport Core Programme projects, contrary to the Administration's explanation that all essential information has been passed to the Chinese side. Can the Administration advise this Council whether such complaints by the Chinese Government are justified and how the Government would help the Chinese side to understand better things that they feel unclear?

SECRETARY FOR THE TREASURY: Mr Deputy President, I really cannot comment on comments made by the Chinese side on the adequacy or inadequacy of our discussions which must remain confidential. All I can say in response to this question is that the Airport Committee will be meeting tomorrow.

MR RONALD ARCULLI: Mr Deputy President, would the Secretary for the Treasury inform us whether commercially sensitive and, perhaps, confidential information has been given to the Chinese Government and not to the Members of this Council?

SECRETARY FOR THE TREASURY: Mr Deputy President, I can say that some information of a confidential nature has been given to the Chinese side; it belongs to the categories Mr ARCULLI described. But to the extent that negotiations remain secret, this sensitive information remains confidential.

MR STEPHEN CHEONG: Mr Deputy President, given that the Secretary for the Treasury has repeatedly stressed that negotiations between the Government and the Chinese Government remain secret or confidential, can the Secretary inform this Council whether it is the considered view of the Administration that the Legislative Council as such has no place in these negotiations?

SECRETARY FOR THE TREASURY: Mr Deputy President, certainly not. The Legislative Council will in due course be consulted once negotiations have been completed and the outcome has been satisfactorily resolved on both sides. The Administration will come forward with proposals to the Finance Committee of this Council for the appropriation of the necessary funds, and it is in the process of these submissions that the outcome of the negotiations will be revealed.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, in reply to Mr Martin LEE just now, the Secretary said, "all information has been passed to the Council, including the Finance Committee." However in reply to MR CHIM Pui-chung, he said, "some confidential information can only be shared between the Chinese and British sides but cannot be given to the Council." Then in response to Mr Stephen CHEONG, he said, "the Council will only be advised when negotiations have been completed." What exactly is the position of this Council in the Sino-British talks on the new airport? Does the Administration not trust even this Council, hence documents would only be passed to the Council for deliberation and for rubber-stamping after both sides have struck a deal?

SECRETARY FOR THE TREASURY: Mr Deputy President, I believe I have already answered that question. It is in the nature of negotiations, particularly rather sensitive negotiations, that negotiations be conducted on a confidential basis. Failure by one or the other party to do so would lead not to workmanlike negotiations but to debates in public about the respective positions. That is why negotiations have to remain confidential, but as I mentioned earlier, that does not mean that the Administration has anything to hide from this Council or from its Finance Committee. Once the outcome of a settlement or a deal is known, there is no choice for the Administration but to come forward for the appropriation of the necessary funds.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, I wish to follow up Mr CHEUNG Man-kwong's question. If different and varied proposals were presented by the British Government to the Chinese side during the negotiations, would Members of this Council be advised of the different options and information submitted to the Chinese side for their consideration and deliberation, after a settlement has been reached with the Chinese Government?

SECRETARY FOR THE TREASURY: Mr Deputy President, I imagine that it would be up to Members of this Council to satisfy themselves that the outcome of the negotiations lead to a satisfactory deal. It is in the context of looking at our submission to the Finance Committee of this Council that such questions could be asked.

Air traffic

2. PROF FELICE LIEH MAK asked: In view of the heavy air traffic in and out of Kai Tak airport, and the difficulties experienced by pilots in landing and take-off especially in adverse weather conditions, will the Administration inform this Council of:

(a) the number of near misses in the past three years;

(b) the number of times in the past three years that aircraft experienced engine trouble before landing or after taking-off; and

(c) the emergency facilities available to cope with the eventuality of an aircraft crashing into a densely populated area?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, technically speaking, a "near miss" in aviation terms occurs when two aircraft in flight pass closer to each other than is considered safe in any particular given circumstance. During the past three years, there was one such incident involving two helicopters not in the immediate vicinity of the airport.

More relevant to the issue of the safety of landing at Kai Tak are statistics relating to "missed approaches" which occur when pilots have to abort a landing and make a second approach. These occur usually as a result of bad weather, incorrect positioning of the aircraft, mechanical problems, or, occasionally, at the request of air traffic controllers for traffic control reasons. It should be noted that the "missed approach" procedure is a standard operational manoeuvre executed to meet high safety standards; it should not, in itself, be regarded as a hazardous or dangerous event.

Statistics in relation to missed approaches are that in 1989 there were 192; in 1990, 175; and in 1991, 213. There has been no particular trend in the number of missed approaches over the years; the single most significant cause is the weather which can vary considerably from year to year.

As regards aircraft which experienced some form of engine trouble approaching or during landing at Kai Tak over the past three years, the statistics are 14 in 1989, 22 in 1990 and 18 in 1991. Our records relevant to aircraft experiencing engine trouble on take-off from Kai Tak relate only to those aircraft which were obliged

to turn back to Kai Tak as a result; statistics show 18 in 1989, 16 in 1990 and 17 in 1991.

These statistics need to be seen in the context of the fact that over this three-year period the total number of annual aircraft movements grew from approximately 94 000 to 110 000.

Procedures have been drawn up to ensure that adequate emergency facilities will be provided to deal with an aircraft crash anywhere in Hong Kong. These, together with the details of how and where equipment and facilities can be requisitioned and deployed during such an emergency situation are contained in a comprehensive contingency plan. This plan has recently been reviewed and a revised version of it was issued in March this year.

The plan sets out the functions and responsibilities of government departments and other bodies which may be required to deal with such an emergency; these are, primarily, the medical services, the Fire Services, and the police. It also includes a detailed list of the resources available. These include land transport and recovery vehicles, air and marine transport, divers and diving equipment, lifting and cutting equipment, floodlighting, bedding and stretchers and so on. Exercises are held periodically to ensure all are familiar with their roles and the procedures concerned.

PROF FELICE LIEH MAK: Mr Deputy President, in holding such exercises can the Secretary for Economic Services inform this Council what the ideal response time is between the reporting of an accident and the arrival of all these services at the scene of the accident, in other words, what the time being aimed at is?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I think that the Secretary for Security would be best placed to respond to that question.

SECRETARY FOR SECURITY: Mr Deputy President, that would of course depend upon the circumstances and where the accident occurred. But certainly we would expect the emergency services -- by which I would mean the initial response by the police and the Fire Services -- to be very quick indeed, that is to say, within a matter of minutes. Clearly, to mobilize some of the other resources and some of the other equipment might

take more time.

MR MARTIN BARROW: Mr Deputy President, could the Secretary inform this Council what steps the Civil Aviation Department can and does take to ensure that non-Hong Kong registered aircraft flying into Hong Kong are properly maintained so as to minimize the risk of any incidents within Hong Kong's jurisdiction?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, if a foreign-registered aircraft were to be involved in an accident at Kai Tak relating to poor maintenance, for example, of that aircraft, a report would have to be filed with the Director of Civil Aviation who would then require the airline and the aircraft manufacturer to explain the situation. If, as in a recent event, a part of the aircraft were to actually fall off, there would be a major investigation and the Director of Civil Aviation would make a recommendation to the manufacturers regarding the issue of a technical notice that all such aircraft should be checked for that feature.

MR HOWARD YOUNG: Mr Deputy President, can the Government confirm that the Civil Aid Services are also one of the primary services that have responsibility for dealing with emergencies so described, and if so, whether they are also drilled and kept up to date on their roles in this regard?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I can confirm that the Civil Aid Services are one of the services which would be involved in the contingency plan and they are indeed drilled regularly, as well as the other emergency services involved.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, according to records Kai Tak Airport was one of three civil aviation black spots in the world. Will the Administration inform us whether this situation has improved or not?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I would not like to be associated with the phrase that the Kai Tak Airport was a blackspot in terms of world civil aviation. Our safety record at Kai Tak is remarkably good in view of the

difficult approach involved.

MR PETER WONG: Mr Deputy President, will the Secretary please inform this Council which airlines train their pilots on simulators to practise landing in Hong Kong before they actually attempt to do so?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I am afraid I could not confirm, with regard to all world airlines serving Hong Kong, which of those airlines perform that particular sort of training. Cathay Pacific, of course, do that sort of training locally. All pilots who are coming in to land at Kai Tak will have read the detailed information required and issued by the Director of Civil Aviation with regard to the safe approach patterns and the procedures to be followed.

MR HENRY TANG: Mr Deputy President, in his main reply the Secretary said that there has been only one "near miss" in the last three years, between two helicopters. Will the Secretary confirm that that was the only "near miss" incident in the entire Hong Kong air traffic control area and not just at Kai Tak?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I can confirm that that is indeed what I meant. There was only one such incident in the Hong Kong controlled airspace.

DR CONRAD LAM (in Cantonese): Mr Deputy President, the Secretary said in the last paragraph of her reply that joint action would be taken with medical services in case of emergency. Could the Administration inform this Council of the level of manpower resources available for use by the Hospital Authority or other medical services under such circumstances?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, the contingency plan has been revised recently, certainly to take into account all the resources of the Hospital Authority and procedures now applying to the Hospital Authority as well as to the auxiliary medical services and other medical resources that can be called upon. I

could not, myself, estimate how many hospital beds or staff that might involve but it is a very considerable resource.

Flashing neon lights

3. MR HOWARD YOUNG asked: Will the Government inform this Council:

(a) what the reasons for the prohibition of flashing neon lights in Hong Kong are; and

(b) whether there are plans to review the law to account for any changing circumstances since it was made?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, flashing lights over a certain intensity are specifically prohibited in accordance with the provisions of the Hong Kong Airport (Control of Obstructions) Ordinance. The reasons for this are that aircraft landing at Kai Tak are guided in their approach by airport-related flashing beacons and lights. The existence of any other powerful flashing lights in the same vicinity could cause confusion to pilots approaching the airport and thus adversely affect the safety of aircraft.

For similar safety-related reasons, the Shipping and Port Control Ordinance provides that the Director of Marine may direct the removal of a light or illuminated sign, whether flashing or not, if such light or sign obscures, restricts or interferes with any navigation lights or might adversely affect safe navigation.

If the circumstances justifying the need for these provisions were to change significantly, then the law in this respect will be reviewed. For example, the closure of Kai Tak upon the opening of the new airport at Chek Lap Kok would, no doubt, prompt such a review.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, the reply given a while ago has stated the reasons for the prohibition of flashing neon lights in the vicinity of the airport. Since flashing neon lights help promote the image of Hong Kong as a prosperous city and a more attractive tourist resort, will the Administration, having

regard to the presentday advanced navigation technologies, relax the control in this respect in certain areas like New Territories North, southern Lantau and even the southern part of Hong Kong Island, instead of having to defer the decision until the opening of the new airport?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, the prohibition relating to the safety of air navigation relates primarily to the Kowloon and New Kowloon area. Outside of that specific area, there is another provision under the Public Health and Municipal Services Ordinance which provides, under its Advertisement Bylaws, that no such flashing signs should be placed on any premises anywhere in Hong Kong. That particular provision was also reviewed recently in 1988 when a decision was taken that the provision should be retained because of the danger created by such lights potentially to marine, air and road traffic. The law could indeed be looked at again in respect of the attractiveness or otherwise of flashing neon lights for our tourism industry.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, as we all know, Hong Kong is densely populated with extremely heavy road traffic. Will the Administration inform this Council whether regard will be given to the road users, most of whom are not tourists but require a safe environment in which to drive or cross roads, in relaxing the control of flashing neon lights? Will this factor be considered before the Administration decides to relax the control of flashing neon lights?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, in the last review that was indeed the overriding factor which swayed the Administration in favour of retaining this provision. So it will indeed be taken into account in future.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, in view of the rising number of complaints on "light nuisance" by members of the public, that is, the glaring light from large advertisement signboards, particularly cigarette advertisements, on the external wall of a building preventing people from having a good sleep until late at night and even the small hours of the morning, are there any government departments

or suitable measures to control or manage this nuisance? If not, will the Administration at once examine or introduce legislation to improve this situation?

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I believe that this Administration would consider any sensible proposal and that we could indeed look at perhaps a tighter control or introduce some form of tighter control over very bright lights if they are a cause of concern. As it stands, certainly with regard to flashing lights, the law is clear and they are prohibited.

Smuggling activities

4. MRS SELINA CHOW asked: In view of the continuance of rampant smuggling activities, will the Government inform this Council how effective the Anti-Smuggling Task Force has been to date, and what additional measures, operational and legislative, are required to assist police initiatives?

SECRETARY FOR SECURITY: Mr Deputy President, there has been a considerable decline in smuggling activities between Hong Kong and China in recent months. At the peak of smuggling activities in February and March 1991, there were over 1 400 speedboat sightings a month. This compares with an average of 130 sightings in each of the past two months.

The Anti-Smuggling Task Force was established in February 1991. Since then, it has achieved the arrest of 176 persons, and the seizure of 100 vessels and goods worth $42.3 million. It has acted to obtain, collate and disseminate information on the changing activities of smugglers to all the agencies involved in anti-smuggling. I believe that it has been effective in reducing the extent of smuggling activities which I have described.

Nevertheless, we are not complacent about the recent decline in smuggling activities; a similar reduction last year between May and July was not sustained. The Anti-Smuggling Task Force will therefore continue to explore new operational

initiatives against the smugglers, such as the recent destruction of a loading ramp used by smugglers near Sai Kung and the setting up of a boom in Tolo Harbour which has effectively eliminated smuggling activities there. Additional legislative measures are also under consideration to keep up the momentum of our efforts to tackle the problem. These include making major smuggling offences indictable in addition to being summary offences, increasing the penalties for the operators of unlicensed sampans who often act as lookout boats in smuggling, and the possibility of additional control on "chung-feis", the medium-sized speedboats normally powered by two 300 hp engines. We shall also maintain close liaison with China. Sustained action against the smugglers both in Hong Kong and in China is likely to be the most effective means of curtailing smuggling.

MRS SELINA CHOW: Mr Deputy President, given that so much is at stake for the smuggling industry which must have suffered loss of profits following the success of the Anti-Smuggling Task Force to curb smuggling by sea, will the Secretary please inform this Council whether smuggling by land has shown any sign of increasing and whether efforts are being made to prevent the proliferation of smuggling by this alternative route?

SECRETARY FOR SECURITY: Mr Deputy President, certainly, we believe that the activities we have taken against boats at sea have led to some additional smuggling, particularly of vehicles, by containers and by land. This is something that the police and the Customs and Excise Department are endeavouring also to tackle. They are devoting resources to obtaining intelligence and to dealing with this form of smuggling as well.

MR MARVIN CHEUNG: Mr Deputy President, other than the number of sightings, does the Administration have any concrete evidence to substantiate the contention that smuggling activities have declined in recent months?

SECRETARY FOR SECURITY: Mr Deputy President, there are limitations in conclusions based purely on speedboat sightings. Clearly, there is the possibility of double

counting and there is the possibility that some speedboats will not be sighted. Nevertheless, as an indication of the trend, I believe that the figures I have quoted, in terms of a reduction in smuggling since 1991, show very clearly that there has been such a reduction.

DEPUTY PRESIDENT: Does that answer your question, Mr CHEUNG?

MR MARVIN CHEUNG: Mr Deputy President, I take the answer to mean that, other than the number of sightings, the Government has no concrete evidence to substantiate that statement.

SECRETARY FOR SECURITY: No, I do not think I did mean that, Mr Deputy President. Clearly, both the police and the Anti-Smuggling Task Force have a number of means of keeping tabs on this. Part of their efforts are devoted to obtaining intelligence on smuggling activities as a whole. What I meant to say was that I think the number of speedboat sightings is probably the easiest indicator of the reduction.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, the Secretary said that the Anti-Smuggling Task Force had intercepted 32 stolen vehicles during the first five months of the year, while 1 640 private cars were reported lost during the same period and among which 963 had been recovered. The said 32 intercepted vehicles account for a very small proportion of the total number of vehicles reported lost. Will the Administration inform this Council if it is satisfied with the performance and how more stolen vehicles may be intercepted in order to reduce the loss suffered by the public?

SECRETARY FOR SECURITY: Mr Deputy President, I think perhaps we are confusing two things, and I will try to separate them. Most vehicles which are stolen are recovered in Hong Kong and the figure has, over the years, remained fairly constant. The proportion of vehicles recovered has remained fairly constant. What we have seen in recent years, though, is that a number of vehicles which are not recovered in Hong Kong are clearly being smuggled out and we believe that they are being smuggled out predominantly, but not exclusively, to China. We have so far had returned from China

only 32 of these vehicles. We are continuing to make representations to the Chinese authorities and to discuss with them additional measures that they can take to identify these vehicles and to return them to Hong Kong. And as I said in answer to a question in this Council, I think, two weeks ago, we hope that the new computerization of the licensing system which I believe they are introducing in China will enable them to identify these vehicles more easily in future.

MRS RITA FAN: Mr Deputy President, taking action to counteract smuggling is an integral part of the work of the Customs and Excise Department and there are members of this department working side by side with police officers in the Anti-Smuggling Task Force. I have recently received letters from Customs and Excise officers complaining about the lack of facilities and equipment for the department to fight smuggling. Is the Secretary for Security aware of this? If yes, what is being done about it? If not, can the Secretary kindly look into it?

SECRETARY FOR SECURITY: Mr Deputy President, yes, there are several departments who make up the Anti-Smuggling Task Force -- the police force primarily, but also the Customs and Excise Department, and indeed several others. I am certainly aware that the Customs and Excise Department do have a requirement for additional launches and other boats, and that is something that I hope can be provided in the future.

Public assistance for single persons aged 60 or over

5. MR GILBERT LEUNG asked (in Cantonese): Will the Government inform this Council:

(a) how many people aged 60 or over in Hong Kong are single persons; how many of these single persons are public assistance recipients;

(b) what the average amount of monthly allowance received by this group of single persons under the Public Assistance Scheme is; how it compares with the present median wage; and

(c) whether the Administration considers the above rates of assistance adequate given that the elderly need more money for medical and other expenses than young people and that single persons have to fend for themselves as they have no family members

to look after them; and whether the existing mechanism for revising the rates of allowance under the Public Assistance Scheme is satisfactory?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, I shall answer the three-part question seriatim:

(a) Of the estimated 766 000 people aged 60 or over in Hong Kong, 74 000 are single persons living alone, of which 33 000 are on public assistance and another 12 000 are in residential homes or infirmaries.

(b) The Public Assistance Scheme is intended to ensure that recipients' basic needs in daily life are met according to their personal circumstances. The components of the scheme include a basic rate, a rent allowance, a long-term supplement, an old age supplement, a disability supplement and other special supplements and grants, for example, an allowance for special diet, reimbursement for dentures, spectacles and walking aids. Additionally, all medical care in public hospitals and clinics are free. There is little valid basis for comparing public assistance payments with the median wage. The latter relates to remuneration for work and the former is needs-oriented. However, although the public assistance payment is not linked specifically to wages, public assistance clients have progressively been getting higher allowances over the years, in addition to adjustment for inflation, to enable them to benefit from social and economic changes in Hong Kong. For example, a single elderly person aged 60 and above in 1976 would have got a maximum cash allowance of $390 when the then median monthly household income for a single elderly person was $710. The same person today would get a maximum monthly cash assistance of $3,680, when compared with the median household income for a single elderly person of $5,340 per month (an increase from 54.9% to 68.9%).

(c) The Public Assistance Scheme has been developed and refined significantly over the years. It has evolved from a scheme which provided for basic sustenance to one which is capable of meeting the basic and special needs of recipients.

The scheme is so designed that individual components can be reviewed and new components introduced. Indeed, in the context of the White Paper on Social Welfare into the 1990s and Beyond, it was re-examined as recently as last year, followed by an immediate introduction of the child supplement for public assistance recipients. We believe that the Public Assistance Scheme should be looked at again in relation

to the forthcoming review of the policy on care for the elderly and in the context also of any proposal emerging from the Government's study on compulsory retirement protection schemes.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, the Secretary stressed in the last paragraph of her reply that the Public Assistance Scheme would be included in the comprehensive review of the policy on care for the elderly. A motion was passed by this Council in November last year, urging the Government to revise as soon as possible its overall policy for the elderly so as to secure the quality of living of the aged citizens now and in the future. Will the Administration inform this Council of the present progress of the comprehensive review on the policy for the elderly and when the findings will be publicized?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the Administration is currently studying the various implications of change and will announce the findings of the study group at the appropriate time, but in any case as soon as possible.

DR LAM KUI-CHUN: Mr Deputy President, has the Administration objectively assessed, from the recipient's angle, the adequacy of Public Assistance to single elderly people, and if yes, what are the results, or if no, why not?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, as I said in my main reply, the foundation and the principle behind the Public Assistance Scheme was very recently reviewed. It was recently reviewed in the context of the White Paper and the concept of need was re-established and confirmed after extensive consultation with the people of Hong Kong.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, will the Government consider borrowing the experience of foreign countries of setting the Public Assistance payments at 25% of the median wage, that is, $1,500 per month for singletons, so as to meet the needs of such recipients?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, I did say in the main reply that the concept of our Public Assistance Scheme is based on need; it is not pegged to any wage or the median wage. The concept of need, alongside with other concepts, was established after extensive consultation at the time when the White Paper was the subject of consultation.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, when the Public Assistance Scheme was introduced in 1976, the Public Assistance payment was at 24.3% of the median monthly income of a single person. In August 1991, this percentage dropped to 12.4%. In the context of the general living standards of Hong Kong people, the percentage of the median income at which the recipients may get as Public Assistance payment has dropped by almost 100%. The Secretary replied just now that the Public Assistance payment is pegged not to wages but "need". Would the Secretary enlighten me as to whether "need" refers to subsistence or the basic standards of living accepted by society? Why did the percentage drop by 100%?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the objective of the Public Assistance Scheme is to ensure that the basic and special needs of the recipients are met. The present system of basic rates, supplements, allowances and special grants would meet this very objective of need. Pegging the public assistance rates to the median wage might mean that the needs of the recipients might not be fully taken account of, particularly when there is a downturn in the economy.

MR FRED LI (in Cantonese): Mr Deputy President, I would like the Secretary to answer a very simple question. If we divide the basic rate of $825 by the number of days, the average is $27.50 a day. How can an elderly person make use of these $27.50 if he is to meet his expenses of three meals a day, transport and social activities in Hong Kong today?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, the basic rate is only one of the many component parts which make up the Public Assistance Scheme. The basic rate is to cover essential needs such as food, fuel and clothing, currently at $825 per person per month. Additional to that, there are other supplements to cover personal rate arising out of that particular person's individual circumstances. For

example, an elderly person would be getting an old age supplement additional to the basic rate. If on top of that he needs special care, he gets a higher disability allowance; if he needs dentures, that is fully reimbursed; and if he needs medical care, that also is fully reimbursed. Looking at the components of the scheme, which include the basic rate of $825 per month, a rent allowance of $743 per month, a long-term supplement of $1,050 per annum, an old age supplement ranging from $413 per month to $470 per month based on individual circumstances, a disability supplement ranging $820 to $1,650 per month, and other special grants and supplements including an allowance for special diets, such as an additional $270 per month or a higher diet allowance of $525 per month if the recipient has diabetes or requires a special diet, one will see that the whole package of the Public Assistance Scheme is tuned, and indeed fine-tuned, to be responsive to the particular circumstances of the recipient who is falling within the network of the Public Assistance Scheme.

Subscription television and television broadcasting

6. MR FRED LI asked (in Cantonese): Regarding the policies on subscription TV and TV broadcasting recently endorsed by the Government, will the Government inform this Council:

(a) of the reasons for removing the stipulation that the operator of a mass medium shall not own more than 15% of the share capital of another medium;

(b) whether the measure of allowing the STAR TV to provide subscription TV services and some Cantonese broadcasting as from October 1993 will have negative effects on the "exclusive right" to be granted to the first subscription TV operator for three years; and on what basis the terms of operation of subscription TV are set; and

(c) whether all recommendations of the consultants commissioned to conduct a detailed study on the policy regarding subscription TV have been accepted by the Government; and if not, which recommendations have not been accepted?

SECRETARY FOR RECREATION AND CULTURE: Mr Deputy President, Mr LI's question raises three distinctly different elements in the recently announced policy on Hong Kong's television industry. I shall deal with them one by one.

First, on cross-media ownership, I think Mr LI has misunderstood the policy. The policy is not to remove the existing restriction on cross-media ownership entirely.

What the policy aims to do is to waive the existing cross-media ownership restriction only in respect of the local television licence and not (I emphasize not) to remove the restriction completely as it applies to the industry as a whole. This means that the present restriction still applies to the existing broadcasters.

The reasons for doing this are threefold:

(a) Firstly, Hong Kong's existing broadcasting industry is sufficiently varied, mature and wide-ranging to have any risk of a monopolistic situation developing. At present Hong Kong has two terrestrial wireless television stations, two commercial radio stations, one satellite television station, and one public broadcasters. Between them they provide a wide range of information and programmes.

(b) Secondly, it is in the public interest to encourage as many companies as possible to come forward to bid for the future pay TV licence.

(c) Thirdly, by allowing existing broadcasting companies to bid for the pay TV licence, the future pay TV station will benefit from drawing on available experience and expertise in the industry.

As regards the second question, the recently announced policy stipulates that only one local pay TV licence would be issued initially, and the licensee would be granted exclusivity for a period of three years from the date of issue of the licence. At the same time, STAR TV would be permitted to provide a satellite-based subscription TV service on a regional basis. But this permission is given subject to the following conditions:

(1) the subscription service would have to be in addition to STAR TV's existing free-to-air service;

(2) this service would not be permitted to be introduced into Hong Kong before October 1993;

(3) no Cantonese programmes would be allowed on this service during the three-year exclusivity period of the local pay TV licensee; and finally

(4) this service would be subject to the same regulatory framework as would apply to the future local pay TV licensee, on aspects such as royalty payments, carriage

of advertisements, and so on.

Furthermore, satellite master antenna operators would not be allowed to collect subscription fees either direct or as an agent of STAR TV when delivering this satellite pay TV service to homes in Hong Kong. STAR TV would have to set up its own marketing network or, as is common in many other places, come to an arrangement with the local pay TV licensee to make use of the latter's delivery network. I believe that with these conditions the possible adverse impact on the future local pay TV licensee of allowing STAR TV to provide a regional satellite-based subscription service are minimized, and in my judgement the local pay TV service should still be viable. The lifting of the restriction on Cantonese programming on three of STAR TV's existing five free-to-air channels is unlikely to have any significant impact on the future local pay TV licensee.

Mr LI has also asked after the basis on which the terms of the pay TV licence rest. These terms are based on the principles of providing the future local pay TV licensee with maximum flexibility within an equitable operating environment. Much would be left to the market to put forth proposals on what it perceives to be the optimal operational framework, with minimum initial direction from the Government. A flexible approach has therefore been adopted in setting up the licensing framework, in terms of delivery technology, geographical coverage, programming, subscription rates, and so on, but some initial protection is given in the form of a three-year exclusivity and a graduated royalty scale based on penetration. However, once a licence is issued, the licensee would be bound by the terms of the licence, and would be subject to penalty if these terms were breached.

On the third question, I would like to point out that the consultants whom we have commissioned in the course of the review were only asked to conduct an economic analysis of the TV industry in Hong Kong and not to make policy recommendations. Thus the question of accepting or rejecting any recommendations made by the consultants does not arise.

The consultants' findings have been very useful and provided a sound base for policy deliberations. In addition to economic considerations, the review took into account a range of other relevant factors, including the compatibility of the licensing framework for pay TV with the present general regulatory framework on the existing TV broadcasters, the objective of offering the public the widest possible television choice at a reasonable cost, the desirability to maintain a healthy

competitive environment in the industry and last but not least continuing technological development.

MR FRED LI (in Cantonese): Mr Deputy President, what are the Administration's reasons for reducing the royalty of ATV and TVB by 2% and at the same time allowing STAR TV to provide subscription TV services in October next year?

SECRETARY FOR RECREATION AND CULTURE: Mr Deputy President, the reason for reducing the royalty of TVB and ATV by two percentage points on their existing royalty scale is based on the findings of the economic analysis that has been done by our consultant. The findings indicate to us that by allowing STAR TV to broadcast in Cantonese in some or all of its existing free-to-air channels there will be a certain impact on TVB and ATV with regard to their net advertising revenue in respect of which the economic analysis has assessed 2% to be the right level of impact.

The reason for allowing STAR to broadcast a subscription service has, I think, been clearly explained in my main reply. The reason is simply that STAR TV has an intention to introduce a satellite subscription service for the region as a whole and it would be absurd to single out and exclude the Hong Kong audience from this service when STAR introduces it for the region. Furthermore, whilst we accept that by allowing STAR to introduce a subscription service for the region which covers Hong Kong would have some impact on the local television industry, we have introduced a whole series of conditions, which I have outlined in my main reply, to ensure that this impact is reduced to a minimum. And I believe that with the introduction of these conditions the impact on the existing television industry in Hong Kong would be reduced to an acceptable level.

Written answers to questions

Corporatization or privatization of goverment departments

7. DR HUANG CHEN-YA asked: Will the Government inform this Council:

(a) which government departments or government services have been (i) corporatized or (ii) privatized by the Government respectively in the past ten years; and

(b) whether any assessment has been made by the Government on the impacts which corporatization/privatization had on the operational efficiency and cost effectiveness of the services concerned; if so, what data are available to support the relevant findings?

SECRETARY FOR THE TREASURY: Mr Deputy President, the only government department that has been corporatized during the past 10 years is the Kowloon-Canton Railway (1982). No government department or public service has been privatized during this period, although some public services have been let out by contract to the private sector. Some examples of contracting out are government car parks (1984), the government abattoir at Kennedy Town (1990) and the Aberdeen Tunnel (1991).

With regard to the second part of the question, a recent review of Kowloon-Canton Railway shows that the Corporation has coped effectively with an average annual growth rate of 14% in the number of passengers since 1984, whilst being able to contain fare increases during this period to below the rate of inflation, thanks to the exercise of tight control over expenditure. The overall operating performance of the Corporation has also improved steadily. Before the KCR was corporatized it was running at a loss. In the second year of its corporate existence (1985), however, it generated a 2% return on net assets. Last year, it produced a healthy return of 8%.

Information on police officers passed to the ICAC

8. MR JAMES TO asked: Will the Government inform this Council whether arrangements are made by the Royal Hong Kong Police Force to furnish the Independent Commission Against Corruption (ICAC) with personal particulars and photographs of all police officers on a regular basis; if so, what the reasons for such arrangements are; how the ICAC deals with records of those police officers who have retired or resigned from the Force; and whether the Administration will review these arrangements to ensure that they will not violate the Bill of Rights Ordinance?

SECRETARY FOR SECURITY: Mr Deputy President, there are no arrangements for the Royal Hong Kong Police Force to furnish the Independent Commission Against Corruption (ICAC)

with the personal particulars and photographs of all police officers on a regular basis.

The police do, however, pass on information concerning police officers to the ICAC where that information is required by the ICAC for specific investigations. There is a tight security system within the ICAC to protect such records from any possible misuse or abuse. Such records are regularly screened to remove unwanted and irrelevant material from them.

The Administration believes that this practice of passing information to ICAC for specific investigations is not inconsistent with the Bill of Rights Ordinance.

Public assemblies and processions

9. MR ERIC LI asked: As the Public Order Ordinance provides that prior notice or application to the Police is required for the holding of public assemblies and processions, will the Government inform this Council whether these requirements conflict with the provision in the Bill of Rights Ordinance which safeguards residents' right of peaceful assembly; and if so, when the relevant legislative amendments will be introduced into this Council?

SECRETARY FOR SECURITY: Mr Deputy President, whether a particular provision in a law contravenes the Bill of Rights Ordinance is ultimately a matter for the courts to determine.

The Public Order Ordinance is now under review. The provisions of the Bill of Rights Ordinance will be taken into account in that review. We have not yet come to any conclusions.

Central and Wan Chai reclamation

10. DR SAMUEL WONG asked: With the formation of an embayment area for the Central and Wan Chai reclamation works, will the Government inform this Council what mitigation measures will be undertaken to ensure that the environmental impact on water and air will be kept to the minimum as a result of such embayment?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the Central and Wan Chai reclamation Phase I contract is scheduled to commence in November 1992. The following mitigation measures will be undertaken to minimize the environmental impact on water:

(a) as recommended by the Sewage Master Plan Study, work on a new sewer to supplement the existing sewer in Jubilee Street will start in August 1992;

(b) the Connaught Road Central trunk sewer will be de-silted to increase capacity;

(c) manhole inspections, aimed at identifying sewerage and drainage connexions which need to be re-directed, will be conducted; and

(d) stormwater outfalls, which carry considerable pollution as well as much of the cooling water discharged from nearby commercial buildings, will be extended to discharge outside the reclamation area.

Specifications for water pollution control have been included in the contract. These specifications include equipment types for dredging and disposing of mud, water quality monitoring and maximum pollutant levels. Should these specifications be breached, the contractor will be directed to undertake remedial measures.

Regarding air quality, the contract specifications provide for controls on dust from construction activities. These include restrictions on the storage of cement and the prohibition of concrete batching and rock crushing in the main works area. The requirement on the contractor to use marine sand as reclamation material and marine based reclamation equipment will also minimize the number of construction vehicles passing through Central District.

In addition, a focused environmental impact assessment is currently being carried out to examine the possible need for further measures to minimize environmental impact during and after construction of the Central Reclamation Phase I works. This assessment will be completed in August 1992 and submitted to Environmental Pollution Advisory Committee. Where necessary, recommendations from this Environment Impact Assessment will be included in environmental protection clauses in the contract tender document in the form of tender addenda or variation orders.

Open employment for the mildly mentally handicapped

11. MR LAU CHIN-SHEK asked: With regard to open employment arrangements for the mildly mentally handicapped after completion of nine years of free education, will the Government inform this Council of the following:

(a) whether the Hong Kong Government, as the largest employer in Hong Kong, has, in its recruitment policy, considered giving priority to the employment of suitable though mildly mentally handicapped persons, so as to set an example and encourage the local business sectors to employ such people;

(b) whether the Government has, before implementing the policy on importation of labour, considered exploring the potential labour pool of mildly mentally handicapped persons and encouraging the business community to place more of them in unskilled jobs;

(c) the number of cases of mentally handicapped persons seeking assistance from the Labour Department's Selective Placement Division in each of the past 3 years; of these, the respective numbers successfully placed in open employment; and

(d) whether the Government has reviewed the effectiveness of open employment arrangements made by the Selective Placement Division for the mentally handicapped; and whether additional services will be provided to help place such persons in open employment?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers to Mr LAU's questions, in the order in which they are asked, are as follows:

(a) The Government's policy on the employment of mildly mentally handicapped persons is in line with its general policy on employment of disabled persons in the Civil Service, which is to place the disabled in appropriate jobs within the Civil Service wherever possible. As with other candidates, mentally handicapped persons applying for appointment to the Civil Service have to comply with the stipulated entry requirements. If they are found suitable for appointment, they are given an appropriate degree of preference for appointment over other candidates. The Labour Department provides a free Selective Placement Service to mildly mentally handicapped

persons and refers suitable job seekers to the relevant government departments for job interviews.

(b) The Government is always aware of the availability of disabled persons as a source of labour supply. Staff of the Selective Placement Service visit employers regularly to advise them of the employability of mildly mentally handicapped persons and to make use of its service to employ such persons to fill their vacancies. Every year, the Selective Placement Service organizes a number of promotional activities to enhance the employment opportunities of disabled persons. Such activities include exhibitions, presentation of souvenirs to employers who employed the largest number of disabled employees and the publication of pamphlets and newsletters to keep the public aware of the potential labour force provided by the disabled population.

(c) The Selective Placement Service provides employment assistance to the mildly and moderately mentally handicapped. The number of registrations of such persons, referrals for job interviews and placements in employment for the years 1989 to 1991 are as follows:

| | 1989 | 1990 | 1991 |
|---|---|---|---|
| Registrations | 315 | 342 | 336 |
| Referrals | 421 | 345 | 279 |
| Placements | 227 | 206 | 175 |

(d) Since the establishment of the Selective Placement Division in 1980, the operation, policy and effectiveness of the service have been put under regular review. It has been found that the present system of placing disabled job seekers into open employment is fairly comprehensive and effective. Public consultation on the Green Paper on Rehabilitation entitled "Equal Opportunities and Full Participation : A Better Tomorrow for All" ended last month. A number of options for promoting the open employment of disabled persons, including the mildly mentally handicapped, have been suggested. The Labour Department will have regard to these options in its next regular review.

Rainstorm warning system

12. MR HENRY TANG asked: On the Rainstorm Warning System, will the Government inform this Council:

(a) the number of times in the past five years when rainfall reached 50 mm within an hour and 100 mm within two hours, and whether any of them occurred when typhoon signal number 8 or above was hoisted; and

(b) the reasons for not making it a rule to postpone all public examinations when the "red" warning is issued?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, the answers to Mr TANG's questions are as follows:

(a) During the past five years, there were seven occasions when rainfall over 10 telemetering raingauges in Hong Kong reached or exceeded 50 mm within an hour, and only one occasion when it reached or exceeded 100 mm within two hours. (See Footnote). None of these eight occasions occurred when typhoon signal number 8 or above was hoisted.

(b) Public examinations are run in Hong Kong by the Hong Kong Examinations Authority (HKEA), either in its own right or on behalf of overseas examinations bodies. The reasons for not making it a rule to postpone all public examinations when the Red Rainstorm Warning is issued are as follows:

(i) under the new Contingency Plan for Natural Disasters, the issue of a Red Rainstorm Warning by the Royal Observatory (RO) does not impose a requirement on relevant government departments/public authorities to close or postpone services automatically. Each department/authority must assess other important factors such as traffic conditions, transport availability and timing of the RO's announcement before deciding what action to take;

(ii) the scheduling of examinations is very carefully orchestrated to ensure absolute fairness and prevent cheating. Any postponement is undesirable and every effort is made to avoid it. This is particularly important for overseas examinations since their scheduling is co-ordinated with the timing of the same examination in other parts of the world so as to prevent cheating by, for example, passing questions

and answers to candidates in other countries by telephone or facsimile;

(iii) persons sitting for public examinations are usually at least 16 years old and better able to take care of themselves in adverse weather conditions than younger students, especially kindergarten and primary school children;

(iv) once underway, every effort must be made to bring an examination to its conclusion for reasons of security and fairness. Rescheduling the examination would require a completely new set of examination papers to be prepared. Again this is particularly difficult for overseas examinations.

For all these reasons, it is not practical or feasible for the HKEA to postpone examinations automatically upon the issue of a Red Rainstorm Warning. Nevertheless, when such a warning is issued prior to 7 am (the time at which question papers are released by the HKEA for distribution to examination centres) on the morning of an examination, the HKEA will give careful consideration to the feasibility of postponing the examination, taking all factors into account. Similarly, consideration will be given to postponing afternoon examinations when sufficient warning is given by the RO.

Note: Currently, the criterion for issuing the Red Rainstorm Warning is "Whenever 50 mm or more of rain have been received by 10 or more raingauges in Hong Kong within a 60-minute period". The criterion for issuing the Black Rainstorm Warning is "Whenever 100 mm or more of rain have been received by 10 or more rain gauges in Hong Kong within a 120-minute period".

Land sales revenue

13. MR GILBERT LEUNG asked: Will the Government inform this Council:

(a) in respect of the revenue from land sales, rates, stamp duty and property tax for the years 1989-90, 1990-91 and 1991-92, of the actual yield and the original estimates;

(b) of the revenue generated in 1991-92 by the additional 5.9 hectares of residential land granted by the Sino-British Land Commission;

(c) of the percentage rise in property prices (which have a direct bearing on the revenue from land sales) in 1991-92; and

(d) in view of the proceeds from land sales for the first two months of 1992-93 having reached $1,866.65 million, which amounts to over 20% of the estimated revenue ($8,630 million) from this source, whether the Administration would agree that the figure in the original forecast is too conservative and that it should be reassessed?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President,

(a) The information is set out in the Annex.

(b) The revenue realized from the sale of the additional 5.9 hectares of land was $2,499.2 million.

(c) Information available to the Rating and Valuation Department shows that property prices of domestic units, offices, retail premises and flatted factories on a territory-wide basis, increased by 50%, 15%, 35% and 15% respectively in 1991-92. The prices of pre-sold uncompleted properties are not included in this analysis.

(d) Since the timing for land sales is not spread evenly throughout the year and the premia received for different sites vary considerably, land sale proceeds for only the first two months of the financial year is unlikely to be an accurate guide to the full year total. It would therefore be premature to judge whether our revenue estimate is too "conservative". The Government will continue to monitor the land sale programme and will, in the normal course, prepare revised revenue estimates in the light of actual land sales proceeds.

Annex

| | 1989-90 | 1990-/91 | | 1991-92 | | |
|---|---|---|---|---|---|---|
| | Original estimate ($m) | Actual revenue ($m) | Original estimate ($m) | Actual revenue ($m) | Original estimate ($m) | Actual revenue |
| Land sales | 7,941 | 8,524 | 5,820 | 4,351 | 4,070 | 13,925 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Rates | 1,625 | 1,663 | 3,016 | 3,039 | 3,520 | 3,494 |
| Stamp duty | 4,670 | 5,464 | 5,400 | 5,939 | 5,299 | 9,569 |
| Property tax | 940 | 953 | 1,040 | 1,138 | 1,270 | 1,230 |

Crown Lands Resumption Ordinance

14. MR LAU WONG-FAT asked: In view of the number of disputes arising from the frequent application of the Crown Lands Resumption Ordinance by the Government recently to resume private land and the criticisms that powers conferred on the Government by that Ordinance are excessive, hence causing unfairness to landowners, will the Government inform this Council:

(a) how many times the Ordinance has been invoked in the last 3 years for land resumption; why it was necessary to invoke the Ordinance; what specific purposes these lands were resumed for; and

(b) whether there are any plans to review this Ordinance which has been in place for some time in order to bring it in line with the developments of society; if so, what the specific plans are; if not, why not?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy President, the Crown Lands Resumption Ordinance is used to resume private land for a public purpose. The Ordinance was invoked on 56 occasions in the financial years 1989-90, 1990-91 and 1991-92. The specific purposes for the projects are set out below.

Summary for New Territories Projects

| Purpose | No. of projects |
|---|---|
| Drainage/sewerage | 15 |
| Village expansion/resite area | 9 |
| Pylon construction | 5 |

| | |
|---|---|
| New town development | 4 |
| Water supplies/mains laying | 2 |
| Borrow area | 2 |
| Landfill | 2 |
| Rural/local centre | 2 |
| Others (new airport, hospital, stream improvement, relocation of shipyards, village landscape areas, amenity facilities) | 6 |
| | 47 |

| | |
|---|---|
| Summary for Urban Projects | |
| Urban Council project | 4 |
| Urban renewal/improvement | 3 |
| Implementation of Outline Zoning Plan | 2 |
| | 9 |
| Total Number | 56 |

The above does not include resumptions under the Roads (Works, Use and Compensation) Ordinance.

The report of the Special Committee on Compensation and Betterment, which has been produced in connection with the current review of the Town Planning Ordinance, includes a recommendation that the Crown Lands Resumption Ordinance should also be reviewed. The Administration agrees that some parts of the Ordinance may need to be brought up to date. A review is therefore likely to be undertaken after work on

the Town Planning Ordinance has been completed. Any such review will take account of the fact that the present mixture of statutory and ex-gratia arrangements for resumption compensation generally works well, as witnessed by the small number of cases going before the Lands Tribunal.

Briefing out of prosecution

15. DR LEONG CHE-HUNG asked: Will the Attorney General advise this Council:

(a) of the reasons for instructing lawyers in private practice to conduct the prosecution of a barrister and a solicitor in the High Court Criminal Case No. 280 of 1991, as opposed to the Legal Department handling the prosecution; and

(b) the costs entailed in briefing out this prosecution.

ATTORNEY GENERAL: Mr Deputy President,

(a) The principal witness giving evidence for the Crown in that particular case was a former senior officer of the Legal Department while a number of other Crown witnesses were officers of the Department who had in the past worked under the principal witness. The independence and impartiality of the prosecution could have been put in doubt if it had been handled by counsel of the Department. It was therefore necessary to instruct lawyers in private practice to conduct the prosecution.

(b) The total cost entailed in briefing out the prosecution of this case, which lasted for 161 hearing days, was $22.9 million.

Localization of the Civil Service

16. DR LEONG CHE-HUNG asked: Given the Government's commitment to the localization of the Civil Service, will the Secretary for the Civil Service advise this Council of the reasons for the continued employment of 60 Chief/Senior Engineers and Chief/Senior Geotechnical Engineers in the Civil Engineering Department, on overseas agreement terms?

SECRETARY FOR THE CIVIL SERVICE: Mr Deputy President, the Government is fully committed to implementing the policy on localization. Preference is given to qualified and suitable local candidates on recruitment. Appointments on overseas terms are made only when suitable local candidates are not available in sufficient numbers. All appointments are subject to the advice of the Public Service Commission, which has a role in ensuring that the claims of local candidates receive full consideration. Since 28 March 1985, overseas officers have been appointed on agreement terms only. Renewal of agreement is subject to, inter alia, operational need, whether a suitable local replacement is available, and whether any promotion blockage would be caused to local officers. These criteria are clearly laid down in Civil Service Regulations. The advice of the Public Service Commission is sought on each and every case.

As regards the Engineer grade under the central authority of Director of Civil Engineering, there are altogether (as at 1 July 1992) 226 officers in the Chief/Senior ranks, serving in six main departments (see Annex). Forty-six of these officers are on overseas agreement terms, which represents 20% of the total strength in those ranks. These overseas agreement officers were appointed because of proven difficulties in recruiting suitable qualified local candidates. It should be noted that, with the implementation of PADS projects, the need for trained Engineers has increased. Nevertheless, we are adhering to the criteria laid down in Civil Service Regulations in examining the need for renewal of contracts on a case by case basis.

As regards the Geotechnical Engineer grade, there are altogether (as at 1 July 1992) 42 officers in the Civil Engineering Department and Architectural Services Department in the Chief/Senior ranks. Of these, 13 are on overseas agreement terms, representing 31% of the strength in those ranks. There has always been great difficulty in recruiting suitable local candidates with a geotechnical background and, with the agreement of Public Service Commission, the department has had to recruit overseas candidates for the grade. In view of the inadequate supply of local candidates and an increase in wastage, at present overseas officers' agreements are being renewed in order to retain the necessary expertise and experience, and thus provide a satisfactory standard of service to the public. But again each case has to be examined under the relevant Civil Service Regulations.

Annex

List of departments with large Engineer grade establishments under the central authority of Director of Civil Engineering

Civil Engineering Department
Drainage Services Department
Highways Department
Territory Development Department
Transport Department
Works Branch/NAPCO

First-year first-degree places

17. MR MICHAEL HO asked: In view of Government's decision to reduce the planning target of first-year first-degree places in tertiary institutions by 500 by 1994-95 and the present acute shortage of manpower in the nursing profession, will the Administration inform this Council:

(a) whether the number of first-year places originally included in the 1992-93 expansion programme of the Nursing Degree Course in the Hong Kong Polytechnic will be reduced and, if so, what the reasons for its reduction are and what its effect on the student intake of the course for 1993-94 and thereafter will be; and

(b) whether the existing number of first-year places of this course, which was determined in 1990, will also be affected?

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, on 3 June 1992, I replied in this Council to a question asked by Mr TIK Chi-yuen regarding the Government's decision to adopt a revised planning target of 14 500 first-year, first-degree (FYFD) places for 1994-95. I advised then that the details of how the new target should be phased in over the next three academic years were being discussed between the University and Polytechnic Grants Committee (UPGC) and the tertiary education institutions, in the context of the latter's revised academic development proposals for the 1992-95 triennium.

The Hong Kong Polytechnic has incorporated in its revised academic proposals for 1992-95 some changes to the intakes originally planned for first-degree courses in certain programmes. These include the full-time BSc course in Nursing in respect

of which a reduction of 10 places in 1992-93 is proposed.

The revised academic proposals put forward by the Hong Kong Polytechnic and other institutions are being examined by the UPGC. On Nursing courses, I have advised the Committee that the Secretary for Health and Welfare and I are firmly of the opinion that, in the light of improvements being introduced in the public health and hospital services, there should not be any reduction in student intake. I have been assured that the Committee will take this into account when considering course proposals in Nursing.

As regards the second part of Mr HO's question, the revised planning target has no effect on the number of first-year first-degree Nursing places offered in the 1991-92 academic year.

Unlawful assembly

18. MR JAMES TO asked: Section 8(d) of the Summary Offences Ordinance states that it is an offence for a person to assemble together with other persons in the night time without lawful excuse; or seeing any such illegal assembly, or knowing or having reason to suspect that such assembly has taken place or is about to take place, not to give immediate notice thereof to the nearest police station or to a police officer. Will the Government inform this Council:

(a) whether there have been arrests or prosecutions made under this section;

(b) if so, what the details of these cases are and if there are cases whether prosecutions were not initiated after arrests had been made, what the reasons for not doing so are; and

(c) whether there is action in hand for revising this section?

SECRETARY FOR SECURITY: Mr Deputy President, the present section 8(d) of the Summary Offences Ordinance was enacted in 1932. As for the details of those cases prosecuted,

I am unable to provide them at this stage as it will involve extensive research into all the individual case files. The police computer system does not keep statistics for this relatively minor offence. To obtain details of past cases would entail extensive and very time-consuming scrutiny of manual records going back many years. There may have been arrests and prosecutions under this section in the past, but I believe there have not been any in recent years.

We are intending to review the provisions of the Summary Offences Ordinance as a whole. Some of the provisions are outdated and in need of change. But this review will take some time, and we have not yet reached any conclusions.

Bail jumping

19. DR CONRAD LAM asked: Will the Government inform this Council:

(a) of the number of defendants who have jumped bail in each of the past five years, together with a breakdown of the various offences they involved; and

(b) whether the enactment of the Bill of Rights (BOR) has any effect on the granting of court bail; and whether the number of jump bail cases has increased since its enactment?

SECRETARY FOR SECURITY: Mr Deputy President, an arrested person may be granted bail by a court at different stages of the prosecution process. We do not have readily available statistics of the number of defendants who have jumped bail at these different stages in each of the past five years; such statistics could only be produced through a very laborious and time-consuming retrieval of individual case records. We do, however, have statistics in relation to persons who have been sentenced for an offence during the past three years. These statistics are at Annex A.

Article 5(3) of the Bill of Rights enshrines in legislative form what has always been the general principle in granting bail, that is, that since accused persons are to be presumed innocent until proved guilty, they should be released pending trial, subject to appropriate conditions, unless there are valid reasons for not doing so. Annex B shows the number of sentenced defendants who have jumped bail during the three-month period immediately before the enactment of the Bill of Rights

Ordinance in June 1991 and for the six-month period thereafter. From the limited statistics available, it is not possible to reach any firm conclusions as to what effect, if any, the Bill of Rights has on the granting of bail or on the number of persons jumping bail.

Annex A

Statistics on persons jumping bail (1989-1991)

| Year | 1989 (Jan -- Sept) | | 1990 (Apr -- Dec) | | 1991 | |
|---|---|---|---|---|---|---|
| Type of crime | A | B | A | B | A | B |
| Violent crime | 6 486 | 94 | 4 887 | 60 | 4 629 | 53 |
| Preventive crime | 2 575 | 61 | 2 177 | 67 | 1 931 | 39 |
| Other major crime | 22 818 | 383 | 16 327 | 361 | 15 567 | 276 |
| Minor crime | 16 313 | 141 | 13 889 | 144 | 15 786 | 149 |
| Total | 48 192 | 679 | 37 280 | 632 | 37 913 | 517 |

Notes:
1. Column A: Total number of persons sentenced for the offence during the period.

2. Column B: Total number of persons who have been sentenced for the offence and who have jumped bail before the conclusion of their respective proceedings.

3. The recording of statistics from October 1990 to March 1991 was temporarily suspended for review of the statistical system.

Annex B

Statistics on persons jumping bail in 1991 (Apr -- Dec)

| Period | Apr -- June | | July -- Sept | | Oct -- Dec | |
|---|---|---|---|---|---|---|
| Type of crime | A | B | A | B | A | B |
| Violent crime | 1 465 | 21 | 1 556 | 13 | 1 608 | 19 |
| Preventive crime | 724 | 14 | 638 | 11 | 569 | 14 |
| Other major crime | 5 229 | 77 | 4 976 | 86 | 5 362 | 113 |
| Minor crime | 4 989 | 45 | 5 436 | 45 | 5 361 | 59 |
| Total | 12 407 | 157 | 12 606 | 155 | 12 900 | 205 |

Notes:

1. Column A: Total number of persons sentenced for the offence during the period.

2. Column B: Total number of persons who have been sentenced for the offence and who have jumped bail before the conclusion of their respective proceedings.

3. The Bill of Rights Ordinance was enacted on 8 June 1991.

Legislation on fund raising

20. MRS PEGGY LAM asked: Will the Government inform this Council whether there is at present legislation to monitor fund-raising activities for charity purposes including sales or similar activities launched through the mass media, to ensure that all money raised will be used for charity; and when there is an actual need for deductions from charitable donations in order to meet expenses for arranging these activities, to set an upper limit for deductions, so as to avoid a serious imbalance between these deductions and the proceeds for charities; and if not, whether the Government will consider enacting legislation to monitor such fund-raising activities, so as to prevent any abuse of charitable donations to meet other expenses, and to ensure that the donors' good intentions can be fulfilled?

SECRETARY FOR HEALTH AND WELFARE: Mr Deputy President, fund-raising activities, for

charitable or other purposes, touch upon the policy purview of a number of branches of Government.

Existing legislation to monitor fund-raising activities for charitable purposes in public places is provided through section 4(17) of the Summary Offences Ordinance (Chapter 228). It authorizes the Director of Social Welfare to issue permits to organizations organizing fund-raising activities such as flag-days. Permit-holders can deduct from the gross proceeds expenses necessary for the arrangement of the fund-raising activity. In this connection, there is an administrative provision in the case of flag-days to set the upper limit for such deduction at 10% of total proceeds. Permit-holders are also required to submit an auditor's report within three months after the event.

There is no legislation, however, to regulate fund-raising activities for charitable purposes in the mass media or to stipulate a limit on expenses incurred for such activities. It is generally known that fund-raising events such as spectaculars and extravaganzas are staged at considerable production cost met from proceeds raised.

There is no evidence of abuse, fraud or dishonesty by fund-raisers. Nevertheless, there may be a case for requiring fund-raisers to keep and publish proper accounts, to have the accounts audited, to lodge copies with the Government and to make copies available for inspection by the public.

Statement

Exchange Fund

FINANCIAL SECRETARY: Mr Deputy President, I would like to make an important announcement concerning the Exchange Fund. As Controller of the Fund, and after consulting the Exchange Fund Advisory Committee, I have decided to publish later today a balance sheet showing the overall size of the Fund, the amount of foreign currency reserves held and the accumulated earnings. I intend to publish such a balance sheet every year from now onwards.

In reaching my decision to break with the tradition of confidentiality on this matter, I have had in mind five main considerations.

First, and very much my point of departure, I believe that public servants owe the community a duty of frankness and openness on important matters of public policy. For many years we have operated a policy of confidentiality on the Exchange Fund. We did so for good reasons. But the circumstances have changed and I am convinced that the time is now right to change this policy.

Second, Hong Kong's monetary framework has been strengthened significantly in recent years. We are now less vulnerable to speculative pressures on the exchange rate.

Third, by publishing an annual balance sheet setting out the size of the Fund and its accumulated earnings, we will be able to demonstrate unambiguously Hong Kong's impressive financial strength.

Fourth, disclosure will provide important information for credit rating agencies and prospective lenders for our infrastructural projects to enable them to make a realistic assessment of Hong Kong's credit-worthiness.

Fifth, disclosure of foreign currency reserves is very much the established practice in the major market economies. Indeed, the International Monetary Fund has recommended that Hong Kong take this important step.

These are the reasons for my decision. And now I would like to explain the position of the Fund at the end of 1991. The balance sheet will show that at 31 December 1991 the Exchange Fund stood at HK$236 billion. I would like to highlight two particular figures. The first is that the accumulated earnings of the Fund amount to HK$99 billion. The second is that the total foreign currency assets in the Fund amount to US$29 billion.

I think Members will agree that these are very substantial figures. Let me put the foreign currency figure in particular into its proper perspective. At about US$29 billion, our foreign currency holdings are the 12th highest in the world, even though on a GDP basis Hong Kong would be ranked only 34th. Another way of putting it is to compare this figure with those of other economies on a per capita basis. Our per capita foreign currency holdings stand at US$5,000. This compares with an average for the OECD countries of only US$740.

The Fund's accumulated earnings of HK$99 billion should not be confused with the fiscal reserves which were approximately $76 billion at 31 December 1991. It is only the fiscal reserves that are available to be drawn upon, prudently, to meet public expenditure requirements. The Fund's role is to safeguard our exchange rate stability.

Nor should either the Exchange Fund or the fiscal reserves be confused with the Land Fund, which receives the share of land sale revenue set aside for the SAR Government. At the end of 1991, the land revenue transferred to this Fund totalled $25 billion excluding interest earned.

To make comparisons easier, I am publishing the figures for the period 1986-90 as well as the figures for 1991. The 1992 figures will be published at about this time next year, that is, as soon as the audited accounts become available. Later this afternoon, the Director of the Office of the Exchange Fund will be holding a press briefing to explain the figures and to answer questions.

EXCHANGE FUNG BALANCE SHEET
AS AT END OF YEAR

(HKD Million)

| | Note | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 |
|---|---|---|---|---|---|---|---|
| ASSETS | | | | | | | |
| Foreign Currency Assets | 1 | 84,715 | 113,089 | 127,089 | 149,152 | 192,323 | 225,333 |
| Hong Kong Dollar Assets | | 3,876 | 5,746 | 5,962 | 9,625 | 3,874 | 10,788 |
| | | 88,591 | 118,835 | 133,051 | 158,777 | 196,197 | 236,121 |
| LIABILITIES | | | | | | | |
| Certificates of Indebtedness | 2 | 20,531 | 26,831 | 31,731 | 37,191 | 40,791 | 46,410 |
| Transfers of Fiscal Reserves | 3 | 23,359 | 32,557 | 38,269 | 52,546 | 63,226 | 69,802 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Coins in Circulation | | 1,441 | 1,470 | 1,890 | 2,012 | 2,003 | 2,299 | |
| Exchange Fund Bills | - | - | - | - | 6,671 | 13,624 | | |
| Other Liabilities | 4 | 4,103 | 4,453 | 2,554 | 1,603 | 391 | 4,834 | |
| Balance of Banking System | 5 | - | - | 860 | 978 | 480 | 500 | |
| | | 49,434 | 65,311 | 75,304 | 94,330 | 113,562 | 137,469 | |
| ACCUMULATED EARNINGS | | 39,157 | 53,524 | 57,747 | 64,447 | 82,635 | 98,652 | |

NOTES ON THE ACCOUNTS

1. (a) Investments

The fund is invested in interest bearing deposits with banks in Hong Kong and overseas and in a variety of financial instruments, including bonds, notes and treasury bills. Only instruments which have good marketability and which are issued by or guaranteed by governments with high credit standing are acquired.

(b) Foreign currency assets distribution

A large proportion of the Fund's foreign currency assets are held in US dollars because this is the intervention currency and there is no exchange risk involved, given that the Hong Kong dollar is linked to the US dollar. Apart from the US dollar, the Fund also holds assets denominated in other major foreign currencies. They are the Canadian dollar, deutschemark, Japanese yen, pound sterling, Swiss franc, Dutch guilder, French franc and the ECU.

(c) Location of assets

The assets are held in deposit, trustee and safe-keeping accounts with banks, central banks and custodial organizations situated in Hong Kong and other major financial centres.

(d) Valuation of assets

Treasury bills and other short-term money market instruments are valued at cost. Bonds and notes are valued at mid-market prices as at the close of business on the last business day of each accounting period.

(e) Translation of foreign currency assets

US dollar (USD) assets are translated into Hong Kong dollars (HKD) at an exchange rate of USD1=HKD7.80. Assets in other foreign currencies are translated into Hong Kong dollars based on US dollar middle market cross rates in New York at the close of business on the last business day of the accounting period.

2. As backing for their bank note issues, the two note-issuing banks are required to hold non-interest bearing certificates of indebtedness issued by the Exchange Fund. Since 17 October 1983 these certificates have been issued to or reclaimed fro the two banks against payment in US dollars at a fixed rate of HKD7.80=USD1.00.

3. This is that proportion of the fiscal reserves which has been transferred from the General Revenue Account, Capital Investment Fund, Loan Fund and Capital Works Reserve Fund to the Exchange Fund on an interest earning basis.

4. Other liabilities comprise expenses accrued at the year end, in the main interest due on fiscal reserve transfers, contingency reserves for bank rescue operations and any other borrowings.

5. In accordance with the Accounting Arrangements introduced in July 1988. The Hongkong and Shanghai Banking Corporation Limited, as the Management Bank of the Clearing House of the Hong Kong Association of Banks, is required to maintain a Clearing Account with the Exchange Fund. The balance in the Account, which represents the level of liquidity in the interbank market, can only be altered by the Fund. The Accounting Arrangements enable the Fund to maintain exchange rate stability more effectively by influencing the level of interbank liquidity through money market operations.

Motion

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER moved the following motion:

"That the Factories and Industrial Undertakings (Noise at Work) Regulation, made by the Commissioner for Labour on 23 June 1992, be approved."

He said: Mr Deputy President, I move the resolution standing in my name on the Order Paper.

Section 7(1) of the Factories and Industrial Undertakings Ordinance empowers the Commissioner for Labour to make regulations to ensure the safety and health of people in industrial undertakings. The Factories and Industrial Undertakings (Noise at Work) Regulation was made by the Commissioner for Labour on 23 June 1992. In accordance with section 7(3) of the principal Ordinance, I now move that the Regulation be approved by this Council.

The purpose of the Regulation is to provide employees with more effective protection against noise hazards in industrial undertakings. This is necessary because, notwithstanding regulation 21A of the Factories and Industrial Undertakings Regulations which provides for protection from sound, about 63 000 employees in industrial undertakings are still exposed to a noise level of 90 dB(A) or above. This situation is highly undesirable.

A major weakness of regulation 21A is the absence in most cases of a mechanism for establishing whether exposure falls within the stipulated limit, namely continuous exposure for eight hours to a sound level of 90 dB(A) or its equivalent. Protective measures are therefore seldom taken by either the proprietor or the employee. It is also difficult to prove in a prosecution that an employee has been excessively exposed to sound. Establishing evidence requires meticulous measurement over many hours, which is time-consuming and not cost-effective. So far, only cases involving extremely high noise levels have been successfully prosecuted.

The new Regulation before Members, which has been endorsed by the Labour Advisory Board, imposes requirements on proprietors of industrial undertakings to conduct noise level assessments and demarcate areas affected by excessive noise as ear protection zones. Where demarcation is impracticable, for example, on a construction site where noisy machines are being moved around quite frequently, the Regulation requires proprietors to label the noisy machines to indicate the distance within which ear protectors must be worn. Demarcation and labelling will make

proprietors and employees more conscious of the need for protective measures and also help the Labour Department enforce the law.

The new Regulation divides noise hazards into three different action levels in line with similar classifications used in the United Kingdom Noise at Work Regulations 1989. It also spells out the duties of proprietors and employees at the respective action levels. The major requirements are that:

(a) at the first action level but before the second action level, a proprietor has to provide a suitable approved ear protector to an employee upon request, except where the wearing of ear protectors would be likely to cause a risk to the safety of the employee or to any other person;

(b) at the second action level or above, or at the peak action level, proprietors must provide and employees must wear approved ear protectors, and the area in any industrial undertaking thus affected must be demarcated as an ear protection zone; and

(c) where demarcation is impracticable, as in the case of a construction site, all noisy machines must be labelled. Employees attending to these noisy machines must wear ear protectors.

Provision is made for exemption by the Commissioner for Labour where, despite action by a proprietor, it has not been practicable for him to comply with the requirements of the new Regulation. In all other cases, however, contravention of the new Regulation will incur a maximum penalty of $30,000 for employers and $10,000 for employees.

To give proprietors of industrial undertakings ample time for compliance, we propose that the new Regulation should come into operation 12 months after approval by this Council. Regulation 21A of the Factories and Industrial Undertakings Regulations will be repealed at the same time.

Mr Deputy President, I wish to take this opportunity to thank the ad hoc group of this Council, which was formed under the convenorship of Mr TAM Yiu-chung to scrutinize the new Regulation, for its support of the resolution. The ad hoc group has made some useful suggestions during discussion with the Administration. These are being followed up with expedition. In particular, we are embarking on an overall

review of the various levels of penalty under the Factories and Industrial Undertakings Ordinance to see whether there is a need to increase the penalty levels. We aim to complete this review before the Regulation is brought into operation in a year's time.

Another review will be undertaken six months after the Regulation has come into operation to ascertain whether there are any enforcement and prosecution difficulties which may need to be tackled.

In addition, the Labour Department will take steps to publicize the Regulation and to enforce its provisions. We hope these measures will ensure that the Regulation will achieve the aim of providing a safe and healthy working environment to employees in industrial undertakings.

Mr Deputy President, I beg to move.

Question on the motion proposed.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, a 15-member ad hoc group was set up in this Council on 26 June 1992 to scrutinize the resolution regarding the Factories and Industrial Undertakings (Noise at Work) Regulation. The ad hoc group has since met three times, including on one occasion meeting with representatives of the Government.

The ad hoc group welcomes the adoption by the Government of this new Regulation to replace Regulation 21A of the Factory and Industrial Undertakings Regulations so that industrial workers can enjoy more effective protection. According to data provided by the Government, there are 63 000 workers in Hong Kong who are or may be exposed to noise approaching dangerous levels in their places of work. These workers are employed in seven industries, namely, shipbuilding, textile, building and construction, metal manufacturing, paper and paper products, wooden products and wooden furniture, and clock manufacturing. Given the large number of workers involved, protective measures should be in place to make sure that the workers are given appropriate protection insofar as their hearing is concerned. The ad hoc group hopes that the new Regulation, and the new measures and arrangements which go with it, will enable employers to understand where and when to provide the protective measures and assist the authorities concerned to overcome problems of enforcing its

provisions.

Members of the ad hoc group took the view, while they were scrutinizing the Regulation, that in order to enforce the noise protection provisions, we need to have an adequate supply of fully qualified people who can carry out the work of noise level assessment. The Government has already promised the ad hoc group that courses on noise and percussion, occupational and environmental hygiene are offered in local as well as overseas institutes of higher learning and that expertise in this field should not be hard to find. In addition, the Occupational Safety and Health Council will also organize training courses for employees of industrial undertakings who are concerned with this issue so that they will be able to acquire the professional knowledge required for noise assessment. The Government has also made the clarification that the Regulation does not require that industrial undertakings should have their own staff to take care of the assessment work. Small industrial undertakings may therefore make use of the service provided by consultancy firms. Noise assessment should not translate into a huge financial burden to the employers.

Some members of the ad hoc group considered that, compared with the fine of $10,000 to which an employee is liable for breaching the Regulation, the $30,000 fine for the employer for the same offence is too low. However, the ad hoc group also noted that, since the fine has been fixed after taking into account the fines for other offences covered under the Factories and Industrial Undertakings Ordinance, it is quite inappropriate to increase singularly the fine for just one particular offence. In addition, the Government has also indicated that a full review is now underway to assess the fine levels of the various offences under the Ordinance. Views of the ad hoc group will also be taken into consideration in the review exercise. The Government has already undertaken that the review will be completed before the Regulation takes effect.

The ad hoc group further noted that the Government has adopted the approach of formulating the Regulation in such as way that it will rely more on self-regulation and less on arbitrary requirements. The purpose is to encourage employers and workers on the work floor to take an active part in maintaining environmental hygiene and safety of the workplace, without having to rely overly on the enforcing agencies. The ad hoc group welcomes this approach. However, it is also aware that this approach may also lead to problems in terms of deciding whether or not to prosecute. The Government has officially assured members of the ad hoc group that suitable administrative measures will be used in terms of enforcing the Regulation and in any

case a review will be conducted six months after the Regulation has come into operation to ascertain whether there are any enforcement difficulties.

The ad hoc group agrees with the relevant proposal and considers that the Regulation should take effect one year after it has been passed by the Legislative Council so that the Government will have ample time to engage in the promotion and education effort which may be required and so that the employers may be better prepared to meet the new requirements.

The ad hoc group considers that in order for the Regulation to be effectively enforced the relevant parties should fully understand and comply with it for only then will the provisions of the Regulation acquire real teeth. In this regard, while the ad hoc group approves the Regulation, it also urges the Government to step up publicity and promotion so that provisions of the Regulation will be properly enforced to achieve the goal of providing a safe and healthy place for our workers.

Meanwhile, the ad hoc group has also received representations from two labour groups and two workers' unions. These organizations consider that the existing provision regarding the demarcation of ear protection areas is not adequate. They want to have more specific legal provisions to require employers to reduce noise to the lowest level. In addition, they also consider that in order to have proper provisions for noise assessment, employees should be entitled, for example, to ask their employers to conduct a noise assessment. They also request that employees should be given a regular hearing test. The ad hoc group hopes that the Government will consider these views seriously and that it will expeditiously make appropriate improvements in respect of administrative measures and regulations.

Mr Deputy President, I have given above a work report of the ad hoc group in my capacity as its convenor. I also wish to present my personal opinions as follows:

I totally support the objectives of the Regulation. However, given the short time frame in which the Regulation has to be presented to the Legislative Council for endorsement, and also given the desire of ad hoc group for it to be passed within the current term, the scrutiny of the various provisions has been done in a rather hasty manner and I actually find that rather regrettable.

Regarding the Regulation itself, it has the limitation that no effective measure is in place to make sure that employers will reduce noise in the workplace to its

lowest level: The demarcation of ear protection zones is apparently more in the nature of a palliative. In this regard, the Government should be aware of these limitations and formulate measures to remedy the situation. In addition, codes of practices should be devised for the noise-prone industries so that employers will be required to conduct regular examinations and repair works on the noise creating machinery; employers should also be responsible for making arrangements so workers who are exposed to noise at work can take shifts for rest.

Meanwhile, the Government should step up prosecution against employers found breaching the Regulation for deterrent effect. I welcome the approach which the Government has indicated that it would take in terms of relying more on self-regulation than arbitrary requirements in the fleshing out of the Regulation. However, I think that effective self-regulation requires that employees should have the opportunity to participate and the power to monitor the situation. In this regard, a set of complementing measures is required. For example, an occupational safety board with statutory powers should be set up to monitor the enforcement of the safety measures.

Mr Deputy President, although I still think that the Regulation still leaves room for improvement, I am prepared to pass it in order not to cause delay.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, I support the Factories and Industrial Undertakings (Noise at Work) Regulation. During the debate on industrial safety on 20 May, I suggested to the Government that rather than having Factory Inspectors monitoring industrial safety, we should borrow the spirit of the United Kingdom's Poisonous Substances Control Act by requiring employers to submit to the Government experts reports on the industrial health situation of their factory premises. This will make it very easy for the Government to identify problems which require the factories' attention. It is the employers' responsibility to improve the health situation of their factories in order to meet the industrial safety standards. The employees will then also be aware of the risks to which they are exposed to at work and the necessary precautions to be taken. I am delighted that the Regulation tabled for passing today has adopted the principle mentioned above. This approach can save government manpower dedicated to conducting monitoring work and improve industrial safety as well. I hope that the Government would in future adopt the same principle for other factories and industrial undertakings, especially those which make use of potentially hazardous materials and articles such as chemicals,

laser devices and microwave ovens. Proprietors of these factories should be required to submit an inspection report compiled by experts on the industrial safety situation of their factories. On the basis of this report, proprietors should put in place safety precautions for their employees.

On the other hand, provision is made in the Regulation for exemption by the Commissioner for Labour where, despite action by a proprietor, it has not been practicable for him to comply with the requirements of the new Regulation. I hope the Government could take note of the fact that very often employers lack the will rather than the ability to comply with the requirements. The Government should set a good example in protecting industrial safety. Many old vessels of the Marine Department, as far as I know, still use the bell as a means of communication. The noise level in these circumstances is very high. In order to hear the bell, crews of these vessels choose not to wear ear protectors. The Marine Department can in fact make use of an electronic signalling system for communication so as to protect the hearing of its workers. So, I hope that the Department can employ alternative signalling system on these vessels in order to protect the hearing of their crews, rather than applying for exemption from the Commissioner for Labour from complying with the provisions of this new Regulation.

Moreover, I have to point out some inadequacies of this Regulation. In the absence of provisions by this Regulation requiring workers of noisy working environments to undergo a pre-employment hearing test and to do so on a regular basis after taking up the employment, it is therefore practically impossible to determine the actual effects of the Regulation and the extent to which employers and employees have been complying with the respective requirements. Nor is there stipulation in the Regulation on the standards to which ear protectors should satisfy. I understand that many of the ear protectors available on the market can hardly effect any protection to their wearers. The United Democrats of Hong Kong wish the Government could introduce legislation in these two respects as soon as possible.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, the problem of industrial noise, which has been affecting some 500 000 workers in Hong Kong, is finally given its due attention by the Government today. Legislation is introduced to control noise at work, but its emphasis is still laid on the protection of hearing, requiring employees to wear ear protectors. If the Regulation is passed, there will be enforcement difficulties especially where the Regulation emphasizes that workers will be penalized if they fail to comply with the requirement of wearing ear protectors.

There is no doubt that the responsibility for the generation of noise, identifying the source of noise and reducing noise levels is shifted from employers to employees.

This piece of legislation on noise spanned less than three weeks from its being first submitted to this Council to being tabled for approval today. The time allowed for scrutiny of this Regulation is shorter than that of other legislative amendments, despite the former's far greater impact. The stance of the United Democrats of Hong Kong (UDHK) on today's motion is that I would support the passing of this Regulation only if the Secretary for Education and Manpower makes a clear commitment to the following five requirements in his speech later, lest I would vote against the motion.

(1) Employers should control the source of noise and keep the noise level to the minimum. Specific measures include putting an end to the use of noisy machines, removing noisy articles from places of work and reducing the length of continuous exposure to noise;

(2) To conduct pre-employment and regular hearing tests for workers;

(3) To establish a strict registration system for noise level assessment personnel, whereby these assessors are required to complete a polytechnic diploma course in noise vibrations or similar courses;

(4) Workers and their representatives are entitled to request their employers to measure the level of noise; and

(5) Legislative provisions should be made regarding the safety standard of the hearing protection equipment.

Mr Deputy President, these are my remarks. Thank you.

MISS EMILY LAU (in Cantonese): Mr Deputy President, like the colleagues who spoke before me, I find it regretful the way in which the Government handled this piece of legislation. The Regulation was submitted to this Council for scrutiny within such a short time and in such a hasty manner; we have found it impossible to have detailed studies and consultation with the various trade unions.

The question of industrial safety has long been neglected by the Government, thus

Hong Kong's legislation in this area has lagged far behind that of its sovereign state -- the United Kingdom. And the statutory provisions for the protection of workers' hearing border on non-existence. The Government has told us that there are 63 000 employees in Hong Kong who work in environments which have a high noise level of 90dB(A) or above. However, the union representatives who petitioned the ad hoc group yesterday refuted that the government figure had underestimated the severity of the whole problem. Just now, the Honourable TAM Yiu-chung mentioned that the Government had listed seven trades only. Obviously there are other trades which have not been covered by the Government. Many workers therefore are not looked after by the Government at all.

Mr Deputy President, the new Regulation requires that employers must conduct noise level assessments at places of work and demarcate ear protection zones. These assessments have to be conducted by the so-called qualified personnel, but the Regulation fails to specify the qualifications of these people. The union representatives we interviewed yesterday found this approach by the Government somewhat trifling, despite the Government's claim that the employer is to be held responsible eventually, that is, whoever conducts the assessments, the ultimate decision lies with the Government. However, I feel that this arrangement is far from being scientific and will certainly give rise to numerous arguments and controversies in future. Just as the Honourable LAU Chin-shek has mentioned earlier, the Regulation fails to stipulate that workers have the right to request the Government to conduct noise level assessments at these places of work. During discussions of the ad hoc group, we questioned the Administration about this issue. The Government's response was that workers could do so. But I hope that specific provisions could be made in the Regulation for this particular right of the workers and unions.

Mr Deputy President, the union representatives also conveyed to us yesterday their worry over the lack of manpower in the Labour Department to enforce this new Regulation. I hope that clear and specific commitment could be made by the Administration in its reply later. The union representatives also pointed out that the wearing of ear plugs or ear protectors were made impracticable by some working environments as the absence of sound could make them vulnerable to some other risks. They hoped that under such circumstances the Government should instruct employers to take other precautions such as removing noisy machines from their places of work. In fact, Mr Deputy President, the union representatives said the essential spirit of this Regulation was to control the hearing of workers rather than industrial noise.

I find it pretty sarcastic. I share their view. As to the use of ear protectors as a means of protection, Mr Deputy President, the unions have expressed the wish that the Government would require employers to provide regular and proper maintenance for these protectors. Moreover, they also hoped that employers would be required to conduct regular hearing tests for workers so that remedial actions could be taken if hearing difficulties were identified.

Mr Deputy President, I find that the $10,000 fine for non-compliance on the part of workers under this Regulation is too high as indeed they will have been the victims. The punishment is too stringent if they were to be fined $10,000 when they had already lost their hearing at the same time. On the contrary, the $30,000 fine for non-compliance by employers is too lenient. Although the Government has explained that a comprehensive study is being conducted on the penalty code, I wish it could make a serious commitment to raising substantially the penalty before deterrent effect could be achieved in this respect.

MR LEE WING-TAT (in Cantonese): Mr Deputy President, the Factories and Industrial Undertakings (Noise at Work) Regulation tabled before us today may give a certain degree of protection to workers affected by noise. However, the biggest problem with the Regulation itself is its failure to require employers to abate the source of noise. Measures which may reduce the noise level include requiring factory proprietors to replace noisy machines with less noisy ones and relocating noisy machines to reduce the noise level to which workers are exposed. Before these two measures can be taken, employers should be required under the Regulation to allow their workers to take a short rest after working for a certain period of time in an environment of high noise level, so that the workers would not be continuously exposed to industrial noise.

The ad hoc group has interviewed some union representatives and it has come to the group's knowledge that workers in many trades will not be benefited by the amendment of this Ordinance at all. Cooks of restaurants, for example, can hardly wear ear protectors in their working environments. A further amendment to this Regulation is therefore needed to take it a step further towards perfection.

Mr Deputy President, the full enforcement of this Regulation hinges on inspection by Factory Inspectors of the Labour Department. However, the serious shortage of manpower in the Labour Department is a cause for worry as insufficient inspection is being conducted by the Government. I request that the Labour Department should

submit a report to OMELCO after a regular inspection has been made.

Thank you, Mr Deputy President.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Deputy President, I have listened carefully and attentively to the Members who have spoken on this resolution. I would like to thank the Members for their support for the Regulation. I believe it is agreed that the Regulation is a step in the right direction although there may be imperfections. As I said when moving the resolution, we have received some very useful suggestions from the members of the ad hoc group which we are following up with expedition. We have also over the last few days received copies of the views presented to the OMELCO by several labour groups, and we are studying these very carefully.

As far as the present Regulation is concerned, it was of course drawn up after detailed consultation with the Labour Advisory Board. And as I said, I think we all agree that it is a step in the right direction. I have, as I said, taken very careful note of the suggestions and requests made by Members. I would certainly undertake to look into them very carefully. Many of them of course are technical issues which, I am afraid, I am not able to deal with on the spot today. But I will certainly undertake to look into those in consultation with the Commissioner for Labour and with other experts who are in the Department.

Question on the motion put and agreed to.

First Reading of Bills

COMPANIES (AMENDMENT) BILL 1992

COMPANIES (AMENDMENT) (NO. 2) BILL 1992

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1992

INSURANCE COMPANIES (AMENDMENT) (NO. 3) BILL 1992

BUSINESS REGISTRATION (AMENDMENT) BILL 1992

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992

ORGANIZED AND SERIOUS CRIMES BILL

CRIMINAL PROCEDURE (AMENDMENT) BILL 1992

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

Second Reading of Bills

COMPANIES (AMENDMENT) BILL 1992

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

He said: Mr Deputy President, I move that the Companies (Amendment) Bill 1992 be read a Second time.

The purpose of the Bill is two-fold. First, to enable the Registrar of Companies to take effective enforcement action against companies which persistently fail in their statutory duty to submit annual returns; secondly, to enable companies which are not trading and are inactive to take advantage of a new "dormant" status, whereby they will be exempted from compliance with a number of provisions of the Companies Ordinance for the period during which they remain dormant.

Section 109 of the Companies Ordinance requires every company to deliver to the Registrar a copy of its annual return within 42 days of its annual general meeting. There are currently over 300 000 registered companies in Hong Kong. A recent survey conducted by the Registrar indicated that as many as 25% of those do not submit regular annual returns. The problem is particularly acute with moribund companies, the directors of which are not concerned about incurring late filing fees as they have no intention of filing any further documents in the future.

Although there are already procedures which may be initiated by the Registrar

under the Ordinance for striking companies off the register, these procedures require the Registrar to exercise his discretion in each individual case. The provisions in question, therefore, do not provide a practical means of dealing with a problem of this magnitude and, furthermore, because of the nature of many of the cases, it is difficult for the Registrar to receive the up to date information he requires to enable him to exercise his discretion properly.

It is therefore proposed that the Registrar be provided with a more effective means of dealing with cases of default by introducing a simplified procedure for striking companies off the register where they fail to submit annual returns for two consecutive years. Striking-off action will not be initiated until fair warning has been given to a company and its directors and the company has been given the opportunity to remedy the situation.

If a company chooses to ignore these warnings, it may be struck off and dissolved. All property and rights vested in it or held on trust for it immediately before its dissolution will then be deemed to be bona vacantia and to belong to the Crown. The Bill also provides for creditors to make claims against bona vacantia. Additionally, if, upon application by the company or any member or creditor of it, the Registrar is satisfied that there are reasonable grounds for a company to be restored onto the register, and an appropriate fee is paid, then reinstatement may be effected quickly and simply.

The proposed legislation also introduces a new "dormant" status for private companies. At present, companies which are not undertaking any business are nevertheless required to comply with all the requirements of the Ordinance. This involves the commitment of considerable time and resources, both by the companies concerned and by the Registrar, to work which may serve little useful purpose.

Under the proposal, a private company may by special resolution authorize its directors to submit a statutory declaration declaring the company to be "dormant". The Bill defines a company as dormant during any period in which no significant accounting transaction occurs; that is a transaction which, under section 121 of the Ordinance, would be required to be entered into the company's books. A company which is regarded as being dormant would be exempted from a number of requirements of the Ordinance. These relate mainly to the submission of documentation, including annual returns, matters relating to the holding of meetings and requirements relating to accounts and auditing.

Companies which take advantage of this new status will be required to notify the Registrar if and when they intend to enter into a significant accounting transaction. They will then cease to be regarded as dormant and will be required to comply with all the provisions of the Companies Ordinance in the normal way.

Given the substantial scope of the exemptions which dormant companies are able to enjoy, it is important that the legislation should lay down meaningful sanctions against any possible abuse of this privilege by a company seeking to retain the benefits of the exemptions after it ceases to be dormant. The Bill provides, therefore, that the directors and shareholders of a company which enters into a significant accounting transaction without notifying the Registrar will be liable for any debt or liability of the company arising out of that transaction.

However, certain categories of companies will not be able to avail themselves of dormant status because of the need in their case for a higher degree of public accountability. These include public companies, authorized financial institutions, authorized insurers, registered dealers, and their respective holding companies.

With these comments, Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

COMPANIES (AMENDMENT) (NO. 2) BILL 1992

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

He said: Mr Deputy President, I move that the Companies (Amendment) (No. 2) Bill be read the Second time.

The purpose of this Bill together with the Securities and Futures Commission (Amendment) (No.2) Bill is to enable certain functions of the Registrar of Companies in relation to prospectuses to be transferred to the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (SEHK).

Under the current system, the Registrar, the SFC and the SEHK all have vetting responsibilities in respect of prospectuses and there is considerable duplication and over-lapping of these responsibilities. In line with the recommendations of the 1988 report of the Securities Review Committee, the Administration believes that the existing vetting system should be rationalized and streamlined so that only a single body vets and approves the documentation for a new issue.

Under the proposed amendments, the role of the Registrar of Companies would be limited to that of a registration authority only. He would continue to be responsible under the Companies Ordinance for registering prospectuses but would cease to take responsibility for vetting them prior to registration. Meanwhile, the statutory responsibility for authorizing the registration of prospectuses, including that of ensuring that they complied with the Companies Ordinance, would be vested in the SFC. Although the SFC will retain the statutory responsibility it is intended that, for those prospectuses relating to securities which are to be listed on the Stock Exchange, the exercise of that responsibility will be transferred to the SEHK. The transfer can be effected by a transfer order made by the Governor in Council under section 47 of the Securities and Futures Commission Ordinance. For those prospectuses where the securities are not listed, the SFC will exercise the responsibility for authorizing their registration.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (NO. 2) BILL 1992

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Securities and Futures Commission Ordinance."

He said: Mr Deputy President, I move that the Securities and Futures Commission (Amendment) (No.2) Bill be read the Second time. I have already identified the principal purpose of this Bill in moving the Second Reading of the Companies (Amendment) (No.2) Bill.

The opportunity is also being taken to rectify the constitutions of the Securities and Futures Appeals Panel and of the tribunals which hear appeals by excluding non-executive directors of the Securities and Futures Commission (SFC) from

membership. This is to ensure that any appeal will be heard by an independent and impartial tribunal.

A revision of the Financial Resources Rules of the SFC is also proposed, introducing a requirement for registered persons to make periodic returns concerning their capital adequacy. This is to enable the SFC to monitor compliance with the capital adequacy requirements.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

INSURANCE COMPANIES (AMENDMENT) (NO. 3) BILL 1992

THE SECRETARY FOR MONETARY AFFAIRS moved the Second Reading of: "A Bill to amend the Insurance Companies Ordinance."

He said: Mr Deputy President, I move that the Insurance Companies (Amendment) (No. 3) Bill 1992 be read a Second time.

This is a composite Bill seeking to refine existing provisions of the Insurance Companies Ordinance in two areas: first, to designate the management of retirement schemes as a new class of long-term business and secondly, to facilitate the reporting of suspected fraud by auditors, accountants and actuaries.

Insurers undertaking long-term business are required under the Insurance Companies Ordinance to set aside a long term fund to meet the liabilities arising from such business. This ensures that adequate protection is given to the policy holders.

At present, retirement schemes managed by insurance companies are not designated as a class of insurance business. They are not, therefore, subject to prudential supervision under the Insurance Companies Ordinance. This is unsatisfactory in the light of the Government's intention to introduce a regulatory framework for retirement schemes.

It is proposed, therefore, that the Ordinance be amended so as to designate the

management of retirement schemes as a class of long-term business. This new class of long-term business will have two components. The first covers schemes where the contracts merely provide for the management by an insurer of investments under retirement schemes. As the liabilities of the scheme operator under such contracts relate directly to the value of the investments, the assets will be required to be kept in a fund separate from that containing the assets of other classes of long-term business.

The other component of the new class of long-term business relates to those schemes where retirement benefits are provided through contracts of insurance, that is, contracts which include a life insurance element. No separation of assets from the general long-term fund will be required in such case as this component is not asset-linked.

I now turn to the reporting of suspected fraud by auditors, accountants and actuaries, collectively referred to as "prescribed persons" in the Bill. The scope for reporting by prescribed persons is currently very limited. We believe this should be extended to facilitate their communication with the Insurance Authority on matters relevant to the Authority's functions. This is necessary to protect the interests of policy holders and preserve the integrity of the market.

It is also proposed that the prescribed persons should be protected against possible liability for breach of their duty of confidentiality to clients when communicating in good faith with the Insurance Authority. Members may recall that such protection is already available to auditors of authorized institutions under the Banking Ordinance and auditors of registered dealers under the Securities and Commodities Trading Ordinances.

The insurer will also be required to notify the Insurance Authority of any change or prospective change of an auditor or actuary, as such changes may signify possible irregularities in the operation of an insurer's affairs. For similar reasons, auditors and actuaries will also be required to inform the Insurance Authority of their intention to resign or to make an adverse statement on the affairs of their clients. In addition, the Insurance Authority will be empowered to disclose information relating to a prescribed person to the appropriate professional association for the purpose of any disciplinary proceedings.

With these remarks, Mr Deputy President, I move that the debate on this motion

be now adjourned.

Question on the adjournment proposed, put and agreed to.

BUSINESS REGISTRATION (AMENDMENT) BILL 1992

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

He said: Mr Deputy President, I move that the Business Registration (Amendment) Bill 1992 be read the Second time.

The Business Registration Office is now upgrading its equipment and changing its procedures, with a view to serving the business community more efficiently. The Bill now before Members will free the Office from the requirement to keep paper-based records indefinitely. In future the Office will keep its records both on microfilm and on a computer, and delete records of businesses which have ceased to operate for 10 years or more. This new, streamlined method of data storage and retrieval will result not only in significant staff savings but also provide the business community with a much more efficient service.

The Bill also includes minor amendments to provide for the registration of a new branch of a business and to revise the level of fine for non-compliance with the Ordinance from $2,000 to $5,000.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) (AMENDMENT) BILL 1992

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Multi-storey Buildings (Owners Incorporation) Ordinance."

He said: Mr Deputy President, I move the Second Reading of the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill 1992.

This Bill is designed to give effect to proposals formulated on the basis of views expressed during public consultation on an earlier version of the Amendment Bill which was published as a White Bill at the end of May last year. It aims primarily to further facilitate the formation of owners' corporations and to repeal those provisions in the existing deeds of mutual covenant which are considered to be unfair to flat owners.

One of the most contentious provisions of the existing Ordinance is section 2A which provides that the Ordinance does not apply to a building in respect of which a person has undertaken to, or agreed with, the Government to manage or be responsible for its management.

The Government accepts the argument contained in many submissions that flat owners should have the right to incorporate themselves. Clause 4 of the Bill accordingly repeals section 2A of the Ordinance. And in order to put the matter beyond doubt, clause 27 of the Bill provides, inter alia, that any arrangements whereby flat owners are prevented from being registered as an owners' corporation shall be void and of no effect.

In order to facilitate the formation of owners' corporations, clause 5 enables the Secretary for Home Affairs to approve applications for incorporation by the owners of not less than 30% of the shares in the building, instead of the 50% as presently provided. This change will be particularly helpful in buildings with a large number of absentee landlords who do not normally take any interest in the management of their buildings.

The problem of unfair Deeds of Mutual Covenant is another contentious issue picked up by most commentators. Such Deeds frequently provide for perpetual management by the developer himself or by a management company associated with the developer. In such cases, there is little the flat owners can do to rid themselves of the manager.

Under the Amendment Bill a new Seventh Schedule is provided setting out the terms that are to be impliedly incorporated into every Deed of Mutual Covenant. Such terms will prevail over corresponding provisions in existing covenants which are inconsistent with them.

Paragraph 7 of the new Seventh Schedule provides a procedure whereby the flat owners may terminate the appointment of a manager employed by or associated with the developer. Basically, it requires a resolution of the owners of not less than 50%

of the undivided shares. The developer may then appoint a replacement manager with the consent of the flat owners. Should they fail to reach any agreement, the flat owners would have the power to appoint their own manager.

However, the Government recognizes that in some exceptional circumstances, certain residential developments may best be managed by the developer or his appointed managing agent. New section 34E(4) in clause 27 proposes that the Secretary for Home Affairs may exclude the application of paragraph 7 of the Seventh Schedule to any specified building in accordance with published guidelines.

As the inclusion of new provisions on unfair Deeds of Mutual Covenant widens the scope of the existing Ordinance, it is considered necessary to change its short title to reflect these changes. Clause 2 therefore seeks to change the short title of the Ordinance from "Multi-storey Buildings (Owners Incorporation) Ordinance" to "Building Management Ordinance".

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

ORGANIZED AND SERIOUS CRIMES BILL

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to create new powers of investigation into organized crimes and certain other offences and into the proceeds of crime; make provision in respect of the sentencing of certain offenders; create an offence of assisting a person to retain proceeds of crime; and for ancillary and connected matters."

He said: Mr Deputy President, I move that the Organized and Serious Crimes Bill be read a Second time. This Bill and the Criminal Procedure (Amendment) Bill which I am also going to introduce at this sitting, seek to improve our ability to investigate and prosecute organized and serious crimes.

There has for long been great concern in the community about the extent of organized crime in Hong Kong. Organized crime encompasses the whole spectrum of

criminal activity from trafficking in narcotics, robbery, fraud, blackmail, loansharking and vice to extortion and protection of shopkeepers, hawkers and Public Light Bus drivers. It represents a particularly serious threat to law and stability in our society:

(a) because it survives on fear and intimidation, and on the threat of violence;

(b) because it imposes a rigid discipline on its members, which often serves to insulate the organizers from direct participation in the criminal act and hence from the risk of prosecution;

(c) because it generates enormous profits which are in many cases laundered into legitimate businesses, with the legitimate and the criminal activities then bolstering and supporting each other; and

(d) because it affects the lives of ordinary people, particularly those who can least afford to resist the extortionate demands -- the hawker, the PLB driver, those living in squatter areas.

Our objective in tackling organized crime must therefore be twofold: to enable the police to obtain evidence against those who organize, co-ordinate or carry out such crimes; and to enable adequate sanctions, including financial penalties, to be imposed on those involved in organized crime. I have no doubt that these objectives are widely supported by the community. That message came out loud and clear in the public response to the White Bill which we published for consultation in August last year. We received valuable comments and advice on the proposals in the White Bill from the public, from professional organizations and the debate in this Council last December. The revised proposals in the two Bills which I shall introduce this afternoon have taken into account the views expressed by the public on the White Bill, and also advice we have had from the Fight Crime Committee and the OMELCO Panel on Security.

In furtherance of the objectives I have mentioned, we have first sought to provide the police with more effective powers to investigate organized crime. At present, the police encounter great difficulties in their investigation of such crimes because they frequently lack the ability to break through the wall of silence protecting those who co-ordinate and mastermind organized criminal syndicates. We therefore propose that the police should, for the purpose of investigating organized crimes, be able

to apply to the High Court for powers to require a person to answer questions or otherwise furnish information or to produce material. It will be an offence to fail to comply with such an order or to provide false information.

These powers will be subject to a number of safeguards. They can be invoked only for the purpose of investigating organized crime involving the offences in the first schedule of the Bill. The application for the use of the powers must have the consent of the Attorney General. The powers must be authorized by a High Court judge after being satisfied that it is in the public interest to grant the authority.

The special investigative powers would be able to request production of information and material by banks, the Inland Revenue Department and any bodies or persons which operate under a statutory or common law obligation to maintain confidentiality. Items subject to legal privilege would be however excluded from the requirement to produce material.

In addition to the above powers, the Bill provides that the police may apply to the High Court or District Court for a warrant to enter and search premises to seize evidence relevant to an investigation.

The special investigative powers which we propose in relation to organized crimes exist in various forms in a number of Ordinances, for example, the Securities and Futures Commission Ordinance and the Companies Ordinance. They will provide investigators with powerful, but necessary, tools to gather information and evidence. They will be of great assistance to the police in identifying persons involved in organized and serious crimes and in developing a prosecutable case against them.

We have also sought to enable the courts to impose more stringent penalties, including financial penalties, for those convicted of organized and serious crimes where this may be appropriate. At present a defendant or his counsel can, during a sentence hearing, make submissions to the judge in mitigation of the sentence. Under current practice and rules, the prosecution is unable without the invitation of the court to bring to the attention of the court relevant information relating to the prevalence of the offence, its financial rewards, its impact on the community or victims, or whether it is related to organized crime or triad activity in order to enable the court to decide whether a heavier sentence than would otherwise be imposed is warranted. This limitation on the information the prosecutor can bring to the court's attention restricts the court's ability to impose a heavier sentence

where it may be appropriate.

It is proposed that where a person has been convicted in the High Court or District Court of an offence in Schedules 1 or 2 of the Bill, the prosecution would be entitled to provide the court with information relating to the offence, its relationship to organized crime, its impact on victims and its financial benefits.

After having regard to the information brought before the court, if the court is satisfied that it would be appropriate to impose a heavier sentence than would otherwise be the case, then it may impose such a sentence, provided that it does not exceed the statutory maximum.

We also propose that where a person is convicted of a specified offence, the court would be empowered to make a confiscation order in respect of all proceeds of crime received by the person in connection with the commission of any offence. In addition, a general money laundering offence covering the proceeds of all crime is proposed. These proposals represent an extension of the proposals in the White Bill on Organized Crime, in that they would not be limited to the proceeds of specified offences relating to organized crime.

Mr Deputy President, I believe that the proposals I have outlined will greatly improve our ability to investigate and prosecute those responsible for organized and serious crimes, and to destroy the power, especially the financial power, of organized crime syndicates.

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

Question on the adjournment proposed, put and agreed to.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1992

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

He said: Mr Deputy President, I move that the Criminal Procedure (Amendment) Bill be read a Second time.

Prosecution of cases relating to organized crime frequently involves accomplice evidence. The warning in respect of such evidence has been criticized as technical, complex, inflexible and confusing. This Bill will abolish the requirement for a corroboration warning in respect of the evidence of accomplices. The result will be that judges will be able to exercise their discretion to deal with the credibility of accomplice witnesses in the same manner as they deal with credibility generally. There will be no special rules, but simply a requirement that justice be seen to be done.

Mr Deputy President, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

SUPPLEMENTARY APPROPRIATION (1991-92) BILL 1992

Resumption of debate on Second Reading which was moved on 1 July 1992

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

Bill read the Second time.

BANKING (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 29 April 1992

Question on Second Reading proposed.

DR PHILIP WONG: Mr Deputy President, the Bill before us has two main purposes. It seeks to amend the Banking Ordinance to enable reporting by external auditors on the internal control system of the authorized institutions, and to allow the Commissioner of Banking to give an authorized institution in difficulty less than seven days notice before he submits a report on the circumstances to the Governor in Council.

The ad hoc group has had six meetings, including three with the Administration, to exchange views on various provisions of the Bill. A total of four submissions were received from the Hong Kong Association of Banks, the Hong Kong Deposit-Taking

Companies Association, and the Hong Kong Society of Accountants. The points raised by these submissions were carefully considered and discussed with the Administration. I will now briefly summarize the major issues considered by the ad hoc group.

Whilst fully supporting the Secretary for Monetary Affairs' proposal for providing a legal framework for external auditors to report on authorized institutions' internal control systems with a view to enhancing the supervision standards of the banking industry, the ad hoc group shares the concern of the banking sector and the Hong Kong Society of Accountants on how the mechanism is expected to work.

In response, the Administration has assured the ad hoc group that the above concern will be addressed by the publication of a statutory guideline which will be drawn up in consultation with the banking sector and the Hong Kong Society of Accountants, and the new provisions in the Bill concerning reporting by auditors will not be implemented before the publication of the statutory guideline.

The ad hoc group also expressed concern over the circumstances which might lead to the appointment of a second auditor under clause 4. The Administration explained that this would be done only in very exceptional circumstances where the Commissioner had reason to believe that the authorized institution's own auditor would not be capable of producing an adequate report. The general factor which would be taken into account in deciding the capability of the authorized institution's auditor would include the auditor's expertise, resources, competence, independence and integrity. The ad hoc group was satisfied with the explanation and the assurance given by the Administration.

As regards the proposed amendment of allowing the Commissioner of Banking to give an authorized institution in difficulty less than seven days notice before he submits a report on the circumstances to the Governor in Council, it is fully supported by the ad hoc group. The event of the closure of the Bank of Credit and Commerce Hong Kong Limited in July 1991 has demonstrated that the existing arrangements whereby the Commissioner of Banking reports a banking crisis to the Governor in Council should be streamlined. It is gratifying to see that the Administration has promptly acted on this aspect. The new provision will provide flexibility to enable the Governor in Council to take action more expeditiously in case of need.

The ad hoc group has, in the course of the study, agreed with the Administration

a number of amendments which are purely technical but are considered necessary for improving the drafting of the relevant provisions. These amendments will be moved by the Administration at the Committee stage.

The Administration has also agreed to make further amendment to clause 6, which is proposed by the Hong Kong Association of Banks. This amendment will be moved later by my honourable colleague, Mr David LI, at the Committee stage.

Finally, I would like to thank the organizations which submitted their views to the ad hoc group. I also wish to thank the Administration for their co-operative attitude in discussion with the ad hoc group.

Mr Deputy President, with these remarks and subject to the amendments proposed, I support the Bill.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, the United Democrats of Hong Kong and I welcome and support the Banking (Amendment) Bill 1992, which will strengthen the auditing mechanism of and the healthy supervision by the Office of the Commissioner of Banking on the financial well-being of banks. In recent years, the malpractices of many companies, as can be seen particularly from the incident of the Maxwell Group in the United Kingdom, has driven home the very importance of proper auditing control.

I hope that the principles concerning the auditing system in this Bill can be extended to cover the accounts of listed companies, such that the interests of investors and the general public can be safeguarded.

Besides the auditing system, the auditing standards are also very important. The bureau regulating financial accounting standards in the United States has recently laid down a new regulation which stipulates that all enterprises, including banks, must set out the latest market value and not the original value of their assets and liabilities, such that the financial standings of the companies can clearly be shown. I hope that the Administration will examine whether Hong Kong can adopt this new approach of market value accounting as a way to enforce a more efficient supervision on our banking system.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, I am grateful to Dr WONG and

members of the ad hoc group for their careful consideration of and support for the Bill.

We have, in the light of our discussions with the ad hoc group and submissions from the banking sector and the accounting profession, agreed to certain technical amendments to the Bill to clarify the scope of certain provisions. I shall explain these in greater detail during the Committee stage.

In addition, in response to a submission from the Hong Kong Association of Banks, we have, as Dr WONG has identified, also agreed to an amendment to section 81(6) of the Ordinance dealing with exemption of large exposures to single counter-parties. The Administration therefore supports the amendment which Mr David LI will be moving at the Committee stage.

I wish to reiterate that reporting by external auditors of authorized institutions on the quality of internal control systems of institutions will represent a significant improvement to our banking supervisory system as it will provide an early warning signal to the banking supervisors.

The Commissioner of Banking has consulted the banking sector and the Hong Kong Society of Accountants on the statutory guideline dealing with the auditors' reports. It is our intention to bring the relevant provisions of the Bill into effect in September 1992 on the publication of the guideline. It is proposed that the other provisions of the Ordinance should take effect on 1 August.

Mr Deputy President, I have noted the comments made by Dr HUANG. On the question of extending the provisions relating to auditors to cover all listed companies, I am able to say that we are already giving consideration to the possibility of providing for the requirements to apply more widely. The Standing Committee on Company Law Reform is studying the issue but it is too early to know what will be the outcome of their deliberations. We would certainly wish to consult widely with all interested parties before reaching any final decision. We will also consider the second point Dr HUANG has raised, namely, that of requiring banks to adopt current value accounting, or what is known within the securities industry as "marking to market". I have to say, however, that I, personally, have strong reservations over the concept which has proved very controversial elsewhere -- the Chairman of the Federal Reserve System in Washington, that is, the Central Bank of the United States, wrote last year to the Securities and Exchange Commission expressing his concern over the prospect that the Commission might be considering introducing this concept for American banks whose

shares were listed on the United States stock exchanges. If banks are to carry out their proper economic function, they must be encouraged to stay with their sound customers through difficult days as well as the good ones. "Fair weather friends" are of no use to anyone. But "marking to market" could force banks into taking the short-term view. If it did, such a move would certainly not be serving the public interest.

Finally, Mr Deputy President, I would like to express my thanks to the Hong Kong Association of Banks, the Hong Kong Deposit-taking Companies Association and the Hong Kong Society of Accountants for the constructive stance they have taken in respect of this Bill and their valuable comments.

Mr Deputy President, with these remarks, I beg to move.

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

Bill read the Second time.

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

SECURITIES (CLEARING HOUSES) BILL

Resumption of debate on Second Reading which was moved on 19 February 1992

Question on Second Reading proposed.

MR LAU WAH-SUM: Mr Deputy President, one of the five major recommendations made by the Securities Review Committee in May 1988 was the establishment of a central clearing and settlement system for securities transactions.

As a matter of fact, the uncertainty caused by the settlement backlog was a reason given by the Stock Exchange for the closing of the stock market on 20 October 1987.

Today, we are still awaiting the birth of the central clearing and settlement system or in short the CCASS as proposed by the Securities Review Committee despite the fact that there are strong and clear indications that its delivery can no longer be further delayed: the average number of shares traded per day has increased from

280 million in the first half of 1987 to over a billion in the past few months, representing almost four times growth. The ever increasing growth in trading volumes has in fact pushed the Stock Exchange to extend its daily settlement hour by 30 minutes starting 18 May this year to cope with the ever increasing trading volume.

Mr Deputy President, what I have said so far in fact boil down to one conclusion, that is, Hong Kong stock market needs a CCASS. Otherwise, our market will not develop efficiently and may be severely constrained by volume. In other words, we need the Bill before us today.

The Legislative Council ad hoc group set up to study the Bill, of which I am the convener, spent many hours of hardwork scrutinizing the Bill since its formation in February this year. Many questions have been raised and carefully considered. On top of the question list is whether we need a CCASS or not. The answer, not unexpectedly, is yes.

I will report the ad hoc group's deliberations on other questions one by one in the rest of my speech.

First, the question of the insolvency-related provisions of the Bill.

The ad hoc group holds the view that it is beyond doubt that the introduction of the CCASS has to go ahead in order to keep Hong Kong in line with the international market development. It follows therefore that the insolvency-related provisions are absolutely necessary because without which the operation of the CCASS can be declared invalid and net settlements have to be unwound in an insolvency proceedings based on the House of Lords decision in British Eagle International Airlines Ltd v. Compagnie Nationale Air France (1975).

That being said, the ad hoc group noted that most organizations submitting views had expressed doubts as to whether the proposed insolvency-related provisions of the Bill were justified as it might confer on the clearing house considerable powers and privileges which might in turn reduce substantially the traditional protection for creditors of an insolvent broker.

The ad hoc group showed particular concern over these comments and had set up under its auspices a technical sub-group to study the insolvency-related and immunity provisions of the Bill.

The work of the technical sub-group included:

(a) detailed comparison between the relevant provisions and the corresponding provisions in the United Kingdom Companies Act 1989; and

(b) close scrutiny of each and every insolvency-related clause of the Bill by making special reference to:

(i) the present practice of existing insolvency law; and

(ii) the anticipated scenario of the new practice in case of defaults as a result of the Bill.

After lengthy examination, the sub-group considered and the ad hoc group agreed that the Bill contained the minimum disapplication of insolvency law that was necessary.

To ease the mind of those showing concerns over the extent of the insolvency-related provisions, it would be helpful if I take this opportunity now to explain, in no uncertain terms, what exactly the scope of the insolvency-related provisions are. The provisions are confined to a very limited class of a defaulting broker's assets as follows:

(a) securities collateral held by or deposited with the clearing house -- these securities collateral are limited to securities the broker has purchased but for which he has not made related payment to the clearing house; and

(b) cash collateral which would only include money pledged to and held by the clearing house.

All other assets and transactions of the defaulting broker would remain subject to the current insolvency law.

The second question is about the default rules of the clearing house. The ad hoc group noted that some submissions held the view that because of their potential impact on insolvency law, default rules should be subject to effective control and that the rules should form part of the legislation.

The ad hoc group, while it totally agrees that there should be effective measures to control the default rules, including their ambit, subsequent amendments, and their application, feels that making the rules statutory, as proposed by some organizations, might not necessarily be the best solution.

As far as control of default rules is concerned, the ad hoc group is satisfied that there are sufficient safeguards in the Bill to ensure that the default rules are properly administered. These safeguards are:
(a) the SFC has the express power under clause 4(10) and (11) to request the clearing house to amend any of its rules, including default rules;

(b) the Financial Secretary is empowered under clause 19 to amend Schedule 2 which stipulates the ambit of the default rules if at any time he considers that the effect of Schedule 2 requires to be extended or modified;

(c) any amendment to Schedule 2 is subsidiary legislation subject to the provisions of section 34 of the Interpretation and General Clauses Ordinance, Cap. 1 and therefore subject to Legislative Council's scrutiny;

(d) any future decisions to trigger default rules are to be made by the Risk Management Committee of the clearing house. It will not, the group has been assured, be a decision made by one individual.

The ad hoc group is also satisfied that it is not feasible to include default rules in the Bill. The group's concerns are:

(a) the operation of the clearing house may require urgent amendments to be made to default rules within a matter of days. This would not be possible if default rules changes were required to be by way of subsidiary legislation; and

(b) the default rules of a clearing house are not a "stand alone" set of rules; they need to fit together with other rules of the clearing house, for example, the settlement rules and the risk management rules. This would make it difficult, if not impossible, to identify all the rules which are relevant to default if default rules were required to be subsidiary legislation.

The ad hoc group feels that the job of monitoring the default rules should best be left to the SFC as proposed in clause 4(1) of the Bill. What is required by the

Legislative Council is the need to ensure that the default rules cannot go beyond the ambit of what is permitted in Schedule 2 of the Bill and that there are adequate safeguards to ensure that this can be done.

Nevertheless, to address the concerns of various organizations, the ad hoc group has requested the Administration to give a public assurance during the Second Reading debate of the Bill today that the current default rules of the Hong Kong Secuities Clearing Company are within the ambit of Schedule 2 and that the Administration would work closely with the SFC to ensure that any future amendments or changes to these rules will conform with the Schedule. Mr Deputy President, I look forward to hearing the Secretary for Monetary Affairs' assurance in his speech.

The third question about the Bill which has been thoroughly considered by the ad hoc group is the effects of the Bill on consumer protection. From what we have read from the submissions, we note that there are at least six different concerns all of which occur largely because of misunderstanding about the actual operation of the Bill and the stock trading. In this afternoon, in order to save time, I will limit myself to speak on only one of them, which I consider is comparatively the most important.

This concern is that under the proposed Bill, transactions will be put through by way of computer set off and the shares will lose their physical identity leaving no means for a cheated shareholder to identify and reclaim a particular lot of shares as his own, thus denying the existing protection and introducing difficulties when a seller wants to trace shares or a trader tries to reclaim stolen shares.

The ad hoc group has been advised that while the right to follow shares into CCASS will be curtailed by the Bill, in practice the only circumstances under which a shareholder could follow shares into the hands of a third party would be in the case of stolen shares disposed of by means of a forged transfer. In these circumstances, the deprived shareholder may apply to court, under section 100 of the Companies Ordinance, for rectification of the share register. That right is preserved by clause 16(3) of the Bill.

In other circumstances, a shareholder will usually be prevented by the doctrine of estoppel from pursuing any remedy against a person to whom his shares have been transferred. Because it has been an established practice in Hong Kong that when a shareholder wants to sell his shares, he will endorse an instrument of transfer in

blank with accompanying share certificates. This is necessary because the shareholder's broker does not know who the ultimate purchaser will be and therefore requires the transfer to be in blank. If the shareholder's broker fraudulently sells the shares to a third party, the original owner will be estopped to claim the shares back against a transferee purchasing without notice and in good faith.

I now turn to the third question which has been actively pursued by the ad hoc group. That is, is the increase in the Compensation Fund limit to $8 million per defaulting broker commensurate with the market development?

The ad hoc group notes that the increase in compensation payment limit does indeed compare favourably with market development. Hong Kong market capitalization in 1980 was approximately $210 billion as compared to that of approximately $1,100 billion in 1991 representing an increase of about five times. Whereas the increase of compensation fund from $2 million to $8 million, coupled with the proposed introduction of compulsory broker fidelity insurance which amounts to $2.5 million to $10 million per broker represent an increase in investor compensation in the range of five to nine times.

Past statistics regarding broker defaults also show that of the 17 claims against the Compensation Fund since 1974, all but two of them could be adequately met by the proposed $8 million limit.

The sixth and also the last question considered by the ad hoc group is the level of immunity enjoyable by the clearing house.

Most organizations expressed in their submissions their concern over the wide scope of the immunity provisions in clause 17 and stated that the recognized clearing house was given blanket immunities from liability.

The ad hoc group has been given to understand that the scope of the immunity provisions is in fact rather limited. Clause 17 does not grant any immunity to the clearing house in relation to its day to day operations -- the immunity only applies when the clearing house is exercising the statutory functions under the Bill or if the clearing house is performing its obligations imposed under the Bill. All other acts and actions of the clearing house would be subject to the normal laws of negligence.

Nevertheless, the ad hoc group considers that a higher standard of care should be imposed on the clearing house and suggests that the emphasis of the immunity should be shifted from having to show bad faith on the part of the clearing house to a provision that protects actions done with reasonable care and in good faith.

DEPUTY PRESIDENT: Mr LAU, you are speaking for the ad hoc group and you have got a lot of points to cover. So I shall let you speak on beyond the 15 minutes.

MR LAU WAH-SUM: Thank you, Mr Deputy President. This is agreed by the Administration and amendments will be made to clause 17 later today at the Committee stage.

Mr Deputy President, in concluding I would like to thank the organizations which submitted their views to the ad hoc group and whose representatives took part in many hours of detailed discussion. Let me also thank the Administration, the SFC and the Hong Kong Securities Clearing Company officials, who with great goodwill, helped us in our task of understanding, modifying and approving the legislation which will enhance the development of our status as one of the leading financial centres in the world. I must also extend my deepest thanks for the support and hardwork that the OMELCO Secretariat and the Legal Unit have given to the ad hoc group for without their help I doubt whether we would have been ready today.

Mr Deputy President, with these remarks, I support the motion.

MR PETER WONG: Mr Deputy President, I rise to support the resumption of the Second Reading of the Securities (Clearing Houses) Bill.

It has to be recognized that we are dealing with a very different Stock Exchange compared to the one at the time of the 1987 crash. It is now a fully professional exchange -- one that we should be proud of now and in the years to come. If everything goes according to plan, it should become a pre-eminent exchange in the region and should provide an investment basis that will facilitate the modernization of China.

This Bill is designed to reduce and manage risk. The default of a broker and the consequential fallout from the undelivered or forged scrips would have a devastating chain effect on subsequent transactions. The ad hoc group has now accepted that the new system will satisfy most people whilst retaining its potent

attributes without unnecessarily depriving innocent victims of their rights. We will need to see how it works out in practice and, if necessary, to fine tune the system.

Although it was not part of the ad hoc group proceedings, the Panel on Finance, Taxation and Monetary Affairs received a full briefing from the Monetary Affairs Branch, SFC, Stock Exchange and the Clearing House on "Risk Management" in the context of the proposed clearing of securities. I shall not go into the fine details, but we addressed the risk to the clearing system from the points of view of broker and custodian participants as well as the customers. No one can realistically expect all risks to be eliminated, since no system is totally proof against fraud and human ingenuity. Collusion can always upset any system.

I believe that we now have a system that is well designed and risks are fairly apportioned. This means that, eventually, every participant will have to pay for the mistakes of others. Although limits have been raised, the protection is not unlimited. Hence, every participant, whether a customer, a broker or a custodian, has to be on the watchout for untoward happenings which could jeopardize the system, and take appropriate risk management steps within his own control. They cannot rely solely on the Exchange or the SFC to give comprehensive protection. Only by everyone co-operating and ringing bells, can we hope to catch the miscreants and prevent them from becoming gangsters playing havoc on the market.

Mr Deputy President, as a member of the old Securities Commission that looked rather helplessly upon the 1987 crash, I see the passing of this Bill as the watershed in the securities industry in Hong Kong. The subsequent Securities Review Committee's recommendations have now been substantially carried out by the formation of the Securities and Futures Commission together with fundamental changes in the Exchange. We are now ready to enter the brave new world of our modern, efficient securities industry.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, after the efforts of various parties concerned for more than three years, the central clearing and settlement system is finally put to this Council today for legislation and it is hoped that the system of continuous net settlement can be implemented in October while trading in the form of automatic order-matching and execution can be carried out by the Stock Exchange of Hong Kong early next year. Such achievements will formally mark the

beginning of the transformation of the Hong Kong stock market into an international one. Moreover, such advanced facilities can be used to make arrangements for large state-owned enterprises in China to obtain a status of primary listing in Hong Kong, thus encouraging large investment groups of a world-wide nature to invest in Hong Kong with an incessant flow of huge funds, making Hong Kong the future Switzerland of Asia and China.

As the representative of the financial services sector, I hope that shareholders of the Hong Kong Securities Clearing Company Limited, that is, the brokers of the Stock Exchange of Hong Kong, and the five other banks will, under the assistance of the Securities and Futures Commission, offer their co-operation and reinforce the foundation of Hong Kong as a financial centre, while at the same time increase the number of financial products for transaction and enhance the provision of diversified financial services. I also hope that local brokers will match progressive pace of the times by enhancing their own strengths, accepting challenges and making a concerted effort to obtain achievements in the future.

Mr Deputy President, with these remarks, I support the motion.

SECRETARY FOR MONETARY AFFAIRS: Mr Deputy President, I am grateful to Mr LAU Wah-sum and members of the ad hoc group for the time and effort they have put into their careful consideration of the Bill, and their support. I agree with Mr Peter WONG that the enactment of this Bill will mark an important landmark in the reform of the regulatory framework of our securities industry. It is the last major recommendation to be implemented of the Securities Review Committee.

In the course of studying the Bill, members of the group considered a number of concerns expressed by interested parties. Mr LAU Wah-sum has in the course of his speech identified with admirable clarity those concerns and the ad hoc group's response and I do not intend to be repetitive. I shall therefore largely confine myself to those issues on which the ad hoc group has sought assurances from the Administration.

Mr LAU Wah-sum has referred to concern over the scope of the default rules of a recognized clearing house, which are not to be regarded as invalid on the grounds of inconsistency with insolvency law. These rules are of particular significance in that they are therefore capable of laying down procedures which are insulated from

the application of insolvency law. The concern is that a recognized clearing house might abuse its discretion by introducing default rules which went beyond the ambit of what was permitted by the Bill.

This was in fact something of which we were very conscious in drafting the Bill and the need to provide safeguards against possible abuse in respect of the default rules of a recognized clearing house has been repeatedly emphasized in the Bill. A careful study of clause 4(2) and Schedules 1 and 2 will show that the ambit of the protection which a recognized clearing house will have from insolvency law has already been clearly set out. Further safeguard is found in clause 4(1), which provides that no rules of a recognized clearing house (including default rules) shall have effect unless approved by the Securities and Futures Commission. Finally, clause 19 gives the Financial Secretary the over-riding power to amend Schedule 1 or 2.

In other words, if any purported default rules were outside the said ambit, they would be contrary to statutory provisions and would have no effect. The Bill would not protect action taken under such purported rules. We are, therefore, satisfied that the default rules of a recognized clearing house cannot go beyond the ambit of what is permitted by the Bill.

I wish also to assure Members that we are satisfied that the current default rules of the Hong Kong Securities Clearing Company Limited are consistent with the Bill and, in particular, comply with the relevant Schedule 2. We will work closely with the Securities and Futures Commission to ensure that any future amendments to these rules conform with the Schedule.

I also confirm that the Administration accepts that the protection afforded by clause 17 to a recognized clearing house should be limited only to acts done with reasonable care and in good faith. I therefore support the amendment which Mr Marvin CHEUNG will be moving at the Committee stage to address this point.

Finally, Mr Deputy President, I can assure Mr CHIM Pui-chung that the enactment of this legislation will benefit all members of the stock exchange as well as the investing public. The banks, the Securities and Futures Commission, the Stock Exchange of Hong Kong and the Clearing Company have worked together admirably in bringing this project to fruition. I am sure they will continue to work in harmony to further develop Hong Kong's securities market.

With these remarks, Mr Deputy President, I beg to move.

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

Bill read the Second time.

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

PUBLIC SERVICE COMMISSION (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 1 July 1992

Question on Second Reading proposed.

MR ANDREW WONG: Mr Deputy President, the Public Services Commission (PSC) was first established in 1950 to advise the Governor on the appointment, promotion and disciplinary matters in prescribed grades in the Civil Service, including those seconded to other public bodies including the Hospital Authority (HA) and the Vocational Training Council (VTC). The Bill seeks to exempt the promotion of civil servants in the service of the HA and the VTC from the purview of the PSC but preserves the duty of the PSC's advice on disciplinary matters.

Members of the ad hoc group who scrutinized the Bill were satisfied that owing to the introduction of a Shadow Promotion Scheme under which the promotion of such officers was to be solely determined by the HA and the VTC with shadow, not substantive, posts created automatically in the Civil Service, it was no longer necessary or appropriate to seek the advice of the PSC on promotion decisions.

In brief, the Shadow Promotion Scheme provides a mechanism for the creation of shadow posts and ranks to accommodate civil servants selected for promotion by the VTC and HA. Staff who feel aggrieved by such a decision may appeal to the management of the two organizations, or further, to the Governor.

Members were also satisfied that the scheme had no additional financial implications as salaries plus the on-cost element were to be reimbursed wholly to the Government, and that it was entirely temporary as the number of staff covered would diminish as and when they left service.

In short, Members found the Bill in order. Mr Deputy President, with these remarks, I support the motion.

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

Bill read the Second time.

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

MARINE FISH (MARKETING) (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 1 July 1992

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

Bill read the Second time.

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

RABIES BILL

Resumption of debate on Second Reading which was moved on 17 October 1991

Question on Second Reading proposed.

MRS SELINA CHOW: Mr Deputy President, the objective of the Rabies Bill is to consolidate into a single piece of legislation the existing provisions for the suppression of rabies found under the Dogs and Cats Ordinance and the Public Health (Animals and Birds) Ordinance. It also seeks to introduce additional measures that are considered necessary to deal with the threat of rabies comprehensively. The Bill was introduced into this Council on 17 October 1991. We have had a small ad hoc group of three people to look at it. Altogether we have had four meetings and considered one public representation. While the figures themselves may look modest, the

consideration of the Bill has not been entirely easy or simple as there have been matters of principle and public interest which members of the group unanimously feel should be addressed properly.

These resulted in rather substantial revision of the Bill after research and reconsideration on the part of the Administration, as will be reflected in the amendments to be moved at the Committee stage.

Perhaps not too many of us will remember the last rabies epidemic in Hong Kong in 1980 with a total of 13 local cases. This notwithstanding, the spirit of the Bill to legislate for more effective and efficient rabies control provisions is well supported by the group. This is particularly so in view of the increasing number of pet owners in Hong Kong in recent years.

What concerned members of the group most in the scrutiny of the Bill was how to strike a good balance between the powers conferred on the authorities to take speedy and effective action to suppress rabies in the case of an outbreak, including the powers to destroy rabid and suspected rabid animals, and to enter domestic premises to search for such animals; and at the same time to safeguard the reasonable interests of animal keepers and occupiers of domestic premises as well as the public at large.

I shall report briefly to honourable colleagues the major areas considered by the ad hoc group and the recommendations we made with a view to ensuring this balance. How does it destroy animals? Firstly, as an act of destruction it is irreversible, and the loss of a pet can be a highly emotive issue to the owner concerned. The ad hoc group feels that the power to destroy animals must be clearly defined and appropriately vested in suitably qualified professional officers in order to safeguard the interests of animal keepers.

The group noted that apart from references to rabies-related circumstances, the Bill proposes that an authorized officer should be empowered to destroy animals that he has reason to believe are a danger to other animals or people. We questioned whether the scope of this power is appropriate, given that the Bill is to deal specifically with the problems of rabies. To address the group's concern, the Administration has agreed to a Committee stage amendment, which will be moved by Dr Conrad LAM, to narrow this power of destruction, with due regard to the intent of the Bill.

On the latter point concerning the vesting of the power to destroy animals, the Administration has assured the ad hoc group that clear and detailed administrative guidelines will be drawn up to ensure that different levels of officers will be appropriately authorized and that the power to destroy animals under the Bill will be vested in officers with the necessary professional expertise.

The Secretary for Economic Services has agreed to repeat this assurance in his reply during this debate.

Erection of notices

Clause 18, as drafted, gives a discretion as to whether warning notices will be erected at places where the feeding of animals is prohibited. The ad hoc group considered that the erection of warning notices should be mandatory because the public will be at risk of prosecution for feeding animals in such places. A similar concern is relevant to clause 31 which empowers the Governor to declare, by order in the Gazette, any place to be a place prohibited to animals. I am glad to say that the Administration has accepted the ad hoc group's recommendation that the erection of warning notices under clauses 18 and 31 should be mandatory. Mr Michael HO will move the necessary amendments at the Committee stage.

Power to enter domestic premises

An area of major concern to the ad hoc group is the authorized officer's powers of entry and search. The Bill proposes that, in performing his duties, the authorized officer may at all reasonable times, with or without assistance, enter any land or premises, or board any conveyance, though he must be covered by a warrant when he enters domestic premises. The ad hoc group considered that this may not provide sufficient protection of persons' rights to privacy in domestic premises or for the rights of the home dweller. To safeguard against unnecessary interference of these rights and possible abuse, the Administration has agreed, on the recommendation of the group, to amendments to the Bill to provide for the need for a magistrate's warrant and the presence of a police officer before entry and search of domestic premises, except in the case of emergency. I shall move the necessary amendments to this effect at the Committee stage.

Appeal board and processing of appeals

The Bill allows a person who is aggrieved by specified decisions or actions of the Director of Agriculture and Fisheries or an authorized officer to appeal to the Governor. The ad hoc group considered that it would be preferable for such appeals to be dealt with by an Appeal Board to be drawn from a panel of medical practitioners and a veterinarian surgeon, as this would help to avoid overburdening the Governor. The group is pleased that our recommendation has been accepted by the Administration and suitable amendments will be made at the Committee stage.

Compensation

The one aspect of the Bill that has taken the ad hoc group and the Administration the most time to settle is the question of compensation. The Bill provides that no compensation is payable in respect of seizure, detention, forfeiture, destruction or other disposal of an animal and things under the Ordinance. While accepting that no compensation should be paid for some of the specified actions, the ad hoc group feels that compensation should be payable to those owners who have fully fulfilled their legal duties as owners and have had their animals unnecessarily destroyed; that is, afterwards to be found not to be rabid. The Administration maintained their position initially for operational considerations. However, members of the ad hoc group insisted that it would not be equitable to deprive those law-abiding animal keepers of an avenue of compensation should they feel aggrieved. The Administration has finally taken on board members' view and agreed to make compensation payable for destruction of animals which are established to be non-rabid afterwards. An amendment to this effect will be moved by the Administration at the Committee stage. I hope this will provide a means of redress to the aggrieved owners, though I believe few pet owners would ever wish to have to resort to this remedy.

Finally, the ad hoc group has also expressed concern on the following areas and suggested that the Administration should confirm, during the Second Reading debate of this Bill, that:

(1) They will publicize the new 96-hour requirement (clause 22(5)) for an owner or keeper to report the loss of his animal, making it clear that the consequences of failure to report could be put to the owner at risk of prosecution; and

(2) Care will be taken to ensure that amendments to the schedules of the Bill, by way of subsidiary legislation, will be subject to the scrutiny of this Council unless otherwise exceptionally required to deal with emergency situations.

We have been given to understand that, in his speech this afternoon, the Secretary for Economic Services will positively respond to our suggestions.

Mr Deputy President, with these remarks, I support the Bill.

SECRETARY FOR ECONOMIC SERVICES: Mr Deputy President, I am grateful to Mrs Selina CHOW and members of the ad hoc group set up to study the Rabies Bill for the careful and thorough consideration they have given to all of its clauses. I believe that the amendments to be moved at the Committee stage will result in a much improved Bill.

Mrs CHOW has referred to the ad hoc group's request for the Administration to provide assurances in respect of three specific points. I am pleased to be able to respond positively to that request.

Firstly, I can assure Members that clear and detailed procedures will be drawn up to ensure that only officers of the appropriate rank are authorized to exercise or perform the various powers and duties provided for in the Bill. The power to destroy an animal will be vested only in officers with the necessary professional expertise.

Second, publicity will be given to the level of penalty for abandonment of an animal. Such publicity will also make clear that an animal that has gone missing will, if it is seized and detained for 96 hours without the loss being reported, be presumed to have been abandoned, thus rendering the keeper liable to prosecution for abandonment of the animal.

Third, should it be necessary under clause 43 to amend any of the Schedules to the Bill, it is the Administration's intention that the subsidiary legislation concerned would specify a commencement date which would give Members adequate time for scrutiny of the legislation, unless earlier implementation was essential in the interests of rabies prevention and control.

Mr Deputy President, with these remarks, I commend the Rabies Bill to this Council.

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

Bill read the Second time.

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

## LINGNAN COLLEGE BILL

Resumption of debate on Second Reading which was moved on 3 June 1992

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

Bill read the Second time.

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

## CRIMES (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 13 May 1992

Question on Second Reading proposed.

MRS SELINA CHOW (in Cantonese): Mr Deputy President, the Bill before us this afternoon is a simple and yet complicated one. It is simple because it has only two clauses. It is complicated because it deals with a controversial matter the current loitering offence provided in section 160(1) of the Crimes Ordinance.

The loitering offence under section 160(1) of the Crimes Ordinance has been the subject of public criticism in recent years. It is nebulous in nature and is subject to potential abuse because of the lack of a victim to provide independent evidence. The matter has been reviewed by the Law Reform Commission (LRC). The views are divided: the LRC supports complete abolition of the loitering offence while its sub-committee appointed to study the matter recommends its retention in a modified

form.

The ad hoc group set up to study this Bill has been advised by the Administration that the loitering offence under section 160(1) has provided the police with an effective legal means to detect and prevent crime, and its retention would be in the public interest. They have suggested to limit its application to arrestable offences and to modify it to be compatible with the provision of the Bill of Rights Ordinance.

Members of the ad hoc group, and I think Members of the Council as well, are divided on whether the loitering offence should be removed from the Ordinance or be retained in the form presented in this Bill.

Arguments in support of abolition of the loitering offence under section 160(1) are:

(a) it is particularly open to potential abuse;

(b) the law could be applied discriminatorily: those from a disadvantaged background suffer a greater risk of prosecution;

(c) crime prevention could equally be achieved by the police exercising their power under section 54 of the Police Force Ordinance (Cap 232) to stop and question persons in a public place who act in a suspicious manner; and

(d) it is wrong in principle and against human rights to characterize as criminal conduct behaviour which is not unlawful and which falls short of an attempt. A person should be arrested only for a committed crime or an attempt to do so.

Arguments in support of the retention are:

(a) there is no substitute available for the loitering offence;

(b) the loitering offence has been demonstrated to be an effective crime prevention tool;

(c) the removal of the loitering offence in the current crime situation may be construed as a relaxation of the fight against crime; and

(d) the loitering offence should not be removed on the mere ground of possible fabrication of evidence. This could be minimized by improvement to the current standard of police practice and procedure.

In considering the need for a loitering offence under the Crimes Ordinance, the ad hoc group has also discussed with the Administration safeguard against possible abuses of the loitering offence. The following improvements to the current standard police practice and procedure have been formulated:

(a) all persons charged with loitering offence would be interviewed and a cautioned statement taken. Details of the arresting officer's suspicion would be set out in the preamble of the cautioned statement or record of interview, a copy of which would, as far as practicable, be given to the arrested person immediately after the interview has been conducted or the cautioned statement has been taken; and

(b) in all cases a case summary will be provided to the defendant (whether or not represented by a lawyer, or the defendant choses to defend himself) on his first appearance in court before being asked to indicate his intentions to plead.

These special procedural measures will ensure that the defendant of a loitering offence knows clearly before his trial the circumstances leading to his arrest and charge.

The ad hoc group has also examined whether the other provisions of the Crimes Ordinance are incompatible with the Bill of Rights Ordinance. The presumption of intention provision in section 9(3) is considered inconsistent with Article 11 of the Bill of Rights Ordinance and the spirit of section 65A of the Criminal Procedure Ordinance. The Administration has accepted Members' views and the Secretary for Security will move an amendment to repeal section 9(3) of the Crimes Ordinance at Committee Stage.

Mr Deputy President, if I may, I would like to take this opportunity to state my personal view on the retention or otherwise of the loitering offence. I am aware of the nebulous nature of the current loitering offence, as well as its criticism, particularly the potential risks of abuse and fabrication of evidence. However, I am also mindful of the implications of its abolition in the present crime situation. It is a question of striking a careful balance between law and order and human rights. In my view, the loitering offence, in the modified form proposed in this Bill, together

with the special safeguard measures I explained earlier will be the answer.

Mr Deputy President, with the above observations, I support the motion.

MRS RITA FAN: Mr Deputy President, in considering the Bill before this Council, I have been mindful of the need to remove any obvious and clear conflict with the Bill of Rights. I am also aware of the necessity to ensure that the man in the street, who often makes up the silent majority of our community, does not suffer undue losses of property and personal damage because our police's ability to prevent and detect crime has been hampered by the lack of legislative backing. The balance between individual rights and police power had always been a very delicate one; but nevertheless, it is our responsibility as legislators to try to get it right. I think the Bill as amended by the Committee stage amendment to be moved by the Secretary for Security has got it right. My colleagues who advocate for the total repeal of the loitering offence are most eloquent, and their genuine concern for the possible abuse of loitering by the police must not be taken lightly. Indeed, as a result of their views and the sense of fair play of other members of the ad hoc group and the co-operation of the Administration, significant protection for those arrested and charged for loitering will be implemented. But I am afraid I cannot support Mr James TO's amendment which actually undermines the effectiveness of the offence of loitering. To do so would be to allow an ordinary person to become the victim of a crime when the attempt to commit that crime could have been intervened by police action. It means that even though police officers have spotted suspicious behaviour (which would permit arrest for loitering), they cannot make an arrest of that person for further investigation. Simple stop and search just cannot serve the purpose. I cannot see how this can be beneficial to the man in the street.

Here is a real case.

"A number of young boys were robbed between April and June this year in a certain area in Kowloon. One day, police officers spotted a youth following two young boys into a lift; he got out before the lift door closed. Then he followed another boy who was alone into another lift. The officers took another lift and located the youth on the 19th floor. They asked him why he was there. The youth remained silent. He was then arrested for loitering. Later, the youth admitted that he was looking for an easy target to rob. He was put on an identification parade, and was positively identified by six young boys for robbing them."

Without the loitering offence, the youth would not be arrested. It would not be possible to put him on the identification parade. The six young boys who had been robbed would not have their case detected. That youth may go on robbing young boys until he was caught red-handed.

Let us imagine for one moment that one of the young boys robbed is our son or younger brother. Think of the fear that he experienced when he was forced to obey the youth and give him all his money and other valuables. Think of the frustration the young boy would feel when no justice and punishment were given to the one who had robbed him. Think of the kind of conclusion that the young mind may be drawing as a result of that experience. Would it not be much better if he had not gone through all these?

Prevention is always better than cure, although prevention is not often possible. But this is not the reason for weakening our prevention machinery. To repeal the loitering law, without any effective replacement, would undoubtedly subject ordinary people to a greater possibility of being a victim of crime. We are all concerned about the well-being of the ordinary law-abiding people; let us show our concern by retaining this preventive measure for their protection until another effective replacement is found.

MR MARTIN LEE: Mr Deputy President, in addressing this Bill, we need to keep clearly in mind what our objectives are. Certainly, we need to make sure that our police force has effective means of preventing and detecting crime. Similarly, we need to mete out punishment for any actual or attempted crime. Just as important, we need to ensure that our police have the full support of the community in carrying out their duties, for only then will the police be effective in preventing the serious crimes that our community is so concerned about.

A close, dispassionate look at the loitering provision in the Crimes Ordinance reveals that the provision does absolutely nothing to achieve the first two objectives stated above, namely, the need to prevent crime and to punish criminals. Rather, the retention of the loitering provision will serve only to poison the relationship between the community and the police and cast doubt in the minds of the public as to the fairness of our system of criminal justice. In so doing, it will serve not to fight crime but to weaken the joint community/police effort that is so vital to combat organized crime gangs that account for such a large measure of Hong Kong's

serious crimes.

The criminal offence of loitering has long been criticized by the legal community in Hong Kong as misguided and prone to abuse. After studying the issue in great detail, the Law Reform Commission came out strongly for its repeal. The Commission concluded that the offence of loitering served to criminalize behaviour that was not necessarily criminal, was particularly subject to abuse because of its victimless nature, and violated the basic common law principle that a person should not be punished unless he has committed a criminal act. In light of the existence of the stop and search powers of the police under section 54 of the Police Force Ordinance, the Commission stressed that the loitering offence did not serve any effective crime prevention purpose. In a submission to this Council, the Hong Kong Bar Association strongly supported the recommendation of the Law Reform Commission.

It is important to stress that the loitering offence does nothing to assist the police in deterring and detecting crime. Supporters of the offence constantly refer to it as an "effective crime prevention tool"; yet they never bother to explain just how it serves to prevent crime, particularly serious crime. Under section 54 of the Police Force Ordinance, the police already have the full power to question or search any individual they believe to be acting suspiciously. The loitering offence does nothing to add to these powers.

In the example given by the Honourable Mrs Rita FAN, the policeman in question could have exercised these powers under section 54 of the Police Force Ordinance to detain the suspect and ask them questions. And if the suspect were to be so co-operative as she had described, he could also have made a confession statement to the police, in which case, still the robbery offences would have come to light. The importance of all the examples given by the Honourable Mrs Rita FAN lies in the willingness to make a confession; because if the suspect had not co-operated so well in confession to the earlier offences of robbery, the police, in arresting him and in charging him for loitering offence, would still not be able to discover the earlier criminal activities relating to the robberies of the young boys.

Mr Deputy President, it is important to bear in mind that our law provides punishment not only for completed crimes but for any attempt at a crime. Once an individual has taken any action that constitutes an attempt to perpetrate a criminal offence, he can be prosecuted for it. Some have argued that criminal sanctions for attempt do not go far enough. "What about the case of a potential burglar who is

snooping around a car park at 3 am, but has not yet attempted to pick a lock?" they ask. In this case, section 17 of the Summary Offences Ordinance already provides a two-year jail sentence for anyone in possession of any implements such as a crow-bar or lock-pick who has intent to use them for any unlawful purpose -- even though he has not yet attempted to use them. The key principle here is that the person has already taken an action that is criminal -- that is, the possession of these implements with intent to commit a crime.

To realize the potential unfairness of the loitering offence, Members need to look no further than the scenario put forward by the Government as justification for the offence. I would like to read that today. I hope Members will bear closely in mind that this is the best-case scenario put forward by the Administration. Hence, if this best-case scenario does not convince Members of the need for the offence, then nothing will. The Administration's potential scenario, as reported by a police officer, reads as follows:

"Between 1125 has and 1145 hrs on 22 June 1992 I saw you at the "Airbus" bus stop outside Queensway Park on Queensway, Central. During this time I saw you approach close to male and female passengers waiting for the bus and also as they were boarding the bus, but you did not attempt to board the bus yourself. You repeated these actions when the next bus arrived. I suspected you intended to steal from those persons or commit indecent assaults upon them, so at 1145 hrs on 22 June 1992 I therefore arrested you for loitering."

This example shows the ridiculous nature of the offence even after the amendment to be moved by the Secretary for Security -- and remember, this is the best-case scenario. Someone walks by a bus line twice, and the police officer arrests him on the possibility that he might have intended to steal or commit indecent assault! We do not even know whether the suspect is supposed to have intended to commit indecent assault (if it be the case) on a man or a woman! This person has done nothing criminal -- he was pacing around a bus stop -- and we are going to put him in prison because a police officer thought he might be considering a crime! Note that the police officer is not even sure of what crime this person is alleged to be considering. Note also that at any trial, there would be no witness other than the police officer and no corroboration of the police officer's testimony. It would only be the word of the accused against the word of the police.

It cannot be said that the repeal of the loitering provisions would hamper the

police officer from preventing crime in this case. For, under the Police Force Ordinance, the officer could have stopped and searched this man at any time if he was worried he was about to commit a crime. Similarly, if he had actually made any attempt whatsoever to commit the acts he is alleged to have contemplated, of course he could be prosecuted for that attempt. But to put him in prison for walking next to a bus line -- is that really what our system of justice stands for? Do we want to be the laughing stock of the legal fraternity of the common law jurisdictions?

I would like to give another example, through which I hope Members will better understand the central problem of this offence, namely, that it punishes not for actions committed but for suspicions about individuals. Take the example of a police officer who sees two people approach a shiny new car parked outside the Legislative Council Building. The two look at the car and then wink at each other, looking around as if to see whether anyone is observing them. Whispering to each other, they walk round the car, observing every angle of the vehicle. Then they put their face up against the windows to look at the inside the new car.

Now, what I described above is fact and not fiction. And it happened yesterday outside our Legislative Council Building. The new car was a Nissan Cima bearing the number of AS 2323 and it belongs to our honourable colleague Prof Edward CHEN, and my companion was my honourable colleague Dr LEONG Che-hung. I am happy to say that no prosecution has resulted: at least not yet. But suppose the police officer had seen two working-class youths with tattoos on their shoulders that made the police officer suspicious. Surely, this would be a classic case for loitering -- for what on earth could these youths be doing in the Legislative Council carpark looking so carefully at the new car and observing its every angle? The point is that the two pairs did exactly the same thing -- but in one case it was criminal and in the other case it was not. Why? Solely based on the appearance of the individuals. This points to the fatal flaw of the provision -- it runs the risk of criminalizing not behaviour but personal appearance. And, that is why the loitering offence is so open to abuse. But before I leave this example, in fairness to the owner of the new car, I must add that this model Nissan Cima is singularly unsuitable in any country where unleaded petrol is not available.

DEPUTY PRESIDENT: That is totally irrelevant to the subject under discussion, Mr LEE.
(Laughter)

MR MARTIN LEE: Mr Deputy President, we must also keep in mind the potential ramifications of the law. We are now facing an unprecedented barrage of serious crime, which, if we are going to defeat, we will need the full backing of the entire community. Yet, the loitering offence and its potential for abuse serves only to drive a wedge through the vital fabric of police/community co-operation. For, take the case of the person who has been unfairly charged for loitering when he has not committed any criminal action. We run the risk that this person will lose faith in the fairness of the police and our criminal justice. When this person in the future becomes aware of triad activities, will he be willing to come forward and testify to the police? Or will he be willing to step in and defend a police officer who is being attacked? I fear he will not. And, this lack of respect for and support of the police force will, in the long run, only hamper the police in their efforts to go after the big fish of organized crime who are responsible for the heinous acts we have witnessed recently.

In light of the compelling reasons against the retention of the loitering offence, I hope Members will think carefully about this issue and agree with the strong recommendations of the Law Reform Commission and the Bar Association. I urge Members to support the amendment which will be moved by the Honourable James TO.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, in 1988, the Administration consulted people in the districts for views on section 160(1) of the Crimes Ordinance, which is about the offence of loitering.

In view of the significant impact of that provision on the law and order situation in the district, the Wan Chai District Board adopted an unanimous view against its repeal and called for its retention. As the provision offers an effective means to prevent crime, I was among those who contributed to that view; today, I am going to hold to the same view.

I remember, before that provision became law, a number of owners' corporations and mutual aid committees in the district frequently lodged complaints with me over the problem of strangers hanging around inside or outside their buildings. But since there was no law against it, the police could not do anything on the spot. In the presence of the police, of course the suspect would not do anything illegal; but as soon as the police were gone, crime was committed. Not uncommon were cases of theft,

intimidation, extortion in the form of coercing residents into buying merchandise at excessive prices, as well as serial robbery in some buildings and so on. The law and order situation in those buildings improved so much after the promulgation of section 160 of the Crimes Ordinance.

In 1992, the Administration proposed that section 160(1) of the Crimes Ordinance be amended, not repealed, a move highly commended and supported by the population at large. It is so because the public has absolute faith in the effectiveness of this provision in crime prevention and its major deterrence effect on people who behave suspiciously and thugs who are intending to break the law. Instances of this are so numerous that I would just quote one or two for Members' reference.

In March this year, five arson cases happened in Sau Mau Ping Estate during nine days. According to the record, each and every one of the cases occurred at five o'clock in the morning. So two plainclothes policemen were assigned to patrol the area during the small hours of the day. At last, on 22 March, they saw a suspicious man walking from one block to another where many of the flats had been vacated. On being stopped by the policemen, the man claimed he was going to visit a friend, but could not tell his friend's name and flat number when asked. So the police charged him with loitering. A lighter was later found on his person, while the suspect said he was not a smoker. Upon further questioning, he admitted having committed the five arson cases.

Another case occurred in the lifts of some Chai Wan buildings, where women were robbed and raped. Also thanks to the loitering offence the culprit was brought to justice. Here is how the case was solved: two plainclothes policemen saw a 24-year-old youth waiting in a lift lobby. But every time a lift came, he did not go into it; he just stole a glance at it. The policemen's suspicion was aroused. The youth was stopped and charged with loitering. Subsequently it was found that he was the robber and rapist. All six victims identified him at first sight as the culprit. Originally sentenced to 20 years' imprisonment, he got remission of eight year on appeal, which is regrettable, and has to serve just a 12-year term.

Besides, pickpocketing at bus stops and people on the prowl outside schools to recruit students into triad societies were common occurrences. I was told by both the police and the Education Department that nowadays triad elements dare not blatantly recruit students outside schools because we have this provision. If it were to be repealed, innocent young students would be more susceptible to falling

victim to traps set by triad societies; every day would be a field day for criminals.

The instances I have just mentioned clearly point to the necessity of retaining the provision. However, since the original wording requires the loiterer to give an explanation of his behaviour, it is a violation of the legal principle of presumption of innocence. Besides, the original wording also fails to spell out the precise legal justification for holding the loiterer in breach of the law. Such being the case, I agree that there is the possibility of abuse by the police, and thus the need for amendment to bring it in line with the Bill of Rights and to forestall any possible abuse by the police. I find the amendments now put forward by the Administration reasonable and also acceptable.

Mr Deputy President, before I entered this Chamber a while ago, I was presented with a petition letter from a member of the public. May I quote a few sentences from the letter. A paragraph goes like this: "If the loitering offence is removed, it will precipitate crimes which would otherwise have been preventable. We as humble and lowly citizens do not wish to have strangers with dubious intentions hanging around our buildings or bus stops and looking for chances to commit crime, thereby causing loss to our property and even jeopardizing our safety. We understand some Councillors, out of respect for human rights, are asking for the repeal of the loitering offence. Nonetheless, we hope these Councillors can also consider the case from our point of view. We should also be entitled to enjoy, as our human right, freedom from criminal harassment!"

Mr Deputy President, I therefore urge our colleagues in this Council to support the amended section 160(1) of the Crimes Ordinance, and in so doing offer better protection for Hong Kong people's life and property.

Mr Deputy President, with these remarks, I support the amendment Bill.

MRS MIRIAM LAU: Mr Deputy President, the Bill seeks to substantially amend the controversial offence of loitering to make it consistent with the Bill of Rights Ordinance (BOR). Although the previous section 160(1) is triggered only where a person is found lingering in circumstances which reasonably suggest a purpose other than innocent, the requirement for an accused person to give a satisfactory explanation may nonetheless so infringe the presumption of innocence guaranteed by the BOR.

The new section proposed in the Bill removes the requirement for an accused to give explanation and puts the onus on the prosecution to prove intent to commit an arrestable offence. Personally, I am satisfied that under the proposed new provision, all the BOR objections under the previous section have been addressed.

Mr Deputy President, some Members have called for the repeal of section 160(1) altogether. When the Law Reform Commission (LRC) considered the loitering law in 1990, it recommended the repeal of section 160(1), contrary to the views of its Sub-Committee which recommended retention of the section in an amended form. The reasons for the LRC's recommendation were:

Firstly, the section was objectionable in principle and that it criminalizes behaviour falling short of attempt;

Secondly, there will be potential for abuse; and

Thirdly, a less objectionable substitute under section 54 of the Police Force Ordinance is available.

Whilst I accept that the objections in principle may be valid, in regard to the previous section, such objections do not depict as strongly in the proposed new version. Under the new section, the prosecution will have to adduce proof beyond reasonable doubt that the accused did certain overt acts which indicate his intention to commit an arrestable offence. It is not sufficient to allege that he merely lingered about.

If the police were not allowed to intervene, even if there were clear evidence that the accused had intent to commit an arrestable offence, which would be the case if the loitering offence is abolished, then the police would have to wait until an attempt or actual commission of an offence is made before action may be taken, in which event the intended victim or victim's property may be put to unnecessary risk. That clearly would not be desirable in the public's interest.

It has been suggested, and indeed the LRC did take the view, that section 54 of the Police Force Ordinance can achieve the object of crime prevention. Therefore section 160(1) is not necessary. It must be pointed out that section 54 of the Police Force Ordinance has now been amended so that the police no longer have

the power to arrest and detain a person for enquiries. All the police can do in respect of a person who has acted in such a manner as to demonstrate clearly that he intended to commit a crime is to stop and search him, and if the person is not a wanted person and nothing is found on him, then the person can go on his own merry way and perhaps go to the next street again and repeat what he has done before in the hope that no other policeman would stop him again. In other words, it is clear that stopping and searching alone would not be sufficient protection for potential victims and that section 54 cannot be an adequate substitute for section 160(1).

In the example cited by the Honourable Martin LEE, the man with the crowbar in the car-park may be caught by the Summary Offences Ordinance. But what if the man did not have a crowbar with him and his real intention was to commit rape or indecent assault on a single woman coming into the car-park, and the man did follow a number of women around intending to choose which victim he wanted to pick? The Summary Offences Ordinance would not apply. Are we saying that even in these circumstances, the police cannot take any action?

There is some concern in regard to the nebulous nature of the loitering offence, as the arrestable offence which the defendant was accused of intending to commit would not normally be identified. As such, the law may be subject to abuse. The question of abuse is true of many criminal provisions and there is always a danger that a police officer would mistake or exaggerate his evidence. However, the possibility of abuse is not sufficient reason for removing the offence. To minimize the risk of abuse, the ad hoc group insisted that the prosecution's case be made known to the defendant at an early stage. The police have agreed that all the essential facts leading to the defendant's arrest will be clearly set out in the preamble of a cautioned statement which will invariably be taken from the defendant in loitering cases -- of course, the defendant need not make any statement -- and the statement will be given to the defendant as soon as possible after it is taken. This will serve to equip the defendant with sufficient facts to prepare his defence and, at the same time, substantially reduce the possibility of police fabrication after arrest.

It may well be that we have to look into how we can improve our police complaints system to enhance confidence in the police; but I do not agree that we should do away with a law which has hitherto proven to be a useful crime prevention measure, simply because we are sceptical that the law may be abused.

The number of loitering cases has declined substantially from 1 507 in 1986 to

423 in 1991. This suggests that the police are now applying the loitering law more judiciously. Indeed, the police have confirmed that there is now much greater supervisory control over such cases, each case being perused by a CID Inspector before any decision is taken to charge a suspect.

The loitering law has hitherto served as a useful crime prevention device. The case of Sham Tsuen v. Attorney General (1986) already laid down clear guidelines for application of the previous section. It is clear that the ordinary citizen lawfully going about his or her own lawful business will not be troubled by the loitering law. Only those whose acts suggest a purpose other than innocent would be caught.

The present amendment improves the section even further to expunge BOR objections. Under the new provision, the right of silence and presumption of innocence of the accused are preserved. The privilege against self-incrimination is not violated. There is no shifting away of the burden of proof away from the prosecution. In fact, the new section has addressed many, if not all, of the objections raised by the LRC to the previous section.

In August 1988, a telephone survey was carried out to gauge public opinion on the loitering law. An overwhelming majority of respondents favoured giving the police the power to take effective preventive action in loitering circumstances. The consultation conducted by the LRC Sub-Committee showed that the District Fight Crime Committees were solidly in favour of retaining the existing law. I believe the public opinion on this issue is very clear: they want the loitering law to be retained.

As much as we uphold human rights in this society, we must ensure that a proper balance is struck between human rights and the need to prevent the commission of crime. I agree that there is a tendency in other jurisdictions to abolish the loitering law; but before Hong Kong rushes to follow suit, it is useful to examine the law and order situation of such jurisdictions, both before and after abolition.

In the United Kingdom, the loitering laws were repealed in 1981. The crime rate for robbery cases in the United Kingdom dramatically increased from 104 per 100 000 in 1980 to 155 per 100 000 in 1981, and continued to increase to 241 per 100 000 in 1989. Simultaneously, the crime detection rate fell from 20% in 1980 to 15% in 1989. It may be argued that these statistics are not conclusive but, to my mind, they are very telling.

In Australia, the offence of loitering was repealed in Canberra in 1987. As far as I know, this resulted in a massive upsurge of deliberate loitering by youths and unemployed people in public areas causing serious harassment to members of the public. Shoplifting and pickpocketing offences also proliferated. Eventually, the residents were so frustrated and concerned that the law had to be partially re-enacted by public demand in 1989.

Mr Deputy President, the law and order situation of Hong Kong over recent years is a matter of grave concern to our local community. Do we really want to be doing anything which may aggravate the situation? In my view, powers of crime prevention are definitely necessary under our current social conditions. The police need such powers, and the public demands the retention of such powers. Clearly, this is not the time for repealing our loitering law.

Mr Deputy President, I support the Bill and I urge fellow Honourable Members to likewise give it their support.

MRS ELSIE TU: Mr Deputy President, I have tried hard to come to terms with this Bill which leaves it to any policeman to decide whether a person is loitering with intent to commit an arrestable offence.

At the time of arrest, no crime has been committed. The policeman who makes the arrest does not know what the loiterer intends to do, and the charge that follows depends entirely upon the policeman's interpretation of what is in the mind of the loiterer.

It is therefore not surprising that this offence has been deleted from British law. It is so nebulous that even in Hong Kong where loitering per se is still an offence, it seldom brings a conviction.

What, therefore, is the purpose in keeping this offence on the statute books at all? We are told that it is a deterrent to crime, but since the crime to be committed is not known, it is hard to prove whether or not it is a deterrent. The ad hoc group was informed by a former United Kingdom law enforcer that deletion of this charge from the statute books there has made no assessable impact on crime.

My strongest objection to retaining this offence in law is that it can easily

be abused by any unprincipled policeman who wants to show a crime detection record to justify getting his salary. Unfortunately there have been enough complaints to indicate that the law has indeed been abused.

If the Government had been willing to set up an independent Complaints Against Police Office, I might have felt more comfortable with the amendment, which is a slight improvement on the present law. But since the innocent accused at present has no reliable means of redress against the abuse, I cannot accept it as adequate to prevent abuse.

I agree that the public is crying out for stronger action against crime, but I am convinced that what they mean is violent crime, not petty loitering offences which waste police time and manpower. The public wants to see genuine action against triad intimidation of shopkeepers, restaurant owners, hawkers, minibus drivers, construction companies and other lawful business. Parents want to see their children going to school safely without being threatened and molested by triad recruitment gangs.

I would like to see the police concentrate all their efforts on reducing crime in all its forms, and not just picking up poorly-dressed citizens who happen to be standing too long in one place and whose intentions a policeman is expected to guess.

Having considered all these points and attended the discussions of the ad hoc group, I feel that we would achieve more by deploying more police on violent crime detection, and by deleting the loitering law altogether. There are other laws that can deal with a person intending to commit a crime, because police have stop and search powers which are more than adequate, and these are also sometimes abused. We need to get our priorities right. No man would spend his time trying to kill mosquitoes while a tiger was in fact attacking his family. Let us get the tigers first.

Mr Deputy President, I dislike the present loitering law, and consider that the amendment does little or nothing to improve the way it is used or abused. I favour deleting loitering from our law books.

MR MOSES CHENG (in Cantonese): Mr Deputy President, the purpose of the Crimes (Amendment) Bill 1992 is to amend the loitering offence under section 160(1) of the existing Ordinance to ensure that it will not be inconsistent with the Bill of Rights. Following the adoption of the Bill of Rights as part of Hong Kong Law last year, any

existing provision in our law which is inconsistent with the Bill of Rights must be amended. According to the study undertaken and the advice given by the Bill of Rights experts in the Legal Department, the amended provision proposed in the present amendment Bill is consistent with any of the provisions in the Bill of Rights. I am therefore in favour of the passage of the Crimes (Amendment) Bill 1992.

However, I do understand there are people, including some of our colleagues in this Council, who are against the retention of the loitering offence. They regard the amended provision as being in conflict with individual's rights and prone to abuse in persecuting people with questionable antecedents. I beg to differ from their view. It is true that there have been cases of abuse in respect of the present provision. That is why I support the recommendation of the ad hoc group that the police have to provide to the accused in writing facts on which a charge of loitering to be brought against him is based in order to minimize risk of abuse. We must not do away with a law simply because of the possibility of abuse. I will certainly not agree to the suggestion put forward by those who wish to do away with the loitering offence altogether.

During the meetings of the ad hoc group to examine the Bill, representatives from the police, the agency responsible for maintaining law and order, vouched for the effectiveness of loitering charges in the prevention of crime. As Mrs Rita FAN put it: "prevention is always better than cure". Given the law and order situation in Hong Kong, why should we take away from the police, who are in the frontline of maintaining social stability, a tool which they consider effective in crime prevention?

The Bill of Rights was passed in this Council last year, making it part of Hong Kong Law. It is an indication that Hong Kong is an open and advanced society in which individual's rights are respected. However, in an open and advanced society, we should seek to strike a suitable balance between individual's rights and the maintenance of law and order in society. This is a point endorsed by Bill of Rights, and, I believe, has the support of the general public.

Mr Deputy President, with these remarks, I support the motion.

MISS EMILY LAU: Mr Deputy President, a poet once said:

What is this life if full of care
We have no time to stand and stare?

If the proposal before us today to amend section 160(1) of the Crimes Ordinance is passed, the care-worn members of our community face a dilemma. Should they stand and stare, or should they face the risk of being charged with the offence of loitering with intent to commit an arrestable offence?

Mr Deputy President, I do not support the proposed amendment because it is bad in principle and defective in the way it is formulated. Because in practice it will criminalize essentially innocent activities solely by reference to what a policeman and magistrate may decide that a person has on his mind when he is lingering in a public place or in the common parts of any building.

Mr Deputy President, a free society does not penalize its citizens for having evil thoughts or intent alone. So precious is freedom of thought and opinion that both the International Covenant on Civil and Political Rights and our own Bill of Rights recognize them as absolute and without limitation. We are taking a dangerous step along the road to the Orwellian world of the "Thought Police" if we allow this proposal to be made law.

In recommending the abolition of the existing section 160(1) which the proposed amendment is intended to replace, the Law Reform Commission concluded that it was wrong in principle to characterize as criminal conduct which fell short of an attempt to commit a criminal offence. The Law Reform Commission considered that no matter what concepts were used, it was extremely difficult to draw the line between conduct that was not unlawful and unlawful loitering; so it was better to repeal the subsection. That objection, in principle, remains equally applicable to the proposed provision before us.

The Law Reform Commission also recognized the potential for abuse in such an offence as members of our society who were most likely to be charged were the less affluent or articulate. We should not lightly dismiss the damage which may be done to the fabric of our society if the disadvantaged or recent legal immigrants to Hong Kong are alienated by use of this law. For this and other reasons the Hong Kong Bar Association has consistently supported the abolition of the existing section 160(1) and opposes the proposed replacement.

Mr Deputy President, the proposed amendment is defective in the way it is formulated because it does not require the loitering to be connected in time or place with the arrestable offence that the accused has an intent to commit. It does not provide that the loitering must be for the purpose of committing an arrestable offence; nor does it require that the arrestable offence be specified.

Mr Deputy President, what in fact is an arrestable offence? The ad hoc group considering this Bill asked the Administration to provide a list of arrestable offences which persons charged with loitering were accused of intending to commit. We were given a list of 14 offences under the heading, "Arrestable Offences Peculiar to the Loitering Offence"; but of course there is no such thing as an arrestable offence peculiar to the loitering offence.

Mr Deputy President, in the Interpretation and General Clauses Ordinance, "arrestable offence" is defined as "an offence for which the sentence is fixed by law or for which a person may be sentenced to imprisonment for a term exceeding 12 months". There are literally hundreds, if not thousands, of arrestable offences in our laws. In Part One of the Crimes Ordinance alone, there are more than eight kinds of arrestable offences, each consisting of a number of individual arrestable offences. For example, in section 10(1) there are at least 13 ways in which the offence of sedition may be committed.

Not only is there no requirement in the proposed provision to specify the arrestable offence which the person has the intent to commit at the time the person is apprehended or charged, it is not proposed that the arrestable offence shall be included in the charge. This increases the dangers inherent in having such a vaguely worded offence. The Administration has not explained, at least to my satisfaction, how this can possibly comply with Article 5(2) of the Bill of Rights which requires that "anyone who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him". Nor has the Administration explained how the proposed amendment can comply with Article 11(2) of the Bill of Rights which confers the right of a person charged to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

Mr Deputy President, what is the intent which is required to establish this offence? Is it simply the intent to do the act which constitutes the arrestable offence? Or is it necessary, also, to have that intent which is required to secure

a conviction of the arrestable offence? If no arrestable offence is required to be specified in the charge, what will the prosecution be required to prove? Will it only be necessary for the prosecution to prove that the person charged intended to commit any one of hundreds of thousands of arrestable offences in our laws?

Mr Deputy President, section 160(3) of the Crimes Ordinance is itself an arrestable offence. It requires no intent on the part of the person loitering; the offence is complete if the mere presence of the loiterer causes any person reasonably to be concerned for his safety or well-being. So does that mean that an offence will be committed under the proposed section 160(1) if the loiterer loiters with intent to loiter? I give these as examples of only some of the problems which exist in interpreting this proposed provision. No doubt the proponents of this amendment will seek to dismiss these as mere technical objections to be resolved by the courts. But if an offence is framed in such a way that it is not possible to see what the ingredients are in it, then it is, in my view, irresponsible for any legislator to support it, and wrong for this Council to pass it.

What are the arguments put forward by the Administration for retaining a loitering offence of this kind? Surprisingly, Mr Deputy President, the Administration never maintained it was essential to have such an offence. A representative of the police told the ad hoc group only that they would prefer its retention. It is said to provide an effective means of detecting and preventing crime. I cannot argue with the "Red Queen logic" that crime can be prevented by creating more criminal offences, except by replying that the converse must be true. It does seem to me that street crime is prevented by having visible and vigilant police patrols. The police already have a formidable array of powers, including the recently amended power to stop and search under section 54 of the Police Force Ordinance. In particular, section 54(2) gives the police power to search any person in any street or other public place at any hour of the day or night whom they reasonably suspect of having committed or being about to commit or of intending to commit any offence. This extensive power renders liable to search any person who is loitering in circumstances giving rise to a reasonable suspicion that he is about to commit or intends to commit any offence. And alone, it is a sufficient measure for detection and prevention of crime.

If, upon a search carried out under section 54 of the Police Force Ordinance, a person is found to have dangerous drugs on him or to be in possession of an offensive weapon or any article for use in the course of any burglary, theft or cheat, he can be charged with the appropriate offence. Again, these are by way of examples only.

It is therefore a specious argument that a person cannot be charged with an offence under section 54.

It is not difficult to see, Mr Deputy President, that the Administration wishes this offence to be retained for those circumstances where the search reveals nothing incriminating and where there is no basis for preferring any other charge against the person searched. It is precisely for this reason that the opponents of such an offence regard its existence as capable of serious abuse, just like its predecessor.

In my ward office, Mr Deputy President, I have received complaints from irate constituents who claim they were innocent but were charged with the loitering offence. To compound the problem, no independent monitoring mechanism exists to prevent abuse.

Mr Deputy President, no proposal has been put forward to amend the other loitering provisions in sections 160(2) and (3) of the Crimes Ordinance. Section 160(2) would seem to overlap with section 4(23) of the Summary Offences Ordinance and therefore would seem to be unnecessary. Section 160(3) is open to some of the objections that apply to subsection (1) and should therefore be repealed. Unless and until there is a review of these loitering provisions, they remain available for use or misuse.

Mr Deputy President, I deplore the fact that, in common with a number of other important Bills apparently necessitated by the expiry of the freeze period in the Bill of Rights Ordinance which this Council has recently had to consider, legislators were not given sufficient time to fully research and consider this important legislation. Neither was time made available for public consultation. The accession to the International Covenant took place in 1976; thereafter the Administration repeatedly assured the United Nations Human Rights Committee that our laws complied with the Covenant. The gestation period of our Bill of Rights was a lengthy one, and after its passage the Administration had a full year in which to consider what amendments to existing legislation were necessary.

Mr Deputy President, public consultation remains an essential element, both in the legislative process and in securing the consent of the community to laws imposed by an executive-led administration. In that process, the Administration should be prepared to present its arguments not only to legislators but to the community at large. The explanatory memorandum accompanying a gazetted Bill is no substitute for a reasoned explanation of the thinking behind any legislative proposal. I urge the Administration to bear this in mind in the next Legislative Session.

Mr Deputy President, I consider the proposed amendment to be wrong in principle and irredeemably flawed. For the reasons I have given, I am against it and will vote in support of Mr James TO's amendment for the repeal of section 160(1).

6.38 pm

DEPUTY PRESIDENT: I shall take an adjournment and Council will resume at ten past seven.

7.27 pm

DEPUTY PRESIDENT: Please desist from taking photographs in the public gallery. Please desist.

DEPUTY PRESIDENT: We will wait for a quorum.

DEPUTY PRESIDENT: Council will now resume.

MR JAMES TO (in Cantonese): Mr Deputy President, I will first speak on the offence of loitering, although the Crimes (Amendment) Bill covers other areas besides the amendment of this offence.

When considering the amendment to the powers vested in the law enforcement officer, regard should be given to the principle of whether the officer is given adequate and essential powers at the same time when abuses are being provided against. The offence of loitering is a controversial one, otherwise it would not have been necessary for the Law Reform Commission to consider this short bit of provision. If this provision had not been so controversial, the Law Reform Commission would not have set up a committee to further examine the relevant problems.

There is a difference between substantive and inchoate offences. Substantive offences have clear definitions. Inchoate offences are, as its name would imply, offences in respect of which the law enforcement officer need to make an assessment as to whether he should intervene before the substantive offences are committed. Let

us examine loitering in the context of inchoate offences and see what problems there are in the very nature of this offence.

First, no weapons found. If for example a police officer on beat duty stops and searches a person and finds on him an AK47 or a grenade, that person will be charged with unlawful possession of firearms and not loitering; if stolen goods are found on him, he will be charged with unlawful possession of stolen goods or articles of dubious origin, and not loitering; no drugs are found on him; no victim is involved. Besides, in the situation where a police officer makes an allegation against a person for loitering, there is very often no third person present. Therefore if some police officers are dishonest or excessively eager, abuses will arise.

Second, this offence indeed is aimed against certain classes or categories of people, especially the lower class people like new immigrants, construction site workers and those who are shabbily dressed.

Third, some people are in fact always loitering. As the Legislative Council Member of the Kowloon West constituency, I can tell this Council that in my constituency many aged persons, handicapped persons, scavengers, prostitutes, persons at risk, and rehabilitated mental patients can be found loitering on the streets. They are doing so for one reason or another but not with the intention of committing crimes. Take the example of a person living in a bedspace apartment, his living space is so confined that it hardly allows a turn of the body and he can only lie down in his bedspace. So he can only loiter in the street or play chess or Chinese playing cards in the park. Only when the hour becomes late will he go home, wash himself and retire to his bedspace of only a few cubic feet. This kind of people are liable to be victimized by the offence of loitering.

Fourth, in enforcing the law, it is indeed true that the enforcer relies on subjective judgment to arrive at a conclusion as to whether to intervene. I should like to share with Members some of the examples most discussed in the Law Reform Commission which the police say are typical. Example One : a person is seen pushing his way hither and thither among people on the street and coming within "preying" distance of pockets or handbags; Example Two : a person is seen looking around him on entering a building or outside a building, or attempting to push open the iron gate of some old building or Chinese tenement building; Example Three : a person is seen (as in the example cited by Mr Martin LEE) attempting to pull at the door of a vehicle; Example Four : a person is seen following a woman or girl in a poorly

illuminated location; Example Five : a person is seen pressing his body towards women in a crowded tram. Patently, under the existing law the person in the examples quoted can be prosecuted and convicted without having to wait till he commits a substantive act. In the case of a person pulling at the door of a vehicle, the law provides for the offence of tampering with vehicle with which the person concerned can be charged. Similarly, a person who presses his body towards women can be charged with attempted indecent assault or attempted common assault. However, it would be dangerous to rely on the conclusion drawn by a police officer according to his subjective judgment. Let us pause to ponder this. Would the law and order situation deteriorate if the loitering offence was done away with? By invoking the revised Police Force Ordinance, the police can still exercise the powers of stop and search, checking for identity card and interception. Generally speaking, if there are more constables on the beat (or an increased presence of Dear Old Bill, as some would say), bad elements on the prowl for a prey will scarper. A second point is that if, after a period of observation in certain cases, there is sufficient evidence to base a charge under the new law, why not continue with the surveillance or observation for a while longer till the person under observation starts to act or does something which in law constitutes an attempt when the police will then close in for the arrest? Would this not be a neat way of doing it and less open to censure? A third point is that to my way of thinking the basic and proper approach should be to enhance the police presence in the streets. A fourth point is that at present there is laxity in enforcing the relevant provision. According to the present state of enforcement, there are no more than 10 to 20 cases each month brought before the court and this figure does not imply full and unmitigated success in prosecution. Only half of the cases are successfully prosecuted and the other half are dismissed because the court does not accept the testimony of the police officer concerned but acquits the defendant. From the prosecution statistics, one is apt to ask whether there is indeed a need for such a controversial provision, which is liable to abuse, in order to deal with 10 to 20 cases of the alleged offence each month. A fifth point is that a police representative told the ad hoc group that the police had no strong views that this particular amendment should be retained; but a Security Branch official put in edgewise saying, "We do not share this view." So the police are taking one view while the Security Branch another view.

Furthermore, the first point I would like to refute is that the loitering offence enhances the police ability to detect crime. This is a wrong point to make. The ability to prevent crime might be enhanced to a certain extent but never the ability to detect or to investigate. If serious offences that come under the Organized and

Serious Crimes Bill -- which had its First Reading today -- are involved, some special detective or investigative powers are indeed to be made available. But this will not relate to the loitering offence. In the examples quoted by some Members such as Mrs Rita FAN and Mrs Peggy LAM moments ago, the cases in question were detected because usually the defendants concerned made a confessionary statement after they had been taken to the police station; detection of these cases did not therefore arise from exercise of the powers conferred on the police under the loitering offence section of the Crimes Ordinance.

The second point I would like to refute is that the safeguard against abuse presently being introduced -- that is to say, giving the defendant well before a charge is laid or as soon as practicable the details of the allegation made against him -- will be of help in forestalling abuse. It will be of little help because the allegation is one which is made by a party against another without a third party present; it is the constable who writes down the allegation according to what the constable sees or perceives; giving it to the defendant as soon as possible will only pique him more than it otherwise would; it will be no solution to the problem.

The third point I would like to bring out is that the Law Reform Commission, having considered all the arguments advanced against my proposed amendments, has nevertheless reached the decision to recommend the total repeal of the loitering offence. The Law Reform Commission's deliberation was focussed on the existing powers of the police, such as the powers conferred on the police under section 54 of the Police Force Ordinance, which was then not yet amended. However, after its amendment, the major, substantive effects of the section have remained the same. The Law Reform Commission has taken the view that provisions in the law which are being criticized for conferring more power than is necessary for the prevention of crime should be wholly repealed. Views on the revised powers of the police tend to vary widely from person to person depending on the individual's social outlook, orientation, class, knowledge and experience. Some Honourable Members here are perhaps used to being bowed at and saluted by police constables under Police Regulations and being accorded the best treatment whenever they go on inspection visits. But Members who are in regular contact with the general public -- particularly Mrs Elsie TU for whom I have the highest respect -- would know of, from long years of experience, numerous instances of abuse of powers and would be able to quote examples of same. I believe that people from different social groups or strata will have different degrees of experience and understanding of this.

Finally, I would like to refer to a few of the examples quoted by some Members earlier on. Example One: there are numerous complaints nowadays that strangers are found going in and out of many of the buildings in Wan Chai. The question in that regard is not whether we should retain the loitering offence on our statute books. If the stranger is a whorer coming to the building to visit a one-woman brothel, then he is a customer and in that capacity he is legitimately entering the building as a visitor to patronize a prostitute. Therefore the proper way to deal with the situation is not to arrest the stranger for the offence of loitering but to rigorously enforce the deed of mutual covenant. Example Two: sales agents are found knocking on people's door to sell their goods. It should be the responsibility of the caretaker of the building to ask them to leave; it would not be right to call the police to arrest them for loitering. Some other Members earlier mentioned the example where a man is found following a woman into a carparking compound. I find this example somewhat unnerving. It is because I leave home for work early in the morning and return late in the evening; if after this sitting of the Council I drive home and happen to meet a lady who is about to drive her car out of the carpark next to mine, I would be in for a terrible fright. When a police constable is doing surveillance within a carparking compound, would he arrest for loitering a man who he sees is following a woman? Or should he observe from a dark corner for a while longer to see if the man does a substantive act before coming up to the man to effect an arrest? Would the latter course of action be a safer course and less open to criticism?

I do not agree that at present the crime rate is rising. As a matter of fact, according to statistics provided by the police, the incidence of street crime, so far from rising, is falling. It is only the incidence of violent crime and robbery that is rising. I quite support the argument advanced by Mrs Elsie TU a moment ago that we should address the concerns of the general public and not to just argue in general terms that the law and order situation is deteriorating and then start off nabbing "small fries" for loitering. I feel that this would be the wrong approach. I hope Members will support my proposed amendments during the Committee stage and the Third Reading of the present Bill.

DR YEUNG SUM (in Cantonese): Mr Deputy President, a while ago Mr James TO told us that if, on getting off his car at the end of his journey home at night, he found a lady in the vicinity he would be in for a terrible fright; it was because he could be charged with loitering. But I can assure Mr TO that there is no cause for panic,

since the police know him to be a Member of the Legislative Council, and no charge of loitering will ever be brought against him.

I have been engaged in social work in a number of housing estates and squatter areas. During the course of my work, I found that many people from the lower social strata were often charged under the so-called "  " or loitering provision by the police after having been arrested for allegedly suspicious behaviour. Here I can tell colleagues that from my observation, more often than not, it is those from the lower social strata that are subjected to arrest or prosecution by the police under the loitering offence provision. Those who are well-dressed or with good social status are rarely arrested by the police under the same provision.

A colleague mentioned earlier that findings of a number of opinion polls show many people are in favour of retaining the loitering provision. I believe the key lies in how the questionnaires are designed. For instance, if you say: "The loitering provision is useful in combatting crime; is it agreeable to you?", of course most people will say "yes". But if you ask: "Is it agreeable to you for the police to enforce the loitering provision on the ground of combatting crime when you happen to be wandering in the street for no specific purpose?", then I believe most people will say "no". These polls are therefore unreliable because so much depends on how and under what circumstances those questions are asked.

There are also Members who submit that cases of crime and theft in the neighbourhood have come down since the loitering provision was enforced, suggesting the existence of a cause-effect relationship between the loitering provision and the decline of theft cases. But could it be in reality due to the increased police presence in the street? Such a cause-effect argument may not hold water.

Mr Deputy President, two amendments are now proposed by the Government to the effect that when a police officer invokes this provision he has to ascertain, firstly, that the person is intending to commit a crime and, secondly, that the crime is an arrestable offence, before prosecution can be instituted. But the question is: such a judgement is still solely the police officer's. I wish to draw Members' attention to the fact that, by accident or by design, this provision is highly susceptible to abuse by the police.

I would like to add one more point. We are against this provision and call for its repeal mainly because it violates the principles of human rights. I am not in

the legal profession, but I do know a few things in this regard. First, everybody is equal before the law. As I pointed out earlier, the police usually target people from the lower social strata when making arrests under the loitering provision; in other words, people from the lower social strata as well as ordinary citizens are discriminated against before the law. Second, the presumption of innocence should be upheld. When a police officer finds someone acting suspiciously, or when that person is deemed to be acting suspiciously because he is shabbily dressed or just being pallid and worn out by a day's work, the police officer could suspect that he is up to something and arrest him. This is an obvious, blatant discrimination against people from the lower social strata.

Mr Deputy President, in keeping with the spirit of human rights and the rule of law, I strongly urge Honourable Members to support Mr TO's motion to repeal the loitering provision.

On the issue of combatting crime, I would like to make it clear that while democrats often advocate human rights because we believe in them, we nevertheless recognize the need to strike a balance between law and order and human rights. When it has come to our knowledge that a provision poses discrimination against ordinary citizens or certain groups of people we should, from the perspective of human rights, seek to amend it. There are a variety of ways to maintain law and order, such as strengthening police manpower, increasing informer's reward and stepping up co-operation between the Chinese and Hong Kong authorities. All these help combat crime, and there is no need to undermine the Bill of Rights in order to curb crime.

Thank you.

SECRETARY FOR SECURITY: Mr Deputy President, I am grateful to Mrs Selina CHOW and members of the ad hoc group for their speedy and thorough examination of the Crimes (Amendment) Bill 1992.

I note that members of the group have different views on the need for retention of the loitering offence, as indeed the Law Reform Commission. I would only reiterate what I said in introducing the Bill into this Council that the loitering offence is an effective means of preventing crime before a victim suffers loss or injury and we need to retain it as such. For the avoidance of doubt, I would also like to make it clear that the police are very strongly of this view. And we are not simply talking

about the prevention and detection of minor or petty crime. Experience shows that about a third of the persons arrested for loitering were, as a result, charged also with serious or violent crime, such as theft and robbery.

As some Members have pointed out in their speeches, countries which have abolished the loitering offence have seen a deterioration in their crime situation and some of them have had to re-enact similar legislation to tackle the problem.

The new section 54 of the Police Force Ordinance which provides police officers with the power to stop and search persons who act in a suspicious manner or who are suspected of being involved in a criminal offence is not an adequate substitute and does not obviate the need for the loitering offence.

The purpose of the Bill is to amend the existing offence so as to make the provision compatible with the Bill of Rights Ordinance. We are confident that the revised formulation will be so compatible.

Mr Martin LEE, in the examples which he has quoted, seems to me to have omitted reference to one crucial point. The revised formulation requires the court to be satisfied that a person charged has by his actions demonstrated the intent to commit an arrestable offence.

The police have strict internal guidelines to prevent abuse or discriminatory application of the power under the loitering offence. I do not believe, as Mr Martin LEE has claimed, that the existence of the offence poisons community relations. On the contrary, from the consultations we have had, we believe that the community as a whole supports the retention of the provision in a modified form. In order to ensure fair play the Administration has also agreed with the ad hoc group procedures to ensure that the person charged with loitering will have adequate information about the offences which the police officer suspected the accused of intending to commit so that he can prepare his defence.

For the above reasons, the Administration does not support the Committee stage amendments to be moved by Mr James TO to repeal the loitering offence.

I will be moving an amendment at the Committee stage to repeal section 9(3) of the Ordinance which contains a presumption of intention relating to the offence of sedition. I am advised that this presumption is probably incompatible with the Bill

of Rights Ordinance. We had intended to repeal it in the context of a separate "omnibus" Bill. But I agree with the members of the ad hoc group that it would be better to take the opportunity of the Crimes (Amendment) Bill to repeal this provision as soon as possible.

Thank you, Mr Deputy President.

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

Bill read the Second time.

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

SOCIETIES (AMENDMENT) BILL 1992

Resumption of debate on Second Reading which was moved on 20 May 1992

Question on Second Reading proposed.

PROF FELICE LIEH MAK: Mr Deputy President, the Societies Ordinance is one of the six pieces of legislation that have been subjected to a one-year freeze period under the Hong Kong Bill of Rights (BOR) Ordinance. The Societies (Amendment) Bill 1992 aims to address BOR problems in the Ordinance to make it compatible with the BOR Ordinance. The Bill was submitted to the Legislative Council for First Reading on the 20 May 1992 which was slightly over two weeks before expiry of the freeze period which the Ordinance was subject to, and less than two months before the close of the current Session of the Legislative Council.

With the very limited time available and a very important issue in hand, the ad hoc group set up to study the Bill has had to work particularly hard in order to enable the Bill to resume its Second Reading debate before the close of this Session. The group has held eight meetings, four of them were attended by the Administration. For this, I must thank my honourable colleagues for the time and effort they have put into the discussions, the Administration for their quick responses, and the OMELCO Secretariat for their support. Without the close co-operation of all parties it

would not have been possible for this Bill to resume its Second Reading debate today.

Mr Deputy President, I now come to the major issues of the Bill which have much concern of Members. The Bill proposes to introduce a notification system to replace the current registration system. Under the current Societies Ordinance all societies are required to register with the Commissioner of Police, failing which the society will be unlawful and its office bearers liable to prosecution. But making any registrable association unlawful simply through failure to register is considered incompatible with Article 18 of the BOR which guarantees freedom of association. The same article, however, also stipulates that restrictions on these rights are acceptable so far as they are prescribed by law and are necessary in a democratic society in the interests of security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedom of others.

The proposed notification system is meant to replace the registration system to maintain regulation of societies in order to protect the interests of the community in this regard.

This group has had lengthy discussions over the proposed notification system. The discussions started from whether there should be a notification system at all. To a few members of the group, any regulatory system on societies is an infringement on freedom of association. They therefore object to the proposed notification system totally. Some members accept the notification system but consider it objectionable that failure to comply with the notification requirement will be an offence. Most members, however, see the need for some form of regulation of societies to enable members of the public to identify a lawful society from an unlawful one, which includes in this regard a triad society. On this basis most members agree that the proposed notification system is not a disproportionate measure to ensure freedom of association on the one hand, and the protection of the interests of the community on the other.

As regards whether penalties should be attached to the system, it is most members' view that they are necessary to enable the whole system to work effectively by ensuring compliance with the notification requirement. Nevertheless, the level of penalty as proposed in the Bill for failure to comply with the notification requirement is considered disproportionate to the severity of the offence.

With the agreement of the group, I will be proposing amendments at the Committee

stage to bring the level of penalty commensurate with the severity of the offence as most members see it.

The group also has grave concern on whether the offence in question will be a recordable offence and hence be recorded in a person's Certificate of No Criminal Conviction. Some members consider such consequence too serious and not justified in view of the nature of the offence. In this regard, the group is glad to learn that the Commissioner of Police has indicated that he has no intention to classify the offence as a recordable offence. This information is very useful to the group as it has removed some of the members' worries. I am sure that Members will welcome it, if the Secretary for Security will reassure Members on this point in his speech.

With the majority's agreement over the introduction of a notification system with penalty, the group proceeded to examine the other features of the proposed system. The group has divided views over a number of points. For instance, there is no doubt as to the appropriateness of appointing the Commissioner of Police as the Societies Officer, given that the system is perceived by some members as basically a civilian matter. There is also a view that appeals should be directed to the courts or to a tribunal independent from the Administration, instead of to the Governor in Council as proposed in the new section 8(7), and to the Secretary for Security as proposed in the new section 9(5).

A few members also object to the proposal in section 15 which gives the Societies Officer the power to obtain any information he may reasonably require for the performance of his functions. On these points, the group had lengthy discussions and deliberations with the Administration and it is most members' view that:

(a) Since the notification system is ultimately set up for the purpose of safeguarding the security of Hong Kong, public order and public safety, it is not inappropriate for the Commissioner of Police, whose overall duty is to maintain law and order, to be appointed as Societies Officer to administer the system.

(b) The proposed appeal channels are appropriate in that the process should be less time-consuming and more economical than if they are directed to the courts. And after all, it is also always possible for the aggrieved persons to apply for a judicial review of the appeal process. And finally,

(c) Suitable power has to be given to the Societies Officer in order to enable him

to perform his duties, and since an objective test has been proposed to be introduced in section 15 which will effectively require the Societies Officer to prove that any information he asks for from a society is reasonably necessary for the performance of his function, the power so provided is considered acceptable.

Having said all this, I must stress that there are also certain areas in the Bill that are considered insufficient to serve its purpose of facilitating formation of lawful societies and prohibiting the formation of unlawful ones. For example, as I have mentioned earlier, the proposed level of penalty for failure to comply with the notification requirement is considered unnecessarily stringent.

As agreed by most members, I will be proposing amendments to the Bill at the Committee stage to remedy these insufficient areas. In this connection, I must take the opportunity to thank and congratulate the Administration for being receptive in taking the views of members and agreeing to the amendments to be proposed. I understand that the Secretary for Security will also be proposing amendments at the Committee stage to repeal section 34 which provides the Societies Officer with the power to summon. This is an example of the Administration's positive response in taking the views of members of the group.

I must also thank the Administration for giving assurances to members on certain areas of the Bill which have been of much concern. First of all, the group is very much concerned on how the Administration will use the power in the new section 8, to prohibit the operation or continued operation of a society, and how it interprets the criteria of security for Hong Kong.

Concerning public safety and public order, the Administration explained that the proposed power could be used in very limited circumstances and will be used very rarely. It is also not considered that any of the existing societies in Hong Kong are operating in a manner prejudicial to the security of Hong Kong or to public safety and public order. The Secretary for Security has undertaken to elaborate in his reply today the Administration's thinking and understanding of the these terms, and the circumstances under which the provision will be invoked.

Some members of the group are also concerned about the time needed by the Administration to process a notification and have asked the Administration to specify how long it will take to inform an office-bearer whether the notification submitted is indeed in order. The group is glad to have the assurance from the Administration

that notifications will be processed as quickly as possible, and in most cases within a month from the date of the receipt of the notification. On this point, the group wishes to bring the message across to the Administration that it is members' utmost concern that the notification system will be maintained as an efficient and purposeful service to the community. Every effort should hence be made by the Administration to ensure that the system will not become a nuisance to law-abiding citizens or a hindrance to lawful associations.

Mr Deputy President, I must stress that the ad hoc group has done its best in scrutinizing the Bill and bringing in improvements to make the Societies Ordinance the best possible for the interests of the community.

With these remarks, Mr Deputy President, I support the motion.

8.00 pm

DEPUTY PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

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

Question proposed, put and agreed to.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, the Societies (Amendment) Bill 1992 proposes to replace the registration system with a notification system. In other words, people are free to form societies. These societies do not have to register; they only need to inform the Government to let it know about their existence or cessation of existence. This notification system can also avoid the situation of two societies using the same name. One of the objectives of the Bill is to prevent unlawful organizations from misleading the public by claiming to be reliable and lawful. I fully agree with such objective, since the purpose of legislation is to establish a framework which is in line with the law and is generally acceptable so that law-abiding citizens may lead a peaceful life within such framework. The system

as set out in the Bill is in fact a crime prevention measure. Some colleagues think that we have to legislate but there is no need to strictly comply with the legislation or to provide for penalties. I am indeed puzzled. To enact legislation without any appropriate penalty for breach is to say that the legislation need not be complied with and there is no obligation created thereunder. This violates the spirit of legislation and fails to achieve its objectives. In that case, why should laws be made? Is it superfluous to do so? We know that triad societies and unlawful organizations will not and dare not inform the authorities concerned. That is why they can only conduct many of their activities in private. However, if the legislation provides that societies have to notify the authorities concerned but it will not be an offence if they fail to do so, I believe those unlawful organizations and triad societies are bound to "blatantly" carry out their activities in public. They may even step up recruitment of members and conduct activities which can demonstrate their strength. The public may mistake their activities to be legal activities and such societies to be lawful ones. Thus a larger number of unruly elements may even be encouraged to form other societies. They will not have the fear of being punished according to law since there will be virtually no penalty. I think if this is the case, our community will have no peace. How can there be stability and prosperity for Hong Kong then?

Mr Deputy President, I am sure the legislation must contain a penal provision in order to punish societies which do not abide by it

Mr Deputy President, with these remarks, I support the Societies (Amendment) Bill 1992.

MRS MIRIAM LAU: Mr Deputy President, I agree that the system of registration of societies must go, but I firmly believe that it is necessary for the Administration to retain some form of regulation over societies existing in our community. Hence, I support the notification system proposed by the Bill.

The notification system merely enables the Administration to know; it does not permit the Administration to interfere with the formation or operation of any society unless there is reason to believe that such society may prejudice the security, public safety or public order of Hong Kong. Without some knowledge of the existence and operation of bodies or associations which exist in our territory, I cannot see how the Administration can take timely action to protect our community should any of these

bodies or associations turn out to be a threat to internal security. The notification system is therefore clearly necessary to safeguard public interest.

If the notification system is to be effective, then legal consequences must be allowed to flow from non-compliance of the law. Such consequences must of course be proportionate to the mischief sought to be prevented. There is some concern that the penalty set out in the Bill for failure to notify may be too harsh for an unwary first offender. The Administration has agreed to amend the penal provision so that imprisonment and daily fine will only apply in the event of a second or subsequent conviction, the first conviction merely to attract a fine. The police have also confirmed that this type of offence will not be recordable, hence there is no question of an offender being branded a criminal. The penalty, as amended, is in my view very light. In any event, that is the maximum punishment and usually the courts would only resort to the statutory maximum in the very worst type of breach. To go lower than what is proposed would, in my view, make a mockery of our laws.

Under the Business Registration Ordinance failure to apply for business registration attracts one-year imprisonment and a fine. In my view, operation of one's legitimate business is as much a right of the citizen as is his right to associate with others. The Honourable James TO has given notice to move an amendment at the Committee stage to the effect that failure to notify the formation of a society, however many number of times the failure had occurred, should only attract a maximum monetary fine of $10,000. If the amendment carries it might encourage persistent breaches or deliberate non-compliance of the law. Would the reduced penalty achieve the object which the notification system sets out to achieve? My view is that a mere monetary fine would not be a sufficient deterrent.

The provision as drafted already builds in the defence of due diligence on the part of the defendant and matters beyond the defendant's control. The police assured the ad hoc group that, as a matter of practice, they will usually remind the defaulting society to notify, and only if the society insists on non-compliance would action be brought. The law does not seek to unduly punish those who break it through oversight. But if we do not adequately punish those who blatantly defy the law, then the law would be meaningless and ineffective and the whole notification system would fail.

I cannot, therefore, support any proposal to further reduce the penalty.

During the course of deliberating the Bill, some members expressed reservation in regard to the Secretary for Security's power under section 8 to prohibit the operation or continued operation of a society on grounds that such operation or continued operation may be prejudicial to the security of Hong Kong or to public safety or public order. The right to freedom of association enshrined in Article 18 of the Bill of Rights Ordinance is not absolute; and it is expressly provided that restrictions which are in the interests of national security or public safety or public order may be imposed.

Section 8 refers to the security of Hong Kong, which is in fact narrower than national security, and restricts the power to Hong Kong circumstances. Although we do not as yet have any jurisprudence on the definition of national security, public safety and public order, such jurisprudence will no doubt be built up in due course. In the meantime, resort may be had to existing judicial interpretation of similar provisions existing in the International Covenant on Civil and Political Rights.

Some members of the group felt that the Secretary for Security should not be the authority to make the order under section 8. I do not agree. The Secretary for Security is the officer responsible for the security of Hong Kong and internal law and order matters. Even if some other officer were to be charged with the power to make the order, reference will still have to be made to him as he is the ultimate authority. The system as proposed prevents the Secretary for Security from acting arbitrarily. He can only act on the recommendation of the Societies Officer who will have to justify his recommendation on reasonable belief. The society complained against has the right to make representations. In any event, a society aggrieved by the making of the order can appeal to the Governor in Council. Some members feel that the appeal should be made to the court or some independent judicial body. I do not see anything wrong with leaving appeals of this nature to the Governor in Council. And it is clearly simpler, speedier and more economical to do so.

A party who still feels that there has been a miscarriage of justice after the Governor in Council has adjudicated on the matter is entitled to appeal to the court by way of judicial review.

The Honourable James TO will also move amendments.....

MR JAMES TO: Point of elucidation, Mr Deputy President.

DEPUTY PRESIDENT: Are you prepared to give way, Mrs LAU?

MRS MIRIAM LAU: Yes, Mr Deputy President.

JAMES TO (in Cantonese): Just a moment ago, the Honourable Mrs Miriam LAU mentioned that we hoped to establish some precedents as we could refer to some international precedents. Can the Governor in Council, as the existing channel of final appeal, make reference to and accumulate these precedents?

MRS MIRIAM LAU: Mr Deputy President, as far as I understand, the Secretary for Security has agreed, in his reply to be given later on today, to elucidate what exactly the Administration will do and how cases of this nature will be dealt with by the Administration; so the matter can be clarified at that stage.

DEPUTY PRESIDENT: Yes, do continue, Mrs LAU.

MRS MIRIAM LAU: I will start the paragraph again, Mr Deputy President.

The Honourable James TO will also move amendments at the Committee stage to repeal sections 15 and 16 altogether. The effect of his proposal would be that the Societies Officer would no longer be entitled to ask for any information concerning any society. It has been suggested that there is no need to ask for information since if any society should infringe the law, then it would be caught under some provision in our statute. Section 15 has already been substantially amended to only empower the Societies Officer to demand for information which he may reasonably require for performance of his functions under the Ordinance. In my view, it is important to distinguish between the right to freedom of association and the right for the authority to know about the composition and activities of existing societies.

As I mentioned earlier, I believe that the Administration needs to know in order to take timely action, should any of these societies pose as a menace to the orderly

conduct of this society. There is always the possibility of illicit societies which operate under cover of a respectable front. By only asking to be informed, there is no restriction or encroachment on the freedom of association. On the other hand, by denying the authorities the right to know, we would in effect be saying that there is no need for the Administration to take any preventive action.

Surely, if we are to maintain a peaceful and orderly society, our police must be in a position to bring about preventive measures before disruption is caused to the community. I am convinced that in order for the police to take preventive measures they must be able to have access to information and they must possess adequate powers to deal with the situation.

I cannot, therefore, support Mr TO's proposed amendments.

Mr Deputy President, with these remarks, I support the Bill.

MR MOSES CHENG: Mr Deputy President, Article 18 of the Bill of Rights guarantees the "freedom of association" subject only to restrictions provided by law which are necessary for certain limited purposes, including the protection of national security, public safety and public order. The provisions regulating the registration of societies under the existing Societies Ordinance contravene the said Article 18 of BOR and therefore have to be amended to make them BOR compatible. Although some of my colleagues have declared their strong objection, I have no reservation in my support for the proposals of substituting the process of registration with the process of notification as set out in the Societies (Amendment) Bill 1992.

Reasonable balance between individual's rights and community's interests

Personal freedom and rights of the individuals should be respected and protected by the law. However, the rights and freedom of an individual person might not necessarily be compatible with the interests of the community. To preserve harmony it is therefore necessary to maintain a reasonable balance between the individual's rights and freedom and the interests of the community as a whole. Provisions of the law play a very important role in maintaining and enforcing such balance. In the consideration of the provisions of the Bill, we are discharging our responsibilities of seeking for such balance. The provisions of the Bill, together with the amendments as agreed with the Administration, do, in my view, represent a fair balance and should

therefore be supported.

Democracy and human rights can only grow in peaceful environment

From the experience which we can draw from neighbouring regions in South East Asia, democracy and human rights can only flourish in peaceful environment with good public order. A country with frequent commotion or unrest as well as a country with high crime rate will not be conducive to the healthy developments of democracy and human rights. It is therefore a high priority in our agenda to ensure that our laws should be capable of and effective in preserving law and order in our community, so that Hong Kong would be the ideal environment for democracy and human rights to grow.

Effective level of penalty

To enforce compliance the laws must be backed up by effective penalty which is proportionate to the severity of the offence. I support the amendments as agreed with the Administration to the respective level of penalty set out in the Bill. In the ad hoc group I called for distinguishing the levels of penalty for the office bearers of triad and prohibited societies. I am pleased to note that the Administration has agreed with such view and has made adjustments accordingly. I urge the Administration to keep the level of penalty under review so that it will be suitably adjusted with changes in the community.

Penalty v. Incentives

Some people have asked for the substitution of penalty for non-compliance with incentive-rewarding compliance. The justifications which warrant the departure from the well established principles and practice in our jurisprudence have not been established. I, therefore, cannot lend my support to such proposal.

Mr Deputy President, with these remarks I support the motion.

REV FUNG CHI-WOOD (in Cantonese): Mr Deputy President, we all hope that people care more for their society and participate more in its affairs; therefore, we should try to make it convenient for and even encourage members of the public to form different organizations as a means of participating in society. Moreover, we should help the public develop their potentials and interests so that, when need arises, they can

organize themselves to promote their objectives and ideals. The Government should make it as convenient as possible for the public to form societies.

The freedom of association is of particular importance in Hong Kong given the fact that such freedom of association does not exist in the country which will become our sovereign state after 1997.

The change from the registration system to a notification system under the present amendment to the Societies Ordinance proposed by the Administration is a great step forward, and I support the change in principle.

However, in respect of the penalty, an office-bearer is liable to prosecution and a maximum fine of $10,000 for failure, within one month of the formation of a society, to notify the Societies Officer who is an authority within the Royal Hong Kong Police Force. On second conviction, a maximum penalty of three months imprisonment plus a maximum fine of $30,000 and a daily default fine of $300 may be imposed. This is extremely unreasonable. Let us pause to ponder this. There may be hundreds of reasons for the failure to notify. Sometimes it may be because of postal errors, loss of or failure to open letters in time, or failure to mail timely notification letters, or because of problems with the internal operation of a society (for example person A thinks that person B is going to send the notification letter, but person B has no idea that he has to do so), or because the person responsible for mailing the notification letter has to leave Hong Kong suddenly for something urgent but forgets to notify the Societies Officer, or some people simply do not know that the police have to be notified when they form a society. Such things happen easily and it is very easy for office-bearers of societies to become subject to criminal punishment. This is extremely unreasonable.

Some people take part in public and community affairs and form societies because of their ideals or out of interest. This is not only harmless but in fact beneficial to society. Why then should they be burdened with the risk of incurring criminal liability?

As a matter of fact, in many democratic countries, for example Australia, it is not necessary for people to register or to notify the government when they form societies. In Hong Kong where the public is urged by the Government to assist in combatting activities of triad societies, this Societies Ordinance is retained. I am not opposed to the requirement of notifying the Government when societies are

formed, but this is meant to help the police in fighting illegal activities. Therefore, it follows that members of the public found to have contravened this Ordinance should not be criminally prosecuted. The penalty proposed at present will be an obstacle to the freedom of association.

I once proposed in the ad hoc group studying this Bill to amend the time limit for notification from 14 days to one month to allow the public more time to clear the relevant procedures. The Government now accepts this proposal, but turns down the other proposals put up by the ad hoc group, such as the one concerning the level of penalty, and another suggesting that an appeal against a ban on the operation of a society should go before the Court and not the Governor in Council. To sum up, I feel that the present Ordinance is detrimental to the freedom of association and hope a fresh review will be conducted later.

DR LAM KUI-CHUN (in Cantonese): Mr Deputy President, at present the people of Hong Kong are being troubled by rampant criminal activities while the Police Force is doing its best to combat criminal activities of triad societies. Under such circumstance, now is not the time to amend the law and curtail the power of the Police Force in dealing with triad activities. Nevertheless, since the Bill of Rights has already, in effect, abolished the old Societies Ordinance, the most important work now is to make amendments accordingly to the old Ordinance. This is to ensure that the Security Branch can still effectively collect all relevant information about undesirable societies, and to have the power, at the right time, to make reasonable intervention.

I understand that the Bill is controversial. To indicate my support of section 8(2) of the Ordinance which reserves the relevant power for the Secretary for Security, I shall just briefly state the following reasons and give two examples:

(1) The Security Branch is the department which possesses the largest collection of background information with which to determine whether a society or an activity constitutes damage to social order.

(2) If intervention is necessary, the Security Branch will have the manpower and resources most suited for the task.

For example, a member of a triad society wishes to organize a team to carry out criminal activities but pretends that this is a project to help discharged prisoners

while in fact plans are in hand for illegal and shady deals. In such cases, only the Security Branch is equipped with the necessary information and manpower to uncover this sham.

Another example is: when a person who has a record for molesting children sets out to organize activities for children and adolescents, only the Security Branch has the file records to enable the police to check such activities in time and to protect the adolescents and children in question.

Mr Deputy President, notwithstanding the existence of the Bill of Rights, I still think that at such time when triad activities are so rampant, the Secretary for Security must retain certain powers in order to curb the activities of undesirable societies to avoid jeopardy to the life and property of the public.

I support the Second and Third Readings of the Bill.

MISS EMILY LAU: Mr Deputy President, this Bill represents a belated first step to reform the Societies Ordinance in an attempt to bring it into line with Article 22 of the International Covenant on Civil and Political Rights which has applied to Hong Kong since May 1976. It cannot receive the careful consideration it deserves because of the extremely tight timetable which has been imposed on this Council by the Administration and which has also precluded public consultation. I must here make the point that an executive-led administration does not mean that we should be led by the nose. This Bill was first gazetted less than two months ago and amendments were still being proposed by the Administration as late as last week.

While I welcome the move away from registration of societies to notification, Mr Deputy President, I find myself unable to support this Bill because of the sweeping power to prohibit the operation or continued operation of a society under section 8, and the equally sweeping powers of entry and search conferred under sections 31 and 32. I would have hoped that in this Bill full recognition could have been given to the right of every person to freedom of association as guaranteed by Article 18 of the Bill of Rights. Instead, there is evidence in the proposed provisions of much of the old thinking that everything which moves must be regulated, and everyone who breaches a regulation must be liable to imprisonment. Our hardworking police officers and prison officers are already overstretched and our prisons overcrowded. Is it really sensible, Mr Deputy President, or necessary, to make Joe Blow liable to imprisonment for repeatedly neglecting to notify the Societies Officer that he became Secretary of the Hong Kong Antique Spittoon Collectors Society? This comment

applies to every offence provided for in the Bill, except those relating to unlawful or triad societies.

Worse still, Mr Deputy President, under the Bill, every society is treated as a potential threat to the security of Hong Kong, or public safety or public order. Under section 8, the Societies Officer is obliged to notify the Secretary for Security where he reasonably believes that the operation or continued operation of a society may be prejudicial to the security of Hong Kong or to public safety or public order, and is then empowered to recommend the making of an order prohibiting its operation or continued operation. I emphasize that the words are "may be prejudicial" not "if prejudicial", so that the mere possibility of prejudice is sufficient to give rise to such a recommendation.

Under such notification the Secretary for Security is empowered to publish in the Gazette an order prohibiting the operation or continued operation of the society in Hong Kong. Normally, he shall not do so without first giving the society an opportunity to be heard or to make representations in writing as to why such an order should not be made. But I think such an opportunity is meaningless unless the society is given both the material upon which the Societies Officer came to his conclusion and the reasons why the operation of the society is to be prohibited. Neither is provided for in the Ordinance, Mr Deputy President.

Not only does this make the opportunity meaningless, it makes such an order virtually unchallengeable by way of judicial review as suggested by Mrs Miriam LAU. Moreover, any challenge in the courts would normally be confined to the decision-making process and not to the merits of the decision. Section 8, therefore, is highly objectionable as it stands and the addition of the word "reasonably" before the word "believes" in subsection (1) is purely cosmetic. If this measure is to be enacted, the obligation to give the material upon which the Societies Officer came to his decision, and the reasons for the order, must be provided for in the Ordinance.

Mr Deputy President, that hoary old chestnut, the right to appeal to the Governor in Council against a prohibition order, is employed again as a last resort. An appeal to the Executive Branch against an order made by the Executive Branch is also meaningless. An avenue of appeal to an independent tribunal with power to review the merits of the decision should be given.

Under the proposed amendment to section 360C of the Companies Ordinance, a company

shall be struck off the Register of Companies if the Governor in Council is satisfied that it would, if it were a society to which the Societies Ordinance applies, be liable to have its operation or continued operation prohibited under section 8 of that Ordinance. No appeal is available and no opportunity is given for the company to be heard.

Mr Deputy President, many societies operate legitimately as limited companies. They do so not because they wish to evade the provisions of the Societies Ordinance but because they wish to take advantage of the limited liability available by virtue of incorporation. The same rights of appeal, as I have suggested for societies, must be made available to such companies ordered to be struck off the Companies Register under section 360C of the Companies Ordinance. There is no basis for treating them differently.

Mr Deputy President, there is an unconvincing attempt to align this provision with the permitted limitations on the right to freedom of association in Article 19(2) of our Bill of Rights. This attempt is made in section 2(4) by providing that the expressions "security", "public safety" and "public order" have the same meaning as they have in the Hong Kong Bill of Rights Ordinance. The Bill of Rights provides no definition of these expressions. Moreover, the permitted limitations include those that are necessary in a democratic society in the interests of national security. The expression used in section 8, as it will be if this Bill is passed, is "the security of Hong Kong". The Administration has now admitted to the ad hoc group that the expression "national security" relates to the interests of the sovereign power. On that basis, the power under section 8 is not within the permitted limitations.

I welcome this frank admission by the Administration that we have now passed into law under our Bill of Rights a limitation which permits the Administration to restrict the right to freedom of association on the grounds that it is necessary in the interests of the security of the United Kingdom, and, post 1997, in the interests of the People's Republic of China. Mr Deputy President, at least we know where we stand.

Under section 31, the Societies Officer may enter any place or premises which he has reason to believe is used by any society or its members as a place of meeting, where he reasonably believes it is necessary to do so in connection with the performance of his functions under the Ordinance. His functions are not specified under the Ordinance and this power of entry is not restricted only to unlawful or

triad societies. So who is to be the Societies Officer? Section 3 provides for the Governor to appoint him. However, members of the ad hoc group were told that it would be the Commissioner of Police. This is why I said earlier on that every society is regarded as a potential threat. This power, in one swoop, gives the police what they could not obtain under the Police Force Ordinance. I cannot protest it too strongly.

Mr Deputy President, section 32 is equally objectionable as it enables the Societies Officer to obtain a search warrant to obtain evidence that a society is being used for the purpose prejudicial to the security of Hong Kong, or to public safety or public order. But unless and until an order is made under section 8, such society is by definition a lawful society and its office bearers and members have committed no offence. It should not be overlooked that the general criminal law already provides protection for security under the all-too-wide provisions relating to sedition. Public safety, order, health and morals are all similarly protected.

Mr Deputy President, no justification has been provided for these sweeping powers. Security can become an obsession to those whose daily business it is, but as a community I think we should say, to paraphrase the words of William SHAKESPEARE: "That way madness lies, let us shun that."

For these reasons I am unable to support this Bill.

Finally, Mr Deputy President, let me sound one word of warning to the Administration. This Bill attempts to tackle the undoubted triad problem by deeming all triad societies to be unlawful. I hope that when the time comes, this irrefutable presumption will withstand any legal challenge.

With these remarks, Mr Deputy President, I oppose the Bill.

MR JAMES TO (in Cantonese) : Mr Deputy President, many Members have argued that passage of the present Bill will enable the Administration to combat triad activities. Let us assume that the present Bill passed into law today upon being endorsed by all Members of this Council, that tomorrow an association or society known as "San Yee On Mountaineering Association" or "14K Dancing Society" came into being, that this association genuinely engaged in dancing or mountaineering activities, and that in the course of these activities people had the chance to make the acquaintance of and chat with some "Big Brothers". Would the passing of the Bill ban the setting up of

such an association? The answer is no. In the ad hoc group, I had put this case to a representative of the Administration and he had answered that it would not be possible to ban it.

According to the Secretary for Security, up to date the Administration has never invoked section 8 to stop any society or association from forming. As section 8 provides that only a society or association which jeopardizes the overall security of Hong Kong shall be banned, there is no way that the section can be invoked to ban an illegal organization or group of people who engage in lawful activities, such as carrying on business as hawkers or nightclub operators.

Let us not deceive ourselves or others. We rely on an intelligence network to detect criminal organizations. By "intelligence" I mean information of the sort uncovered through covert means, not the sort of information formally required to be furnished to the police by way of report or return. If we rely on people to formally submit information and not on the police to collect it, would triad societies bother to voluntarily come forward to register? If a certain questionable organization was going about a dubious recruitment drive, would it bother to get some of its "Big Brothers" to formally submit a return to the authorities concerned? I believe the answer would be no. Moreover, the existing Ordinance provides for numerous exemptions which enable some bad elements and their organizations to easily bypass this Ordinance. Such an organization need only pay $2,000 to buy a "shell company" with limited liability, go to an accounting firm and law firm the next day to go through certain formalities and then start its recruitment drive. Alternatively, it may approach the Commissioner of Inland Revenue to pay $1,100 as Business Registration Fee and thereby avoid any of the provisions in the Societies Ordinance, including the controversial section 8 which I referred to a moment ago. Let us ask ourselves. If a triad society is really to launch a recruitment drive or to expand its network, would it have difficulty in coming up with a mere $2,000 or $1,100; or would it not just get a few of its "Dragonhead Big Brothers" to come forward to voluntarily register?

Another point I would like to make is that we are worried lest the names of societies should give rise to confusion. This would be an area where civil proceedings could be taken. Supposing someone should set up an organization known as "The Hong Kong United Democratic Front", I believe the United Democrats of Hong Kong and other similar democratic organizations might commence civil proceedings for passing off. However, this should be a matter for the organizations concerned to

sort it out among themselves as to who should use which name; it should not be the responsibility of the Commissioner of Police to enquire as to which name closely resembles another. There are numerous decided cases of trademark disputes which we may draw reference from, for example, the cases concerning whether one trademark is identical to another or whether one style of description is identical to another. Do we need to mobilize the police high command to do this? Would this not place the Commissioner in a bind?

Would it not be a waste of resources to mobilize the police force, including superintendents and inspectors, to keep tabs on several thousand cultural, recreational, social or religious organizations just to update information relating to them?

The Honourable YEUNG Sum will later have more to say about a voluntary registration system.

With regard to penalties, some Members have mentioned that the Administration has, of its own accord, revised them so as not to impose a custodial sentence upon first conviction but only upon second or subsequent convictions plus a daily default fine. Some Members are apt to support whatever the Administration proposes. But when we see the Administration contradicts itself, why do we not point it out?

If Members happen to have before them a copy of the Societies Ordinance would they care to look at section 9 subsection 4? The subsection provides that a society after having first registered with the Commissioner of Police shall inform the Commissioner of any subsequent change of particulars in default of which the office bearer in charge shall be liable on conviction to a fine of $10,000. Please note that no custodial sentence is provided for. No matter how many times the Ordinance is breached, no matter how many times the office bearers of a society have been changed, failure to report to the Commissioner will only result in a fine of $10,000; no custodial sentence or a daily default fine is to be imposed. Why is it so? Would that not be a contradiction? If it is required that there should be draconian penalties attaching to failure to report, why do Members of this Council suffer the contradiction to exist?

Let us turn to section 16 according to which only a fine of $20,000 will be imposed upon failure to change a society's name where the Commissioner of Police so requires on the ground that it might mislead people. Such failure is an act or omission causing social damage and yet it is punishable neither with imprisonment nor a daily default

fine. Why do we suffer the contradiction to exist? Why do we not accept the reality, that is, respect for the freedom of association which would allow of certain token penalties to ensure acquisition of the necessary information in the event of non-compliance with administrative requirements

In another development, the Bar Association has argued that in attempting to construe the meanings of two related terms as being identical, we have lumped together public order considerations under section 8 and national security considerations under the Bill of Rights. The Bar Association has described this attempt as "nonsense". I will not rehash the Bar's arguments in this regard.

Furthermore, section 8 subsection 3 provides that where the Secretary for Security prohibits a society from forming, the society must be accorded the opportunity to defend its case. Here I would like to point out that in requiring a defence to be filed, the authority concerned must have adequate evidence to support any allegation against the society as to what offence or irregularity it has committed or in what way it has jeopardized public order and must let the opposing party have particulars of the allegation. If no particulars of the allegation were given (the way the particulars of claim are pleaded in a writ of summons), it would be ridiculous to require the opposing party to defend its case by refuting the allegation so made.

Another point I would like to make relates to appeals. Some Members have argued that the Governor in Council should be the appropriate authority to take appeals to because that would save costs and trouble. I feel that this argument is not acceptable because nowadays many administrative errors are put right by the courts through the appeal process.

Some Members have mentioned that an aggrieved party can apply for judicial review. The Governor in Council is an authority sitting behind closed doors and need not give any reason for its decisions or written explanation of any sort. Neither would it draw on international case law to construe terms such as "national security". We would therefore be unable to draw on international jurisprudence in protecting the rights of Hong Kong people.

One argument has it that sensitive matters such as security of the territory cannot be entrusted to an independent body or even the courts to deal with and that it should be the executive that should be "calling the shots" in these matters. I would like to tell Members that in the United Kingdom and some other common law

jurisdictions there is a growing tendency on the part of the courts to grant judicial review in respect of administrative decisions involving sensitive or security considerations. If it is argued that matters of a sensitive nature should not be reviewed by a third party, may I ask the Secretary for Security why representatives of the general public sit on the Deportation Appeals Board; some Omelco Members here may be members of the said board too. The board is an independent body and it has also to deal with sensitive and security-related cases.

I am glad that the Secretary for Security has, of his own accord, proposed to repeal section 34, that is, the section which confers the power to summon citizens to give information. As I said in the ad hoc group, even the Organized and Serious Crimes Bill -- introduced into this Council earlier today -- has provided, in respect of the investigation of serious crimes, for such a summoning power to be only granted by the court upon application by the investigative authority; but the principal Societies Ordinance or the original amendment proposed in the present Bill confers such a summoning power without qualification on the Commissioner of Police.

Some Members have argued that it is very good of the Secretary for Security to have proposed the amendment of his own accord. I think this argument cannot stand; it is because it would in itself be an intrinsic contradiction if no amendment was made to it.

Furthermore, I propose to repeal section 15 which empowers the Commissioner of Police to direct the Societies Officer to require a society to furnish information of any sort. If the Societies Officer can require the furnishing of any information, he can, for instance, demand to know the following: the number of meetings held during the past three years; the names of guests present at the meeting; the subject matters discussed or the contents of speeches made; and the decisions arrived at. This way, the right of privacy granted by the Bill of Rights would be completely done away with.

Having given a multiplicity of views on the Societies Ordinance, let me turn to the part of the Ordinance relating to notice by an ordinary society. The United Democrats support the proposal to increase penalties against triad societies from the maximum custodial sentence of five years to 15 years and from the maximum fine of $250,000 to $1 million. We welcome such a move on the part of the Administration as well as the move to separate triad societies from ordinary societies in dealing with them.

With regard to section 24 which provides that anyone convicted of a triad offence

shall be disqualified from becoming an office bearer of any other society, I have a humble proposal to make. I hope that the Commissioner of Police will, when he has occasion to go over the said provision, consider the position of those people in the gospel drug rehabilitation centres and take a cautious approach. The church to which I belong does have brothers and sisters in Christ who once committed offences and were triad members. Later they joined the gospel drug rehabilitation centres and they were supported by my church. Of course, we have to be on guard lest, as the Honourable Conrad LAM said earlier, some people should engage in a recruitment drive under the guise of participation in gospel drug rehabilitation or help to ex-prisoners. As a matter of fact, I already made that point a while ago when I said that there is no way under the existing law of banning societies of this nature; we can only judge from the acts their members do and have them arrested according to law upon discovery of any unlawful act on their part.

Some Members have argued that the penalty clauses in the Bill are aimed only at those who, after setting up their societies, have repeatedly failed to notify the regulatory authority. I find an inherent contradiction in this argument. If there had been repeated requests for the furnishing of information, that would have implied that the regulatory authority already had knowledge of the existence of the society concerned; probably through the wide intelligence network of the police force, the regulatory authority already had knowledge not only of the names of the office bearers but also of the names of other members. In such event, if the regulatory authority still repeatedly requires the office bearer in charge to furnish information and proceeds against him for failure to do so, such course of action will be open to challenge.

Furthermore, some Members have argued that penalties must be provided under any law enacted to regulate the conduct of society at large. To them penalties amount to a sine qua non. In this regard, the United Democrats are of the view that there should be a token penalty clause laying down a maximum fine of $10,000. This would be consistent with other provisions. However, I could give an example of a provision laying down no penalty for failure to perform a mandatory obligation. The example can be found in the Public Order Ordinance the relevant section of which provides that an organizer of an assembly shall, after the conclusion of the function, maintain the assembly place in tidy order; but there is no penalty prescribed in the said section. The relevant penalty is however to be found in the Public Health and Municipal Services Ordinance; yet the penalty is to be imposed on the person who litters and not on the organizer of the assembly. Therefore I think that to lay down

no penalty for failure to perform a mandatory obligation is not out of order. I hope Members will support the amendments I shall be moving during the Committee stage.

DR YEUNG SUM (in Cantonese): Mr Deputy President, we are very pleased that the Government are proposing substantial amendments to this Societies Ordinance, but unfortunately the amendments themselves are not good enough, therefore we are putting forward some amendment proposals in this respect. First of all, the main objective of this Societies (Amendment) Bill is, on the part of the Government, to combat triad societies. However, as Mr James TO has just explained, triad societies now operate mainly by registering as limited companies and therefore are no longer covered by the Societies Ordinance. As a result, the said objective cannot be achieved. Secondly, the fight against triad societies has created a lot of problems for civic groups in forming societies. Many members of the public, women's groups and the mentally retarded basically care for society and wish to form their own societies to promote certain social activities. Owing to this Ordinance, they are now required to notify the relevant authority within one month, failure of which will make them liable to a fine of $10,000. Continued failure to notify will result in three months imprisonment plus a daily fine of $300. Obviously, to combat triad societies and to contain triad activities by means of this Ordinance will on the contrary adversely affect civic groups and bodies in forming societies. The result would be like "letting the tiger go but swatting the fly", in other words, hitting the wrong target. I hope that "notification" will only be on a voluntary basis, that is to say, not to make it compulsory for all groups and bodies to inform the Government. An advantage of notifying the Government would be that, when the names of certain groups overlap and cause confusion to the public, such confusion can be avoided if the Government is notified on a voluntary basis upon the formation of a society. "Notification" can be encouraged, for example, by offering to those organizations whose formation has been gazetted special concessionary rates for hiring the City Hall or accessibility to government subvention. It is more than enough for the Government to encourage organizations to notify the relevant authority, and there is no need to impose penalty or restrictions. If the Government or honourable colleagues insist on adopting this notification system, I think we shall accept it, with reluctance, and on three conditions: First, that no criminal liability be incurred for failure to notify. Although the Commissioner of Police has undertaken not to make it a criminal offence nor to record conviction, I hope this will be the policy of the Government instead of the personal decision of a government functionary. This is because if somebody else takes up the post of the Commissioner of Police,

a different approach may be adopted. I believe it would be better if this could become a policy. When the Secretary for Security makes reply later, I hope he will state the position of the Government, that is, it will be no criminal offence to forget or fail or omit to notify the authority when a society is formed. Second, no criminal record should be retained. Third, the level of fine should not be set too high so that ordinary people can afford it.

SECRETARY FOR SECURITY: Mr Deputy President, I am grateful to Prof LIEH MAK and all the members of the ad hoc group for their prompt and thorough study of the Societies (Amendment) Bill 1992. I shall try to respond to the various points made by Members on this Bill.

Some Members have asked why we need a Societies Notification System at all. As we have explained to the ad hoc group, we believe that we must have some means of preventing unlawful societies from taking on a facade of respectability and legitimacy. It is an important crime prevention measure.

A few Members have asked that the Securities Officer should respond quickly to societies to let them know whether notifications filed by them are in order. The Commissioner of Police has undertaken to do so as quickly as possible after all the necessary information required of the societies under the Bill has been supplied to him, or to request that the further information required should be provided.

Some Members have also asked why the Commissioner of Police and not the head of another government department should be appointed as Societies Officer? The main purpose of the Societies Ordinance is to combat triad societies and other associations which present a threat to security, public safety or public order. These powers are best exercised by the Commissioner of Police who has the necessary expertise and resources for this purpose and whose duty it is to maintain law and order in the territory.

As in the case of the present Ordinance, the Amendment Ordinance will not apply to societies set out in the schedule which are already regulated under other legislation by other competent authorities, for example, corporations registered under the Multi-storey Buildings Owners' Incorporation Ordinance. I should be very glad to see this list of exempted societies expanded in due course to include other societies which might be adequately regulated by other government departments.

Some Members have asked that the meaning of the expressions, "security", "public safety" and "public order" should be made clear. These expressions are not normally defined in legislation. So far as the expression "security" is concerned the Bill enables the operation of a society to be prohibited on the grounds that it is prejudicial to the security of Hong Kong. It is, I believe, well established and accepted that the similar expression "national security" can refer only to the survival or well-being of the nation as a whole. Similarly, the expression "security of Hong Kong" can refer only to the survival or well-being of the territory as a whole and not simply to the well-being of sectional or lesser interests, or to the interests or well-being of the Government. I can therefore state that the power to prohibit societies will be exercised only in situations where there are strong reasons for believing that the operation or continued operation of a society prejudices either the security of Hong Kong, in the restrictive sense to which I have referred, or constitutes a real and serious threat to public safety or public order in the territory, for example, because it promotes terrorism.

Mr Deputy President, there are several amendments to be moved at the Committee stage. The amendments to be moved by Prof LIEH MAK, which result from the discussions in the ad hoc group, have the support of the Administration. However, I am unable to support the three amendments to be moved by Mr James TO. His proposed amendment to section 5(4) suggests the fine of $10,000 for the offence of failure to comply with a notification requirement. In the Administration's view, the amendment to be moved by Prof LIEH MAK which suggests a fine of $10,000 upon first conviction and a fine of $20,000 and three months imprisonment upon second conviction, plus a daily fine of $300, are more appropriate penalties for the offence in question.

I should however, here like to emphasize that the Registrar of Societies does at present, and the Societies Officer will in future, write to societies which fail to observe their obligations under the Ordinance to alert them of their obligations before any legal action is taken. For office bearers of societies who repeatedly ignore advice from the Societies Officer and continue to breach the law despite a first conviction, I believe that a higher penalty is warranted. But I should also like to confirm that the Commissioner of Police has made it clear that he has no intention of making such a conviction a recordable one.

Mr TO also proposes repealing sections 15 and 16 of the Ordinance on the grounds that they give too wide a power to the Societies Officer to require societies to

furnish him with information. However in my view, the Bill already provides a narrower, more objective and more reasonable basis for the exercise of this power than under the present Ordinance. Similar powers exist in other Ordinances, for example in the Business Registration Ordinance. To discharge his responsibilities, the Societies Officer requires the power to obtain up to date information on societies.

I will be moving a Committee stage amendment in relation to clause 22 of the Bill. This amendment will repeal section 34 which confers on the Societies Officer power to summon witnesses to provide information concerning any society whose activities may be prejudicial to the well-being of Hong Kong. This clause proposes to modify the existing Ordinance to provide an objective basis for the exercise of the power. Concern was expressed by some members of the ad hoc group that it duplicates similar powers proposed in the Organized and Serious Crimes Bill but without the same safeguards as in that Bill. The powers proposed in the revised section 34 and those in the Organized and Serious Crimes Bill are not in fact the same but in view of the concern expressed and the fact that the existing power in the Societies Ordinance has been seldom if ever used, I am proposing to repeal this section. The police believe that its deletion will not affect their ability to deal with triad and other unlawful societies.

Thank you, Mr Deputy President.

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

Bill read the Second time.

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

## CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 4 December 1991

Question on Second Reading proposed.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, since the promulgation of the Control of Obscene and Indecent Articles (Amendment) Bill 1992 last year the public

has expressed general concern over the Bill and there have been lots of criticisms and comments by the industry. After wide discussions for more than half a year, the Legislative Council's ad hoc group studying the Bill and the Administration finally reach a consensus. Thus, the Second Reading debate on the Bill resumes today.

First of all, let me explain the spirit of the Bill and the purposes of its amendment. At present, the publication of any pornographic and indecent article is subject to the Control of Obscene and Indecent Articles Ordinance. However, films having been censored by the Film Censorship Authority may be exempted from control, and according to the definition of films, they include videotapes and laser discs. We are all aware of the increase in Category III films in recent years. Owing to a legal loophole, Category III films published in the form of videotapes and laser discs are readily accessible to young persons under 18. The first part of the amendments made by the Bill deals with this problem. It provides that if a film having been censored by the Film Censorship Authority is to be published in the form of videotapes and laser discs, it has to be further examined by the Obscene Articles Tribunal. In the event that a film to be turned into a videotape has not been submitted by the film maker for examination and that the videotape is later classified by the Tribunal as pornographic, a maximum penalty of a fine of one million dollars and imprisonment for three years may be imposed. The second part of the Bill amends the wording of the warning notice currently displayed on indecent articles so that vendors and the public are aware that apart from not being allowed to be sold to young persons under 18, indecent articles cannot be distributed, circulated, hired, given, lent, shown, played or projected to such persons.

Before commenting on the Bill, I would like to point out that members of the ad hoc group unanimously agree that young persons under 18 should be protected from the influence of indecent and pornographic films and videotapes. We feel that the existing legal loophole leading to easy accessibility of undesirable videotapes to young people should be closed as soon as possible. To achieve this aim, it may not be necessary to implement the proposals of the Bill as many of them are open to question.

The things about which the industry and the public are most concerned with regard to the Bill are that a film has to be censored twice by the Government if it is to be published in another form and that the censoring authority and censorship standards are not the same. The ad hoc group feels that the Administration is unable to justify why a film has to be censored twice and that the proposal will bring about confusion.

In the past, there were cases where films classified by the Film Censorship Authority as Category III (Persons aged 18 and above only) or Category II (Not suitable for children) were considered "obscene videotapes" unsuitable for even adults by the Obscene Articles Tribunal and where films classified by the Film Censorship Authority as obscene and unsuitable for showing were regarded by the Tribunal as films that can be shown to adults. Though these extreme cases are not common, it demonstrates clearly that double censorship may lead to double standards. Members of the ad hoc group all feel that there is no need for double censorship. After discussions, the views of the group are accepted by the Administration which will propose amendments at the Committee Stage to repeal the double censorship provision so that censorship of films published in the form of videotapes and laser discs will also be carried out by the Film Censorship Authority.

Another important issue discussed by the ad hoc group is whether to accept the Administration's proposal to adopt stricter standards in censoring videotapes and laser discs. The Administration is worried that once the Category III videotapes leave the video shops, it is hard to ensure that they will not go to the hands of young people. Hence, the best solution is to adopt stricter standards to reduce indecent material contained in videotapes so that even the video is viewed by young people, there will not be serious adverse effects on them. The Administration is well-intentioned in making this proposal and Mrs Miriam LAU and I tend to accept that. However, those more liberal-minded hold that censored Category III films that can be shown to adults in cinema should also be allowed to be viewed by adults at home. Most of the problems can be solved by the Administration strictly prohibiting video shops from hiring and selling illegally Category III videotapes to young persons under 18. Moreover, in future, any person who gives a Category III videotape to a person under 18 or lets him watch such a videotape commits an offence and will be subject to legal sanction. Therefore, it is not necessary to apply double standards in the censorship of films and videotapes. The ad hoc group finally decides to reject double standards in censorship. After numerous consultations, the Administration eventually agrees with the group's views. The ad hoc group has spent a lot of time on discussions with the Administration and there was some diversity of opinion. Here, the group would like to thank the Administration for its willingness to accept good advice, which enables the scrutiny of the Bill to be completed.

I mentioned above that the group has been advocating protection of young people from the influence of undesirable articles. Though the group rejects the double censorship provision of the Bill, which will be deleted later, it supports the

amendment to the wording of the warning notice displayed on indecent articles contained in the second part of the Bill. The group therefore urges that the Bill be passed after Second Reading.

I wish to add that in studying the Bill, the group has made a lot of suggestions to the Administration. These include attaching greater importance to prosecutions relating to pornographic publication and videotapes and other obscene articles, increasing manpower, intensifying prosecution of offenders, eradicating the use of obscene pictures as covers for videotapes, increasing fines payable under the Film Censorship Ordinance, and most important of all, amending the Film Censorship Ordinance as soon as possible so as to close the existing legal loophole. The Administration agrees to consider the group's suggestions and priority will given to the amendment of the Film Censorship Ordinance.

Lastly, I wish to point out that it is imperative for the Government to exercise control over obscene articles. Recently, I twice met representatives of the Concern Over Pornography Joint Committee. I note that some merchants often take advantage of the legal loophole. For example, the characters on the warning notice displayed on indecent publications are so small that ordinary readers will not notice them at all. Perhaps the Administration should consider whether it is necessary to place restrictions on the size of the warning notice by specifying its minimum size.

Mr Deputy President, I support the motion.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, the Amendment Bill introduced by the Recreation and Culture Branch contains a proposal that films to be turned into videotapes and laser discs be submitted to the Obscene Articles Tribunal for censorship. As the proposal meets with objections from organizations of the relevant industry and most of the ad hoc group's members, the Second Reading of the Bill is not resumed until today.

The ad hoc group held nine meetings over the past six months or so. There were also meetings and correspondence between the group and the Recreation and Culture Branch. The Branch eventually agrees to delete clause 2 of the Bill, which suggests that videotapes and laser discs of censored films be subject to the Control of Obscene and Indecent Articles Ordinance. In fact, from the very beginning, the organizations of the film and videotape industry have opposed the application of two sets of

censorship standards on the same film. Aiming at protecting minors, they also make many useful suggestions, for example, to intensify prosecution. Unfortunately, the proposed amendments of the Recreation and Culture Branch evidently provide no remedy for the flooding of illegal pornographic and indecent videotapes. On the contrary, they aim at the wrong target and place restrictions on the turning of censored films into videotapes and laser discs. This is just like putting the cart before the horse.

Mr Deputy President, I favour the application of one set of censorship standards on one film. Measures should also be taken to protect persons under the age of 18. In my view, what ought to be done now is to increase manpower to institute proceedings against traders of illegal pornographic and indecent videotapes. As the existing 60-plus adjudicators of the Obscene Articles Tribunal come from all walks of life, they may assist in the prosecution of offences concerning illegal videotapes. I am also in support of setting up a telephone hotline to encourage people to report crimes in this regard. Furthermore, there should be stricter requirements for publicity posters for pornographic and indecent films and wrappings of videotapes of such films so as to reduce the influence of such films on minors.

Mr Deputy President, with these remarks, I support the ad hoc group's proposed amendments.

SECRETARY FOR RECREATION AND CULTURE: Mr Deputy President, I am grateful to Mrs Peggy LAM and members of her group for the very thorough and constructive study of this Bill. As mentioned by Mrs LAM, the ad hoc group agreed with the Administration that persons under 18 years of age should be protected and not be allowed access to indecent or obscene films, videotapes and laser discs. This is the main objective of the Amendment Bill. But, the group differed with the Administration on the means to achieve this objective. The group considered that films, videotapes and laser dics should all be classified by the same authority, namely, the Film Censorship Authority, under the Film Censorship Ordinance irrespective of the circumstances under which these articles are to be shown; whether in cinemas or at home. The group argued that this would achieve uniformity of standards and treatment.

Although the means proposed by the group in achieving the objective of this Bill does not take account of the distinction between the circumstances of viewing the article in a cinema and at home -- a distinction the Administration considers important -- after very careful consideration I accept that there are merits in

placing the classification of such articles under one authority. Besides ensuring uniformity of standards and treatment, this would also avoid confusion and delay to the industry, and the public will have a much clearer idea of the classification of such articles. In the spirit of true consultation and co-operation with members of the ad hoc group, and accepting that the responsibility to control the access of such indecent articles in the home by young persons under 18 should fall on parents, the Administration has agreed to place the classification of films, videotapes and laser discs under the Film Censorship Authority. This will mean that videotapes and laser discs made from films to be shown in cinema will be classified by the Film Censorship Authority to the same standards. A Category III film turned into a video will not be allowed to be sold or hired to those under 18, whilst a Category II one will have to bear a warning notice that it is not suitable for children. Only a Category I film turned into a video can be freely available to all.

This new arrangement cannot be dealt with under the present Amendment Bill. It will require amendments to the Film Censorship Ordinance. The Administration is now in the process of drafting amendments to the Film Censorship Ordinance to give effect to this proposal. And I hope to bring this piece of amending legislation to this Council in the next Session.

To bring about what the ad hoc group seeks, I therefore undertake to move an amendment to the Control of Obscene and Indecent Articles (Amendment) Bill 1991 at the Committee stage by deleting the part concerning the publication of videotapes and laser discs made from films already approved for exhibition by the Film Censorship Authority.

As regards the second part of the Bill, which proposes an amendment to the wording of the warning notice to be displayed on indecent articles, the ad hoc group has unanimously supported the Administration's proposal. This amendment will therefore proceed as proposed.

Finally, Mr Deputy President, as regards the views expressed by members of the ad hoc group on enforcement, I shall be happy to pass them on to the relevant enforcement authority for careful consideration and acceptance. Thank you.

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

BANKING (AMENDMENT) BILL 1992

Clauses 1, 3, 7, 8 and 10 were agreed to.

Clauses 2, 4, 5 and 9

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Taking account of the views of the ad hoc group and the Hong Kong Society of Accountants, we have agreed to make a number of amendments to clauses 2, 4 and 5 of the Bill. These are purely technical changes and do not affect the original intention of the relevant provisions.

First, the amendments remove cross references to the appointment of auditors under clauses 2, 4 and 5 to make these provisions free-standing. They also make it clear that the auditors are approved by the Commissioner of Banking specifically for the purpose of preparing the reports under these sections.

In clause 4, we have agreed to adopt the ad hoc group's suggestion that the drafting of section 59(2)(b)(i) should refer to a report on "the state of affairs or profit and loss" of an institution based on an audit of the institution's accounts instead of a report "which consists of an audit of the institution's accounts". Despite the deletion of specific reference to the Companies Ordinance, the amended provision will still enable the Commissioner to require the report to be prepared in accordance with relevant provisions of the Companies Ordinance.

In respect of clause 5, the Hong Kong Society of Accountants submitted that there should be a strong link between the matters covered by a report under section 63(3A)(b), for instance on whether there appears to be any material contravention by an

institution, and the systems review under section 63(3A)(a). In response, we have proposed a new section 63(3BA) to make it clear that auditors would not be asked to report on matters under section 63(3A)(b) in isolation from those under section 63(3A)(a). Notwithstanding this linkage, auditors are expected to take into account other relevant information which comes to their attention in the normal course of their audit work in reporting under section 63(3A)(b).

A number of other amendments have also been made which are consequential to the changes outlined above or to tidy up the drafting of the Bill.

With these remarks, Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended by deleting the clause and substituting -

"2. Conditions regarding overseas branches and overseas representative offices

Section 50 of the Banking Ordinance (Cap. 155) is amended -

(a) in subsection (1)(c), by repealing everything after "accompanied by a" and substituting -

"report prepared by, subject to subsection (2A), an auditor or auditors appointed by the institution, the institution shall submit a report as to whether or not, in the opinion of the auditor or auditors, the return or information is correctly compiled, in all material respects, from the books and records of the overseas branch;"; and

(b) by adding -

"(2A) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (1)(c) shall be -

(a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Commissioner for the purpose of preparing the report;

(b) an auditor approved, or an auditor from amongst auditors nominated, by the Commissioner for the purpose of preparing the report after consultation with the institution; or

(c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Commissioner.".".

Clause 4

That clause 4 be amended --

(a) in the proposed section 59(2) -

(i) in paragraph (a), by deleting "by an auditor" and substituting "prepared by an auditor or auditors";

(ii) in paragraph (b), by deleting subparagraph (i) and substituting -

"(i) on the state of affairs or profit and loss, or both, of the institution based on an audit of the institution's accounts carried out in respect of the period specified in the notice requiring such a report; or"; and

(iii) in paragraph (c), by adding "prepared" after "and".

(b) by deleting the proposed section 59(3) and substituting -

"(3) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (2) shall be -

(a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Commissioner for the purpose of preparing the report;

(b) an auditor approved, or an auditor from amongst auditors nominated, by the Commissioner for the purpose of preparing the report after consultation with the institution; or

(c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Commissioner.

(4) Section 60(1)(a) shall not apply to anything done for the purposes of subsection (2)(b)(i) unless otherwise specified by the Commissioner by notice in writing to the authorized institution concerned.".

(c) by deleting the proposed section 59(7).

Clause 5

That clause 5 be amended --

(a) in the proposed section 63(3), by deleting "by the institution's auditor or auditors specified in the requirement" and substituting "prepared by, subject to subsection (3AA), an auditor or auditors appointed by the institution".

(b) in the proposed section 63(3A) -

(i) by deleting "by the institution's auditor or auditors specified in the requirement" and substituting "prepared by, subject to subsection (3AA), an auditor or auditors appointed by the institution";

(ii) in paragraph (a)(i), by deleting "as referred to in subsection (3)" and substituting ", in all material respects, from the books and records of the institution"; and

(iii) in paragraph (b), by adding "subject to subsection (3BA)," before "whether".

(c) by adding after the proposed section 63(3A) -

"(3AA) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (3) or (3A) shall be -

(a) an auditor or auditors appointed by the institution prior to the report being

so required and approved by the Commissioner for the purpose of preparing the report;

(b) an auditor approved, or an auditor from amongst auditors nominated, by the Commissioner for the purpose of preparing the report after consultation with the institution; or

(c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Commissioner.".

(d) by adding after the proposed section 63(3B) -

"(3BA) No report shall be required under subsection (3A) as to a matter referred to in paragraph (b) of that subsection unless the report is also required as to a matter referred to in paragraph (a) of that subsection.".

(e) in the proposed section 63(3D), by deleting the definition of "auditor".

Clause 9

That clause 9 be amended by deleting the clause and substituting --

"9. Official secrecy

Section 120 is amended -

(a) in subsection (4), by adding "59," after "56,"; and

(b) in subsection (5)(e), by repealing "or an auditor or former auditor appointed under section 59(2) or appointed under section 63(3)(b)" and substituting ", whether or not the auditor or former auditor, as the case may be, was appointed under section 50, 59 or 63".".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4, 5 and 9, as amended, proposed, put and agreed to.

Clause 6

MR DAVID LI: Mr Chairman, I move that clause 6 be amended as set out under my name in the paper circulated to Members.

This amendment gives effect to the Hong Kong Association of Banks' proposal that section 81(6) of the Banking Ordinance be amended so as to allow the Commissioner of Banking to exclude certain securities from the definition of "financial exposure of an authorized institution". These securities are issued or guaranteed by the central government or central bank of any Tier One country as defined in the First Schedule of the Ordinance. Such securities are generally high quality liquid assets and can be realized when necessary.

Mr Chairman, with these remarks, I beg to move.

Proposed amendment

Clause 6

That clause 6 be amended by adding before paragraph (a) --

"(aa) in paragraph (b) -

(i) in subparagraph (i)(B), by repealing "or";

(ii) by adding after subparagraph (i)(C) -

"(D) securities issued, or guaranteed, by the central government or the central bank of any Tier 1 country within the meaning of the Third Schedule; or"; and

(iii) by adding ", securities" after "other undertaking";".

Question on the amendment proposed, put and agreed to.

Question on clause 6, as amended, proposed, put and agreed to.

SECURITIES (CLEARING HOUSES) BILL

Clauses 1, 3, 7, 8, 16, 18 to 20 were agreed to.

Clauses 2, 4 to 6, 9 to 15 and 17

MR LAU WAH-SUM: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

I have already explained why it is considered necessary to amend clause 17(1) and (3) concerning immunity during the Second Reading debate of the Bill.

I will concentrate on the amendments to the remaining clauses which purely deal with the Chinese text. The approach adopted by the ad hoc group when scrutinizing the Chinese text of the Bill was to ensure that the Chinese text reflected accurately the legal meaning and intention enshrined in the English text and that translation of technical terms was consistent with other existing bilingual legislation. I will refer to a couple of examples to illustrate this approach.

First of all, on the semantic aspect, some of the terms adopted in the Chinese text have failed to express the full meaning of the English text. For example, in clause 10(b), the English version reads "in the manner specified in the request". In the Chinese version, it was translated as " ". The ad hoc group considered that the term " " cannot reflect correctly the meaning of "specified" which in the context of the clause simply means "clearly stated". As a matter of fact, the Chinese term " " has a wider meaning of giving instruction to someone to do something. Thus it was proposed to amend " " to read " ".

Then, on the question of consistency, the ad hoc group noted that some of the Chinese terms used in the Bill did not follow the Chinese translation of the same English terms adopted in other existing Ordinances. For instance, the word "property" in clauses 2(1), 9(2), 10(2), 12, 13 and 17(5) was rendered as " " in the Chinese text of the Bill. However, in the Chinese translation of the Interpretation and General Clauses Ordinance (Cap. 1) "property" is rendered as " ". For the sake of consistency, the ad hoc group recommended that the term " " should be amended to read " " wherever it appears in the Bill.

With these remarks, Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended, in the definitions of "  " and "  ", by deleting " wherever it occurs and substituting "  ".

Clause 4

That clause 4(2) be amended --

(a) by deleting "  ";

(b) by deleting "  " and substituting "  " .

That clause 4(10)(b) be amended by deleting "  " and substituting "  ".

Clause 5

That clause 5(1) be amended by deleting "  " where it twice occurs and substituting "  ".

That clause 5(2) be amended by deleting "  " and substituting "  ".

That clause 5(3) be amended by deleting "  " and substituting "  ".

Clause 6

That clause 6(2) be amended by deleting "  " and substituting "  ".

Clause 9

That clause 9(1)(b) be amended by deleting "  " and substituting "  "

That clause 9(2) be amended --

(a) by deleting "  " wherever it occurs and substituting "  ";

(b) in paragraph (e) -

    (i) by deleting "  ";

    (ii)  by adding "  " after "  ".

Clause 10

That clause 10(2) be amended --

(a) by deleting "  " wherever it occurs and substituting "  ";

(b) in paragraph (e) -

    (i) by deleting "  ";

    (ii)  by adding "  " after "  ".

Clause 11

That clause 11(1) be amended by deleting "  " wherever it occurs and substituting "  ".

That clause 11(2) be amended --

    In the definition of "  " -

(a) by deleting "  " and substituting "  ";

(b) by deleting "  ";

(c) in paragraph (b), by deleting "  ";

(d) in paragraph (d) -

(i) by deleting "  ";

(ii) by deleting "  " and substituting "  ".

Clause 12

That clause 12 be amended --

(a) by deleting "  " wherever it occurs and substituting "  "

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

Clause 13

That clause 13 be amended by deleting "  " wherever it occurs and substituting "  ".

Clause 14

That clause 14(2) be amended by deleting "  " and substituting "  ".

Clause 15

That clause 15(1) be amended --

(a) by deleting "  " where it firstly occurs and substituting "  ";

(b) in paragraph (ii), by deleting "  " and substituting "  ".

That clause 15(2) be amended --

(a) by deleting " " where it firstly occurs and substituting " "

(b) in paragraph (ii), by deleting " " and substituting " ".

Clause 17

That clause 17 be amended, in subclauses (1) and (3), by deleting "unless the act or omission is shown to have been in bad faith" and substituting "if the act or omission is shown to have been done or omitted to be done, as the case may be, with reasonable care and in good faith".

That clause 17(5) be amended by deleting " " where it twice occurs and substituting " ".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4 to 6, 9 to 15 and 17, as amended, proposed, put and agreed to.

Clause 21

SECRETARY FOR MONETARY AFFAIRS: Mr Chairman, I move that clause 21 be amended as set out in the paper circulated to Members.

This is to make provision for a transitional arrangement for claims on the Compensation Fund which, as proposed in the Bill, will have the upper payment limit for claims in respect of each defaulting broker increased from $2 million to $8 million. The effect of the amendment is to make it clear that the increased limit will not apply to defaults occurring prior to the commencement of the new Ordinance. Our intention is to bring the new Ordinance into operation later this year, to tie in with the implementation of the continuous net settlement system by the Hong Kong Securities Clearing Company Limited.

Mr Chairman, I beg to move.

Proposed amendment

Clause 21

That clause 21 be amended by adding --

"(5) In relation to any entitlement to claim compensation arising under section 109(1) of the Securities Ordinance (Cap. 333) occurring before the relevant day, the amendment made to section 109(3) of that Ordinance by item 7(e)(ii) of Schedule 3 shall not apply, and section 109(3) shall apply in relation to any such entitlement as if item 7(e)(ii) had never been enacted.".

Question on the amendment proposed, put and agreed to.

Question on clause 21, as amended, proposed, put and agreed to.

Schedule 3 was agreed to.

Schedules 1 and 2

MR LAU WAH-SUM: Mr Chairman, I move that schedules 1 and 2 be amended as set out in the paper circulated to Members.

Proposed amendments

Schedule 1

That schedule 1 be amended, in the heading, by deleting " " and substituting " ".

Schedule 2

That schedule 2 be amended --

(a) by deleting " " where it firstly occurs;

(b) by adding "  " after "  ";

(c) in paragraphs (d) and (e), by deleting "  " wherever it occurs and substituting "  ".

Question on the amendments proposed, put and agreed to.

Question on schedules 1 and 2, as amended, proposed, put and agreed to.

PUBLIC SERVICE COMMISSION (AMENDMENT) BILL 1992

Clauses 1 to 4 were agreed to.

MARINE FISH (MARKETING) (AMENDMENT) BILL 1992

Clauses 1 to 4 were agreed to.

RABIES BILL

Clauses 1, 3 to 5, 9, 12 to 17, 19, 23, 26 to 28, 30, 32 to 36, 39, 40, 42, 43, 45, 47 and 49 to 51 were agreed to.

Clauses 2, 20, 29, 41, 44, 46, 52 and 53

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 2 is amended to add definitions of the terms "Appeal Board", "Chairman", "Panel" and "Secretary", which appear in the new clauses 39A to 39F relating to appeals.

Clause 20(2) is amended to provide that, in the case of abandonment of an animal from a conveyance, the owner and the operator of the conveyance shall be liable to a fine of $5,000 and to imprisonment for three months. This penalty is half of that to which the keeper of the animal would be liable under clause 20(1) for the offence of abandonment.

Clause 29(2)(c) is amended so that regulations relating to rabies control areas may provide for an appeal to be made to an Appeal Board rather than to the Governor.

Clause 41 is deleted in view of the introduction of the new clauses 39A to 39F relating to appeals.

Clause 44 is amended to provide for compensation to be payable to the keeper of an animal destroyed on suspicion of rabies when it is established that the animal was not affected with rabies at the date of its destruction. The amended clause also defines the circumstances in which no compensation is payable.

Clause 46 is amended to provide for regulations to be made with respect to appeals under new clause 39A and the practice and procedure of the Appeal Board. It is also amended so that such regulations may provide for an appeal to be made to the Appeal Board rather than to the Governor.

Clause 52 is amended to provide for the definition of "disease" in the Public Health (Animals and Birds) Ordinance to exclude rabies. This is in keeping with the intention to consolidate in one piece of legislation, namely the Rabies Bill, all provisions relating to the prevention and control of rabies.

Clause 53 becomes superfluous following the amendment to clause 52 and is deleted.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended by adding --

""Appeal Board" (　) means an Appeal Board established by section 39C;

"Chairman" (　) means the Chairman of an Appeal Board;

"Panel" (　) means the Appeal Board Panel established by section 39B;

"Secretary" means the Secretary for Economic Services.".

Clause 20

That clause 20(2) be amended by deleting "$10,000 and to imprisonment for 6 months" and substituting "$5,000 and to imprisonment for 3 months".

Clause 29

That clause 29(2)(c) be amended by deleting "Governor" and substituting "Appeal Board".

Clause 41

That clause 41 be amended by deleting the clause.

Clause 44

That clause 44 be amended by deleting the clause and substituting --

"44. Compensation

(1) Subject to subsection (2) where an animal has been destroyed under this Ordinance and it is established to the satisfaction of the Director that the animal was not affected with rabies at the date of its destruction, there shall be payable in respect of such animal out of money appropriated by the Legislative Council for the purpose,

to the keeper of the animal compensation equal to the market value of the animal immediately before it was destroyed as determined by the Director.

(2) No compensation is payable under this section where the keeper of the animal concerned has with respect to the animal -

(a) failed to comply with any provision of this Ordinance;

(b) failed to comply with any direction or requirement given to or imposed on him by the Director or an authorized officer pursuant to this Ordinance; or

(c) caused, suffered or permitted any contravention of this Ordinance,

prior to its destruction.

(3) No compensation is payable by the Government in respect or the seizure, detention or forfeiture of an animal or thing under this Ordinance.".

Clause 46

That clause 46(1) be amended by adding after paragraph (t) --

"(ta) appeals under section 39A, and the practice and procedure of the Appeal Board;".

That clause 46(2)(f) be amended by deleting "Governor" and substituting "Appeal Board".

Clauses 52 and 53

That clauses 52 and 53 be amended by deleting the clauses and substituting --

"52. Interpretation

Section 2(1) of the Public Health (Animals and Birds) Ordinance (Cap. 139) is amended in the definition of "disease" by repealing "rabies,".".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 20, 29, 41, 44, 46, 52 and 53, as amended, proposed, put and agreed to.

Clauses 6, 24, 25 and 38

DR CONRAD LAM (in Cantonese): Mr Chairman, I move that clauses 6, 24, 25 and 38 of the Rabies Bill be amended as set out under my name in the paper circulated to Members.

The proposed amendments to clauses 6, 24 and 25 of the Bill seek to limit the application of the Bill only to those circumstances connected with rabies. As the Honourable Selina CHOW pointed out in her speech, the power to have animals destroyed must be clearly defined. The proposed amendment to clause 6 will remove from the original Bill the power to destroy any animal which is a danger to other animals or people and limit the application of the Bill to rabies only. The deletion of clauses 24 and 25 will remove from the original Bill provisions and restrictions on the general keeping of animals.

The proposed amendment to clause 38 seeks to give more rigour to the respective provisions whereby it is strictly stipulated that the Government must, after the eventual forfeiture or sale of any animal or thing under detention consequent upon the failure of the keeper or importer to claim the animal or thing after a specified period of time, serve a notice on the keeper or importer notifying him of the sale. This amendment will enable the keeper or importer to make a demand for the proceeds of the sale within a specified period of time.

The proposed addition of subclause (7) to clause 38 stipulates that it is an offence to remove any animal or thing from a quarantine or observation centre without the permission of an authorized officer, and the offender shall be liable to the same maximum penalty for causing, suffering or permitting an animal to enter or remain in a place prohibited to animals.

Mr Chairman, I beg to move.

Proposed amendments

Clause 6

That clause 6 be amended --

(a) by deleting paragraph (b) and substituting -

"(b) is or could be rabid; or";

(b) in paragraph (c) by deleting "; or" and substituting a full stop; and

(c) by deleting paragraph (d).

Clauses 24 and 25

That clauses 24 and 25 be amended by deleting the clauses.

Clause 38

That clause 38 be amended --

(a) in subclause (3) by adding "notifying him of his intention to order the forfeiture of such animal or thing" after "require";

(b) in subclause (4) -

(i) by adding "or otherwise transferred" after "sold"; and

(ii) by adding "or transferee" after "purchaser";

(c) by adding after subclause (4) -

"(4A) Where an animal or thing is sold pursuant to this section the Director shall as soon as is reasonably practicable after the sale serve notice on the keeper or

importer of the animal or the owner of the thing as the case may require notifying him -

(a) that the animal or thing has been sold;

(b) of the date of the sale;

(c) of the amount of the fees payable in respect of the detention of the animal or thing;

(d) of the expenses of the sale; and

(e) that unless he makes a demand for the proceeds of the sale (after deducting the fees payable in respect of the detention and the expenses of the sale) within 1 month after the date of the service on him of the notice the proceeds of the sale shall be paid into the general revenue,

unless such keeper or importer or owner is unknown to or cannot be readily found or ascertained by the Director or is absent from Hong Kong.";

(d) in subclause (5) by deleting "within 1 month after the sale." and substituting -

"-
(a) where a notice has been served under subsection (4A), within 1 month after the date of such service;

(b) where a notice has not been served under subsection (4A), within 1 month after the date of the sale.";

(e) in subclause (6) by adding after "month" -

"after the date of the service of the notice under subsection (4A) or the date of the sale, as the case may be"; and

(f) by adding after subclause (6) -

"(7) A person who contravenes subsection (1) commits an offence and is liable to

a fine of $10,000 and to imprisonment for 6 months.".

Question on the amendments proposed, put and agreed to.

Question on clauses 6, 24, 25 and 38, as amended, proposed, put and agreed to.

Clause 7

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that clause 7 be amended as set out under my name in the paper circulated to Members.

Clause 7 is amended in subclause (1) to provide for the seizure and detention of an animal that has not been licensed in accordance with such licensing requirements as may be introduced.

Mr Chairman, I beg to move.

Proposed amendment

Clause 7

That clause 7(1)(d) be amended by adding after subparagraph (i) --

"(ia) has not been licensed as required by the regulations or pursuant to section 19;".

Question on the amendment proposed, put and agreed to.

MRS SELINA CHOW: Mr Chairman, I move that clause 7 be further amended as set out under my name in the paper circulated to Members.

The amendment pertains to the style of translation and it seeks to make the Chinese text more natural and Chinese than it would otherwise read. To this end, clause 7(4) will be amended from " " to " ".

Mr Chairman, I propose to move.

Proposed amendment

Clause 7

That clause 7(4) be amended by deleting "  " and substituting "  "

Question on the amendment proposed, put and agreed to.

Question on clause 7, as amended, proposed, put and agreed to.

Clauses 8, 10, 11, 21, 22 and 37

MRS SELINA CHOW: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The proposed amendments to these clauses will seek to improve the lucidity of the Chinese text of the Bill and to make it a more natural rendition of the English text.

In a number of these amendments, a reversal in the phrasal order is proposed to resemble a natural form of Chinese speech. This is the case with clause 8(3)(c) the original version of which reads: "  ". The amendment seeks to reword it as: "  ". A similar case can be made of clause 21(1) and the proposed amendment seeks to reword the original rendition of the first sentence from "
" to "
". This is to make it sound a more natural form of Chinese speech.

Mr Chairman, I propose to move.

Proposed amendments

Clause 8

That clause 8(3) be amended --

(a) by deleting paragraph (b) and substituting -

"(b) "

(b) in paragraph (c), by deleting " "
and substituting " ".

Clause 10

That clause 10 be amended by deleting the clause and substituting --

10. Power to enter and search

Subject to section 10B, where an authorized officer reasonably suspects the presence in or on any land, premises or conveyance of an animal liable to be destroyed under section 6 or liable to be seized and detained or destroyed under section 7 or of any thing liable to be seized and treated or sterilized or destroyed under section 8 he may, with or without assistants, enter such land or premises or board such conveyance and search for such animal or thing.".

Clause 11

That clause 11 be amended --

(a) in subclause (3), by deleting "In" and substituting "Subject to section 10B, in"; and

(b) by deleting subclause (4).

That clause 11(3) be amended by deleting " " and substituting " ".

Clause 21

That clause 21 be amended, in the Chinese version, by deleting subclause (1) and substituting --

"(1)

(a)

(b) "

Clause 22

That clause 22(1)(b) be amended by deleting " " and substituting "

Clause 37

That clause 37(2) be amended by deleting " " and substituting " " .

Question on the amendments proposed, put and agreed to.

Question on clauses 8, 10, 11, 21, 22 and 37, as amended, proposed, put and agreed to.

Clauses 18 and 31

MR MICHAEL HO (in Cantonese): Mr Chairman, I move that clauses 18 and 31 of the Rabies Bill be amended as set out in the paper circulated to Members.

The proposed amendment to clause 18 makes it compulsory on the Government to erect a notice or notices at every place specified indicating that the feeding of any animal at that place by a person other than the keeper of the animal is prohibited. This provision will ensure that the public will know they are liable to prosecution if they feed the animal at those places.

Similarly, the proposed amendment to clause 31 seeks to give effect to the erection of notices whereby the officer concerned is under compulsory obligation to erect or place notice or notices at every place gazetted as a place prohibited to animals by order of the Governor.

Mr Chairman, I beg to move.

Proposed amendments

Clause 18

That clause 18 be amended by deleting subclause (2) and substituting --

"(2) The Director shall erect a notice or notices at every place specified under subsection (1) indicating that the feeding of any animal at that place by a person other than the keeper of the animal is prohibited.".

Clause 31

That clause 31 be amended --

(a) by renumbering it as clause 31(1); and

(b) by adding after subclause (1) -

"(2) The Director shall erect or place at every place declared to be a place prohibited to animals under subsection (1) a notice or notices indicating that, except under and in accordance with a permit, it is an offence to cause, suffer or permit an animal to enter or remain in such place.".

Question on the amendments proposed, put and agreed to.

Question on clauses 18 and 31, as amended, proposed, put and agreed to.

Clause 48

DR CONRAD LAM (in Cantonese): Mr Chairman, I move that clause 48 of the Rabies Bill be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 48

That clause 48(b) be amended by deleting ", 4 and 5" and substituting "and 4".

Question on the amendment proposed, put and agreed to.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that clause 48 be further amended as set out under my name in the paper circulated to Members.

Clause 48 is amended in subclause (c)(iii) to repeal that part of section 6(1)(b) of the Dogs and Cats Ordinance which empowers an authorized officer to seize, shoot or otherwise destroy any dog which appears to him to be neither licensed nor under the control of any person. Following the amendment to clause 7 moved earlier, adequate provision exists in the Bill for the seizure, or destruction if necessary, of stray or feral dogs in the interests of rabies prevention and control.

Mr Chairman, I beg to move.

Proposed amendment

Clause 48

That clause 48(c) be amended by deleting subparagraph (iii) and substituting --

"(iii) by repealing subsection (1)(b) and substituting -

"(b) seize, shoot or otherwise destroy any dog or cat which appears to him to be suffering from any infectious disease;";".

Question on the amendment proposed, put and agreed to.

Question on clause 48, as amended, proposed, put and agreed to.

New clause 10A. Powers of entry -- ancillary provisions.

New clause 10B. Entry of domestic premises

Clauses read the First time and ordered to be set down for Second Reading pursuant

to Standing Order 46(6).

MRS SELINA CHOW: Mr Chairman, I move that new clauses 10A and 10B as set out in the paper circulated to Members be read the Second time.

For the reasons I gave at the Second Reading debate, I have proposed these new clauses to put in place more stringent requirements for an authorized officer's exercise of his powers to enter and search premises, in particular domestic premises, for any suspected rabid animal. Under the new clauses a magistrate's warrant and the company of a police officer are required before there can be entry and search of domestic premises except in the case of urgency. This is to safeguard against unnecessary interference of a person's right to protection of privacy, family and home.

Mr Chairman, I propose to move.

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

Clauses read the Second time.

MRS SELINA CHOW: I move that clauses 10A and 10B be added to the Bill.

Proposed additions

New clause 10A

That the Bill be amended by adding after clause 10 --

"10A. Powers of entry -- ancillary provisions

(1) In exercising any power of entry under section 10 or 10B an authorized officer may use such force as is reasonably necessary -

(a) to enter any land or premises or board any conveyance; or

(b) to remove any person or thing obstructing the entry, boarding or search.

(2) An authorized officer who enters any land or premises or boards any conveyance under section 10 or 10B shall, if so requested, produce written evidence of his identity and of his authorization under section 5.

10B. Entry of domestic premises

(1) Subject to subsection (2), sections 10 and 11 do not authorize any person without the permission of the occupier or person appearing to him to be in charge of the premises, to enter domestic premises unless a magistrate has issued a warrant authorizing him to enter the premises under subsection (3).

(2) In a case of urgency, where a warrant cannot be obtained under subsection (3) without affording an opportunity for the animal liable to be seized or destroyed under this Ordinance to escape or to be removed from the premises or in the case of any thing liable to be seized, treated, sterilized or destroyed under this Ordinance without affording an opportunity for such thing to be removed from the premises, an authorized officer may, with or without assistants, enter such premises and search for such animal or thing.

(3) A magistrate may, if satisfied by information on oath that there is a reasonable ground for suspecting the presence of any animal liable to be seized, detained or destroyed under this Ordinance or of any thing liable to be seized, treated, sterilized or destroyed under this Ordinance in any domestic premises, issue a warrant authorizing an authorized officer to enter and search the premises.
(4) The power of entry conferred by a warrant issued under subsection (3) may be exercised by the person on whom it is conferred either alone or together with other persons.

(5) Notwithstanding any other provision of this section an authorized officer may not, without the permission of the occupier or person appearing to him to be in charge of the premises, enter domestic premises unless he is accompanied by a police officer.".

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

New clause 39A. Appeal.

New clause 39B. Appeal Board Panel.

New clause 39C. Appeal Board.

New clause 39D. Proceedings before the Appeal Board.

New clause 39E. Powers of the Appeal Board and Chairman.

New clause 39F. Decision of Appeal Board.

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

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that new clauses 39A, 39B, 39C, 39D, 39E and 39F as set out in the paper circulated to Members be read the Second time.

The new clause 39A provides that a person may appeal to the Appeal Board if he feels aggrieved by a decision made by the Director of Agriculture and Fisheries or an authorized officer. Such decisions may have been made either in relation to where, when, how or for how long an animal should be detained or confined, as was previously provided in the deleted clause 41, or in relation to compensation payable under clause 44.

The new clause 39B establishes the Appeal Board Panel which is to consist of up to six medical practitioners and up to six veterinary surgeons.

The new clause 39C empowers the Secretary for Economic Services to appoint an Appeal Board to determine an appeal and provides for the Board to consist of one public officer, one medical member and one veterinary member.

The new clause 39D governs the conduct of the proceedings of the Appeal Board.
The new clause 39E sets out the powers of the Appeal Board and its Chairman.

The new clause 39F empowers the Appeal Board to determine the appeal and provides for its decisions to be final.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that new clauses 39A, 39B, 39C, 39D, 39E and 39F be added to the Bill.

Proposed additions

New clauses 39A, 39B, 39C, 39D, 39E and 39F

That the Bill be amended by adding after Part VII --

"PART VIIA
APPEALS

39A. Appeal

(1) Any person aggrieved by -

(a) a direction given to him by an authorized officer under section 11 or 17;

(b) the length of any period for which any animal of which he is the keeper or importer, is directed to be detained by an authorized officer under section 11(1)(c) or 35;

(c) the refusal of an authorized officer to permit an animal of which he is the keeper or importer, to be removed from a quarantine centre, observation centre or other place in which it has been detained;

(d) an increase in a specified period of detention in respect of an animal of which he is the keeper or importer, made by an authorized officer under section 36;
(e) any condition imposed by the Director in granting him an exemption under section 42;

(f) any decision of the Director concerning his entitlement to compensation under section 44;

(g) the amount of compensation payable under section 44 as determined by the Director,

may within 30 days of the notification to him of such direction, refusal, increase, condition, decision or determination appeal to the Appeal Board by notice of appeal addressed to the Director, in a form and manner specified by the Director, setting out the grounds of the appeal.

(2) After receiving a notice of appeal under subsection (1) the Director shall, within 14 days after such receipt, forward it to the Secretary.

(3) An appeal made under this section shall not affect the operation of the direction, refusal, increase or condition appealed against prior to the determination of the appeal.

39B. Appeal Board Panel

(1) There shall be a panel to be known as the Appeal Board Panel.

(2) The Panel shall consist of the following persons appointed by the Secretary -

(a) not more than 6 medical practitioners (referred to in this Part as the medical members); and

(b) not more than 6 veterinary surgeons (referred to in this Part as the veterinary members).

(3) A public officer is not eligible for appointment to the Panel.

(4) Subject to subsection (5) a member of the Panel shall be appointed for a period of 2 years and shall, on ceasing to be a member, be eligible for reappointment.

(5) A member of the Panel may at any time, by notice in writing to the Secretary, resign from the Panel.

(6) In subsection (2)(b) "veterinary surgeon" (　　) means a duly qualified veterinary surgeon within the meaning of the Pharmacy and Poisons Ordinance (Cap. 138).

39C.　Appeal Board

(1) The Secretary shall, not later than 21 days after receipt of the notice of appeal under section 39A(2), appoint an Appeal Board to determine the appeal.

(2) The Appeal Board shall consist of 1 public officer, 1 medical member and 1 veterinary member.

(3) The members of the Appeal Board shall elect a Chairman from amongst themselves to preside at the hearing of the appeal.

(4) The members of the Appeal Board, other than the public officer, shall be remunerated for their services out of money appropriated for the purpose by the Legislative Council at such rate as the Financial Secretary may determine.

39D.　Proceedings before the Appeal Board

(1) The Chairman of the Appeal Board shall notify the appellant of the time and place of the hearing of the appeal.

(2) The parties to an appeal may be present at the hearing of the appeal and make representations either in person or by counsel or solicitor or, with the consent of the Appeal Board, by some other person.

(3) A counsel, solicitor or legal officer within the meaning of the Legal Officers Ordinance (Cap. 87) may be present at any hearing to advise the Chairman on any legal matter.

39E.　Powers of Appeal Board and Chairman

(1) For the purpose of hearing an appeal to which this Ordinance applies the Appeal

Board may -

(a) receive and consider such evidence as it considers relevant whether or not it would be admissible in evidence in a court of law;

(b) require evidence to be given on oath or affirmation and orally or in writing;
(c) by notice in writing signed by the Chairman and served on the person to whom it is addressed, require that person to attend and give evidence at the hearing of the appeal, and to produce such record, document or other thing in that person's custody or under his control relating to the subject matter of the appeal as may be specified in the notice;

(d) require such person to answer all questions put to him by or with the consent of the Appeal Board;

(e) exercise such other powers as may be necessary or ancillary to the carrying out of its functions under this Ordinance.

(2) Subject to any regulations referred to in section 46(1)(ta) the Appeal Board may determine the procedure for the hearing of appeals.

(3) The Appeal Board and its members, and witnesses, counsel and any solicitor, and any other person who is a party to or who otherwise has an interest in the proceedings shall have the same privileges and immunities in respect of the hearing of an appeal under this Part as they would have in proceedings before the High Court.

(4) Any person who refuses or fails -

(a) to take any oath or make an affirmation when required to do so by the Appeal Board;

(b) to attend and give evidence when required to do so by the Appeal Board;

(c) to produce any record, document or other thing he is required by the Appeal Board to produce;

(d) to answer truthfully and fully questions put to him by or with the consent of the Appeal Board,

commits an offence and is liable to a fine of $5,000.

(5) The Chairman at the hearing of the appeal may administer an oath or affirmation to any person.

39F. Decision of Appeal Board

(1) The Appeal Board may confirm, vary or reverse or revoke the direction, refusal, increase, condition, decision or determination against which the appeal is made.

(2) The decision of the Appeal Board shall be final and shall not be subject to appeal.".

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

Schedules 1 to 4 were agreed to.

Long title

DR CONRAD LAM (in Cantonese): Mr Chairman, I move that the long title of the Bill be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Long title

That the long title be amended by deleting ", to make provision for the control of certain animals,".

Question on the amendment proposed, put and agreed to.

Question on long title, as amended, proposed, put and agreed to.

LINGNAN COLLEGE BILL

Clauses 1 to 5, 7, 8, 10 to 12, 14 to 16, 18, 19, 21, 22, 24 and 26 to 30 were agreed to.

Clause 6, 9, 13, 17, 20, 23 and 25

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The proposed amendment to clause 6(a) expressly specifies the power of the College to take on lease, purchase, manage, sell and let property. The amendment to clause 25(a) clarifies that members of the Council and Board of Governors of the Lingnan College may be exempt from regulations governing the admission of persons to the College premises. The other amendments are proposed to the Chinese version of the Bill for textual improvements.

Proposed amendments

Clause 6

That clause 6 be amended by deleting paragraph (a) and substituting --

"(a) take on lease, purchase or otherwise acquire, and hold, manage and enjoy property of any description, and sell, let or otherwise dispose of the same;".

Clause 9

That clause 9(1)(e) be amended by deleting " ".

That clause 9(6) be amended by deleting " " and substituting " ".

Clause 13

That clause 13(1) be amended, in paragraphs (b) and (f), by deleting " ".

That clause 13(8) be amended by deleting "  " and substituting "  "

Clause 17

That clause 17(6) be amended by deleting "  " and substituting "  "

Clause 20

That clause 20(1)(c) be amended by deleting "  " and substituting "  ";

That clause 20(3) be amended --

(a) by deleting "  "
and substituting "  ";

(b) by adding "  " after "  ".

Clause 23

That clause 23(1) be amended by adding "  " after "  ".

Clause 25

That clause 25(a) be amended by deleting "members of a college body" and substituting "members of the Council and Board of Governors".

Question on the amendments proposed, put and agreed to.

Question on clauses 6, 9, 13, 17, 20, 23 and 25 as amended, proposed, put and agreed to.

CRIMES (AMENDMENT) BILL 1992

Clause 1 was agreed to.

Clause 2

CHAIRMAN: I shall revise the speaking and voting order in the Script, having spoken to Mr TO and the Secretary for Security. The Secretary's proposed amendment to clause 2 is purely cosmetic, to delete the words "of the Crimes Ordinance (Cap. 200)". This reference becomes repetitive once we get to clause 1A which is next to be considered. Mr TO's proposed amendment is of course a substantial one and has been the focus of debate during the Second Reading. Mr TO's proposed amendment will therefore be voted on in priority to the Secretary for Security's amendment which is, as I have said, purely cosmetic.

MR JAMES TO (in Cantonese): Mr Chairman, I move that clause 2 be amended as set out under my name in the paper circulated to Members. The points and arguments supporting the proposed amendment have been dealt with during the Second Reading debate just now, I therefore do not wish to repeat them here.

Proposed amendment

Clause 2

That clause 2 be amended by deleting clause 2 and substituting --

"2. Loitering

Section 160(1) of the Crimes Ordinance (Cap. 200) is repealed.".

Question on the amendment proposed.
SECRETARY FOR SECURITY: Mr Chairman, I also do not wish to repeat the debate we had on the Second Reading and I would only like to say that, as I explained then, the Administration opposes this amendment which would do away with the offence of loitering.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: The Committee will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards.

CHAIRMAN: Would Members now please proceed to vote?

CHAIRMAN: Do Members have any query before the results are displayed? If not, the results will be displayed.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mrs Rita FAN, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG and Mr Howard YOUNG voted against the amendment.

Mr Martin BARROWand Prof Edward CHEN abstained.

THE CHAIRMAN announced that there were 19 votes for the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 2 be amended as set out in

my name in the paper circulated to Members. As you have just explained, this is a minor drafting change.

Proposed amendment

Clause 2

That clause 2 be amended by deleting "of the Crimes Ordinance (Cap. 200)".

Question on the amendment proposed, put and agreed to.

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

New clause 1A Seditious intention

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

SECRETARY FOR SECURITY: Mr Chairman, I move that new clause 1A as set out in the paper circulated to Members be read the Second time.

As I have explained, the effect of this will be to remove the presumption relating to the offence of sedition.

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

Clause read the Second time.

SECRETARY FOR SECURITY: I move that new clause 1A be added to the Bill.

Proposed amendment

New clause 1A

That the Bill be amended by adding --

"1A. Seditious intention

Section 9(3) of the Crimes Ordinance (Cap. 200) is repealed.".

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

SOCIETIES (AMENDMENT) BILL 1992

Clauses 1 to 4, 6, 10, 17, 18, 20, 25 to 35 and 37 to 39 were agreed to.

Clause 5

PROF FELICE LIEH MAK: Mr Chairman, I move that the clause specified be amended as set out under my name in the paper circulated to Members. The amendments are considered necessary to achieve the purpose of the Bill, that is, to facilitate the formation of legitimate societies on the one hand, and to prohibit the operation of unlawful societies on the other. In introducing the notification system for societies, the Bill proposes to require a society to notify the Societies Officer, within 14 days of its establishment, of any change of particulars and of its dissolution. The ad hoc group considers the 14-day period as being unnecessarily stringent. The Administration agrees to extend it to one month. The first set of amendments are proposed to this effect. The second set of amendments relate to the penalty to be imposed on an office bearer of a society upon failure to notify the Societies Officer of its establishment. The Bill proposes the penalty to be a fine of $10,000 plus imprisonment for three months and a fine of $5,000 for each day during which the failure has continued.

Most members of the group agree that sanction is necessary to ensure compliance with the notification requirement, but the level of penalty proposed in the Bill is generally considered disproportionate to the severity of the offence. After a lengthy discussion with the Administration, most members agreed the penalty to be a fine of $10,000 upon a person's first conviction of the offence and then a fine of $20,000 and imprisonment for three months plus a daily fine of $300 on second or subsequent conviction in respect of the same society. Some members still object to the imprisonment provision; other members consider that if a person repeatedly refuses to comply with the law, the penalty should be heavier in order to achieve a deterrent

effect and a daily fine as well as imprisonment as now proposed should be appropriate.

The next proposed amendment relates to section 5(5) in clause 5. Under this subsection, it is provided "Societies Officer is required to serve a notice in writing to the office bearer of an overseas society about the notification requirement when the society is deemed to be established in Hong Kong under section 4 of the Ordinance, that is, when any of its office bearers reside in Hong Kong". The group does not consider the provision necessary as any society, irrespective of whether it is organized locally or originated from overseas, should not be assumed to be ignorant of the law of Hong Kong. The proposed provision will give the impression that the law is giving preferential treatment to a particular group of societies. With the agreement of the Administration, the group is proposing to repeal this subsection.

Mr Chairman, I beg to move.

Proposed amendment

Clause 5

That clause 5 be amended --

(a) in proposed section 5 -

(i) in subsections (1) and (2), by deleting "14 days" and substituting "1 month";

(ii) by deleting subsections (4) and (5) and substituting -

"(4) Where a local society fails to comply with subsection (1) or (2), every office-bearer or person professing or claiming to be an office-bearer shall be guilty of an offence and shall be liable on summary conviction -

(a) in the case of a first conviction for that offence, to a fine of $10,000; and

(b) in the case of a second or subsequent conviction for that offence in relation to the same society, to a fine of $20,000 and to imprisonment for 3 months, and in addition, to a fine of $300 for each day during which the offence continues, commencing from the date of the first conviction,

unless he establishes to the satisfaction of the court that he has exercised due diligence to ensure compliance with this section by the society and that such failure has occurred for reasons beyond his control.".

(b) in proposed section 8 -

(i) in subsections (1) and (4), by adding "reasonably" before "believes";

(ii) in subsection (3), by adding "as the society thinks fit" after "in writing".

(c) in proposed section 10(1), by deleting "14 days" and substituting "1 month".

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, in accordance with Standing Orders, if Members were to support my amendment in respect of the penalty, that is, to remove the provisions on imprisonment and daily fines and to retain the maximum fine of $10,000, then Members would have to vote against Prof LIEH MAK's amendment and then support mine.

However, there is one point I would like to clarify with Mr Chairman. The clause 5 referred to by Prof LIEH MAK contains subclauses (a)(i) and (ii), but my amendment relates to subclause (a)(ii) only. I would like to ask if we could vote on these subclauses separately, otherwise I would be compelled to oppose also the proposal that the notification period be changed from 14 days to one month.

CHAIRMAN: Sorry, Mr TO. Would you repeat your concern?

MR JAMES TO (in Cantonese): Mr Chairman, it is because there are several parts in Prof LIEH MAK's proposed amendment, including the deletion of "14 days" and substituting "1 month" and an amendment of penalty. But the amendment I am going

to propose relates to penalty only. I, therefore, would like to know if we may vote on these parts separately, or else I would be compelled to oppose the change of the time limit from 14 days to one month.

10.00 pm

CHAIRMAN: You have a valid point, Mr TO. I do not have a solution right away. We will take a short break.

10.10 pm

CHAIRMAN: Council will resume. My ruling on your point, Mr TO, is that we ought to take the unopposed amendments as one lot and the opposed amendment separately. So I will in fact put two questions to the Committee.

Question on Prof LIEH MAK's amendment to clause 5 in relation to subclauses (a)(i), (b) and (c) put and agreed to.

CHAIRMAN: We will now vote separately on Prof LIEH MAK's proposed amendment to clause 5(a)(ii) to which Mr James TO has proposed his own amendment. If Members vote in favour of Prof LIEH MAK's amendment, that will by implication be a rejection of Mr James TO's proposed amendment.

Question on Prof LIEH MAK's amendment under clause 5(a)(ii) put.

Voice vote taken.

THE CHAIRMAN said he thought the "Ayes" had it.

MR JAMES TO: Mr Chairman, I claim a division.

CHAIRMAN: The Committee will proceed to a division. The division bell will ring for

three minutes and the division will take place immediately afterwards.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Do Members have any queries before the results are displayed?

CHAIRMAN: Yes, Dr YEUNG Sum.

DR YEUNG SUM (in Cantonese): Mr Chairman, would you please repeat how we should vote, that is, what is meant by "Aye" and "No"? (laughter) It is because I believe your explanation will be helpful to the voting. It is only for the sake of clarity, Mr Chairman.

CHAIRMAN: Yes. Members are being called on to vote on Prof LIEH MAK's proposed amendment under clause 5(a)(ii). Mr James TO's proposed amendment relates to the same subject matter, namely, the punishment point that has been explored during the speeches. If Members vote "Aye", then they are supporting Prof LIEH MAK's amendment and that will mean rejection of Mr TO's amendment and I will not therefore be proceeding to call on Mr TO to propose his amendment. If Members vote "No", then we will proceed to Mr TO's amendment. Do Members wish to have further time? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mrs Rita FAN, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Prof Edward CHEN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Dr LAM Kui-chun, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG and Mr Howard YOUNG voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick

FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, and Mr WONG Wai-yin voted against the amendment.

Mr PANG Chun-hoi abstained.

THE CHAIRMAN announced that there were 32 votes for the amendment and 16 votes against it. He therefore declared that Prof LIEH MAK's amendment was approved.

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

CHAIRMAN: In the circumstances, I will not be calling on Mr James TO to move his amendment.

Clauses 7, 11 to 16, 21 and 24

PROF FELICE LIEH MAK: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

One major purpose of the Bill is to prohibit the operation of unlawful societies. While the ad hoc group supports this principle, members consider it appropriate to distinguish triad societies from other unlawful societies and penalties for a triad society-related offence should be much severe. Hence clause 11 is proposed to be amended to make it clear from the outset that there are two types of unlawful societies, that is, triad societies and societies that are prohibited by virtue of an order made by the Secretary for Security.

As regards penalties, although there are proposals in the Bill to increase penalties for triad society-related offences, they are still unrealistically light for neglecting the seriousness of the offences as the group as well as the community see it. For instance, in section 19, an office bearer of an unlawful society, which includes a triad society, is only liable to a fine of $250,000 and to imprisonment for five years. The group considers this level of penalty not sufficient at all to serve as a punishment or as a deterrent. After lengthy deliberation with the

Administration, the group proposes that for the offence under the section, an office bearer of a prohibited society should be liable to a fine of $100,000 and to imprisonment for three years; an office bearer of a triad society, which is much more serious, should be liable to a fine of $1 million and to imprisonment for 15 years. The penalties in sections 20, 21, 22 and 23 are proposed to be amended for the same reason.

The next set of amendments are meant to address Bill of Rights (BOR) concerns. The Bill is originated from the need to make the Societies Ordinance compatible with the Hong Kong Bill of Rights Ordinance. There are however certain proposals in the Bill which are still considered to be incompatible with the BOR. They are related to the prohibition for the operation of societies under the new section 8 and the powers of the Societies Officer to enter and search under the new section 31 and section 33. The group considers it necessary to apply an objective test to be introduced in these provisions. They are hence amendments to this effect.

Finally, there are also a few amendments necessary to clarify the intention of the Bill. They are related to the right to be heard after a notice of prohibition is published under the new section 8(2) and the type of properties liable to be forfeited under section 36.

Mr Chairman, with these remarks, I beg to move.

Proposed amendments

Clause 7

That clause 7 be amended, in proposed section 14(1), by deleting "14 days" and substituting "1 month".

Clause 11

That clause 11 be amended by deleting the clause and substituting --

"11. Unlawful societies

Section 18(1) and (2) is repealed and the following substituted -

"(1) For the purposes of this Ordinance, "unlawful society" means -

(a) a triad society, whether or not such society has notified the Societies Officer of its establishment and whether or not such society is a local society; or

(b) a society in respect of which an order made under section 8 is in force.".

Clause 12

That clause 12 be amended by deleting the clause and substituting --

"12. Section substituted

Section 19 is repealed and the following substituted -

"19. Penalties on office-bearer, etc. of an unlawful society

(1) Save as is provided in subsection (2), any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of $100,000 and to imprisonment for 3 years.

(2) Any office-bearer or any person professing or claiming to be an office-bearer and any person managing or assisting in the management of any triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of $1,000,000 and to imprisonment for 15 years.".

Clause 13

That clause 13 be amended --

(a) in subclause (1), by deleting "$50,000" and $100,000" and substituting "5 years" and "2 years" respectively.

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

"(2) Section 20(2) is amended -

(a) by adding "or who pays money or gives any aid to or for the purposes of a triad society" before "or is found"; and

(b) by repealing "$50,000" and "$100,000" and substituting "$100,000" and "$250,000" respectively.".

Clause 14

That clause 14 be amended by deleting the clause and substituting --

"14. Section substituted

Section 21 is repealed and the following substituted -

"21. Persons allowing unlawful society on premises

(1) Save as is provided in subsection (2), any person who knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and shall be liable on conviction on indictment in the case of a first conviction for that offence, to a fine of $50,000 and to imprisonment for 12 months and in the case of a second or subsequent conviction for that offence, to a fine of $100,000 and to imprisonment for 2 years.

(2) Any person who knowingly allows a meeting of a triad society, or of members of a triad society, to be held in any house, building or place belonging to or occupied by him, or over which he has control, shall be guilty of an offence and shall be liable on conviction on indictment in the case of a first conviction for that offence, to a fine of $100,000 and to imprisonment for 3 years and in the case of a second or subsequent conviction for that offence, to a fine of $200,000 and to imprisonment for 5 years.".".

Clause 15

That clause 15 be amended by deleting the clause and substituting --

"15. Section substituted

Section 22 is repealed and the following substituted -

"22. Penalty for inciting, etc, a person to become a member of an unlawful society

(1) Save as is provided in subsection (2), any person who incites, induces or invites another person to become a member of or assist in the management of an unlawful society and any person who uses any violence, threat or intimidation towards any other person in order to induce him to become a member or to assist in the management of an unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of $50,000 and to imprisonment for 2 years.

(2) Any person who incites, induces or invites another person to become a member of or assist in the management of a triad society and any person who uses any violence, threat or intimidation towards any other person in order to induce him to become a member or to assist in the management of a triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of $250,000 and to imprisonment for 5 years.".".

Clause 16

That clause 16 be amended by deleting the clause and substituting --

"16. Section substituted

Section 23 is repealed and the following substituted -

"23. Penalty for procuring subscription or aid for an unlawful society

(1) Save as is provided in subsection (2), any person who procures or attempts to procure from any other person any subscription or aid for the purposes of an unlawful society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of $50,000 and to imprisonment for 2 years.

(2) Any person who procures or attempts to procure from any other person any subscription or aid for the purposes of a triad society shall be guilty of an offence and shall be liable on conviction on indictment to a fine of $250,000 and to imprisonment for 5 years.".".

Clause 21

That clause 21 be amended, in proposed section 31(1), by deleting "at any time" and substituting "at all reasonable times".

Clause 24

That clause 24 be amended by deleting everything after "amended" and substituting --

"-

(a) by adding "movable" after "other"; and

(b) by repealing "Registrar or to an assistant registrar" and substituting "Societies Officer".".

Question on the amendments proposed, put and agreed to.

Question on clauses 7, 11 to 16, 21 and 24, as amended, proposed, put and agreed to.

Clauses 8 and 9

MR JAMES TO (in Cantonese): Mr Chairman, I move that clauses 8 and 9 be amended as set out in the paper circulated to Members. It relates to the scope within which the Societies Officer may require societies to furnish information. The arguments in respect of this have been dealt with during the Second Reading of the Bill, I do not wish to repeat them here.

Proposed amendments

Clause 8

That clause 8 be amended by deleting clause 8 and substituting --

"8. Information to be furnished by societies

Section 15 is repealed.".

Clause 9

That clause 9 be amended by deleting clause 9 and substituting --

"9. Persons responsible for supplying information

Section 16 is repealed.".

Question on the amendments proposed.

SECRETARY FOR SECURITY: Mr Chairman, the effect of Mr TO's amendment would deny the Societies Officer the means to obtain up-to-date information on societies. As I explained in my speech on the Second Reading, we believe that the powers to obtain such information are necessary to enable the Societies Officer to discharge properly his responsibilities. The Administration, therefore, does not support these amendments.

Question on the amendments put and negatived.

Question on clauses 8 and 9 were agreed to.

Clauses 19, 22, 23 and 36

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendments to clauses 19, 23 and 36 are minor drafting improvements and a purely consequential amendment. The proposed amendment to clause 22 would repeal section 34 of the Ordinance which, as I explained in my speech on the Second Reading, I believe is no longer necessary.

Proposed amendments

Clause 19

That clause 19 be amended by deleting the clause and substituting --

"19. Section substituted

Section 28 is repealed and the following substituted -

"28. Presumption of existence of triad society, etc.

(1) Where any books, accounts, writings, lists of members, seals, banners or insignia of or relating to or purporting to relate to any triad society are found, such society shall be presumed, until the contrary is proved, to be in existence at the time such books, accounts, writings, lists of members, seals, banners or insignia are so found.

(2) Where any books, accounts, writings, lists of members, seals, banners or insignia of or relating to any unlawful society are found in the possession of any person, it shall be presumed, in the absence of evidence to the contrary, that such person assists in the management of such society.

(3) Where it appears to a magistrate that there is reasonable cause to suspect that any place or premises entered or searched under any power conferred by or under this Ordinance were, immediately before or at the time of such entry, being used for the purpose of a meeting of a triad society, any person found in such place or premises at any time during such search or found leaving therefrom immediately before or at the time of such entry shall, unless he gives a satisfactory account of the reasons for his presence in the said place or premises, be presumed to have been attending the meeting of the triad society.".

Clause 22

That clause 22 be amended by deleting the clause and substituting --

"22. Powers of Registrar to summon witnesses

Section 34 is repealed.".

Clause 23

That clause 23 be amended by deleting ""34(5)" and substituting "34(4)"." and substituting "sections 33 and 34(5)" and substituting "section 33".".

Clause 36

That clause 36 be amended by deleting "a Rural Committee being".

Question on the amendments proposed, put and agreed to.

Question on clauses 19, 22, 23 and 36, as amended, proposed, put and agreed to.

New clause 21A Powers of entry and search

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

PROF FELICE LIEH MAK: Mr Chairman, I move that new clause 21A as set out in the paper circulated to Members be read the Second time.

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

Clause read the Second time.

PROF FELICE LIEH MAK: I move that new clause 21A be added to the Bill.

Proposed addition

New clause 21A

That the Bill be amended by adding --

"21A. Powers of entry and search

Section 33(1) is amended -

(a) by repealing "if necessary" and substituting "if reasonably necessary"; and

(b) by adding "whom he has reasonable cause to believe are associated with the unlawful society" before "and to search".".

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

New clause 25A. Service of summons.

New clause 25B. Protection of informers.

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

SECRETARY FOR SECURITY: Mr Chairman, I move that new clauses 25A and 25B as set out in the paper circulated to Members be read the Second time.

These amendments are purely consequential on the amendment approved to clause 22.

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

Clauses read the Second time.

SECRETARY FOR SECURITY: I move that new clauses 25A and 25B be added to the Bill.

Proposed additions

New clauses 25A and 25B

That the Bill be amended by adding --

"25A. Service of summons

Section 37 is repealed.".

25B. Protection of informers

Section 38 is amended by repealing "Without prejudice to the provisions of section 34, except" and substituting "Except".".

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

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1991

Clause 3 was agreed to.

Clause 1

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

The reasons for the amendment proposed have already been given in my speech during the resumption debate on the Second Reading of the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Clause 1

That clause 1 be amended by deleting subclause (2).

Question on the amendment proposed, put and agreed to.

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

Clause 2

SECRETARY FOR RECREATION AND CULTURE: I move that clause 2 of the Bill be deleted.

Clause 2 proposes to amend section 3 of the Ordinance so that films which have been approved for exhibition under the Film Censorship Ordinance will be subject to the provisions of this legislation if they are published other than by way of exhibition in cinemas. During the resumption debate on the Second Reading of this Bill, I have undertaken to move a Committee stage amendment by deleting this part of the Bill for reasons clearly explained in my speech.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2 be amended by deleting the clause.

Question on the amendment proposed, put and agreed to.

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

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

PUBLIC SERVICE COMMISSION (AMENDMENT) BILL 1992 and the

MARINE FISH (MARKETING) (AMENDMENT) BILL 1992

had passed through Committee without amendment, and the

BANKING (AMENDMENT) BILL 1992

SECURITIES (CLEARING HOUSES) BILL

RABIES BILL

LINGNAN COLLEGE BILL and the

CRIMES (AMENDMENT) BILL 1992

SOCIETIES (AMENDMENT) BILL 1992

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1991

had pased through Committee with amendments, and the

SUPPLEMENTARY APPROPRIATION (1991-92) BILL 1992

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

Question on the Third Reading of the Public Service Commission (Amendment) Bill 1992, Marine Fish (Marketing) (Amendment) Bill 1992, Banking (Amendment) Bill 1992, Securities (Clearing Houses) Bill, Rabies Bill, Lingnan College Bill, Control of Obscene and Indecent Articles (Amendment) Bill 1991, Supplementary Appropriation (1991-92) Bill 1992 proposed, put and agreed to.

Bills read the Third time and passed.

CRIMES (AMENDMENT) BILL 1992

Question on the Third Reading of the Bill proposed and put.

Voice vote taken.

THE DEPUTY PRESIDENT said he thought the "Ayes" had it.

MISS EMILY LAU: Mr Deputy President, I claim a division.

DEPUTY PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards.

DEPUTY PRESIDENT: Would Members please proceed to vote?

DEPUTY PRESIDENT: Do Members have any queries before the results are displayed? The results will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mrs Rita FAN, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Peter WONG, Prof Edward CHEN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG and Mr Howard YOUNG voted for the motion.

Mr PANG Chun-hoi, Mrs Elsie TU, Dr Conrad LAM, Mr LAU Chin-shek and Miss Emily LAU voted against the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr

MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin abstained.

THE DEPUTY PRESIDENT announced that there were 31 votes for the motion and five votes against it. He therefore declared that the motion on the Third Reading of the Bill was carried.

Bill read the Third time and passed.

SOCIETIES (AMENDMENT) BILL 1992

Question on the Third Reading of the Bill proposed and put.

Voice vote taken.

THE DEPUTY PRESIDENT said he thought the "Ayes" had it.

MISS EMILY LAU: Mr Deputy President, I claim a division.

DEPUTY PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards. Can we have order please? Council is still in session.

DEPUTY PRESIDENT: Would Members now please proceed to vote?

DEPUTY PRESIDENT: Do Members have any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mrs Rita FAN, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung,

Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Prof Edward CHEN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Gilbert LEUNG, Mr Eric LI, Prof Felice LIEH MAK, Mr Steven POON, Dr Samuel WONG, Dr Philip WONG and Mr Howard YOUNG voted for the motion.

Dr Conrad LAM, Mr LAU Chin-shek and Miss Emily LAU voted against the motion.

Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin abstained.

THE DEPUTY PRESIDENT announced that there were 32 votes for the motion and three votes against it. He therefore declared that the motion on the Third Reading of the Bill was carried.

Bill read the Third time and passed.

Member's motions

DEPUTY PRESIDENT: On the Order Paper we have a motion to be moved by Mr ARCULLI with amendments to be moved by Mr McGREGOR and Mr K K FUNG. Because Mr K K FUNG's notice was received very late, although within time, I thought it desirable that Members should have time to consider his notice before debating it and I understand that Mr FUNG has arranged for copies of his speech to be distributed to all Members. We will therefore take his amendment tomorrow. As indeed appears from the Script, it was intended to complete the debate on Mr ARCULLI's motion and Mr McGREGOR's amendment this evening. That looks a forlorn hope as we are now twenty-five to eleven and there is no realistic prospect of finishing by midnight. Unlike the last occasion when the question of the midnight deadline arose, I am not inhibited because tomorrow is in fact a sitting day and I am therefore at liberty to proceed beyond midnight. I have decided to let the debate run its course beyond midnight until we conclude the debate on Mr ARCULLI's motion and Mr McGREGOR's amendment. I say that in fairness

to all Members because if I were to stop at midnight or one or at any time before the debate is finished, that would give an advantage to Members who have not spoken and will speak tomorrow as I am sure there will be a very natural inclination on the part of all Members to compress their speeches. I would not wish any Member to suffer as a result.

DEPUTY PRESIDENT: Mr CHIM, do you have a point?

CHIM PUI-CHUNG (in Cantonese): I propose that the motion be adjourned until 9 am tomorrow when we begin the sitting.

DEPUTY PRESIDENT: No, Mr CHIM, my ruling is that we continue until we finish the main debate and Mr McGREGOR's amendment.

SELECT COMMITTEE ON LEGISLATIVE COUNCIL ELECTIONS

MR RONALD ARCULLI moved the following motion:

"That this Council takes note of the Report of the Select Committee on Legislative Council Elections."

MR RONALD ARCULLI: Mr Deputy President, I rise to move the motion standing in my name in the Order Paper under which I, as chairman of the Select Committee on Legislative Council Elections, am asking Members to take note of the report of the Select Committee tabled in this Council on 8 July 1992. Members obviously have not had much time to consider the full report and I apologize for that but I hope they appreciate the tight timetable under which the Committee was working. I would like to take this opportunity to express my appreciation and gratitude to everyone who made submissions to the Committee, to our legal advisers Mr Jonathan DAW and Mr Jimmy MA, our clerk Mr Albert LAM, his staff, and our verbatim reporters for their hardwork, to the media for the coverage they gave to our proceedings and to my colleagues on the Committee for their contribution, patience and hard work.

The Select Committee commenced its meetings on 31 January 1992 and had a total

of 21 meetings of which 11 were public and 10 private. The Committee made a total of 44 recommendations and for the moment the two contentious ones concern geographical constituencies and the related voting system. There is, however, a risk that the remaining 42 issues might be overshadowed by the heat generated by these two issues and thus not receive the attention that they deserve. I therefore propose to refer to some of the equally important issues that the Committee considered and I shall await with interest comments from my honourable colleagues.

Broadly speaking the Committee considered three main areas: first, the desirability of a Boundary and Election Commission, second, issues pertaining to registration and qualification of voters and candidates, election arrangements and legislation and third, the different constituencies and the voting system.

I shall now deal with the Boundary and Election Commission. The Committee discussed whether it was necessary to have two separate bodies but decided that a combined one that was politically neutral comprising of three members appointed for a term longer than one election cycle was the right formula. After some discussion it was decided that the Commission should comprise of a High Court Judge as chairman and another member appointed by the Governor with the third member appointed by the Deputy President of this Council (or the President) when elected from within Legislative Council. The Commission would not have any decision making power over electoral policy matters and would be responsible for making recommendations to the Governor on electoral boundaries for all three tiers of elections following statutory criteria as well as overseeing the conduct of elections. The recommended statutory criteria are:

(a) the difference in population per seat in each constituency from the average population per seat should not be more or less than 25% although the Commission may depart from this where it appears desirable;

(b) the preservation of existing local community identities whenever possible;

(c) compatibility amongst the boundaries of District Boards, Municipal Councils and the Legislative Council; and

(d) regard for physical features such as size, shape, accessibility, natural landscape and planned developments of individual constituencies.

It might be useful to point out to Members that ultimately declaration of electoral boundaries is by way of legislation which will be subject to this Council's scrutiny and possible amendment. To sum up, the recommendations, if adopted, will provide a system not only open to scrutiny but with the proper checks and balances.

Turning now to the second broad area which I would describe as electoral issues and arrangements, the salient recommendations include:

(1) Automatic voter registration

Although discussed even prior to the 1991 elections an automatic voter registration system is considered by the Administration as being fraught with difficulties and costly. Nevertheless we recommend that automatic voter registration should be pursued as soon as practicable. We have considered the technical problems but we believe they can be overcome. It may be feasible to create an electoral database so that registration and polling arrangements can be computerized to the material benefit of the development of Hong Kong's political system. In the long run the resources deployed will be worthwhile. We also recommended that pending the establishment of the automatic voter registration system suitable measures should be taken to update the electoral register and to promote registration of voters.

(2) Minimum voting age

Although this issue has been brought up in this Council twice over the last two Sessions, it was not pursued. We believe that there is no case to justify retaining the minimum voting age at 21 when a person of 18 is allowed to undertake important duties and responsibilities. Indeed, in Britain and China the minimum voting age is 18. We recommend it should be lowered to 18 well before the next round of District Board elections for suitable registration drive.

(3) Restrictions on candidates

Currently our laws do not permit a member of any parliament, assembly or council outside Hong Kong to stand as a candidate in Legislative Council elections. We believe that there is a strong case not to bar deputies of the National People's Congress of the People's Republic of China or deputies of any provincial or local

congresses of China to stand as candidates in elections in Hong Kong provided they meet all other qualifications. We also recommend that the suggestion that a person should not be a member of more than one tier in our three tiers of elected bodies should not be pursued.

(4) Election expenses and political advertisements

We believe there is an inherent weakness in the existing method of fixing the election expense limit. Generally the present limits are too low and the "flat rate" approach irrespective of the difference in size and population of constituencies is inappropriate. The Committee recommends that the better approach would be to take into account the population figure in geographical constituencies and the electorate size in functional constituencies. The current ban on political advertising on television and radio is in the view of the Committee outdated and unduly restricted and the Committee recommends a review so as to liberalize these arrangements.

(5) Absentee voting

At present absentee voting by proxy or post or advance voting is not allowed. We have considered whether those who may, for a variety of reasons, be unable to vote in person should be allowed to vote by proxy. The Committee recommends that only those who are confined to hospital or at home on established medical ground should be allowed to vote by a proxy and such proxy must be an immediate member of the family and who is also a registered voter.

Mr Deputy President, I shall now deal with the third main area: different constituencies and the voting system. By 1995 all Members of this Council will be returned by election. If there is to be a smooth transition and a through-train regard must be had to the decision of the National People's Congress which provides that the first legislature of the Hong Kong Special Administrative Region will have 60 members: 10 to be returned by an election committee, 20 through geographical constituencies and 30 through functional constituencies. Furthermore, the Basic Law also provides that directly elected seats will increase from 20 in 1995 to 24 in 1999 and 30 in 2003. The Committee pointed out that a key matter that has to be resolved is the formation of the election committee and would welcome such formation by democratic process. In this respect the Committee's work cannot be said to be wholly satisfactory for the third component in our constituency system will have to be

resolved through discussion and agreement between Britain and China.

The Committee considered many aspects of the functional constituency system but the two main areas I would like to refer to concern the review of weaknesses in the system and the approach to the nine new functional constituencies. Despite criticisms the Committee does not support the suggestion to abolish functional constituencies in the 1995 legislature but believes that in the long run we should move to a wholly directly elected legislature as is provided for in the Basic Law. As regards weaknesses the Committee has recommended that the corporate electors should not be abolished but that the present requirements be tightened up by:

(1) introducing a qualification period, say, of one year before an elector can vote at a Legislative Council election; and

(2) the representative of a corporate elector should have a substantial connection with that corporate elector.

Issues considered and not supported include disenfranchising functional constituency voters from voting in direct elections or requiring representatives of corporate electors to be registered electors.

As for the nine new functional constituencies over 40 persons and organizations submitted proposals seeking new seats for existing or new constituencies. There may of course be other claims for seats which have not been brought to our attention as they are not required to do so. We took note of the guidelines used by the Administration in 1988 and believe that three can be described as primary whilst one can be called secondary. In addition the Committee recommends that consideration should also be given to:

(1) the representative bodies should be well-organized with established registration systems to serve as a basis as electoral registers;

(2) some preference might be given where prospective electors are individuals but this should not distort proper and fair treatment;

(3) initiative, that is, those that have shown their intentions; and

(4) allocation should produce balance composition and should take into account different community interests.

The Committee is aware that certain groups may present exceptional circumstances and may include special groups like the disabled and handicapped which may thus be given special consideration although they may not meet all the criteria.

Mr Deputy President, I shall now venture into the areas of contention, that is, geographical constituencies and the voting system. Before I deal with the salient points I should like Members to bear in mind the Committee's recommendations as regards the criteria for demarcation of boundaries that I referred to earlier, that is, constituency population per seat to be as near as practicable to the average population per seat, preservation of existing local community identities, compatibility of boundaries of District Boards, Municipal Councils and Legislative Council, and regard for physical features such as size, shape, accessibility, natural landscape and planned developments. We must not forget the decision of the National People's Congress on the composition of the first Hong Kong Special Administrative Region legislature or the progressive addition of seats under the Basic Law. We should also bear in mind the constant developments in Hong Kong and how population movement can be brought about by such developments.

Mr Deputy President, how do we cater for all these unique and complex factors? How do we provide for additional seats? As for additional seats there are only two ways:

The first is to create additional constituencies (whether single or double seat) which means constant re-drawing of boundaries. The second is to retain the existing nine constituencies and add the new seats into them, that is, a multi-seat constituencies system -- that is, constituencies that do not have the same number of seats. If we are to have a single or double seats constituency system there will be 20 or 10 constituencies in 1995, 24 or 12 in 1999 and 30 or 15 in 2003 respectively. It may also be a cruel twist of fate if China agreed to increase the number of seats by an odd number. What then do we do with a double seat constituency? Difficult though it might be, if we simply wish to meet the population size criterion for a single or double seat system ruthless re-drawing of boundaries may achieve that but what about the other criteria? Re-drawing of boundaries of constituencies also produces instability in constituencies identity as well as being extremely difficult, contentious, time-consuming and even costly. If we are to have a multi-seat constituency system this will easily accommodate additional seats as well as fulfil the other criteria. For 1995 the two largest constituencies will each have an

additional seat. This will also bring about an important improvement in the population size criterion as the largest constituency in 1991 had 789 500 people whilst the smallest had 367 800. We will thus have two three-seat constituencies and seven two-seat constituencies. It is essentially for these reasons that the Committee recommends the multi-seat constituency system based on the existing nine constituencies.

I shall now turn to the voting system. In 1991 every voter had two votes in each constituency, thus an equal number of votes. But these votes were not of equal weight because significant differences between population size in constituencies, particularly between the size of the smallest and the largest constituencies,were such that it was felt that this was against the principle of equal suffrage. Against this background the Committee discussed a wide range of choices of voting systems before narrowing down to two options: a block vote system (that is, as many votes as there are seats) or a single non-transferable vote (SNTV). The Committee also agreed and I quote: "While we support the development of political parties, we are also mindful that the chances of independent candidates should not be significantly prejudiced by the voting system. A longer-term consideration we have given is the further development of our political system; we think that the system of voting should be flexible enough to cater for our continual development without the need to make significant changes frequently." This in my view was indeed the proper approach to the deliberations on the voting system.

Other considerations included the issue of fairness among voters and indeed what fairness is. Furthermore, in the absence of a proportional representation system, what system will achieve better proportionality. The SNTV is a variation of proportional representation system. There will be a more level playing field for independent candidates or those supported by smaller groups. It also enhances the prospects of the majority of voters in a constituency having at least one member whom they voted for represent their interests in this Council.

Mr Deputy President, the objective is to give to our community a fair, stable and long-term election system and this includes not just consideration of the constituency system or the voting system but many of the other recommendations made by the Committee. I believe that in recommending the multi-seat constituency system with a SNTV the Committee hopes to achieve that objective. The report of the Committee is but a first step in a long process before this Council is asked to vote on any change of law concerning our election system. I did not and do not believe

that this Council should be asked to decide or accept any of the recommendations of the Committee only one week after the report has been tabled. The issues are of considerable importance and Members as well as the public and those who have made representations should be given adequate opportunity to consider and comment on the recommendations. My motion does exactly that!

Question on the motion proposed.

DEPUTY PRESIDENT: As I said earlier, Mr Jimmy McGREGOR and Mr K K FUNG have given notices to move amendments to the motion. Both amendments have been printed in the Order Paper and circulated to Members. I will call upon Mr McGREGOR to speak and move his amendment. After Members have debated the motion and Mr McGREGOR's amendment, we will vote on his amendment first, and thereafter I will call upon Mr FUNG to move his amendment.

MR JIMMY McGREGOR moved the following amendment to Mr Ronald ARCULLI's motion:

"To add the following after the word "Elections":

", and that in doing so, takes the view that recommendations (9) and (10) set out in the Summary of Recommendations in the Select Committee Report should be disregarded and that the following proposal be accepted:

that all constituencies shall have one seat each and that each voter shall be given one vote for the Legislative Council elections in 1995""

MR JIMMY McGREGOR: Mr Deputy President, I move that Mr Ronald ARCULLI's motion be amended as set out in the Order Paper. I speak tonight as an individual voter. Everything I say however has the full and heartfelt endorsement of the Hong Kong Democratic Foundation. I believe my views will be supported also by many businessmen, professionals, academics, and grass roots citizens of Hong Kong.

Ever since the Report of the Select Committee reached its final draft stage, the media has referred to the recommendations in the Report, all 44 of them, as if all the members of the Select Committee had agreed with them and endorsed them. The final Report does not make it clear that there was very considerable disagreement, indeed

dismay, among liberal members of the Committee with several of the most crucial recommendations. The minutes of the 20th meeting of the Select Committee make this clear. I hope media representatives have read these minutes.

I will concentrate on only two of the recommendations, Nos. 9 and 10, concerning the proposals to have multi-seat constituencies and to introduce the single non-transferable vote in 1995.

I consider both proposals to be completely unacceptable. Taken together, they represent a proposal by a small group of people which will deprive Hong Kong voters of their constitutional rights, and especially the right to vote for candidates of their choice on a basis of one seat, one vote. Those who recommend the multi-seat single vote system should be ashamed of themselves for promoting a thoroughly undemocratic system and one which has already alarmed all right thinking people.

I note the views expressed by the Honourable Ronald ARCULLI in last Sunday's Morning Post in which he strongly supports what I regard to be these ridiculous proposals. It is argued that we should retain nine constituencies in 1995 and give two of them one more seat, making three seats for these two constituencies and two seats for all others, basically because it will not be convenient to keep adding additional constituencies as further directly elected seats become available in 1999 and 2003. Yet the Select Committee also recommends that a Boundary and Election Commission should be set up to do a great deal of important work, on, inter alia, electoral constituency boundaries. What nonsense to suggest that the proposed Boundary Commission cannot demarcate boundaries to provide 10 constituencies of two seats each or 20 constituencies or more with one seat each. The CRC-dominated Select Committee, having recommended that the nine 1991 constituencies should remain, with two of them having three seats, Mr ARCULLI then suggests that this causes a problem of fairness in that voters in some constituencies will have two votes whilst others will have three votes. He asks "is this fair?" and then goes on to explain how very fair it is, in these circumstances, to give each voters only one vote in a two seat or three seat constituency.

Mr Deputy President, I can answer the question posed by Mr ARCULLI, and his CRC colleagues very easily. The entire proposition contained in recommendations 9 and 10 is eminently unfair, completely undemocratic and represents both gerrymandering and distortion of democratic ideals. The CRC creates the problem and then promotes its own undemocratic solution. I am glad that many organizations and people in Hong

Kong have expressed their distaste and anger at such narrowly oriented and self seeking proposals.

I believe these two recommendations are intended to provide a better chance for candidates to be elected in 1995 who would otherwise have had no chance whatsoever in the face of popular support for liberal candidates.

These foolish but dangerous proposals, if adopted by the Government, would thwart the will of the people of Hong Kong. That will was clearly seen in 1991 with a very large proportion of the directly elected seats going to grass roots liberals. There is no reason to doubt that Hong Kong people will again support the liberals in 1995 despite every obstacle placed in their way. These include, I believe, the appointment of sufficient non-liberals to this Council to provide a consistent majority vote against the liberal view on most important issues.

The majority of the members of the Select Committee cannot be described as liberals and the voting record published for the 20th meeting of the Select Committee will show how and where democratic intent began and ended. It was inevitable therefore that the Select Committee Report should reflect, in these very important recommendations, a most illiberal and selfish view. It is a view that certainly did not reflect the public interest. Let me repeat that it did not reflect, either, the view of the majority of democratically elected members of the Select Committee but rather the narrow vision of those who have never faced a contested election in their lives.

It is suggested that the people of Hong Kong do not know who they are supporting in elections and that unknowns may be elected on the coat tail of popular candidates. What an insult to the intelligence of the people of Hong Kong. In other words the CRC which does not boast a single directly elected member knows best by what system people should vote. The man in the street cannot be trusted with the system of election used by democratic countries around the world. How sad that we have come to this. The CRC gives every indication of being insensitive to the meaning of democracy and human rights. Shame on them.

It is also suggested that the whole question of the electoral system be opened up for public discussion and consultation. I thought that was what the Select Committee was set up to do. I thought that was what we have done over a period of several months. I thought that the public had made their views very clear in their

representations to us. However, I am certainly not opposed to further public consultation if the Government decides that it is necessary.

Finally, I would like, Mr Deputy President, through you to address our new Governor, Mr Chris PATTEN.

Mr PATTEN, this issue is of critical importance to the future of Hong Kong. The voting procedures must be democratic, fair and transparent, reflecting the ideal of democracy which has guided much of your own life and which must have given you a deep dedication to democratic government.

Recommendations 9 and 10 in the Report of the Select Committee have no bearing in regard to the Basic Law. The system of voting in 1995 is within the control of the Hong Kong Government to establish just as it was in 1991. I ask Mr PATTEN to exercise his discretion in favour of the people of Hong Kong by refusing to accept these ridiculous recommendations.

I support the Select Committee Report except recommendations 9 and 10 which I regard as obnoxious, undemocratic and disgraceful. I hope the people of Hong Kong will also reject them totally together with the concept they represent. Thank you, Mr Deputy President.

Question on Mr Jimmy McGREGOR's amendment proposed.

MRS SELINA CHOW (in Cantonese): Mr Deputy President, for the past half year, the Select Committee on Legislative Council Elections has never stopped holding hearings and discussions. Of course, there have been many kinds of views; there also have been many arguments. Finally, after six hours of deliberation and subsequent voting here in this Chamber, the Select Committee has come up with the present report in its finished form. The report, in its final version, is based on views from all sides and not, as Mr Jimmy McGREGOR said a moment ago, covers only one-sided comments. The report sets out these comments in detail. It also describes the options that have been chosen, having regard for Hong Kong's special circumstances: a mode for the constituency that is the best suited to the present conditions of the individual communities and the most in line with long-term development needs; a simple procedure that is the most convenient to the voters; and a method that is the best able to encourage people of aspirations with different persuasions to take part in the

elections and thereby establishing a diversified democratic system.

Unlike other places, Hong Kong will change the number of the Legislative Council's directly elected seats every four years. There will be 20 such seats in 1995; 24 in 1999; 30 in the year 2003. If we are to have double-seat constituencies as well as rough population parity among the constituencies, then we will have to re-demarcate the boundaries of the constituencies every year. We did consider the scenario where the whole of Hong Kong in 1995 would be divided into 10 constituencies of a similar population size. We found that, in this scenario, we would have to combine Wong Tai Sin with Sai Kung, Kwai Chung with Sha Tin and Happy Valley with Island South. But even that will not be a lasting arrangement, since we would have to demarcate again the boundaries of 12 constituencies in 1999. What further adjustments will have to be made then is anybody's guess. If we adopt another scenario, that is, one seat per constituency, then there are going to be 20 constituencies in 1995; 24 in 1999; 30 in 2003. As a result, each Legislative Council constituency will diminish progressively in size until, as Sir David AKERS-JONES has reminded us, it is smaller than a District Board constituency. Mass movements have recently become very trendy in Hong Kong. There are voices shouting, "The multi-seat single-vote system deprives citizens of their voting rights"; or, "Each citizen now has two votes. Why take away from him one vote and leave him with only one?" This is why I was very surprised to receive Mr Jimmy McGREGOR's well-considered and often-revised motion for an amendment. Even the amendment that he is moving today is precisely "one voter, one vote". Is he not depriving the voters of their rights? Are there things that he can do but others cannot? In fact, either proposed system will allow each voter to cast one vote, a vote for the candidate with whom he identifies, whom he supports.....

DEPUTY PRESIDENT: Do you have a point to make, Mr FUNG?

FREDERICK FUNG (in Cantonese): I wonder if the Honourable Mrs Selina CHOW would care to explain .....

DEPUTY PRESIDENT: Is it a point of elucidation or point of order?

MR FREDERICK FUNG: Elucidation.

DEPUTY PRESIDENT: Are you prepared to give way, Mrs CHOW?

MRS SELINA CHOW: No, Mr Deputy President. But I would be very glad, outside this Chamber and after I have finished my speech, to clarify any point Mr FUNG would like to raise. Really we have to get on now.

MRS SELINA CHOW (in Cantonese): So the voters' choices proposed in his motion will have been limited as well. Just think. In terms of area and population, a one-seat constituency -- if that is what we will have -- will be smaller than a two-seat constituency. It follows logically that, in a one-seat constituency, the number of candidates will be smaller, so voters' choices will be limited accordingly.

The report recommends a permanent sort of arrangement for how the local people relate to their own constituency, the purpose being to enable voters to identify more readily with their elected representatives. This is a better idea. It is to be carried out by keeping the boundaries of the constituencies basically unchanged but increasing their numbers of seats every four years on the strength of the changes of their population size. As to the question of how many votes each voter should have, I think that the report's "one man, one vote" recommendation will definitely be detrimental to the interests of those large political parties or groups that rely on the coat-tail effect. But the point is that it will affect not solely the parties or groups that are already in existence. It will affect alike any big party already established in the past, being established now or to be established in the future. Such a corrective move is proper because nobody should be able to rely on the distorting effect of a system in which one person has more than one votes. Nobody should be able to rely on such an effect for increasing his own chances of winning or those of his cronies.

Mr Deputy President, I support Mr Ronald ARCULLI's motion. Though I agree with the report's recommendations, I realize that colleagues in this Council will need time to think, to debate and to listen to comments. Also, I sincerely hope that colleagues will not take the matter personally, but respect each other's right to disagree and turn this debate into a full demonstration of the true spirit of democracy.

Finally, I must point out that, at this important juncture, when every Councillor, for the sake of Hong Kong's overall interests and long-term social and economic development, must carefully weigh and consider the Select Committee's report from an objective perspective, any attempt to amend the motion with a view to rushing Councillors into making the choice of a particular election system at this very sitting will be unfair to the Councillors as one body and to the general public. As we know, all election systems have their merits and demerits and all segments of society are now actively and enthusiastically discussing the options. Therefore, this Council should spend some time to gather views from all and then give them careful deliberation. Only this is the right thing to do. This is precisely the intent of Mr Ronald ARCULLI's motion.

MR HUI YIN-FAT (in Cantonese): Mr Deputy President, I must first of all congratulate the 12 members of the Select Committee, who put together such a comprehensive report, complete with detailed factual materials, in less than half a year. They have spent in particular, a great deal of their own precious time on the collection of views from all sides and on the swift preparation of recommendations for timely consideration by the Government in its review of the relevant policies and laws. Such a proactive attitude does a great deal for the image of this Council as a champion of the public's interests.

After careful study and consideration, I find that, though I agree with most of the report's recommendations, there is one recommendation pertaining to a matter of principle that I cannot accept. I am referring to the Select Committee's recommendation, which it had to put a vote, that the Government adopt a "multi-seat, single-vote" system of direct election.

I am among this Council's minority of Members who are the elected representatives of functional constituencies and who are without political party backing nor returned from direct election. I believe that, in such a capacity, in which I do not have to worry about the interests of either a political party or a geographical constituency, I find myself in a better position to speak for the electorate at large. In fact, this Council, as a champion of the public's interests, should give foremost consideration to the interests of the citizenry as a whole in speaking up on any subject. Arguments arising out of the the self interests of any particular party will only tarnish this Council's image.

From the point of view of a voter, the right to vote is the most important thing. This means that a voter in a constituency should have as many votes as the number of representative seats available in this constituency, never mind the number of candidates. This is the voter's basic right, of which he must never be deprived, even if he does not use all his votes. The "multi-seat, single-vote" system is based on a distrust of the voter's ability to make the right choice. It deprives him of his due right.

Another unacceptable aspect of the "multi-seat, single-vote" system is its assumption that the majority of the electorate are politically ignorant. I am referring to the talks about a so-called coat-tail effect on the electorate. Not only does such a theory lack a clear statistical basis, but its biggest problem is the assumption that voters tend to vote for prominent candidates. But the truth is that voters' political intelligence may not be so limited that they will be influenced by such a shallow factor.

Also, I always hold that election rule under no circumstances should be tailored to the needs of the theories of any group or to the needs of any organization or political party. In the laying down of election rules, there is no need to accommodate the views of the minority. A minority group may have a chance to become the mainstream group as circumstances change and as it succeeds in winning voters' support. Besides, it is up to the electorate to decide whether they wish their legislature to be composed of Members of different parties or to be under one-party dictatorship. Of course, the electorate will have to be responsible for all the consequences of their choice. In this connection, the Government must remain strictly fair and impartial and avoid frequent changes of rules, which will lead to confusion and cause the electorate to lose their faith in elections altogether.

Mr Deputy President, I am aware that, under the "single-seat, single-vote" system, any increase in the number of directly elected seats may make it necessary for the constituencies to be re-fixed. The benefit, however, will be worth the effort even if administrative costs have to be increased as a result. The most important thing is to let the electorate know for sure that their voting right will always be safeguarded. Only thus will they gradually build up their confidence in elections. Then, the overall voter turn-out rate will improve, as will the representativeness of those elected.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment motion.

MR MARTIN LEE (in Cantonese): Mr Deputy President, during the Legislative Council's first debate on the 1991 elections, held on 1 March 1990, one Member made a far-sighted prediction. He said that, to make sure that our first direct elections would not end up a farce, we would have to lay down some fair rules of the game. He predicted that election losers would very probably try to alter the rules. He emphatically stated that "it is time for us to trust our voters." He professed faith in the majesty of the ballot box but doubted the magnanimity of losing candidates.

Things turned out exactly as this Member predicted, losers in the 1991 elections, such as the Liberal Democratic Federation and the Hong Kong Federation of Trade Unions, as well as certain people who were too afraid even to run in the direct elections, are now trying to change the rules of the game, to destroy Hong Kong's time-honoured unanimous vote system and to deprive citizens of their right to vote for a choice of candidates. I believe that the particular Member must not have foreseen that he would turn out to be the protagonist in the event that he predicted. This Member is none other than Mr Ronald ARCULLI, Chairman of the Select Committee on Legislative Council Elections. He and other members of his Co-operative Resources Centre (CRC) are racking their brains to find a way to change the rules of the game.

Why has Mr Ronald ARCULLI ceased to trust the voters? What has removed his doubt about the magnanimity of the losers? Why is he trying to help them to change the rules of the game instead?

Those opposing the "multi-seat, single-vote" (MSSV) system today include those who were successful candidates of 1991 direct elections as pairing candidates and those who were winners as opponents of pairing candidates. In favour of the MSSV system are those who either did not receive the baptism of fire in the direct elections or were routed in them. To sound better, they say that they wish to make the legislature more broadly based. In fact, all they intend to achieve is a bigger voice in the legislature for their small circle of interest groups.

Mr Allen LEE once said in public that the CRC would like to be the ruling party after 1997. They know now that they will no longer be able to count on appointment by the Governor in 1995, and they are afraid that they may be no match for the liberal groups under the existing rules of the game. This is why the CRC members in the Select

Committee have come up with such a proposal. To survive, they try to keep the functional constituency elections and to change the rules of direct elections.

In fact, they already have a big enough voice in the legislature. Please do not forget that the liberal groups, despite the massive popular support they have, are still a minority in the legislature. People of the opposite political persuasions, despite being rejected by the public in the 1991 direct elections, are still the majority in the legislature thanks to appointments and the functional constituency elections. The Legislative Council in 1995 should in fact have more Members who represent the public and less Members who represent minority interests.

Two years ago, in the OMELCO's group on constitutional development, I already proposed dividing Hong Kong into 18 geographical constituencies, each with one seat to be returned under a "one-man-one-vote" system. I thought that such a system would be the simplest, fairest, most representative and best able to make Members accountable to the public. It is a system that has been tested by history and is now being used in the vast majority of democratic countries. As a matter of fact, people who cite the coat-tail effect as a justification for rejecting the "double-seat, two-vote" system should, in principle, be very much in favour of the "single-seat, single-vote" (SSSV) system. But they oppose it as well. We therefore cannot but feel that their opposition has an ulterior motive.

One major flaw of the"multi-seat, single vote" (MSSV) system is that it deprives the voter of his full right to choose candidates. That is to say, the voter in a multi-seat constituency can show his support for only one candidate. He is denied the right to show his support for a second or a third candidate. Those blaming the coat-tail effect probably think that the people are not intelligent enough to choose their own representatives. They may dislike the way the people vote but it should not be taken as a reason for depriving the people of their right to make their choice.

Nor would some of the successful candidates returned under the MSSV system enjoy mass support. This system would permit the return of a small number of representatives who have "safe votes". They would be returned by a small number of such votes despite being rejected by the majority of the voters. Though without a broad base, they would still be able to cast their votes in the Legislative Council to counteract the votes of the widely supported representatives. This would be unfair to the voters in the constituencies. Let us suppose that 10 candidates run for office in a three-seat constituency and that two of them are popular and most

likely to win on a combined 85% of the votes as is quite possible. Then the remaining eight candidates will have to vie for the remaining 15% of the votes. The third winner may be returned by a very low percentage of the votes, perhaps less than 5%. According to the relevant law, if a candidate fails to grab 5% of the votes, he will forfeit his deposit, but he is still returned to the Legislative Council under this system. It can be likened to a situation where one takes a fall but he comes up with a handful of gold dust. Will this not be a big joke?

Another thing is that the MSSV system would produce a disproportional election result. The result would not be proportional representation but disproportional representation. Let me give an example. Suppose that a very popular candidate in a three-seat constituency secures 75% of the votes and two other successful candidates share the remaining 25% or less of the votes. In such a case, three quarters of the voters in that particular constituency return only one representative, while the remaining one quarter of the voters, who may be of a different political persuasion, return two. Such a system is blatantly absurd.

Mr Deputy President, the outcome of today's vote will depend solely on the few Members who have not yet taken a position on the issue. I hope that they will not abstain from voting but will cast their votes bravely, sensibly and as their conscience guides them. I hope that they will not be afraid of the brute power, secure in their knowledge that several million people in Hong Kong wish them to vote in support of Mr Jimmy McGREGOR's amendment motion, the carrying of which will signify a victory not for the liberal groups but for the entire citizenry of Hong Kong and for truth itself.

Mr Deputy President, these are my remarks. The United Democrats of Hong Kong will unreservedly support Mr Jimmy McGREGOR's amendment motion.

DEPUTY PRESIDENT: Would members of the public please observe order because if order is not observed I will have the public gallery cleared.

MR NGAI SHIU-KIT (in Cantonese): Mr Deputy President, this Council's motion debate today on the report of the Select Committee on Legislative Council Elections is bound to evolve into a political debate as to whether the "multi-seat, single-vote" (MSSV) system should be adopted or not. As a member of the Co-operative Resources Centre

(CRC), I am of course in favour of this MSSV system.

The CRC's position is quite clear. There is no need for me to repeat. However, as a member of the business community, I take a very realistic approach to the present debate. I will judge the winner not on the basis of who wins the championship award but on the basis of whose position is reasonable and conducive to social stability and social progress. It is true that, during the Legislative Council's 1991 direct elections, the self-styled "democrats" won most of the directly elected seats. But it is also an undisputed fact that they do not represent the best choices of the majority of the voters. For this reason, a better voting system is called for. The double-seat, block-vote system should no longer be used.

Mr Deputy President, the self-styled "democrats" are strongly opposed to the MSSV system. Their wish for the old system to be retained is merely a wish to protect their vested interests that they have gained from it, to try once more to gain total control over public opinion and to continue their confrontational politics. To put it simply, they have vested interests in the old system. In the opposite corner of the ring are those who wish to replace the old system that exaggerates the representativeness of political parties, replacing it with the MSSV system, so that more people interested in participating in the political process may have a chance -- a better chance -- of being returned to the Legislative Council. May the best man win. This is the law of nature. The MSSV system will also make available more opportunities for representatives of other different political persuasions to be returned to the Legislative Council.

Some people say that the MSSV system will lead to great disparity of voter support between the winning candidates in the same constituency, such that one winner will be broadly based while the others will not. This is more or less similar to what Party Leader, Mr Martin LEE said a moment ago. But, in my opinion, it is an illogical conclusion arrived at out of misunderstanding of "a representative's base." In fact, all candidates who win in accordance with the rules, whatever the form of the election may be, should enjoy equal status as Legislative Council Members with same representativeness. Can we say that our colleagues, MR LAU Chin-shek and Dr Conrad LAM, who won in the largest geographical constituency, namely, Kowloon Central with 287 373 constituents, are superior in the Legislative Council to our colleague, Mr Gilbert LEUNG, the representative of the Regional Council which has only 36 members? Also, can we say that Party Chief Mr Martin LEE, who secured 76 831 votes, the highest in Hong Kong, is more broadly based than his little brother Mr James TO, who grabbed

only 26 352 votes? The answer is obviously "no" to either question.

Mr Deputy President, I would like here to state my position with regard to the functional constituency elections. I quite agree with the Select Committee's appraisal of the functional constituencies. They give voice to the views of representatives from all social strata. They assure the balanced development of society's overall interests. The system is quite suitable for Hong Kong at the present time. The proposal that the 1995 Legislative Council should have more seats for the functional constituencies is proper and represents a step forward in the democratization of the Legislative Council.

The "single-seat, single-vote" system proposed by Mr Jimmy McGREGOR could have been a topic for discussion and study. However, as one listened on, one heard nothing but verbal abuse. Mr Jimmy McGREGOR used extremely sharp words in inveighing against Members from the CRC. He used words like "selfish" and "shame." The spirit in which he moved his amendment was swept cleanly away. There is an ancient Chinese saying that "respecting others before receiving the respect of others." His words gave a selfish and shameful shade to his own colour. To return to the subject, I think that Mr Jimmy McGREGOR's amendment motion is technically quite unsound. It is his proposal that the directly elected seats in 1995 should be returned from 20 constituencies with re-drawn boundaries. Is it not true that, when the number of seats increases, we will again have to increase the number of constituencies accordingly? The boundaries of the constituencies will have to be re-drawn again and again. The criteria used in the re-drawing of boundaries will become more and more complex. Both voters and candidates will be confused and at a loss. Such a situation will easily lend itself to exploitation and manipulation. How can one call that equitable and democratic?

Mr Deputy President, I have more to say but I am running out of time. These are my remarks. I welcome challenges from all! I oppose Mr Jimmy McGREGOR's amendment motion and support the original motion.

MR PANG CHUN-HOI (in Cantonese): Mr Deputy President, this Council's debate today is focussed on differences over the multi-seat, single-vote system. Still, I must say that I greatly regret that the report of the Select Committee on Legislative Council Elections fails to take into account any possible increase in the number of directly elected seats in the 1995 Legislative Council. In other words, the

Committee's report almost takes it for granted that there will only be 20 directly elected seats in 1995. Therefore, no matter how we argue today, no matter how these 20 seats will be divided up among the political parties or groups, there will be just these 20 directly elected seats. This is no help to our main objective, which is to quicken the pace of democratic development. The size of the pie is fixed. In the Legislative Council as a whole, the directly elected members will still be the minority. I hope that this will not just remain a matter for regret but there is room for negotiation.

Another thing is that, in my opinion, the report is just released. Up to now, the general public has not had ample time to digest it and to understand its various recommendations, which have a direct bearing on the interests of each citizen. Therefore, I think that the Select Committee or the Government should do more in publicising the report and promoting civic education.

Among the various recommendations of the report of the Select Committee on Legislative Council Elections, I support the establishment of a combined Boundary and Election Commission, on which members of the Administration are to serve as neutral members. Concerning the drawing of the boundaries of constituencies, however, I stress that the most important consideration is population parity. Without population parity among the geographical constituencies, the election results in all constituencies will not be equitable.

With regard to the registration and the qualifications of voters and candidates, the report recommends a system of automatic voter registration, the lowering of the minimum voting age and the preservation of the voter status of those serving prison terms. I welcome all of these recommendations.

With regard to the qualifications of candidates, the report, in Section 4, Chapter 5, states to the effect that the Select Committee believes that there is a strong case not to bar deputies of the National People's Congress of the People's Republic China or deputies of any provincial or local congresses of China from standing as candidates in elections in Hong Kong. One may interpret from the text that this provision applies also to representatives of the people in Taiwan. I hope that the Select Committee on Legislative Council Elections will clarify this point.

Mr Deputy President, I find no obvious or major flaw in the present multi-vote system. This system is simple to understand and makes vote counting easy. It is

well received by most voters who have become accustomed to it. Furthermore, the report fails to put forward sufficient grounds to reject the present multi-vote system.

I think that the multi-seat, single-vote system will deprive voters of their right to vote for a choice of candidates. In other words, if a voter supports two candidates, he cannot show this by exercising his voting right under such a system. As a result, the election outcome may not effectively and accurately reflect the voters' wishes.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment motion.

MR SZETO WAH (in Cantonese): Mr Deputy President, the Select Committee on Legislative Council Elections had 12 members. Members of the Co-operative Resources Centre (CRC) accounted for half of them. The committee was chaired by a CRC member. Everybody can clearly see this: whatever the CRC opposed failed to be carried; whatever the CRC supported was carried. The committee thus became dominated by the "me-tooists". The report's critical point -- the "multi-seat, single-vote" system -- is nothing but a product and a pet of the "me-tooists".

When hearings were being held, all groups with pro-Beijing backgrounds or connections spoke with one voice in a vigorous attempt to promote the "multi-seat, single-vote" system. They expressed no dissent at all when the "double-seat, two-vote" system was adopted in 1991. They did not criticize it as unfair or unreasonable. Evidently, they accepted it. Now, after being routed in the recent direct elections, instead of reviewing how and why they were shunned by the electorate, they are launching a counter-attack by promoting the unfair and unreasonable "double-seat, single-vote" system.

The CRC never made representations to the committee. Nor did its six members on the committee at first take a position with regard to the "multi-seat, single-vote" system. It was only after their visit to Beijing that they, at the last two sittings of the committee, came out in full support of it. The "double-seat, single-vote" system became the report's recommendation. This may be considered a masterpiece created jointly by the CRC and the pro-Beijing political forces, the former acting from the inside and the latter from the outside.

Advocates of the "multi-seat, single-vote" system maintain that even minorities should have their representatives. Let us take a look at the make-up of the 1995 Legislative Council. Only 20 seats will be returned by direct elections on a universal suffrage basis, accounting for one-third of all seats. These elected representatives of the majority will be in the minority in the Legislative Council. On the other side, there will be 40 seats, constituting a two-thirds majority, returned by the functional constituencies and the Electoral College, that is, elected by a minority of the people. The "multi-seat, single-vote" system is intended to enable the minority, who already have the majority of the Legislative Council seats, further to despoil the minority of the Legislative Council seats representing the majority of the people. Its purpose is to give even more representative seats to a minority who already have majority representation and to reduce further the number of representative seats for the majority of the people who have only minority representation. Such a voting system, if adopted, will rob the poor to pay the rich. Where is justice? Who, then, are the real "hypocrites"? They say that they are the "genuinely good." Well, what really are they?

Election means two things. Firstly, it means electing the good and the competent. Secondly, it means not electing the no-good and the incompetent. The no-good and the incompetent in office will be voted out of office. The incumbent have to watch out as if under a strong and effective oversight system. The "multi-seat, single-vote" system will make election lose its second meaning. It will enable those representing the interests of a tiny number of people and opposed to the interests of the overwhelming majority not only to win elections but, after the elections, to continue to oppose the interests of the overwhelming majority in the capacity of directly elected Councillors supposedly representing the interests of the majority. If they have a number of "safe votes" from the minority, they will not have to worry about being voted out of office. They will not have to submit to oversight by the majority. They will be able to remain in office indefinitely, for ever protecting the interests of the minority. Can election that has lost its second meaning as described be me above continue to be called election? "Free political lunches" are no longer available. Those who are used to them, after racking their brains, have come up with this idea of a "multi-seat, single-vote" system. They intend to have "cheap", almost "free", political lunches by paying a nominal price, which is 20% or less of the fair price.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's motion for amendment.

MR TAM YIU-CHUNG (in Cantonese): Mr Deputy President, if Hong Kong is to have an election system that is better suited to a more open political process, a review of the 1991 Legislative Council elections is necessary. Early this year, the Council set up a Select Committee on Legislative Council Elections. After several months of review and extensive consultation, the committee has finally finished its report on the 1991 elections. I generally agree with the report's contents and recommendations.

The report is rather specific in its discussions of, and recommendations on, various election matters. For instance, one recommendation is to lower the minimum voting age in the 1995 elections from 21 to 18. I think that 1995 is the appropriate time for introducing such a change. Therefore, I will support this recommendation.

Among the report's other recommendations, I believe that the most controversial is the one about the future election system. Of course, I am not surprised that there should be such controversy. Different election systems will have different effects on the make-up of the Legislative Council. This being the presumption, we must first decide what kind of Legislative Council we need; then we will choose the election system accordingly.

I think that the meaning of "democracy" lies in the recognition of "diversity." Hong Kong has a diversified society. Citizens' political preferences are also diversified. Therefore, the make-up of the directly elected membership of the Legislative Council must reflect the different views in society. Even minorities should have their voices in the Council. While a principle of democracy is that the minority obeys the majority, this does not mean that the views of the majority can totally overwhelm the views of the minority. That would be a case of majority dictatorship.

From our experience in last year's Legislative Council elections, we find that the "double-seat, two-vote" system often produced a "coat-tail effect" ruinous to the chances of candidates representing minority views. The voice of the minority consequently could not be heard in the Legislative Council. This being the case, I think that we must choose a better election system, one that will enable minority views to be expressed and heard in the Legislative Council.

Having looked at the election experience of all countries in the world, I think

that the system of proportional representation of some European countries can best safeguard minority views. However, given its present state of political development, Hong Kong is not yet ready to adopt a system of proportional representation. The report of the Select Committee on Legislative Council Elections now recommends a "multi-seat, single-vote" system. One advantage of this system is that it gives a chance to candidates representing minority views to be elected. In consideration of this, I think that the "multi-seat, single-vote" system is the best system for now. Of course, I agree that the "multi-seat, single-vote" system has disadvantages as well. Therefore, the Government should lay down a system that is appropriate to Hong Kong's actual needs. Such a system must be in line with two major principles: It must look after minority interests and it must take care of the matter of minority representation.

Some people have suggested the "single-seat, single-vote" system. Such an election system will give rise to many practical problems and is not good for Hong Kong's long-term political development. The Legislative Council will have 20 directly elected seats in 1995. Under the "single-seat, single-vote" system, if adopted, there will have to be 20 geographical constituencies. The size of each geographical constituency may be similar to the size of an existing geographical constituency for the Urban Council and Regional Council elections. The distinction between the three tiers of representative government will be blurred. It will then be difficult for the Legislative Council to show its distinctive nature, which is that it deals with affairs at the central government level. Under the provisions of the Basic Law, the number of directly elected seats in the legislature will increase from time to time. It will be necessary to redesign the geographical constituencies every time elections are held. The number of geographical constituencies will become greater and greater. The size of each geographical constituency will become smaller and smaller. Both voters and candidates will find the situation hard to cope with. Elections will become more complex. Therefore, I think that the "single-seat, single-vote" system is not an ideal system.

Mr Deputy President, the controversy over the election system has not yet come to a conclusive end. People are still expressing their different views. The issue has yet to be studied rationally and in depth. For this Council to rush to a decision at this time is not advisable.

Therefore, I support the original motion and oppose the motion for amendment.

MR ANDREW WONG (in Cantonese): Mr Deputy President, allow me to begin by declaring my interests. Today's debate is about change versus no change, about small change versus big change, in the election system. Different election systems will have different results for different parties and different individuals (including myself). Though the law does not require me to declare these interests, which I share with everybody else, still, I am pleased to declare them, to show that I have no self-interest.

Mr Deputy President, I support Mr Jimmy McGREGOR's motion for amendment, for reasons that, with your permission, I will explain later. If Mr Jimmy McGREGOR's amendment motion is not carried, I may then support Mr Ronald ARCULLI's original motion. Motions that "take due note," "take respectful note," or "take note" are hard to oppose because their wording is so neutral and non-provocative. They may also be the most suitable at the present time when the elections are still under comprehensive review. This does not mean that I (a member of the Select Committee and a member of this Council) fully approve of the report's every chapter, paragraph, conclusion and recommendation. The report's recommendations are the opinions of the majority of the Select Committee. They are opinions; they are not decrees or laws, nor are they binding on the members of the Select Committee. Similarly, the present motion, if carried by this Council as a result of today's debate, will be an opinion of the majority. It will not be a decree or a law; nor will it be binding on the members of this Council or on the Government. The carrying of Mr Jimmy McGREGOR's motion for amendment will not mean legislating into law the single-seat, first-past-the-post system. On the other hand, failure to have the amendment motion carried will not mean legislating into law the "multi-seat, single non-transferable vote" system as mentioned in the report.

Mr Deputy President, I cannot agree with most of the arguments, conclusions and recommendations contained in Chapters 3 and 4 of the report. Chapter 3, which is about elections in the geographical constituencies, is the focal point of the present debate. Chapter 4 is about elections involving the functional constituencies. I intend to withhold comments on it until we debate Mr Frederick FUNG's motion for amendment. Still, I wish to point out two things at this time. Firstly, the election system involving the functional constituencies, even if reformed as recommended in the report, still will very probably (I personally am confident that it will) be in violation of Article 21 of the Bill of Rights Ordinance, which is also Article 25 of the International Covenant on Civic and Political Rights. Secondly, if we would like to have a more democratic make-up of the Legislative Council, our first target

for attack should be the seats returned by the functional constituencies, seats that account for half of the Legislative Council's membership. I dare not say that failure to reform functional seats on the Legislative Council would amount to confusing the end with the means, but it would obviously signify a failure to differentiate between low-priority business and high-priority business. Mr Frederick FUNG and the Association for Democracy and People's Livelihood deserves credit in this regard.

Mr Deputy President, I always think that complex and controversial issues of this kind, which probably have a bearing on vested interests, should best be studied and discussed when everybody can do so calmly and dispassionately. Such issues should not be regarded as matters over which to wage struggles to the death. My philosophy as a human being and a Legislative Council Member is such that I must in all fairness say a few good words about the report, even though I do not agree with its recommendation about the elections in the geographical constituencies.

Mr Deputy President, the report recommends a "multi-seat, single non-transferable vote" system. While it is a plurality or first-past-the-post system, it is not a system of proportional representation. However, its overall effect (as far as direct elections are concerned) is similar to that of a system of proportional representation. Therefore, it is not totally without merit. While the system limits the number of votes per voter, it does so uniformly. Therefore, it is in line with the principle of equality. In any election involving geographical constituencies, the boundary of a constituency, once laid down, limits the choices of each voter therein, in the sense that he may not vote for a candidate in a different geographical constituency. This is also a uniform limitation and is therefore also in line with the principle of equality. In either case, the limitation cannot be described as something that deprives citizens of their right to vote. Another recommendation in the report is to proceed from the nine existing geographical constituencies in such a way that, when directly elected Legislative Council seats are to be increased, the additional seats will be given to the more populous geographical constituencies. This is in line with the principle of population parity. It is a good recommendation that will keep the geographical constituencies stable. Nor will a recommendation of this kind preclude the use of the block vote.

However, Mr Deputy President, there are problems. Firstly, the report's recommendation will not have the effect of proportional representation. Secondly, and more importantly, are the people of Hong Kong more inclined towards, or will they accept, elections of the proportional representation type compared with an election

system that further amplifies the voice of the majority? In other words, do they wish the legislature's directly elected seats to be a miniature of society or do they wish these seats better to reflect the views of the majority? It appears that most of the people of Hong Kong are more inclined towards, and accept, the latter, that is, an election system that amplifies the voice of the majority, that is, the block vote system.

Mr Deputy President, even supposing that the citizens are more inclined towards a system of proportional representation, the report's recommendation still will not be satisfactory. It will not have the effect of proportional representation. Let us think. Seven of the geographical constituencies in 1995 will return two seats each; only two will return three seats each. The predictable result will be that the 20 seats will be divided up more or less equally between the two mainstream parties. How will this have the effect of proportional representation? Even in 1999, there will still be two double-seat geographical constituencies. It will not be until the year 2003 that all geographical constituencies will be three-seat constituencies. Even then, the situation will be such that the 30 seats will be divided up among the three largest parties.

Mr Deputy President, if we are really to have a system of proportional representation, consideration may yet be given to the classic "single transferable vote" system (note that the vote is not non-transferable). In a double-seat geographical constituency, a voter can choose two candidates in the order of a first choice and a second choice, by writing "1" and "2" respectively after the two candidates' names. In a three-seat geographical constituency, he can choose three candidates in the order of a first choice, a second choice and a third choice. The effect of this will certainly be better than the effect of the "single non-transferable vote" system. Paragraph 38 of the minutes of the 20th meeting of the Select Committee records my motion for a system of proportional representation. Unfortunately, it was not accepted; the motion was not carried.

Mr Deputy President, as I said a moment ago, the majority of the people of Hong Kong (including the voters in New Territories East and the members of the academic community) are more inclined towards the block vote system, which amplifies the voice of the majority, and not the system of proportional representation. I think that this inclination is mainly due to a kind of righteous anger that they feel, anger at the fact that the functional elections favour certain groups and certain social strata. Therefore, our most pressing business is to reform the functional elections thoroughly. Here, I appeal to Honourable Members to support Mr Frederick FUNG's

motion for amendment.

Mr Deputy President, the people of Hong Kong are inclined towards the block vote system that amplifies the voice of the majority. There are reasons for this, whether one calls the people informed or uninformed. Firstly, such a system is the traditional election system of the United Kingdom, the United States and the British Commonwealth countries. It is on a par standing with the system of proportional representation of the European countries. Secondly, and most importantly, it is also the traditional election system of Hong Kong. Since district board elections began in 1982, the system used has been the "single-seat block-vote" first-past-the-post system, of which the "double-seat block-vote" first-past-the-post system is an occasional variation. Since 1983, for the election of the Urban Council, the system used has been the "single-seat, block-vote" first-past-the-post system. For the Regional Council, the same system has been used since 1986. Before 1983 the system used by the Urban Council was the "multi-seat block-vote" first-past-the-post system. Clearly, the report's recommendation signifies a major surgical operation. Even if Hong Kong needs major surgery, we at least must prepare the patient mentally for this by talking to him. But do we really need major surgery?

Mr Deputy President, paragraph 35 of the minutes of the 20th meeting of the Select Committee held on 22 June records Mr Fred LI's motion for the "single-seat, single-vote" system. I supported it, but unfortunately it was not carried.

Mr Deputy President, inside and outside this Council, the arguments about the "double-seat, two-vote" system versus the "multi-seat, single-vote" system are so intense that, as the saying goes, "the sky is darkened by the dust rising from the battle-field." Why do we not keep the least criticized "single-seat, single-vote" system?

Mr Deputy President, I support Mr Jimmy McGREGOR's motion for amendment.

MR LAU WONG-FAT (in Cantonese): Mr Deputy President, I believe that no voting system in the world is universally acknowledged to be the best. Countries with long election histories use different voting systems. I think that, for Hong Kong, the most important thing is to lay down a voting system that is suited to the actual conditions, such that it will not only enable the next Legislative Council election to be held better but remain usable after 1997.

Hong Kong is a diversified society. Citizens belong to different social strata and engage in different kinds of economic activities. They have different needs and hold different values. Nevertheless, Hong Kong has always been able to maintain a harmonious environment. We have neither sharp class confrontations nor racial problems. Such a situation will be very important if Hong Kong is to remain prosperous and stable. There are different explanations as to why Hong Kong has been this way. I believe that a key factor is that the authorities understand the importance of listening to the views of people from different social strata and with different backgrounds and do their best to take care of the interests of all social strata. I think that a good election system suitable for Hong Kong should never deviate from this course.

Many are the favourable and adverse comments made on the "multi-seat, single-vote" (MSSV) system recommended in the report of the Select Committee on Legislative Council Elections. I think that the system's greatest advantage is that it can encourage and attract more independents who stand for a broad range of interests and beliefs, as well as more representatives of small political groups, to participate in the election process.

As we know, independent candidates and candidates representing small political groups cannot compete with candidates of major parties in terms of resources, promotional skills, planning or campaign experience. The MSSV system will enable them to compete with these other forces in a more reasonable environment. This will be helpful towards ending the situation where one or two major political parties have total control over the election outcome. As a result, there will be representation for the broadest range of opinions in each geographical constituency. In this way, the Legislative Council, as the legislature at the central government level, will have Members with a wider variety of voices and more fully representative of the interests of all strata. This will reduce the risk of the Council becoming one-sided. Also, it appears that, as more Legislative Council seats are open to direct elections, fights between parties are inevitable. I believe that, if the Council has more Members who do not belong to any party, these Members will be able to play an active role in keeping things balanced and harmonious and in restraining party fights.

Last year, the Legislative Council elections adopted the "double-seat, two-vote" system. Subsequently, there arose a controversy over a so-called "coat-tail

effect." Whether there was really such an effect is a question answered differently by people with different backgrounds and different vested interests. It is hard to draw a conclusion with which everybody agrees. The Heung Yee Kuk has made a study of the Legislative Council elections. Our views and recommendations are basically in line with the voting system recommended in the report of the Select Committee on Legislative Council Elections. We think that, under such a system, the voter will choose his candidate more carefully. This will reduce random voting to the minimum. Also, the system will put an end to the controversy over the "coat-tail effect." Councillors returned under the recommended system will never be troubled again by criticism of this kind.

Mr Deputy President, in laying down any system, we must consider the actual needs. By the same token, when we find that an existing system has to be changed to suit the interests of society, we must change it boldly.

Finally, I would like to note that the recommendations in the report of the Select Committee on Legislative Council Elections were arrived at in accordance with parliamentary rules and procedures after full discussion by committee members. We should fully respect them. If anybody should disagree with them, he should express his views dispassionately through the proper channels. Talking all the time about people demonstrating in the street sounds like intimidation. It only reminds one of that 10-year struggle in China, which still makes one shudder. It will do no good for the establishment of a better legislature or for the maintenance of Hong Kong's stability and prosperity.

Mr Deputy President, with these remarks, I support Mr Ronald ARCULLI's motion.

MR MARTIN BARROW: Mr Deputy President, when the recent motion on the reaffirmation of the 1989 OMELCO consensus was defeated in this Council, those Members who voted against it were described as being anti-democracy. I am sure that like myself many of my colleagues will have resented that description, particularly as there is more to democracy than simply the number of directly elected seats.

What we were restating in that debate was the need to be pragmatic and realistic, emphasizing that politics is the art of the possible. As I said then, with so many other issues and priorities, we should not be deflected into thinking that a faster pace of democracy is the key to a successful future for the people of Hong Kong.

I continue to believe that it is in the best interests of the community not to put all our energies into attempting to persuade China to amend the Basic Law at the expense of all else. But I also believe, Mr Deputy President, in the important principle that the voting system and constituency arrangements must have credibility not only in the eyes of our own community but also in the eyes of so many friends and supporters all around the world for this great international city.

Let me reiterate briefly what I said in the debate on the OMELCO consensus. The 1991 elections were successful, not so much because of the actual election mechanics or the level of turnout, but because over the past 10 months, this Council has been getting on with its business, and, contrary to what some anticipated, the Administration has not ground to a halt as a result of the Legislative Council delaying expenditure plans or legislation.

During the Select Committee's deliberations there have been some criticisms of the current arrangements. There are those who oppose the functional constituency system. In our unique circumstances that system has served us well and with 30 seats anticipated for 1995, I am sure it will continue to do so. I would therefore oppose any proposal to diminish the role of that element during the next few years.

Having said that I support a gradual increase in democracy and the maintenance of the functional constituency system, it is an absolute prerequisite that our future system should have credibility not just among a vocal minority but among the 80% of the electorate who did not vote last year.

Despite their efforts in recent days, the supporters of the Select Committee's proposals have not, in my judgement, justified their multi-seat constituency and single non-transferable vote proposal.

The widespread perception is that this scheme is a manoeuvre which if implemented would reduce the voting rights of electors. Its supporters may like to ponder the impact on the 80% silent majority who may today be conservatives or just pragmatic observers on the sidelines. I wonder if its supporters have considered that the proposal, as a result of its lack of credibility and logic, might just encourage some of the huge so far uncommitted electorate to vote for less conservative elements.

What then are the alternatives?

Either we stay as we are and simply expand two constituencies to three votes, assuming 20 seats is the number for 1995 -- or we opt for the widely used single-seat single-constituency. While I do not foresee any great problems about changing boundaries every four years, it is true that perhaps too much parochialism could creep in -- with Members fussing about perhaps the location of a bus stop rather than the wider and more important issues facing Hong Kong.

My hope and belief is that as Hong Kong matures politically Members will not simply follow local issues nor blindly follow the apparent wishes of the electorate. Leadership by elected Members is vital. On this point there have already been examples when the United Democrats supported the abolition of capital punishment and the maintenance of the policy of first asylum, contrary to the apparent wishes of the electorate. I entirely endorse their stand on both these issues.

My view is that concerns over the possibility of parochialism do not offset the need for a voting system which has widespread credibility. I therefore cannot support the majority recommendation of the Select Committee on this point. However, I feel it is a pity that matters have come to a head at this early stage and if this Council votes for Mr McGREGOR's amendment, I believe the Administration should nevertheless further consider community views and possibly other options that may emerge. I for one would be quite open minded in considering other options.

Finally, let me make one additional point. Whatever system we ultimately choose, we must not lose sight of what makes Hong Kong tick. Maintaining a high rate of economic growth and building our economic interdependence with the Mainland must remain the overall priorities. That is what will bring prosperity to our six million people. These political debates should not deflect us from that fundamental objective.

Mr Deputy President, I will vote for the amended motion. But I must say I think it is a pity that Mr McGREGOR used the strong language that he did in presenting his case. Thank you.

MRS PEGGY LAM (in Cantonese): Mr Deputy President, a political system cannot be dissociated from the relevant socio-economic conditions. Political development must match the trend of, and keep pace with, socio-economic development. The two kinds of developments must be in harmony so that they may be mutually complementary. The political decision process should be able to accommodate both the community's

overall wishes and interests and those of groups and individuals. The legislative procedure as part of the political-decision system, which has a direct link to the popular will in certain aspects, should exemplify such a principle even more. In other words, the Legislative Council should be made up of Members representing different political groups, different social segments and strata as well as those who are independent. In this way, the different yet inter-related interests of all quarters can receive balanced and equal consideration in the legislative process. Then, as decisions are made, the general public will find them reasonable and acceptable.

Such a guiding principle is particularly meaningful for Hong Kong. Hong Kong is an economically prosperous and increasingly cosmopolitan metropolis. Its economic set-up has become more and more diversified. Formerly a city relying on manufacturing and re-export trade, it has evolved into an internationally known financial and tourist centre. Following the economic re-structure, the emergence of new industries and trades, the coming of age of the post-war generation and the rise of new social forces, the entire social fabric of Hong Kong is altered. The formation of new social strata, and the growing ranks of professionals have brought about in our society complex socio-economic relationships. Hong Kong's stability and prosperity depend very much on the fair and balanced handling of these relationships in the political decision process.

This being so, during any review of the political system, which includes the present discussion of the election system, each one of us should consider the present state and the long-term prospect of Hong Kong's socio-economic development, as well as the spirit of the Sino-British Joint Declaration and the provisions of the Basic Law. Therefore, when discussing how the election system should be changed, Members of the Legislative Council should not look at the issue from the point of view of the political interests of specific groups or specific individuals. It should consider ways of enabling the legislative process fully to reflect the views of different social strata and different people such that the political decision process would be fully reflective of the realities of socio-economic development and not subject to the control or dictate of any political group or individuals.

Hong Kong has many social organizations representing the interests of different social strata. Nor is there any lack of people from different walks of life who are not affiliated with any organization. Under the circumstances, Hong Kong's election system must not only enable each voter to choose freely and rationally the candidates

who can best represent him but also encourage people in different social groups or strata, people of different political persuasions, to run for public offices. Only thus can it be assured that the people can hear the political views of different sides and, at voting time, will have different candidates to choose from. Also, if more representatives of different organizations and different social strata and more independent individuals are encouraged to take part in the elections, this will very probably trigger a chain reaction. I mean to say that more people will come forward to register as voters and that the general public's interest in politics and enthusiasm in voting will be heightened.

Today's discussions about changing the election system are very important. They will have far-reaching repercussions for Hong Kong's long-term political development. Consequently, I appeal sincerely to all colleagues and to all members of the public to be objective and cool-headed. They should find out what the issue is all about, analyse the views of all sides carefully and rationally and do some prudent, fair and balanced thinking about Hong Kong's overall interests and long-term development needs. This Council should then gather the comments of all on this issue, study them and come up with a model that is practical, feasible, reasonable and acceptable to the general public.

Mr Deputy President, Mr Ronald ARCULLI's motion is intended to let colleagues in this Council take note of the report of the Select Committee on Legislative Council Elections. This report runs to three big volumes. I believe that one cannot finish reading it in a short time. Therefore, in moving his motion, Mr Ronald ARCULLI is motivated by one thing: he hopes that colleagues will carefully and objectively study it, analyse it and then take their time before making their choice instead of rushing to a rash decision. It is a neutral motion. Its purpose is to enable colleagues in this Council to give their views, thus letting a hundred flowers bloom.

Mr Deputy President, many petitioning groups and people gather outside the Legislative Council Building today. As I walked from the street to the Legislative Council building's entrance, I received many petitioning letters. I counted them. Opposed to the multi-seat, single-vote (MSSV) system were one poster and eight letters from 12 groups. Supporting the self-same system were two posters and 11 letters from 18 groups. If Mr Jimmy McGREGOR's argument, that we should choose the system supported by the majority of public opinion, is anything to go by, then in that case, we will have to adopt the MSSV system today. If we do not, then are we trying to say that these particular groups do not represent public opinion? Or perhaps they

do not represent public opinion because their views do not concur with those of certain Members.

Mr Deputy President, for the reasons stated above, I feel even more strongly that we need more time to find out the wishes of the people of Hong Kong, particularly the wishes of the silent majority of voters or, rather, the wishes of the silent people of Hong Kong, that is, those who have so far not registered as voters. We must wait until then before deciding which election system is the best. I feel that only thus will we be acting responsibly towards the people.

Mr Deputy President, with these remarks, I support Mr Ronald ARCULLI's original motion. My reason is that only Mr ARCULLI's original motion gives me a chance to fully gauge the wishes of the people.

MRS MIRIAM LAU (in Cantonese): Mr Deputy President, in our study to find out which election system we should use for the 1995 Legislative Council elections, there are several points that we must not fail to take into consideration. Firstly, Hong Kong's unique geographical environment and related factors. Secondly, the fact that the Legislative Council's directly elected seats will increase progressively. Thirdly, the fact that the election system must be consistent with Hong Kong's long-term political development.

Hong Kong's geographical environment is unique. Land is scarce in relation to the size of the population. Population density is high. Environmental planning and urban planning progress have resulted in persistent population movements. The number of the Legislative Council's directly elected seats is a constant variable. The above are undisputed facts. It is essential for us to take into consideration Hong Kong's unique mode of political development.

To have due regard to this characteristic need, we can use either the method of "changing the geographical constituencies to accommodate the number of seats" or the method of "changing the number of seats per constituency to accommodate the geographical constituencies." The former, that is, the method of "changing the geographical constituencies", means that we have to re-draw the boundaries of the geographical constituencies from time to time as the total number of seats would

increase. This will easily confuse the voters in each constituency. Also, it will make the size of each geographical constituency smaller and smaller. The situation would be even worse if the "single-seat" constituency system should be adopted. For instance, Kwun Tong would then have to be divided into Kwun Tong East, Kwun Tong West and perhaps even Kwun Tong South and Kwun Tong North. A major change would have to be made every four years in voters' constituency identification. A voter would find himself sometimes in Kwun Tong East, sometimes in Kwun Tong South, sometimes in Kwun Tong West and sometimes in Kwun Tong North. Over the long term, this would be sure to affect voters' sense of belonging to their community and deal a blow indirectly to their desire to vote. Also, such a practice would be similar to that used for definining district board constituencies. To use it for Legislative Council constituencies would diminish the status of the Legislative Council's elected members as Councillors at the central government level. In consideration of the above, I think that the second method, that is, to fix the number and the boundaries of the geographical constituencies and setting the number of seats for each constituency on the basis of its population size, is more reasonable. It will enable each geographical constituency to retain its original community characteristics and strengthen voters' sense of belonging to their respective constituencies. It will accommodate the future increases of the Legislative Council's directly elected seats as well as future population movements. It will also prevent citizens from becoming lost in the confusion of the oft-re-drawn boundaries. In addition, because the geographical constituencies will be larger, the successful candidates will not be led or hampered by local interests and so will be able to consider the overall interests of society from broader perspectives. Mr Deputy President, I think that Hong Kong's nine existing geographical constituencies will be able to look after the special needs of any of the individual districts. And voters have already developed a degree of familiarity with their respective geographical constituencies. Also, communication links have already been established by past and prospective candidates with the voters. Therefore, the "nine geographical constituencies" mode should be retained.

As to the voting mode, the main choice is between the "block vote" and the "single vote". The system used in 1991 was the "double-seat, block-vote" system. Some people refer to it as the "double-seat, two-vote" system. It is plain to see the result obtained by those candidates who made use of "coat-tail effect". There is no need for me to belabour this point. Some people say that the "single-seat, single-vote" system, that is, the "single-seat, block-vote" system, does not have a "coat-tail effect" and so should be adopted. As I already argued a moment ago,

the "single-seat" system is not suited for Hong Kong. In addition, the "single-seat, block-vote" system, or "single-seat, single-vote" system, may also lead to an unfair election outcome. Let me give one example. In the United Kingdom, which uses the "single-seat, single-vote" system, the Conservative Party secured 40% of the votes but took 60% of the seats, while the Social Democratic Party grabbed 20% of the votes but took less than 5% of the seats. Similarly, in Singapore, the People's Action Party, supported by the majority of the voters, won more than 90% of the seats as an exaggerated result of the block votes. Looking from a different perspective, this means that, where a candidate wins the election in his constituency with only 40% of the votes, the other 60% of the voters will be unrepresented in the legislature. Japan uses the "multi-seat, single-vote" (MSSV) system, which, by giving small-organization backed candidates and independent candidates a fair chance to be returned to the legislature, encourages more people to run for office. Seen from yet another angle, the MSSV system makes it more possible for voters to return their preferred candidates to the legislature. Let me give an example. Suppose that 40% of the voters in a constituency vote for candidate A and another 30% vote for candidate B. Then, when candidates A and B are elected, 70% of the voters in this constituency will have their representatives in the legislature. Some people criticize the MSSV system for depriving voters of their right to vote. At the same time, they think that the "single-vote" system, when applied to a single-seat constituency, is absolutely fair. I think that they are contradicting themselves. It is the same single vote. According to them, it would not deprive the voter in a single-seat constituency but would in a double-seat constituency. Why? I think that election means letting every voter vote for the candidate who, in his opinion, can best represent him. This right has nothing to do with the size of the constituency.

Some people have suggested a "multi-seat, block-vote" system, also known as the "multi-seat, multi-vote" system. A very likely result of such a system would be disparity of seats between the constituencies. Under the circumstances, should the block vote system be introduced, the voters in those constituencies where more seats are allocated would have an opportunity to return more representatives to the legislature. How could this be fair to the voters of the other constituencies, who would return fewer representatives? I think that the weight of each vote would necessarily be distorted by such a system. In fact, all votes in direct elections should have the same worth. The "one-man-one-vote" system, where the vote is cast for one candidate, is the voting system best able to make all votes truly equal in worth.

In sum, I think that the MSSV system is preferable and the best suited for Hong Kong's actual circumstances. It is fair both to the candidate and the voter. In addition, it will encourage more people to take an active part in the election process. In this way, our political development will be more balanced and the Legislative Council will better echo the sentiments of our diversified society and will more fully and more extensively represent the public will. Only this is truly consistent with the spirit of democracy.

The election system is a serious and complex issue. People in all walks of life should be given ample time to study it in depth and analyse it rationally. In fact, all election systems have their respective theoretical bases and their supporters. As responsible Councillors, we should encourage the citizens to express their views. Only after gathering the views of all should we make a direction-setting recommendation to the Government. Mr Ronald ARCULLI's motion is neutral. It is intended to let Councillors express their opinions and to arouse more discussions among members of the public. It is hoped that dispassionate and objective discussions will lead to the identification of a mode that is practical, feasible and closest to the ideal. Such is the spirit of today's debate.

In view of the above, I cannot support Mr Jimmy McGREGOR's motion for amendment.

Mr Deputy President, with these remarks, I support Mr Ronald ARCULLI's original motion.

DR LEONG CHE-HUNG (in Cantonese): Mr Deputy President, on Monday, representatives of four political groups, including the Hong Kong Democratic Foundation, held a press conference in support of the amendment motion moved by my honourable colleague, Mr Jimmy McGREGOR. We were asked, time and again, by friends of the media about our chances of winning the debate today.

Yesterday I read from newspapers the view of my honourable colleague Mr Allen LEE who said it does not really matter who finally win at the end of this debate. After all, he said, it is the Executive Council which will make the crucial selection, before the matter is passed to Legislative Council for another lot voting. I share his view that it does not really matter who emerges as the winner today -- but my argument is entirely different from his.

I totally disagree that Legislative Council Members, particularly the elected Members, should sit back and wait for the Government to make a decision. No matter what the outcome of this debate is, the Administration must recognize, in this debate, which is the best system to serve public interest before making its decision for the future voting system. As representatives of the people, we should, today, duly reflect public sentiments, gain the support of the Administration to guard public interest and take steps to have them realized in government policies.

Here, I thank Mr McGREGOR for bringing this amendment, without which, this debate would not have focused right on the most contentious part of the Select Committee Report, that is, "the multi-seat single non-transferable vote system", not merely "a multi-seat, single-vote system". With this discussion, we can help the people of Hong Kong and the Administration to have a better idea about the crux of the issue, to make the Administration feel the pulse of public mood, and take heed of public opinion before they make that important decision.

If we let the issue slip through our fingers by merely "taking note" of the report, we are doing a disservice to the people of Hong Kong and failing to live up with our responsibility of standing guard for their interest in this Council. If that happens, the public will not understand why we legislators so recklessly fail them on an issue that has tremendous repercussions on future political development in Hong Kong.

Some Members just now expressed the view that this Council should not jump to a conclusion at this early stage, just as the report is published. This is a misleading argument. Most of my honourable colleagues in this Council have, through their respective political groups, expressed their views on the "multi-seat single non-transferable vote system". We should give a chance to those colleagues who are not affiliated to a political group to express their views. For their inclination will directly affect our step forward, or backward, in our democratization process.

The second reason for my supporting Mr McGREGOR, one of the representatives of the commerical sector in this Council, for this amendment is that it has unearthed a commendable fact. That is, the industrial and business sectors are not as conservative as they appear to be, in the eyes of the ordinary man in the street. What is more comforting to realize is that not all businessmen and those elected from functional constituencies are speaking in one voice -- by unconditionally opposing to another step forward in democratic development. Many simply are not worried of the fact that they themselves will be less popular than some particular political

groups or independent political celebrities. They do not throw their weights behind the design of an unfair voting system like "the multi-seat, single non-transferable vote system". This unfair system would, on one hand, hinder popular political groups to field more candidates to participate in future elections and, on the other, strip the people of their right to choose as many representatives as the number of seats that will be available.

I am the representative of the medical and dental constituency. Both the Hong Kong Medical Association Council and the Council of the Hong Kong Dental Association support the current "double-seat two-vote" system. The two associations do not oppose "the single-seat, single-vote" system as it is the most straightforward and fairest mode of direct elections.

The Hong Kong Democratic Foundation of which I am a member has submitted to the Administration and the Legislative Council Select Committee a detailed reform package on Legislative Council elections in 1995. We made suggestions not only on the 20 directly elected seats, but also on the formation and operation of functional constituencies and the electoral college. I am not going to dwell into details as Members could refer to the Report of the Select Committee.

On voting method, the Hong Kong Democratic Foundation has adopted the method proposed by the United Kingdom Electoral Reform Society, that is, the "single transferable vote" system which is one form of proportional representation. The Foundation suggested this system be introduced to direct elections and the elections of some functional constituencies. This system aims to mend the inadequacies of the current "first-past-the-post"' system, as suggested a moment ago by Mr Andrew WONG. Under the current system, it does not matter how high the percentage of votes one managed to fetch. All the winner needs is one vote more than the runner-up. By adopting "the single transferable vote" system, electors can choose the candidates in their order of preference. After each round of counting, the votes of the ousted or elected candidate should be allocated in proportion to other candidates until all the seats are elected.

The "single transferable vote" system indeed can work better in a constituency with a bigger number of seats. Electors have a wide range of choices under the transferable vote system, and, according to their preferences, elect the representatives they like to fill the seats. This is entirely opposite to "the multi-seat single non-transferable vote" system. The latter confines electors to

choose one single representative, regardless of the number of seats in that constituency. It is all too obvious to the people which is a better system.

During the visit of the two experts of the Electoral Reform Society last year, many people, at that time, doubted whether Hong Kong could implement this voting system which they say is complicated. The experts made a lively comparison: Hong Kong people are fond of horse-racing. If they are not in any way thwarted by the variety of betting methods, there is really no convincing reason to undermine their intelligence by saying that they cannot set their preferences of a handful of candidates on a single ballot. If we have the freedom to place' a multitude of bets on horses, be it on a "win", "quinella", "place", "tierce", "double quinella" and many others, why is it that when it comes to the all important issue of election, we then have to limit ourselves to put all our bets on "win" only, just to prevent the "horses of one particular stable" from always winning the race?

Mr Deputy President, I have no intention whatsoever to challenge your indisputable expertise in horse racing. What I wish is to stress to my honourable colleagues, that this debate is not fueled by selfish motives of some individuals or groups to swoop seats. A Legislative Council seat, I stress, is not private property. We are elected by the people with only but one mission: to represent them in politics and to monitor, for them, the administration of the Government. Whether or not we would be re-elected depends on our performance during our term of office, the continued support of our electors and their endorsement to our platforms. If the electors are not satisfied with our work, or they have come up with new demands and requirements, they can choose another to represent them. But as their representatives, we cannot sell them down the river by coming up with a system that would strip them of their rights.

The reason why I stress on the people's right time and again in my speech is that I learn, from newspapers, that our Governor is thinking of introducing the concept of "Citizen's Charter" to improve the efficiency and transparency of public service which is directly related to the people's day-to-day life. A Citizen's Charter will help to strengthen the people in their monitoring of public services, and the sense of responsibility of the administration to the people. It will also help to ensure that the taxpayers' money is well spent. This is a giant step forward towards a responsible government.

This encouraging thought helps us to realize the fact that the Governor does care

very much about, and respect, the rights of the people. It also gives us great faith in him and his administration. But unfortunately the senior government officials in this Council have already headed home and gone to bed. I hope that Secretary for Constitutional Affairs, Mr Michael SZE, would relay my points to them that in the process of future political development, they should not neglect the wishes of the people. And much more, they should not deprive the people of the right to participate in politics and to suffocate their desire in playing a part in the representative government. Mr Deputy President, this is not only my personal wish, but is also the wish of the functional constituency and the political organization I represent, and, it is also the wish of the people of Hong Kong.

With these remarks, Mr Deputy President, I support Mr McGREGOR's amendment motion.

MRS ELSIE TU: Mr Deputy President, unlike the previous speaker, I am cutting my speech short. My constituency has proposed that on this issue I should speak according to my conscience.

Controversy on the voting system seems to have clouded the fact that the Select Committee performed a mammoth task in completing its work during this Session. Equally worthy of congratulation are the back-up staff of the Legislative Council Secretariat.

Today, I wish only to express my reaction on two recommendations in the report, namely, the number of constituencies and the method of voting proposed.

Keeping the present nine geographical constituencies would have the advantage of avoiding making boundary changes, but Hong Kong is changing all the time. Old areas are being demolished and new ones built; so boundary changes are inevitable. Making changes will not be difficult because we already have a large number of identifiable districts represented on district boards, and these can easily be realigned into new constituencies. This is a task for a Boundaries Commission.

During its deliberations, the Select Committee expressed concern about fairness to independent members. The real problem for independent candidates, as I see it, is the huge size of the constituencies. This puts them at a disadvantage compared with political parties fielding two or more candidates who can pool their financial

and human resources. The multi-seat one-vote system would do nothing to solve that problem.

I would therefore opt for constituencies even smaller than those of the municipal councils because they are also too large.

As to the method of voting, I dislike the multi-seat single-vote system because I believe it would distort the results, as well as leaving the voters only partially represented. Likewise, I dislike the double-seat double-vote system. Voters are accustomed to voting for only one candidate in district board and municipal council elections. I am sure that when asked to block vote for two candidates in 1991 many must have been confused or felt pressured into voting for two names appearing together on banners and posters. Some confusion was also caused when well-known persons agreed to support one candidate but found their names on materials printed for two candidates. I suggest that candidates should not be permitted to use names of supporters on election materials, to avoid charges of malpractice. The nomination list should be sufficient, and give everyone an equal chance.

The problems I have mentioned could be avoided by a system of one-seat one-vote, with smaller, more manageable constituencies. It would give independents a fairer chance and reduce the influence of party pairing. It is easy to understand, fair to everyone, and would in the long run be less expensive and time consuming for candidates.

Mr Deputy President, I feel sorry that this excellent report has been marred by controversy over the voting system. I hope my colleagues will lay aside party politics and choose a system that is transparently fair, logical, and without possible accusation of ulterior motive.

While I find the report acceptable on most points, I must support the amendment that calls for one-seat, one-vote.

00.35 am

DEPUTY PRESIDENT: I propose to take a 10-minute break. Members who have not already spoken may find this break useful to enable them to consider whether their speeches might be edited so as not to unnecessarily repeat points already made, particularly

in view of the late hour. I would also remind Members they have agreed not to exceed five and a half minutes each. We will resume at a quarter to one.

00.50 am

DEPUTY PRESIDENT: Council will resume.

MR PETER WONG: Mr Deputy President, I shall highlight two aspects of the report which will illustrate two fundamental principles of elections. Promotion of representative participation and to ensure an efficient and stable government.

Before I do that, I wish to announce that a sample opinion survey has been started by my Legislative Council office on the 1995 Legislative Council elections. The findings, which provide a useful reference for me to formulate my own opinion, characteristically reflect the stance of my functional constituency on the subject. Generally speaking, accountants prefer as few changes made to the Legislative Council elections system as possible. Some two-thirds of the survey respondents did not think that the Basic Law should be amended to allow more directly elected Legislative Council seats in 1995, the major reason cited being that further negotiation with China will adversely affect Hong Kong's stability.

In line with the view of my profession as well as the Hong Kong Society of Accountants, I firmly believe that functional constituency, a unique feature of our political system compatible with Hong Kong's socio-economic development, ought to be retained. Functional constituencies offer a balanced representation of major, significant business and professional sectors upon which Hong Kong's economic prosperity depends. By reflecting broadly based sectoral interests in the Legislative Council, functional constituencies provide different, independent voices which are vital for an open, democratic government. It is therefore important for the Administration to uphold this principle of representative participation in allocating the nine additional functional constituencies seats.

Surveyed accountants join me in endorsing the number of functional constituencies available and the method of electing their representatives in the 1995 Legislative Council elections. I fully agree with the Select Committee's decision that disenfranchising certain electors is not the best remedy for an alleged weakness in

the system. There is no justification to restrict the voting right of, say, an accounting academic who is by profession a qualified accountant and who is also a registered voter in his geographical constituency. Drastic changes made to indirect elections would undermine the stabilizing effects of functional constituencies which provide the much needed tradition, expertise and continuity so essential for maintaining Hong Kong's stability. At this time of political uncertainty, our election system must ensure that the functional constituencies will continue to serve as a bridge for Hong Kong's transition to full democracy. The changes proposed by the Select Committee to improve on the functional constituencies elections will bring about a fair and democratic election system.

I shall now turn to the right of foreign nationals to hold office in the Legislative Council, for which I must declare interest as holder of a full British passport. It is rare indeed for any country to allow foreign nationals to become its legislators at both central and district levels. The city state of Athens, the cradle of democracy, in 400 B.C. only allowed adult, native citizens of known ancestry to take part in its government. Few countries in the world permit holders of foreign nationality to exercise their political right for election as members of the legislature.

However, to cater to Hong Kong's cosmopolitan society, where it is common for people to possess right of abode elsewhere, the foreign nationality rule has been relaxed in the Basic Law. Professional accountants, of whom 1 500 will eventually be covered by the British Nationality Scheme in addition to many more existing holders of foreign passports, generally believe that foreign passports holders should be given the freedom to vote and be elected, if Hong Kong is to have a truly representative government. Our non-discriminatory election system should enable us to elect representatives who, regardless of their nationality, possess personal qualifications that make them most suitable for the role of the governance of Hong Kong.

Viewed in this light, the provision in the Basic Law, which stipulates that 20% of the legislators in the future SAR government are allowed to have right of abode elsewhere, poses a formidable problem. For while it is desirable to secure the most competent legislators, there is also the need to ensure continuity and efficiency of leadership. The so-called "through-train concept" is considered essential for Hong Kong's smooth transition to 1997 and beyond. It has been suggested that the 12 Legislative Council seats in question should be assigned to selected functional

constituencies which are more representative of wider interests.

Since the publication of the report of the Select Committee, the proposal on the number of geographical constituencies and the method of voting has attracted unprecedented attention from accountants. Those expressing dissent from the multi-seat single-vote system have been far more vocal than those supporting; with those expressing dissent being in a majority thus far of about two-thirds, but the numbers are still small in comparison with the whole body of accountants. I must say that I have been pleasantly surprised at the strength of feelings of accountants over the question of the voting system and the lengths to which they have taken the trouble to put their views on paper to me. These views have made a very deep impression on me that there is now a growing body of accountants who have shown that they care very much about their political rights. For me, I am no longer prepared to call accountants apathetic in political matters.

However, we are not voting today on the merits of the various methods but to note the report and to express our individual opinions. Soon after publication of the report, I sent a circular to members of my functional constituency and stated that I was in favour of the multi-seat single-vote system for the reasons set out in the report. I am now aware that there is a very substantial body of opinion within my profession against my views and they are urging me to vote against the motion or abstain. I am also aware that there is a significant number who are for the multi-seat single-vote system. The Hong Kong Society of Accountants has no view on this matter.

I see today as the beginning of the debate proper on what is the most appropriate election system for Hong Kong in 1995. I shall be listening carefully to the on-going debate with great interest and particularly in the coming months to the arguments advanced by those accountants who have responded to me for or against the various proposals. In the meantime, the Hong Kong Government will be consulting the public and put forward a decision to this Council before enacting legislation. Only then, when all the pros and cons and all the permutations have been explored, should we make the final decision on which system to endorse.

In voting for the original motion to note the report, I am neither voting for the multi-seat single-vote, nor the double-seat double-vote nor the single-seat single-vote system. I wish to keep my options open and not be tied down at this time to any one specific model without the opportunity to fully consider any other proposal that may be offered. I will eventually cast my vote for the system which I deem best

suits Hong Kong when it comes before this Council.

MR ALBERT CHAN (in Cantonese): Mr Deputy President, the review of political development is a big matter that affects the overall interests of society. To speak on it, I should be offering my comments in a happy and excited frame of mind. But I am feeling nothing but sorrow and anger. I will, in such a mood, severely criticize the report.

We can see clearly from the report that many people are still trying by all sorts of means to deprive the people of Hong Kong of their basic rights. Hong Kong's economic success and development in science and technology are on a par with the advanced countries of America and Europe. But our political system, as a result of more than 150 years of colonial rule, is still remaining in the feudal patriarchic mode. Democratic development is only at the beginning stage. Political backwardness is a major stigma rested on Hong Kong on the international stage. Whenever I travelled to Europe or America and talked to people there about Hong Kong, I felt proud of Hong Kong's economic success. But when the subject changed to the political system, I felt very embarrassed. This is because, up to now, the people of Hong Kong are still second class citizens ruled by the Hong Kong British Government. Up to now, the people of Hong Kong simply have no say about Hong Kong's own affairs. Over the years, the liberals in Hong Kong have shown that they warmly welcome, and pin high hope on, the day when sovereignty over Hong Kong reverts to China, they will have a democratic Hong Kong. We believe that the people of Hong Kong will be able to stand up proudly and tell the world that the Chinese in Hong Kong will no longer be enslaved second class citizens and that, when a democratic Hong Kong comes into being, the people of Hong Kong will officially become the masters of Hong Kong. The Sino-British Joint Declaration, signed by China and the United Kingdom, showed clearly that the people of Hong Kong would be able to establish a democratic election system and build a highly democratic society. The Joint Declaration gave the people of Hong Kong new hopes. Unfortunately, these hopes, for which the people of Hong Kong have waited for more than 150 years, are gradually being dashed. It is not the feudal and dictatorial Hong Kong British Government that is now trying mercilessly to dash those hopes. Although the Hong Kong British Government cannot shirk its responsibility for the slow development of Hong Kong's democratic government, the real authors of the grotesque moves are the spokesmen of the vested interest groups that have grown in strength under the Hong Kong British rule, as well as their Communist partners, the self-styled representatives of the toiling masses. Even

more lamentably, these spokesmen of vested interest groups, who never in the past fought for a larger role in governing Hong Kong with the Hong Kong British Government, are now exploiting the retreat of the Hong Kong British Government for the purpose of continuing to lord it over us, the Chinese in Hong Kong.

Mr Deputy President, I wish to point out here that what the people of Hong Kong would like to have now is not revolutionary political change or a sweeping change of the ruling power. What the people of Hong Kong demand now is merely that in 1995 half of Legislative Council seats should be returned by direct elections. With regard to the voting, the majority of the people of Hong Kong merely wish to have a reasonable and fair system that will enable them to exercise their political rights fully, so that they may, in their respective geographical constituencies, exercise their due political right as voters with regard to every seat available and to vote for as many candidates as the number of seats. In fact, I believe that such a request will not be rejected by even the most conservative government in the world. But here in Hong Kong, in one of the reputedly most prosperous metropolis of the world, there are people trying to suppress such a request.

Mr Deputy President, why do such grotesque things happen during the review of Hong Kong's political system? Why are the spokesmen of big capitalists and those sharing the views of the communists holding hands in trying to deprive the six million people of Hong Kong of their political rights? Why are they afraid to allow the citizens of Hong Kong to enjoy equal political rights? The answer is quite simple. They are afraid that, when they lose their political privileges, their economic benefits will decline accordingly. Therefore, to make sure that they can continue to exercise their political privileges for gain, they will not lightly give up their right to pull strings, will they?

However, to those who intend to use their privileges to deprive and defraud the people of Hong Kong of their political rights, I hereby submit that they can, by using their privileges, succeed for a time in suppressing the voices and wishes of the masses, but each time they do so the masses will become more discontented, more furious and more bitter. The result may be an upheaval of a magnitude greather than they would expect. History has taught us clearly that the masses know very clearly who are their oppressors and who despoil them of their rights. Today, during the 1990s, I absolutely believe that the people of Hong Kong are no longer willing to be submissive subjects or second class citizens and that the privileged class will become a relic of history with the demise of the Hong Kong British colonial rule. The people of Hong Kong absolutely will not give up their basic civic rights.

Mr Deputy President, at present, a number of people wish to change the voting system for the purpose of consolidating the position of their privileged class. They try to introduce the "multi-seat, single-vote" (MSSV) system and hope to use this system to reduce people's influence. Such an unfair election mode has recently met with the strong protests of many individuals and groups. The majority of the people of Hong Kong obviously will not accept the MSSV system, such an unfair voting system. To prevent the wishes of the people of Hong Kong from being distorted, and to prevent them from being deprived of their interests, I fully support Mr Jimmy McGREGOR's motion for amendment.

MR VINCENT CHENG: Mr Deputy President, this has been my longest day in this Council. To my colleagues, this sitting may just be a few hours longer than usual. To me, it has been literally a year. When Lord WILSON appointed me to this Council, he did not tell me that I would have to spend the early hours of my birthday in this Council. Had he told me, I would not have accepted that perhaps.

My preference is for a multi-seat system. I opted for this system in the Select Committee because I felt that it is the most appropriate system for Hong Kong. I did not accept the single-seat single-vote system when it was proposed in the Select Committee because I felt that we could only accept one recommendation in the report.

But I do have trouble with accepting the concept of single-vote for one practical reason -- it is unlikely that it will receive wide acceptance in the community. We could not have an election system which could not instil confidence in the hearts of the people.

Although the single-seat single-vote system has its merits, like other proposal, it has its problems. Hong Kong is too small geographically for a large number of constituencies. But since it is likely that only one-third of this Council would be directly elected in 1995, this system is acceptable. The problem is that, as we go forward, the system may become very untidy if we have more and more directly elected seats in future. The risk, paradoxically, if we look two steps ahead, is that we may have to go back to a multi-seat system because we may find ourselves having more geographical constituencies than the number of district boards and that district board members could claim a wider representation than Legislative Council Members. If we have to go back to a multi-seat system by the time when people would have become

so used to single-vote, we could be back to square one with a multi-seat single-vote system, which many of us here do not agree.

I do not want to rule out single-seat single-vote at this stage because the system is viable. Yet viable as it may be, the amendment has completely shifted the focus away from the current exercise and reduce our choice to one: either you support multi-seat single-vote, or single-seat single-vote and yet on both of this I have reservations. What about the other systems -- multi-seat multi-vote, double-seat two-vote, or single-seat single-constituency with 20 votes? We should not restrict our choices at the moment and we should not restrict the choice of the Government at this stage.

I share deeply with my honourable friend Mr Martin BARROW's reminder that we must not lose sight of what makes Hong Kong tick. Maintaining a high rate of economic growth and building our economic co-operation with the Mainland must remain the overall priority. These political debates should not deflect us from that fundamental objective.

I also support a functional constituency seat for the disabled so that they could have their representative in this Council. This is shared by my colleague, Mr Eric LI, who we know has made major contribution to social welfare in Hong Kong.

Mr Deputy President, because the debate is now on whether we should accept single-seat single-vote, or multi-seat, single-vote, I prefer neither. I therefore will abstain on the amendment.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Deputy President, we of the democratic groups, in conducting our past political activities, such as the effort to have direct elections introduced in 1988 and the effort to have a democratic Basic Law, had the support of many of the citizens. In the Legislative Council, however, we are a very small minority. Every time a motion is put to a vote, we would end up losing.

The United Democrats of Hong Kong (UDHK) and other democratic friends won an overwhelming majority of the directly elected seats in the 1991 direct elections. Still, in this Council, where more than two-thirds of the seats are occupied by appointed Members and Members elected by functional constituencies, our victories in the direct elections have merely turned us from a tiny minority to a simple minority.

Every time a motion is put to a vote, we would still end up losing. Viewed in this way, how can we be described as having "vested interests under the old system" as Mr NGAI Shiu-kit has described us? Because of flaws in the Legislative Council system, we could never do more for the public than we did, but we did try in all sincerity and with all our strength. We have never sought personal gain.

Our defeats in this Council actually reflect the suppression of the popular will. In today's Legislative Council, it usually and routinely happens that might prevails over truth and official wish prevails over popular wish. Still, the good citizens have been the most patient. Their suppressed anger did not erupt into the open until this proposal about a "multi-seat, single-vote" (MSSV) system was put forward to subject their democratic rights to capricious trampling and to distort the spirit of democracy totally. In the novel Dream of the Red Chamber, a character said, "You have been too calculating and too clever; that, my dear, has now cost you your life." He meant to say that certain people went too far in pressing their point and were too clever; so they suffered the evil consequences of their own doing. His words tell us that, in the life we lead and in the things we do, we should be a bit more magnanimous and should leave some room for others.

The other day, I saw an advertisement by the Co-operative Resources Centre (CRC). It began with the sentence: "The true democratic spirit means one vote for one candidate." My first reaction was that the CRC had become an ally of the UDHK. I reacted this way not because the advertisement contained the name of MAN Sai-cheong but because "one man, one vote" was the trademark of the UDHK. Therefore, right here, I invite the CRC to exemplify the true democratic spirit and support the proposition that the future Chief Executive be elected on the "one-man-one-vote" basis in 1995. I invite the CRC, again exemplifying the true democratic spirit, to support the proposition that, if not all, then at least half of the seats of the Legislative Council be returned by universal suffrage on a "one-man-one-vote" basis.

Mr Deputy President, I am not joking. I will be responsible for what I say. If it should really happen that all seats in the 1995 Legislative Council are to be returned by universal suffrage on a "one-man-one-vote" basis, then I could not be a candidate for the Teaching Constituency, a functional constituency. But I think that a true believer in democracy should support and promote such a change and should, in this process, be prepared to give up his own interests or the special privileges or interests of his organization or profession. I ask the CRC for an answer. Will it accept the proposition that we are to elect the Legislative Council in 1995 and

the Chief Executive on a "one-man-one-vote" basis in the true spirit of democracy? Will it join us in asking for a revision of the Basic Law that is inconsistent with the true spirit of democracy?

If the CRC is not prepared to do so, then it should take down the "true spirit of democracy" display in its advertisement and should stop deceiving the public. If the CRC cannot stand even a minority of democrats in this Council, if it is to find no relief until they are removed, then I ask it to say so. It may cite any reason as it likes. It may even say that it has no reason. Just as I have said, in the present Legislative Council, power prevails over truth and vote is power. However, for the sake of the future of democratic government, I sincerely remind the CRC that there is a price to be paid for opposing the popular will and for power politics that deprives the citizens of their right to vote. If the CRC directly antagonizes the citizenry, it will in the end be spat upon by the citizenry. Frankly, I do not wish to see this happen to the CRC in 1995. I hope that, when the time comes, we all will still be here in the Legislative Council, speaking freely and working for the people of Hong Kong.

Mr Deputy President, democratic politics should be above-the-board politics. It is valuable because it permits sincerity and candour. A democratic trademark which is a forgery used to deceive the people has no political future. The important thing is to design a reasonable election method that permits fair competition. Therefore, I oppose the MSSV system passed by the Select Committee on Legislative Council Elections headed by Mr ARCULLI, for the reason that it directly deprives citizens of their right to vote. I support the "single-seat, single-vote" system proposed by Mr Jimmy McGREGOR, for the reason that it is consistent with the true democratic spirit of "one man, one vote, one seat."

Mr Deputy President, the dispute about how to elect the 1995 Legislative Council should not be settled with reference to the number of petitioning groups outside the Legislative Council Building as Mrs Peggy LAM has suggested. It should be settled by the electorate, that is, by the general public. Here, on behalf of the Professional Teachers' Union I suggest that the Government hold a referendum and let the citizens be their own masters and decide their own fate. I also suggest that the Chinese and the British Governments accept and abide by the result of the referendum. I think that this and nothing else is the true spirit of democracy.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment

motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy President, Hong Kong always has had freedom but no democracy. This is understandable, particularly in regard to the system of election for returning Members to the Legislative Council. Hong Kong is not a country. It has only a colonial-style administrative system. After 1997, it will be a special administrative region in "one country with two systems."

The 1995 Legislative Council will be returned by three kinds of elections. Its 60 Members will be returned separately by functional constituencies, by direct elections in geographical constituencies and by the Electoral College. In any case, these 60 Members will be the Members of the post-1997 legislature, unless some of them cannot "ride the through train." This is written down very clearly in the Basic Law. We have neither the ability nor the power to amend it. In any case, whether we admit it or not, we will have to accept the Basic Law "in toto".

What we are discussing now is the voter's statutory power to vote. I myself come from the Financial Services Constituency, a functional constituency, but I am making it clear that I support the "one-man, one-vote" kind of voting right. This means that any resident of Hong Kong who is 18 or above will have the right to vote in 1995. In other words, a voter can cast only one vote no matter how many candidates or representative seats his particular constituency has. He will cast his one vote in a functional constituency election, in a geographical constituency election or for a member of the Electoral College. The Legislative Council is going to have 60 Members. No voter will have a chance to vote for all 60 candidates. Therefore, every voter will vote for one candidate. This is the fairest form of election.

In fact, if a candidate meets the approval of the voters, he is sure to be elected whatever form of election the authorities may use. He is like an all-round football player. He plays well in a grass field, on an asphalt surface or on a gravel surface.

"Friends, what are we afraid of?" Those were ZHAO Ziyang's words. A moment ago, after listening to Messrs Martin LEE, Albert CHAN and CHEUNG Man-kwong, I had this feeling that I had heard such things before but could not remember exactly where. Then it dawned on me that these had been the words I had heard numerous times in JIANG Qing's stereotype operas. The characters spoke in loud voices and with high emotions. But they were merely speaking for themselves.

Mr Deputy President, an election system does not have to be 100% perfect. But it must contain three elements: Firstly, fairness; secondly, simplicity; thirdly, broadly based representation.

I firmly believe that the voters of Hong Kong will be quite happy and content if somebody who can really represent them can be elected in a fair election. This is what they inwardly want. Those who want more can be described as political voters. Can we accommodate all their wishes?

Mr Deputy President, election is very important to the citizenry. It is even more important for social stability and future prosperity. If election causes social disquiet, mutual hostility and quarrels, that simply would be bad for everybody.

I am not opposed to the probing of truth through debate. Deals are made only when two parties think differently. In the stock market, for instance, a transaction takes place when somebody sells and somebody else buys.

I will make a very frank observation. As Legislative Council Members, we can sit here and debate until half past three in the morning. What will we have gained in the end? We see that the seats for the three ex-officio Members are already empty. Therefore, Mr Deputy President, I will use the following words to describe the debate that we are having tonight: "Who the devil sets man against man? We are fighting off sleep to have no end of a talk, and to no avail into the bargain." Thank you.

REV FUNG CHI-WOOD (in Cantonese): Mr Deputy President, the report of the Select Committee on Legislative Council Elections recommends that the minimum voting age should be lowered from 21 to 18 and that the Government should promote an automatic voter registration system. Both are very good recommendations. They will encourage more people to vote and thus make the outcome of elections more representative of the popular will.

However, the report's recommendation of a "multi-seat, single non-transferable vote" system is a great disappointment, a big retrograde step in democratic development. In the 1995 Legislative Council elections we will still have only one-third of its Members returned by direct elections. This is less than half of the total seats. Ours still will not be a fully-fledged democratic system. And the

"multi-seat, single-vote" (MSSV) system will exacerbate the problem. The Legislative Council will be less able to reflect the popular will for the simple reason that under such a system, one can be returned as a Legislative Council Member even if one fetches only a very low percentage of the votes. And their representativeness would be understandably lower. Let us look back at the 1991 Legislative Council elections. Seven highest vote-getters in the nine geographical constituencies secured more than 50% of the votes each in their respective constituencies. The other two grabbed 49.8% and 48.1% of the votes respectively, very close to the 50% mark. This means to say that, in each constituency, the highest vote-getter on the average got more than or close to 50% of the votes. Now let us look at the candidates who were returned by the second largest number of votes. In two constituencies, the successful candidates each received more than 50% of the votes. In the rest of the geographical constituencies, none secured less than 37.9% of the votes. Evidently, the candidates who were returned by the largest or the second largest number of votes had the approval of the voters and were broadly based representatives. There is no doubt about this. If a "single vote" system is put into practice, the candidate receiving the largest number of votes will, I believe, continue to receive 50% or nearly 50% of the votes. However, under such a system, because each voter can vote for only one candidate, it is certain that the candidate receiving the second largest number of votes will receive a lower degree of voter support, perhaps as low as 20% or 30%. If a constituency has three seats, then the percentage of the votes received by the second successful candidate and the third successful candidate will in each case be lower still. If a candidate is returned by such a low percentage of the votes, how can he be expected to be fully representative of the popular will? Last year, direct elections were held for the first time. Different sorts of ways were employed to raise the voter turnout rate, so that those elected might show that they were broadly approved and enjoyed substantial public support. However, after the elections were held, some people thought that the voter turnout rate was still not high enough and that the directly elected legislators were still not broadly based enough. In this connection, if the MSSV system should be adopted, those directly elected would be returned by an even lower percentage of the votes; this would make them even less broadly based. Mr Deputy President, in Hong Kong, democracy is growing up under very difficult circumstances. The MSSV system would make the Legislative Council's directly elected members less broadly based, with the result that it would be even more difficult to say that this Council's decisions represent the popular will of Hong Kong. This would be a step backward for democracy. With these remarks, I am vehemently opposed to the MSSV system.

MR FREDERICK FUNG (in Cantonese): Mr Deputy President, the report of the Select Committee on Legislative Council Elections recommends a multi-seat, single-vote (MSSV) model as the voting system applicable to geographical constituencies in the 1995 direct elections. The Hong Kong Association for Democracy and People's Livelihood and I think that this recommendation, if adopted, would deprive voters of their voting right and be a substantial retrograde step in Hong Kong's democratic political development. For this reason, the Association and I find it totally unacceptable.

First of all, we must understand that the introduction of any election system will bring some special result with it. The key question to ask when an election system is being designed is: What are the desired goals, will the goals be generally accepted by the community as a whole and is it consistent with the spirit of representative government, which is that the citizens, through equitable arrangements, elect their representatives to participate in the legislature?

Some Councillors have suggested that the MSSV system will accommodate the voices of individuals or very small groups. Let me ask them first: Is that the primary goal of the voting system to be achieved for the 1995 elections?

A fair and open election should naturally be conducive to the election of candidates with more popular support as the voters' spokesmen to the legislature.

Suppose that an election system is intended to encourage independent candidates and nominees of very small groups, who have little popular support, to run for office, such that, if elected, these candidates will become their voters' spokesmen and enjoy the same political rights as the others who secure more votes. In such a case, it must be established that the voters represented by the minority candidates belong to groups which require special consideration by society. For instance, unless their voices are heard in the legislature, they will probably be subjected to everyday persecution of different degrees because they are in the minority or their political views differ from those of the majority of the electorate.

Foreign countries provide some examples in which, for the above reasons, ethnic minorities can return their representatives to the legislature without having to enter the contest in general elections.

But in present-day Hong Kong, I totally fail to see clear evidence of a group of voters who need such special consideration from us. On the contrary, the present functional constituency elections have already provided too much safeguard to the interests of the professional groups and the business community and thereby their voices can more readily be heard in the legislature than those of the general public.

At present, candidates in direct elections in the geographical constituencies need more votes to win than their counterparts in functional constituency elections. Therefore, their political views must accommodate a broader range of interests. If the former elections are burdened with the additional goal of safeguarding the interests of independent candidates and small group nominees, will this not further reduce the proportional representation of the general public? Ask yourselves: Is this something that we wish to see? Do we wish to see it in the 1995 elections?

Some Councillors think that the MSSV system will mitigate the coat-tail effect. Actually, the so-called coat-tail effect does not make the election outcome less fair. When considering a candidate, the voter looks, among other things, at the people and the organization who support him. The coat-tail effect is nothing more than a result of the voter's free choice. The MSSV system, while being directed against the so-called coat-tail effect, is actually directed against the development of political parties. But it is already an undisputed fact in many democratic countries that political parties with good discipline can help voters to know the election candidates better and to monitor the performance of the elected representatives more effectively. The introduction of the MSSV system against the development of political parties will undoubtedly deal a blow to the development of democratic government in Hong Kong.

More importantly, the MSSV system would obviously despoil voters of their voting right. Without the system, there is a chance for the electorate to return all of their favoured candidates. With the system, they are limited to returning only some of them. As a result, some candidates considered suitable by the electorate may fail to get elected.

In contrast to the MSSV system, the Hong Kong Association for Democracy and People's Livelihood has always advocated the single-seat, single-vote (SSSV) system. We feel that it is a simpler and fairer voting system.

Some Councillors are worried that the SSSV system would make the size of the geographical constituencies too small as a result of demarcation, so that each elected

representative would not have a broad base. But all successful candidates elected under the SSSV system are after all ones elected by the free choice of the voters in their respective constituencies. However, under the MSSV system, apart from the candidate who is elected by the largest percentage of the votes, the rest of the candidates who get elected cannot be really regarded as elected by the free choice of the voters. And their representativeness is even more questionable.

Some Councillors suggest that the SSSV system will make it necessary for the boundaries of the geographical constituencies to be re-drawn every time when the Legislative Council elections come up. Such re-drawing of boundaries is, in fact, common-place in foreign countries. The boundary of a constituency can be re-fixed and this is not, as the report alleges, an insurmountable job. There is nothing unusual about re-drawing the boundaries of constituencies before an election is held. Our Legislative Council elections are held once every four years. The population size and the number of Legislative Council seats will have changed during the four years intervals. Slightly adjusting the boundaries of the geographical constituencies will really do no big harm to the election system as a whole.

If the MSSV system should become a reality, then, the Hong Kong Association for Democracy and People's Livelihood and I would consider that to be another catastrophic step backward in Hong Kong's political development, following the failure to have direct elections introduced in 1988.

In consideration of the above, my Association and I fully support Mr Jimmy McGREGOR's amendment motion.

MR MICHAEL HO (in Cantonese): Mr Deputy President, I will choose to deliver my speech today in a lighter note.

The multi-seat, multi-vote (MSMV) system is the same as the block-vote system. The people of Hong Kong are in fact very familiar with it. It was used in the Legislative Council elections last year. It was also used about 30 years ago in the "six-seat, six-vote" election of the Urban Council. And I know that Mrs Elsie TU took part in that election.

That year, both the Reform Club and the Civic Association asked voters to vote for all of the candidates they fielded. This did not lead to any clear coat-tail

effect at the time.

As a matter of fact, the public often has chances to come across and to participate in such a system. Some people may not realize it, but the fact is that they should be very familiar with this MSMV system. I would like to give a few examples with which the public is familiar to jog their memory. Every year, when we vote to select the "top 10 hit songs", the "10 most popular singers" or the "10 most important news events", we may each put up 10 candidates or send in 10 events of our choice. This is indeed a MSMV system. I am sure that the public is very familiar with it. Let us pause to ponder. What is unfair about such an election practice? Will it make the outcome lop-sided?

On the other hand, what is wrong with the multi-seat, single-vote system? Suppose that we can each put up only one candidate or send in one event when voting to select the "10 most popular singers" or the "10 most important news events." In such a case, we will have to let others decide the remaining nine choices for us. Will this be fair? Will the majority of the people of Hong Kong agree with the outcome? Will the public feel that a similar system can be used for the Legislative Council election?

In making the above remarks, my earnest hope in fact is that members of the public will try to review some of their own past experience. But the hour is so late that probably nobody is listening. I very much hope that the citizens who do receive the signal will realize the inequity of the MSSV system.

Mr Deputy President, these are my remarks.

DR HUANG CHEN-YA (in Cantonese): Mr Deputy President, some people say that they are in favour of multi-seat geographical constituencies because otherwise it will be too much trouble to re-draw the boundaries of constituencies as the number of directly elected seats on the Legislative Council will increase in the future. They are worried that, every time an election is held, the boundaries of the constituencies will have to be re-drawn since the number of seats will be progressively increased at a snail's pace. And they complain that this will be too much trouble. Well then, why were the self-same Councillors opposed to the proposition that at least half of the Legislative Council seats should be returned by direct elections in 1995 and then, four years after that, all seats should be returned by direct elections? This

proposition would have solved the problem of re-drawing of boundaries of constituencies. Well then, why are they in favour of such a troublesome and show-paced development? Will the re-drawing of boundaries really be too much trouble? The fact is that many countries re-draw the boundaries of constituencies every time an election is held.

If there are to be more than one seat per constituency, then why can there not be as many votes as there are seats? Why must we adopt this multi-seat, single-vote (MSSV) system? Members from the Co-operative Resources Centre (CRC) have repeatedly today given unstinting praise to the MSSV system. But let me tell them. A member of the public took the trouble to give me a telephone call in the middle of this sitting. He wished to say a few words to me. He said, "The CRC-proposed MSSV system sells democracy short. You tell them that what they do is selling democracy short and depriving citizens of their rights." Therefore, I wish to advise my CRC friends that the public knows very well. The man in the street knows very well my CRC friends' intention: you are simply trying to deprive the public of their rights.

Among the leading democratic countries of the world, only Japan employs the MSSV system. Besides distorting the popular will, the system has another very serious consequence, which is political corruption. Under this system, votes are not distributed among candidates in accordance with voters' preferences for the candidates' political platforms. Japanese politicians wishing to have a sure chance to win often resort to unlawful means of buying votes from local bosses. Here in Hong Kong, it was only with a great deal of effort that we succeeded in bringing corruption under control. I believe that we do not wish to introduce an election system that would again open the door to corruption.

Why do some people try again and again to sell such a system? One alleged advantage of the MSSV system is that it gives a fighting chance to minority views. But the question is: What is the set-up of Hong Kong's Legislative Council like? The Legislative Council now only has 18 Members who can truly represent the general public. The other Councillors represent either particular segments of the public or themselves. The 1995 Legislative Council will still have two-thirds of its Members returned either by the functional constituencies or by the Electoral College. These two forms of elections will already be sufficient for fully, even excessively, protecting minority opinions and rights. The Legislative Council is simply a body in which minority views are represented by a majority of the seats. If somebody is

genuinely concerned about fairness, then why does he not talk about ways of protecting the rights of the majority of the public? Why does he not call for an increase in the number of directly elected seats? Why does he not call for the scrapping of the Electoral College, which is a mode of election that will consolidate the position of a privileged minority by assuring the election of their representatives? Of course, some people will say that all these are stipulated by the Basic Law and the Basic Law cannot be revised. The Basic Law absolutely must not be revised or the Chinese Government will be offended. Does this mean to say that we must stop pursuing fairness or that we need not pursue fairness because we do not wish to offend the Chinese Government? Is it right to bully the humble and lowly citizens and deprive them of their right to vote because they have neither power nor influence? If we wish to have elections that are truly fair and that will safeguard representation for minority views, then we can make all Legislative Council seats directly elected ones. We can then distribute the seats among all political parties in proportion to the number of votes they receive. Will this not enable all opinions in society to be represented by Members whose seats are distributed according to the outcome of fair elections? But the MSSV system is an election system proposed against the backdrop that two-thirds of the Legislative Council seats are already held in the hands of a privileged minority. So it will have the effect of distorting the wishes of the electorate and further despoiling citizens of their rights. The six million people of Hong Kong are to be able to elect only 20 Councillors. In voting inside the Legislative Council, the wish of 300 000 people will then carry only as much weight as the wish of a few hundred members of a privileged class. Is this equality? Is this fairness? Does it mean that the six million people are so insufficiently deprived of their rights that they must be subject to further exploitation by the MSSV system?

Mr Deputy President, if we wish to have fairness and democracy, then we should strive for the direct election of all seats. At least half of the seats of the Legislative Council in 1995 should be directly elected. If one is afraid of the coat-tail effect, then one may wish to oppose the double-seat, two-vote system and simply support the single-seat, single-vote system. Why must the MSSV system be insisted upon?

A newspaper reporter asked me last night (or I should say the night before last) whether I was a beneficiary of the coat-tail effect. If some people in the CRC think that the public does not support me and the political platform of the United Democrats of Hong Kong, then I welcome my CRC friends, perhaps Mr Ronald ARCULLI or some other

CRC Councillor, to challenge me in the next elections. I believe that they may not even be able to get their election deposits back.

DR CONRAD LAM (in Cantonese): Mr Deputy President, a group without an ideal can hardly create a result that is ideal. Let us see if the Select Committee, made up of six members of the Co-operative Resources Centre (CRC), one pro-China person, one independent and four democrats, has worked out a plan that can be regarded as equitable.

Some people say that the multi-seat, single-vote (MSSV) system will safeguard the interests of the weaker political parties. But then I would like to ask: Numerically speaking, which are the weaker parties in the Legislative Council? Which is the strong party with the most seats, with the most motions that are carried, armed with the most resources and with the most formidable backing? May I ask what exactly the MSSV system can do as a system of checks and balances vis-a-vis the strong party? How will it produce a safeguarding effect for the minority groups, that is, United Democrats of Hong Kong, Association for Democracy and People's Livelihood and Meeting Point in this Council? But such a difference of influence is mostly confined to the situation within the Legislative Council. Outside the Council, where appeals can be made to public opinion, I am afraid that the so-called strong parties are really so weak that they need legislative protection from the Government for their continued existence in the political battleground.

It is also claimed that the MSSV system will protect minority interests. Concerning this point, let us look at some figures. In the 1991 Legislative Council elections, 750 000 people voted for the 18 directly elected seats; whereas, in the functional constituency elections, 22 000 votes, including the 17 000 votes of the teaching sector, returned as many as 21 Councillors.

On top of this extreme unfairness, 10 seats will be returned by an Electoral College, in the 1997 elections, representing minority interests. Therefore, it is making an extremely misleading statement to say that the one-man, one-vote, one-candidate method in a multi-seat geographical constituency is equally fair. I will give some reasons below to support my view. Firstly, no unjustified restriction or deprivation can be made fair or reasonable by the sheer great number of victims. Secondly, the one-man, one-vote, one-candidate method in a multi-seat geographical constituency will indirectly force on the electorate some candidates who, though

unpopular, have control of some "safe votes." Thirdly, as queried by Mr Joseph CHAN Cho-wai, lecturer of the Department of Political Science of the University of Hong Kong, why do those who support the one-man, one-vote, one-candidate method for multi-seat geographical constituencies not oppose the method employed in the functional constituency elections?

Mr Deputy President, as pointed out again and again by Dr LOUIE King-shuen, who has been studying election systems for a long time, the present recommendation to change the election system is evidently a deliberate move of the CRC and pro-China individuals with a view to changing the election outcome. In fact, these people have never had the courage to admit that the success of the democrats in last year's Legislative Council elections was a demonstration of the popular will. Why have they chosen instead to belabour the so-called coat-tail effect? In the political arena in China today, people are busy trying to resolve the issue of who is Mr Capitalist and who is Mr Socialist while in the political arena in Hong Kong, both capitalists and socialists are busy trying to change their names to "Mr Excuse". A fighter wins some and loses some, as the Chinese saying goes. There is no need to find this or that excuse after a defeat. And there is no need to act like an ill workman who quarrels with his tools, so to speak.

Mr Deputy President, some people have been criticizing the single-seat, single-vote system for no reason. Here, I would like to point out some facts. Firstly, under the Basic Law's provisions, Hong Kong's legislature must wait until the year 2007 before it will have a mere 30 directly elected seats. Provided no population growth and no mass exodus, each geographical constituency will then have topped 200 000 people. Will this number still be considered too small? Secondly, the year 2007 is still 15 years away. Who can say that China will not become more open and more democratic over the next 15 years? Should this really happen, would Hong Kong then still need such constraints on democracy as the MSSV system and the Grand Electoral College? Thirdly, even supposing that the people of Hong Kong do succeed in their fight to have 60 directly elected seats in the legislature after 2007, the population size of each geographical constituency would still exceed 100 000 (that is, 20 000 more than the population size of Bath, Governor PATTEN's former constituency in the United Kingdom). Fourthly, some people are worried that a Legislative Council constituency would some day become even smaller than a District Board constituency. I believe that their concern shows their ignorance. The truth is that there are now already more than 200 directly elected District Board seats. Some people express their worry about possible technical difficulties in re-drawing

the boundaries of geographical constituencies. I think that this is nonsense.

Mr CHIM Pui-chung talked about football a minute ago. I would also like to talk about football. Today's debate is like a football match in the Legislative Council. It is the democratic team versus the combined team of leftists and the CRC. The prize is the Hong Kong Legislative Council's 1995 Direct Election Cup. The captain of the democratic team is Mr Jimmy McGREGOR and the captain of the combined team of leftists and the CRC is Mr Ronald ARCULLI. By coincidence, the Chinese names of both team captains contain the Chinese character meaning "truth". Whose remarks carry more truth? Who is a fraud? Or, does each side have valid arguments? I hope that the players in both teams will show sports ethics and sportsmanship and will not play foul. We should remember our vows to put the interests of the people of Hong Kong first. We should follow our conscience. We should not place our party interests and personal interests above the those of the people. Mr Chris PATTEN, the Governor, who has abundant experience with democratic game rules, should be the umpire of the match to ensure that the game is played fairly. He should also use this opportunity to observe closely the performance of the appointed Councillors. If the match should end in a draw, then the entire citizenry of Hong Kong should be given the penalty-kick to settle the outcome.

Mr Deputy President, day before yesterday, the departments of political science and public administration of the University of Hong Kong, the Chinese University of Hong Kong and the City Polytechnic issued a joint statement indicating that about 90% of the scholars they had been able to reach were opposed to the MSSV system. We definitely should not turn a deaf ear to the precious view of these scholars, given their expert knowledge of political science.

Finally, I would like to pass on to you some words that I heard outside the Legislative Council Building: "Cheating has gone far enough. Public opinion must be respected."

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment motion.

DEPUTY PRESIDENT: Yes, Mr CHEONG?

MR STEPHEN CHEONG: Mr Deputy President, could I raise a point of elucidation with the Honourable Conrad LAM now because I did not want to interrupt him during his speech? He mentioned "　" in his speech. I would like to know what he meant by that.

DEPUTY PRESIDENT: Do you wish to elucidate, Dr LAM?

DR CONRAD LAM (in Cantonese): I should like to thank Mr CHEONG for raising that point. By "　", I meant a joint force between the "leftists" and members of the "Co-operative Resources Centre".

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy President, I believe that the most important leading players in a truly democratic election system are the electorate and the general public and not any candidate, political party or business consortium. Unfortunately, in Hong Kong, the views of the majority of the citizens have not received due attention in the Government's decision-making process or in electoral arrangements. This is true of the way the Government administers this territory; it is also true of the way the electoral system and the methods of voting are devised and implemented.

For a long time, under an undemocratic system, Hong Kong has been a society where the interests of a few business consortia are excessively accommodated while the interests of the majority of the citizens are grossly disregarded. If one would just look at how many seats in this Council are returned by direct elections and how many are filled by a minority of vested interest groups and by government appointments, then one would see clearly that the interests of the majority of the citizens are still not being adequately looked after. It is said today that we must let the make-up of the Legislative Council "fully" reflect the fact that the different interests of different groups, different parties and different individuals are looked after, and that we must let the method used for direct elections reflect this fact. Please allow me to ask: Is "looking after the minority" just a pretty phrase for disguising continued "dictatorship" against the general public?

In fact, I feel that the "multi-seat, single-vote" (MSSV) system has been put forth primarily because one or two non-independents, defeated in the 1991 direct elections, would like to have such a form of election so that they may win next time

and lay proper claim to being representatives of the people of Hong Kong. In fact, the election methods stipulated by the Basic Law will already enable them to win Legislative Council seats: through election in some of the functional constituencies and through election in the Electoral College. Therefore, they do not have to worry about their representatives' being unable to enter the Legislative Council. However, they want to "wear" the hat of representatives of the people of Hong Kong. This is why they are racking their brains to come up with specific game rules that will enable them to win in the direct elections.

Mr Deputy President, I believe that the general public in Hong Kong will continue to come forward to fight for their rights as long as Legislative Council seats are not all returned by direct elections, as long as government policy does not look after the interests of the majority of the citizens. Therefore, opposition to the MSSV system is just one step taken by the general public in fighting for their rights!

Mr Deputy President, with these remarks, I support the Honourable Jimmy McGREGOR's motion for amendment.

MISS EMILY LAU (in Cantonese): Mr Deputy President, I am speaking in support of Mr Jimmy McGREGOR's amendment motion and in opposition to the multi-seat, single-vote (MSSV) system. Many colleagues have already given their views as to how this system will deprive people of their voting right. I will therefore not waste your time by repeating. I wish to note only that the system, if put into practice, would not only be a disgrace to Hong Kong but make us the laughing stock of the world. And I hope that colleagues will approach the matter very cautiously.

Some people say that the election system in September last year has a coat-tail effect, so it is not acceptable. Mr Deputy President, we were not born yesterday. Where there is party politics, there is bound to be this coat-tail effect. Without the coat-tail effect, what is the point of having party politics? If we are afraid of the coat-tail effect, to solve the problem, our only alternative is to ban party politics and let all candidates run as independents. However, the coat-tail effect or party politics is not the exclusive right of any group; nor is it even the exclusive right of any political party. Mr Andrew WONG and I were both able to win in last year's elections. I believe that one thing we learn from the direct elections of September last year is that the eyes of the people of Hong Kong are very sharp. Whether you are a nominee of a political party or an independent candidate, you need

not be worried so long as if your political platform is supported by the people. So I would like to tell my colleagues of the Co-operative Resources Centre, my colleagues of leftist and rightist parties and my colleagues of any party at all that, if you are really capable, the people of Hong Kong will support you without your having to distort the election system.

Mr Deputy President, I support the single-seat, single-vote system. This is because I feel that my own constituency is too large. It has a population of 640 000, which is eight times the population of the former constituency of Governor Chris PATTEN. It is very difficult for me to get things done in my own constituency. There are more than 600 000 people, but, as Legislative Council Members, we have a monthly allowance of only $30,000. Mr Deputy President, what can we do? So I am in favour of smaller one-seat constituencies. But some colleagues say that the elected representatives of small one-seat constituencies will look no farther than local affairs. These colleagues, if they have participated in the business of this Council over the past few months, should know that all Legislative Council business, such as examining bills and holding committee meetings, has to do with territory-wide affairs. Though you have to attend to the local affairs such as electricity supply, plumbing and whatnot, yet once elected as Members of this Council, you must pay attention to territory-wide business. Therefore, these people really do not know what they are talking about.

However, Mr Deputy President, I am, after all, a supporter of proportional representation. I hope that there will be a more equitable election system, fairer even than the one that the United Kingdom now has. Of course, the day will not come before our political parties come of age.

Mr Deputy President, many newspapers today give very prominent coverage to a report according to which some unofficial Members of the Executive Council yesterday called for an immediate vote on whether or not the Executive Council should support the MSSV system. I do not know if the report is true. If it is, then I will be greatly shocked and surprised. These Executive Council Members surely knew that this Council would debate the issue today. I will be very angry if what they did yesterday was trying to force the pace, to have the issue resolved in the Executive Council first. What is more, by trying to do such a thing, they must take the new Governor, Mr Chris PATTEN, for a fool. So I hope that, in the future, those who are Members of both the Executive Council and the Legislative Council will show more respect for the wishes of the Legislative Council and of the people of Hong Kong. For matters to

be discussed by this Council, I would like to urge them not to try to force the pace and pre-empt this Council's decisions.

Finally, Mr Deputy President, I am very much in support of Mr Andrew WONG's views about the need to change the functional constituency elections. Whether one likes it or not, half of the seats of the 1995 Legislative Council will be returned through elections. And the functional constituency election system has many loopholes and flaws. For these reasons, at tomorrow's debate, I will fully support Mr Frederick FUNG's amendment motion.

MR LEE WING-TAT (in Cantonese): Today's debate on the report of the Select Committee on Legislative Council Elections reminds me of the heated 1987 debates between the democrats and the conservatives on whether or not direct elections should be introduced in 1988. I feel that the biggest difference between then and now is that, this time, nobody is continuing to advance the absurd argument that democracy is not suitable for Hong Kong. However, those who are against democratic movement are trying to employ other tactics to frustrate our democratic pace and cripple our democratic development.

Mr Deputy President, in Hong Kong, the election of District Boards on a universal suffrage basis began in 1982. From then until 1991, we went through eight District Board elections. The block vote system was used in these elections. This meant that a voter could vote for one candidate in a one-seat constituency and, for two, in a two-seat constituency. Up to July 1991, throughout the eight elections, nobody had raised strong objections to such block vote plurality system. It was a simple and user-friendly system and it was approved by the people.

In the 1987 report of the OMELCO's group on constitutional affairs (Mr Andrew WONG was its deputy convener), one chapter dealt with election rules. In discussing whether there are any alternative election systems available for consideration, the report put forward a one-seat preference vote system, a single transferable vote system and a full-list system. Note that there was no reference to a single non-transferable vote system. In February 1988, the Government published a White Paper on The Development of Representative Government: The Way Forward. Paragraph 29 of the White Paper says:

"The Government has therefore decided that, in 1991, there should be 10 directly

elected seats, one from each of 10 district-based constituencies."

In the wake of the suppression of the pro-democracy movement at Tiananmen Square on 4 June 1989, the Chinese and the British sides, under the strong pressure of public opinion, agreed to increase the number of directly elected seats to 18 in 1991 elections. In Hong Kong, at the time, people in different social strata made representations to the Government concerning the various election systems. Finally, the Chief Secretary Sir David FORD announced in the Legislative Council on 21 March 1990 that a two-seat plurality system would be used as the voting system for the 1991 Legislative Council elections. Explaining the choice of this system, he said,

"There are several reasons behind this. First we want to build on the sense of district identity, while providing the opportunity for participation across the whole community without favouring any particular group. Secondly, there is a practical need to avoid the disruption which a change in boundaries would produce. And thirdly, we recognize that we are dealing with a dynamic situation in which our development plans continuously change the shape of Hong Kong."

Quite clearly, the Government at the time gave a fairly balanced consideration to all factors and hoped that the particular system would not favour any particular group.

Mr Deputy President, in the above, the brief account I made in respect of the history is to show that the plurality system has proved to be efficacious in Hong Kong and has the support of both the Government and the vast majority of the people. Anybody wishing to change this system should have produce ample justified grounds to do so.

Mr Deputy President, many arguments have been advanced by those wishing to change the existing election system. They can be summarized as five main points:

(1) the existing system may lead to a situation in which a single party becomes dominant while minority interests are not well taken care of;

(2) the existing system would produce a coat-tail effect;

(3) the existing system enables large parties to win seats out of proportion to the votes they receive;

(4) where the number of seats is unequal among all constituencies, the multi-seat, multi-vote system results in a difference in the worth of each vote;

(5) the existing system requires frequent re-drawing of the boundaries of constituencies and will make each constituency very small.

In regard to the argument that a single party will become dominant while minority interests will be ignored, Messrs SZETO Wah and CHEUNG Man-kwong have already made detailed remarks. I do not wish to repeat.

Secondly, concerning the matter of the coat-tail effect, many Councillors of the United Democrats of Hong Kong (UDHK) have already made their comments. Again, I do not wish to repeat. I would like merely to quote an analysis provided by Mr LEUNG Chin-man, Deputy Secretary for Constitutional Affairs, to the Select Committee on 31 March:

"It is very hard to say that a case in which both candidates receive large numbers of votes can be interpreted as an example of the coat-tail effect. It merely indicates that there is such a possibility."

Mr LEUNG's analysis shows that it is simply very difficult to draw a conclusion as to whether or not there is a coat-tail effect. Dr LOUIE King-shuen of the Chinese University of Hong Kong, who has studied local politics for years, has come to a similar conclusion from his analysis and research.

Mrs Miriam LAU, in an article published in Ming Pao Daily News today, opines that the plurality system enables some political parties to win seats out of proportion to the votes they receive. Actually, she is looking at direct elections in isolation and her approach is not a balanced one. We must understand that, with the functional constituency seats forming the majority in the Legislative Council, every effort must be made to have mainstream opinion reflected in the direct elections. In fact, the multi-seat, single-vote (MSSV) system will similarly lead to a problem of over-representation. The difference is only a matter of degree. Even a system of proportional representation, which is relatively fair, will have the same problem to a certain degree because of the matter of residual votes after all the seats are distributed. The UDHK always think that a system of proportional representation may be pursued if and when Hong Kong is to have direct elections across the board. The

problem mentioned by Mrs Miriam LAU will then be much less of a problem.

According to an article published in Ming Pao Daily News the other day, Mrs Selina CHOW thinks that, under a multi-seat plurality system, some voters will each have two votes to cast while others will each have three and consequently, this bring up the question of whether they enjoy equal voting right. The proponent of such a thesis either is trying to confuse the issue or does not know the mathematics of ratio. In fact, the equality of voting right has nothing to do with the number of seats. It has to do instead with the proportion between the number of elected representatives and the number of voters. In other words, it has to do with the question of how many voters can have one elected representative. (For instance, voting right is the same between a three-seat constituency with a population of 300 000 and a two-seat constituency with a population of 200 000.) One reason for which functional constituency elections have been criticized as inconsistent with the principle of equality is that the same one vote has a greater effect in a functional constituency election than in a direct election; this makes the weight of the vote unequal.

Another argument against the multi-seat plurality system is that it requires frequent re-drawing of the boundaries of constituencies and will make the Legislative Council constituencies smaller and smaller until a time will come when a Legislative Council constituency is going to be smaller than a District Board constituency. The drawing or re-drawing of the boundaries of constituencies is a technical problem. With the establishment of a boundary commission, this matter will certainly be handled neutrally and properly. Therefore, to argue against the block vote plurality system on a technical ground is untenable.

Political development and the demarcation of the boundaries of constituencies should be matters to be considered in the overall context of boards/councils at different levels. In this connection, the UDHK ask for an increase not only in the number of directly elected seats on Legislative Council but also in the number of elected seats on the two municipal councils and the district boards with the abolition of appointed seats. First of all, are the Legislative Council constituencies too big? Given that Mr Chris PATTEN's former constituency had a population of only 80 000, even when Hong Kong's directly-elected seat constituencies are divided in the year 2003 into 30 in accordance with the population of six million, each constituency will still have a population of 200 000. Increasing the directly elected seats of the municipal councils will reduce the population size of each council constituency to about 100 000. For District Board elections, the population size of each one-seat

constituency will be only 25 000. Such a system will not only solve the problem of the re-drawing of boundaries but also accommodate minority opinions. These proportions are very close to what we have now. The UDHK always stress that, when all Legislative Council seats are returned through direct elections, then a system of proportional representation can be adopted on a territory-wide basis or a district basis.

Mr Deputy President, political elections naturally affect people's interests. This is why some people take contradictory positions at different times, or eating their words. Whose opinions are more neutral and credible? I believe that it must be those of political scientists in the tertiary institutions. There are about 50 such scholars. Some of them are now on vacation. Yesterday, more than 30 of them made it clear to the public of Hong Kong that their expertise and conscience told them that the MSSV system must never be adopted.

Finally, I would like to conclude with a quotation from Governor Chris PATTEN's talk to the press yesterday on the voting system to the affect that whichever system is introduced must have the wide support and trust of the community, and it must also be fair, to both the winners and the losers.

Mr Deputy President, I support Mr Jimmy McGREGOR's amendment motion.

MR GILBERT LEUNG (in Cantonese): Mr Deputy President, first of all, I must express my admiration for my colleagues on the Select Committee on Legislative Council Elections. They have worked hard for the last several months. They have held nine public meetings to hear the views of 45 groups and individuals; they have read the written submissions of 101 different people; and they have held 11 in-house meetings. Then they have put together this substantial three-volume report containing 44 recommendations.

The report touches on a wide range of issues and that there should be differences in opinion is understandable. Therefore, when considering the recommendations of the Select Committee, the Government must hold extensive public consultation before making decisions. In this connection, I have distributed copies of the report's chapter 9: Summary of Recommendations to members of the Regional Council for their reference.

Voters' wishes

I am an elected member of the Regional Council, as the representative of Sai Kung. I am also a Legislative Council member, elected by the Regional Council functional constituency. I have a duty to speak for my constituents.

The voters in Sai Kung wish Sai Kung to become an independent constituency with its own seat in the Legislative Council. The present arrangement, in which Sai Kung and Sha Tin jointly form one constituency, is not reasonable. As Miss Emily LAU has also noted, New Territories East is an enormous constituency. In addition, Sha Tin and Sai Kung are separated geographically. The profile of the residents of these two geographically separate districts are also quite different. An additional consideration is the fact that Sai Kung (including Tseung Kwan O), upon full development, will have a population of 500 000. Thus, it has the necessary conditions to be treated as an independent constituency. With some district board members and local groups, I presented such an opinion to the Select Committee in April.

Also, I have consulted members of the Regional Council about the voting system for the direct election of candidates to represent geographical constituencies, about the voting age and about whether deputies to the Chinese National People's Congress (NPC) should be allowed to run for office in Hong Kong. Two of the Regional Council members are out of town and have not yet responded to my questions. Of the other 31 members, 61% favoured the multi-seat, single-vote (MSSV) system, 32% were against, and 7% had no comments.

As to the question of lowering the minimum voting age to 18, 48% of the respondents said yes, 39% said no and 13% had no comments.

With regard to the question of whether the law be amended to allow deputies to the NPC to run for office in Hong Kong, 42% of the 31 members said yes, 13% said no and 45% had no comments.

The above figures show clearly that the views of my constituents are at variance. Still, the figures reflect what the mainstream thoughts are among them. Concerning the voting system for the direct elections in geographical constituencies, a clear majority support the MSSV system recommended by the report. Concerning the proposal of lowering voting age, the ayes and the noes are very nearly balanced. Concerning whether deputies to the NPC should be allowed to run for office in Hong Kong, the noes are far fewer than the ayes. But here the interesting thing is that the "no

comments" are more than the ayes. This shows that my constituents were very rational and prudent in answering this question.

What kinds of arrangements to make for the 10 other seats?

The above three points, particularly the voting system for the direct elections in geographical constituencies, are the focal points of recent controversy. However, I must point out earnestly that, while the voting system for the direct elections is important, it is not the entire issue or the sole issue in the Legislative Council elections. There are many more issues which call for our attention in Hong Kong's democratic development.

The most obvious and most important issue is how the 10 Legislative Council seats in the 1995 elections are to be returned. Up to now, no decision has been reached on this matter. Nor does the report contain a detailed discussion of it. The report only makes a brief reference to the matter in chapter 8, where a page and a half are devoted to the provisions of the Basic Law concerning the make-up of the 1997 and 1999 legislatures. Should these 10 seats be returned by an Electoral Committee as stipulated by the Basic Law? Or should they be returned in some other way? An early decision should be made.

The Legislative Council will have 60 seats. Ten seats account for one-sixth of the total. This is a high percentage. Also, a Legislative Council Member elected in 1995, if he meets the provisions of the Basic Law, may serve until 1999 on the basis of the so-called through train concept. Therefore, for the people of Hong Kong, the make-up of the 1995 Legislative Council is a very pressing matter.

We must on one hand consult the public and, on the other hand, take legislative steps. This needs a lot of time. And 1995 is only three years away. Time is not really on our side. We cannot afford to wait any longer. Therefore, I think that, even if the Select Committee is not able to draw any conclusion about the matter, it should at least lay down some basic guidelines, a time-table for public consultation and the method of public consultation.

District Board should become functional constituency

The second flaw of the report is its failure to give serious consideration to a suggestion to re-establish District Boards as functional constituency. I feel that

this suggestion is reasonable and in pace with Hong Kong's democratic development.

First of all, most district board members are popularly elected. Letting district board members hold an election among themselves to return representatives to the Legislative Council is in fact a kind of indirect democracy. It will have positive implications for strengthening the popularly elected elements of the Legislative Council. Secondly, such an arrangement will enhance communication and co-operation between the districts and the central government. When laying down territory-wide policies, the Legislative Council will have a fuller input of local interests. Thirdly, because the district board constituencies are relatively small, it is easier for members of each district board to monitor the performance of the Legislative Council Councillor returned by them. This will enhance the accountability of the Legislative Council members.

At present, each of the municipal councils has one representative seat in the Legislative Council. So my suggestion here is that, in addition, district boards should together have two seats in the Legislative Council, one representing the urban areas and the other, the New Territories.

Conclusion

The report of the Select Committee on Legislative Council Elections covers a wide range of issues. Unfortunately the political organizations and the press in Hong Kong are now embroiling themselves in the controversy over the voting system for the direct elections in geographical constituencies, as if the Legislative Council's other election-related systems were totally unimportant or had nothing to do with democratic development at all. I doubt very much that this is a healthy situation. For this reason, my speech today is focussed on the seats to be returned by the Election Committee and those to be returned by the functional constituencies. We must realize that these two kinds of seats will account for two-thirds of all Legislative Council seats and that whether they will be returned in an equitable manner will directly affect the pace of democracy in Hong Kong.

Mr Deputy President, these are my remarks.

MR FRED LI (in Cantonese): Mr Deputy President, I am a member of the Select Committee on Legislative Council Elections. I would have felt pain in my heart if the Select

Committee had enforced a collective responsibility system and prevented me from talking to my heart's content. Fortunately, the Select Committee did not enforce such a system. So I can pour my heart out as I describe for you some of my feelings about participating in the Select Committee.

I wish to tell you two things. Firstly, while the multi-seat, single-vote (MSSV) system has aroused extensive discussions among the public and in this Council, the Select Committee never explored it in depth or analysed it objectively. At the 12th, 13th, 17th and 18th meetings of the Select Committee, we alluded to it and briefly discussed it. We were quite certain, and reached a conclusion, about one point, that is, the system of proportional representation was not suited to Hong Kong at the present time. This point was quite clear; we agreed to it. Besides this point, however, we never, among the 12 of us, discussed any system at length. We never discussed the implications of this system, the double-seat, two-vote (DSTV) system or the single-seat, single-vote (SSSV) system. Nor did we ever compare the various systems. Then, strange enough, at the 19th meeting held on 20 June, the MSSV mode suddenly showed up in the first draft of our Committee report. I asked the Committee chairman about the reason for its being there. The chairman responded that it was a matter of his feeling and assessment; that no decision had been made; and that, if I disagreed, I could raise an objection at the 20th meeting. The 20th meeting went on for more than six hours. In the meeting room, we of course did our utmost to advocate an amendment. If you read the minutes of the 20th meeting, you will notice one thing clearly: our four votes of Mr Jimmy McGREGOR, myself, Dr YEUNG Sum and Mr SZETO Wah were overwhelmed repeatedly in the voting process. Obviously, we never discussed the MSSV system at length, even though it now becomes a controversial issue. Then it became one of the recommendations of the Select Committee in its report. I can only tell you that the MSSV system is not the consensus of the Select Committee. It is the opinion of members whose number just exceeds half of the membership.

Secondly, we listened to many comments submitted to us. Some of them concerned the election mode and the demarcation of the boundaries of geographical constituencies. I would like to give you some figures in this regard. We received submissions from 13 groups in support of the DSTV system or the SSSV system and only eight groups in support of the MSSV system. These numbers clearly told the difference. On the other hand, we received representations from eight persons in support of DSTV system or the SSSV system and only two persons in support of the MSSV system. Clearly, among the members of the public who made submissions to the Select Committee and who came to meet the Select Committee, the majority were in support of the DSTV system

or the SSSV system. However, inexplicably, the Select Committee's report recommends the MSSV system. I will leave it to Members to figure out how such a result came about.

I do not wish to repeat what many Councillors have already said about the various problems that would come with the MSSV system. I would like to focus on one point. Some Councillors say that they support the MSSV system because it is simple to operate. Actually, the SSSV system is the simplest and most easily understood by the electorate. District board elections have a history of ten years since they began in 1982. The SSSV system has been employed in most of the elections and it has been the voting system adopted in the municipal council elections. At the beginning, DSTV system was used in more district board constituencies than they are now. Then, since 1988, single-seat constituencies have been gradually replacing the double-seat constituencies. Among the 200-odd district board constituencies now, only 57 (if my recollection is correct) still have two seats each. I think that the Government is going to break up these 50-plus double-seat constituencies and turn them into single-seat constituencies also. This being so, will it be a step backward for us to suggest that Legislative Council seats to be returned by SSSV system? No. The Government is actually moving in this direction. Why? The reason is that the SSSV system is the simplest. Whoever is elected becomes the elected representative of his constituency. This simple system will help achieve accountability and bring the elected representative closer to the people. If we wish to encourage more independents to run for office (if we really care about having more independent candidates) and more people without a great deal of resources or party connections to run for office, then we should support the SSSV system. The reason is: campaigning in smaller constituencies requires less resources since there is no need to deal with constituencies with population of 600 000 and more (as Miss Emily LAU has noted). Why is the SSSV system being opposed by those who wish to assure the chances of independent candidates without party support, by those who argue for accountability and local residents to know who their elected representatives are? I am really at a loss. Of course, the boundaries of the constituencies would have to be re-drawn every time an election comes up and another problem is that the elected representatives of small constituencies tend to give greater priority to matters of local interest. But I think that I have heard all their arguments before. They have no new arguments. Their old arguments have already been duly refuted.

Finally, "one man, one vote, one candidate" is indeed a misleading political slogan and banner. With one ballot paper, a voter should be able to choose two

candidates or just one. In the Philippines, a voter can choose more than 40 candidates. So the "one-man, one-vote, one-candidate" system is nothing to do with fairness or otherwise. We must never allow ourselves to be confused by it. In a DSTV constituency, a voter can cast one vote but can mark his ballot paper in favour of two candidates or just one. In the 1991 elections, 17% of the voters, knowing that they could choose two candidates, chose only one. That was their choice and we must respect it. However, if we should limit each voter to choosing one candidate where there are two seats, they would then be deprived of their right to choose two candidates. What we wish to do is offering the voters more choices and giving them the right to choose their best representatives. We should not deprive them of their rights with the adoption of any system.

Mr Deputy President, these are my remarks. All three Councillors of Meeting Point fully support Mr Jimmy McGREGOR's amendment motion.

MR MAN SAI-CHEONG (in Cantonese): Mr Deputy President, in deciding which election system to adopt, one should first of all look at the specific conditions which characterize the political system of Hong Kong. The major difference between Hong Kong and other countries in respect of elections is that our legislature has only a limited number of seats for Members returned by direct elections in geographical constituencies and in 1995, more than half of the seats will be taken up by Members returned by functional constituency elections which have a great many limitations. The adoption of a multi-seat single-vote system in the context of relatively few directly elected seats will only deprive the individual voter of his right to vote such that his already limited voting right is further diminished.

I am vehemently opposed to the deceptive argument advanced by some people that the multi-seat single-vote system (MSSV) is the most democratic system. Recently, an advertisement in joint names has appeared in the press headlined, "Support the multi-seat single-vote system and one-man one-vote to elect one of the candidates." It also proclaims that it is the election system which is most in keeping with the spirit of democracy. In fact, what it is doing is a great disservice to democracy, though in the name of democracy. If we were to practise the principle of one-man one-vote, then more directly elected seats should be introduced to the Legislative Council to enable members of the public to directly elect legislators who have mandate from the public so that these legislators will then be free to act without having their views being suppressed by other legislators who are divorced from public

opinion.

In order to implement the principle of one-man one-vote, then we have to adopt the single-seat single-vote system. It has the advantage of simplicity. The candidate returned under this system will clearly and really represent the voters in his constituency. It will not give rise to the embarrassing situation engendered by the multi-seat single-vote system in which two candidates may be returned in the same constituency, one with 90% of the vote, the other with only 10% of the vote. This would be unfair to the second candidate for if he only secures a small percentage of the vote then it would be a very big handicap for him, and it would indeed have a negative impact on him in terms of carrying out his work either in his constituency or in this Council. The majority of voters in his constituency may not identify with, or indeed choose not to recognize, the work of this legislator who has only 10% of the vote; they may not agree with his views.

Under the existing laws, the candidate has to forgo his election deposit if he grabs less than 5% of the vote. Under the multi-seat single-vote system, however, it may very well turn out that the first and second runners-up may have below 5% of the votes. Does it not make nonsense of the system if even someone can manage to become a legislator when his election deposit has to be forfeited?

In order to forestall such absurdity, why do we not adopt the single-seat single-vote system? In the United Kingdom, most of the constituencies have between 70 000 and 80 000 electors each. The constituency from which Governor Chris PATTEN comes has only 80 000. If elections to the 20 directly elected seats in 1995 are to be held along the lines of the single-seat single-vote system, then each constituency would have around 100 000 electors with a population of around 300 000. These are by no means small constituencies and indeed this can make for closer ties and contacts between legislators and their electors, which is not a bad thing altogether.

I believe that even Members returned by small-sized constituencies will not be parochial at the expense of territory-wide issues. The track record of the directly elected members of the municipal councils will prove that any such worry is totally unfounded.

The single-seat single-vote system is widely used all over the world. It has been practised in the United Kingdom for years. It is ideally suited to the political

environment of Hong Kong. However, the present situation is that we have a group of people with vested interests under the old system. While they are accustomed to the free political lunch, they are faced with the prospect of not being appointed in 1995. They are pinning their hopes on enjoying a political lunch at half price, that is to say, they are trying to increase their chance of returning to this Council by the introduction of a contrived multi-seat single-vote system.

Now we have a group of losers and political parties, which have been soundly beaten in the elections, not bothering to learn the bitter lesson and find out the real cause of their failure, that is why they were lack of appeal, or indeed failed to muster quite as much support as their opponents. They do not do any of these things to rectify their mistakes before making a meaningful comeback. Instead, they are determined to engineer a device to turn the tide of the democratization process. They are openly or otherwise trying to hoodwink people by the slogan of one-man one-vote to elect one of the candidates and they are playing this game with the support of the so-called majority in this Council, or it would seem that majority in the Select Committee. What they are doing is nothing less than persecution of the minority in this Council. Their intolerance of other political views is as shocking as the meanness of their political tactics is deplorable.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment motion.

MR STEVEN POON (in Cantonese): Mr Deputy President, to begin with I would like to respond to a number of points raised about the Select Committee by Mr Fred LI, who is not with us now and who does not wish to hear what I have to say. Firstly, he said the Select Committee has not discussed the issue of the multi-seat single-vote system. I can say here that the issue has in fact been discussed three times in the Select Committee. It was I who brought up the issue which was then quite thoroughly discussed. I explained the rationale of the system but met with no opposing views at the time.

The second thing I wish to say is that it was Mr SZETO Wah who suggested at the time that controversial issues about how the constituencies were to be demarcated and how many seats were allocated to each constituency should be left to vote by a show of hands rather than being dealt with in a discussion. Out of respect for his opinion, the Select Committee did not pursue other election systems. This shows that

Mr Fred LI who lashes out at the Select Committee has just now basically misled Members. In addition, he has also misled the public by his signature campaign. He said that people's right to vote should not be diminished, that they should have two votes instead of one. But now he has advocated the system of one-man one-vote, which is to say that the people will have one vote after all. His campaign is said to have the support of well over 100 000 people. These people have been cheated; he owes them an explanation.

Today, we are not supposed to argue about party interests. Mr CHEUNG Man-kwong has talked about issues of party politics as if today's debate is after all a fight between the United Democrats and the Co-operative Resources Centre. In fact, the purpose of our debate today is to identify an election system which is the most ideal and fairest for the people of Hong Kong. This fair system should lay more emphasis on the fairness to the voters instead of fairness to the candidates.

Today I have heard many people give their views on elections and seen people resort to label-bandying tactics; I have heard a lot of opposition voiced against the affairs of China. It is regrettable that they have learnt the tactics of confrontation, political struggle, political labelling and manipulating public sentiment, all reminiscent of the Cultural Revolution. As an appointed Member, I am quite used to, and I therefore do not really mind, being the subject of derision and I am quite used to being frequently bullied. But the crux of the matter is the rationale of the multi-seat single-vote system. We should not forget that the system has its own rationale. The ever-increasing number of directly elected seats is a phenomenon not found in other countries. The future Legislative Council elections have to follow the trend of increasing directly elected elements. There are two ways of accommodating this trend. One is to re-demarcate the boundaries of the constituencies every time when an election comes up, the other is to have fixed constituencies. We are all aware of the shortcomings of the first scenario of redemarcation for every election which will leave voters confused. Running in this constituency this time, but in that constituency the next time, a candidate, with no clear idea about one's constituency boundary, has no way of building up his constituency base. The constantly changing constituency boundary also deprives the right of the voters to choose someone who can properly represent them in the districts where they belong. Constituency elections, if held in this manner, are meaningless. For this reason, I think it would be better to fix the number of constituencies according to the physical features of Hong Kong and in such a way that a constituency with a larger population will have more seats than one with less. This way the problem

brought about by the ever-increasing directly elected seats on the Legislative Council will be resolved for, notwithstanding the population shifts, there will be a reasonable and proportional number of constituency seats to match the population distribution.

Indeed, the fixing of constituencies is not a new invention. In the United States, constituency boundaries in various states will not have to be redrawn because of the population shifts before each congressional election. Although Mr Andrew WONG has previously made the point that Legislative Council elections are in many ways different from the congressional elections of the United States, I think that the fixing of constituencies to maintain local features should be a concept which is applicable to Hong Kong. In this regard, I think the multi-seat fixed constituency system is both feasible and reasonable. In deciding on the number of constituencies, careful consideration must be given to the various factors involved such as district representativeness, the territory-wide functions of the Legislative Council, the degree of commitment of candidates, and the principle of minimal change and a point of balance must be maintained. I propose to preserve the existing nine constituencies for the aforesaid reason and bearing in mind, first of all, that each of these constituencies has its own characteristics, and secondly that incumbent legislators as well as the unsuccessful candidates of the 1991 elections have already established close ties with the electorate in these constituencies.

Insofar as voting is concerned, it is unfair that the votes cast under the block vote system in a multi-seat constituency do not carry the same weight. I think the basic principle is that each vote should have the same weight and each vote cast by the individual in the ballot box should be worth the same as any other. And I would not consider anything less than that as fair.

The single-seat single-vote system championed by Mr Jimmy McGREGOR in his amendment motion means that the existing nine constituencies will be increased to 20 in 1995, to 24 in 1999, to 30 in 2003, and even to 60 thereafter. It is too drastic a change to me. Also, I cannot accept the modus operandi, that is, re-demarcation before each round of elections. In addition, the scenario of having 20 constituencies for the Legislative Council elections will effectively mean that we are going to have more constituencies than the number of district boards, which is 19. If we should one day have 60 constituencies, then each of these constituencies will effectively be no more than one third the size of the district board constituency. I think in so doing we are getting our priorities wrong; it is preposterous and

extremely unreasonable.

Mr Deputy President, there are many misunderstandings, intentionally or otherwise, about the multi-seat single-vote system. I wish to briefly sum up the spirit of the system. Since Mr CHIM Pui-chung has just now delivered his twelve-character one-liner, I will also try to compose one to sum up my speech, and it goes like this, "fixed constituency; one-man one-vote to elect one of the candidates; harmonious co-existence of parties (as opposed to all benefit going to the large party); let talented independents contend." Thank you, Mr Deputy President.

MR TIK CHI-YUEN (in Cantonese): Mr Deputy President, different election systems have different strong points. But the degree of fairness and relative advantage of each system aside, one should not in any case dismiss the value of any system altogether simply because one's opponent who holds different political views has managed to win under that system. In evaluating various election systems, we should consider the purpose and equity of the election. It is this principle which is at stake, rather than merely a fight over interests.

The key function of a geographical constituency election is to reflect the mainstream public opinion in that constituency by electing a representative to echo the majority view. A single-seat constituency system or a multi-seat constituency system aside, it is only through a block vote system, that is, as many votes as there are seats, that we can ensure the mainstream opinion of the electorate to be recognized under the system. It is on the basis of this principle that the so-called coat-tail effect should not pose any problem. The effect should be quite acceptable on the principle of democracy and freedom of choice. Critics of the coat-tail effect who fault the choice of the voters actually mirror their subjective views, which is not in keeping with the principle of democracy at all. Just as under the single-seat system voters have the right to choose a candidate with certain political views or a particular party background to their liking, they have the same right under the double-seat system to choose the two candidates fielded by the party to their liking. Of course, they have the equal right to choose candidates from two different parties. This is an advantage of a democratic system respecting people's free will to choose, which we should cherish and preserve. Some critics of the coat-tail effect are not so much opposed to the phenomenon per se as to the effect it produces in terms of enabling a large number of liberal candidates grouped in pairs to win the elections. I think that it is up to a political party and a candidate to work real hard to solicit

public support and identify with the public demands and compete fairly with other political parties. It is irresponsible for one to put all the blame on the coat-tail effect. If they are only opposed to the coat-tail effect, or fearful of it, then why do they not simply go for the single-seat single-vote system?

The whole idea of the multi-seat single-vote system is an attempt to manipulate the choice of the majority by giving undue prominence to the choice of a minority. Meeting Point cannot accept this attempt to suppress the majority view.

The block vote system has all along been in practice for all tiers of elections in Hong Kong. It is a system which is familiar to and well received by the public. The multi-seat single-vote system, which makes major modifications to the existing system not because of any apparent shortcomings of the latter system, is an obvious attempt to deprive the public of their existing electoral rights.

Mr Deputy President, with these remarks, I support the amendment motion of Mr Jimmy McGREGOR.

DR SAMUEL WONG (in Cantonese): Mr Deputy President, last week I sought the views of all of the 36 directors of the Hong Kong Institution of Engineers by sending them newspaper cuttings on the issue of different election methods. Of the 23 returned questionnaires six were in favour of maintaining the election method of 1991, only three were in favour of the double-seat single-vote system, and nine were in favour of a single-seat single-vote system, with the remaining five asking me to decide for them after taking into account the arguments presented in this debate. In this regard, I can certainly say here that their views have been quite clear.

Meanwhile, nearly 100 engineers who are employed with the Government and lecturers of engineering at the University of Hong Kong have written to me to express the wish that I would vote in favour of the single-seat single-vote system. Incidentally, I also received a letter from a senior member who was in favour of the multi-seat single-vote system introduced in the Select Committee Report.

Regarding my 12-member think tank in the engineering constituency, I know that, although they have not insisted how I vote, they will be quite disappointed if I abstain, or if I vote against the amendment motion.

Today, or should one say yesterday, a financial daily carried a short editorial commentary which goes, "The switch from a double-seat two-vote system to multi-seat single-vote system will be more advantageous to candidates fielded by the marginal political groups because this will effectively snatch the votes otherwise going to the United Democrats. The landslide victory of the United Democrats last year stunned their opponents who, instead of adjusting their platform to gain voters' support, have tried to change the rules of the game altogether. Indeed, directly elected Members returned in the 1995 Legislative Council elections will take up only one third of the 60 seats, which is no big deal at all. We must understand that if the liberals' influence was completely neutralized such that they could not even perform a cosmetic function, then it would also mark the beginning of the end of freedom for Hong Kong people. Although we are opposed to most of the liberal views, we are equally opposed to the suppression of even that feeble voice in the wilderness". I hope the writer of that article, Mr LAM Hang-chi, will not mind my quoting him at length because I agree absolutely with what he said. And I am sure that his view will be widely shared among members of my constituency.

Mr Deputy President, I support the amendment motion.

DR YEUNG SUM (in Cantonese): Mr Deputy President, Mr CHIM said just now that we were kicking up a big fuss by going on and on well past three o'clock in the morning. But I believe that Members who have been elected by the people should feel duty bound to debate this important issue, never mind whether it is going to take them through next dawn.

Mr Deputy President, I speak in favour of Mr Jimmy McGREGOR's amendment motion. I, together with other United Democrats Members, am opposed to the multi-seat single-vote system, for the following five main reasons.

First, it despoils voters of their right to choose. Under such a system, while a constituency may have two or three seats, the elector can only make one choice. The advertisement placed by the Co-operative Resources Centre (CRC) in the newspapers says that the multi-seat single-vote system champions the real democratic spirit in that one person is only entitled to one vote in the context of a multi-seat constituency. While people may accept that one-person one-vote is in keeping with the democratic spirit, which is why the CRC has used that as their slogan in the first place, the CRC's slogan has completely evaded the fact that the right of choice of

voters will thus be eroded . For regardless of the number of seats available in any given constituency, voters may only cast one vote, and make one choice in so doing. Mr Deputy President, I wish to state categorically that the multi-seat single-vote system is one which deprives the voters of their right to choose.

Second, it may give rise to misrepresentation. Take a constituency with three seats as an example, it may very well happen that one popular candidate may be returned by securing 70% of the votes, leaving the other two successful candidates to share the remaining 30%, with one taking maybe 10% and the other managing 20%. Mr Deputy President, while the three successful candidates, with their grossly different shares of the vote, are equally legitimate representatives before the law, they will have a quite different mandate and degree of representativeness in the eyes of the voters.

Third, the CRC Members lay great emphasis on the advantage of the multi-seat single-vote system of enabling minority representatives to join the legislature. Mr Ronald ARCULLI has made the point that the multi-seat single-vote system is in fact a variation of proportional representation. Mr Deputy President, I have stated on numerous public occasions that proportional representation is not suited to Hong Kong. Social conditions which are favourable for proportional representation in certain European countries are absent in Hong Kong. These include a mature party system and political culture, a legislature fully returned by universal suffrage, and a social culture which accepts a legislature made up of different factional representatives. However, Mr Deputy President, the fact is that Hong Kong has always practised a block-vote, first-past-the-post system, which is to say that two votes for double seats, single vote for single seat. We have never experimented with proportional representation, let alone any variation of it. Mr Deputy President, some people take the view that democracy includes the tolerance of diversity. They point out that the multi-seat single-vote system will enable minority representatives to join the Legislative Council so that it will become more balanced politically. But the fact is that minority voices are already fully represented by functional constituencies and the grand electoral college. In this regard, I would think that the implementation of the so-called multi-seat single-vote system in the context of a mere 20 popularly elected seats will only aggravate the imbalance which exists in this Council.

Fourth, the re-demarcation of constituencies is basically a very small issue. Our society is not stagnant and we have frequent population flow. For this reason, what Hong Kong needs is an independent committee on constituency boundary demarcation

so that demarcation can be made according to population distribution and flows.

Fifth, the implementation of a multi-seat single-vote system will weaken the strength of the Legislative Council. This is an issue which few Members have touched on. I wish to categorically state that if the multi-seat single-vote system is adopted for the 1995 elections there is no way this Council may become a genuine sounding board of public opinion and develop as a force with support by the vast majority of voters, which is capable of effectively co-ordinating with, checking and monitoring the Administration. Do we wish to see such a weakened legislature which is incapable of representing the strong public will, reflecting public opinion, monitoring government operation and making the Government more accountable to the public?

Mr Deputy President, the United Democrats support Mr Jimmy McGREGOR's amendment motion, which espouses the single-seat single-vote system, and to save time, I will only give three reasons as follows.

First, it is easier for implementation.

Second, it strengthens the ties between voters and their representatives and fosters the former's identification with the latter.

Third, the constituencies so created are by no means small in size; a constituency with a population of 200 000 to 300 000 is not too small by any standard. I also wish to stress that representatives returned through popular elections do not necessarily concern themselves only with district affairs. Whereas the single-seat single-vote system is practised in all the states of the United States, do the elected representatives limit themselves to such issues as street lighting and garbage collection? Surely not; they invariably talk about nationwide issues when they meet.

Mr Deputy President, the United Democrats support the single-seat single-vote system and are opposed to the multi-seat single-vote system mainly because we wish to fight for the people the just and fair right to choose. This cause incidentally largely coincides with the line taken by well over thirty lecturers of political and social administration at our tertiary institutions and this may just as well prove that we are of the same mind in this matter.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment motion on behalf of my colleagues of the United Democrats.

MR HOWARD YOUNG (in Cantonese): Mr Deputy President, today, I do not have the unabashed confidence to say I am speaking for any group of people. Although I am a member of the Co-operative Resources Centre (CRC), I am sure what I am going to say today may not completely represent the thinking of the CRC. On the other hand, although I represent the tourism constituency, also it would be inappropriate for me to say for the people I represent. I was asked yesterday about whether I had consulted with my constituents. I said how I could do so given that I came back to Hong Kong just the night before. Indeed, if nothing else, the three volumes of the Select Committee Report together are as thick as seven inches. Anyway, at noon today, I discussed the issue with five electors in my constituency. I was surprised to learn from them that, despite the high turnout rate of 87% for the tourism constituency in the election last year (indeed the highest turnout in percentage terms of any functional constituency elections), none of my interlocutors actually went to the polls in their respective geographical constituencies. Indeed, two of them, one living in Eastern District and the other in Western District, did not even know who their elected representatives in this Council were. From their reaction, I sense one thing. Although I have not consulted my constituents on this particular issue, I have been asking them how they felt about the Legislative Council generally, over the past couple of months. Now I reluctantly say this to my honourable colleagues. As a matter of fact, many of them told me that they were sick and tired of the way this Council conducted its business. They felt that we were only good at playing politics and quarreling among ourselves, voting to score political points, debating insignificant issues instead of engaging in rational discussion, and frequently resorting to label-bandying tactics. They wondered what we were fighting for, why we did not spend more time on livelihood issues, why we wasted our time to play this political game. They asked, "Did we elect you to office all for those?" Sometimes, I feel so ashamed. I hope we can have a rational debate today.

I think that many speakers have spoken in a rather misleading way which may confuse not only the public, but also fellow Members. I hear many Members say that the multi-seat single-vote system was a model endorsed and promoted by the CRC. But as Mr Fred LI was saying just now, it was not like that at all. As Mr LI revealed, the CRC had not made any submission to the Select Committee. If Mr LI remembers correctly, it was, as he said, put forward by eight organizations in their representations to the Select Committee.

I have also heard many Members make the point that the switch from double-seat double-vote to single-vote will diminish the right of voters to choose. I would like to put it the other way round. Why, for example, has no one proposed to remove all constituency boundaries and treat the entire territory of Hong Kong as one constituency such that each voter would have 20 votes? Will that effectively mean that the democratic right is automatically multiplied by ten times? I notice that terms such as "people with vested interests" have been used by a number of Members. Honestly, according to my judgement, the multi-seat multi-vote system would very often produce a coat-tail effect. But when this happens, who are those with vested interests? Who will be the beneficiaries? I think that the larger the political organizations, the more likely they are to benefit, such as the United Democrats and the CRC. The ones who are not able to get any benefit out of the situation are the independent candidates who do not have the support of political parties, or candidates fielded by very small political groups. I have heard in the past couple of months unsuccessful candidates in the direct elections last year complaining that the system was not fair to them. Of course, they also lost for reasons of their own. I have sympathy for such minority feelings. I think that the multi-seat single-vote system would be slightly more advantageous to the minority parties and independent candidates; as regards large political parties, I must admit that it does not have much to offer to them.

I regret that today's debate has again degenerated into political bickering; we are not conducting a rational discussion. Let me reiterate here that Mr Ronald ARCULLI is not moving the motion on behalf of the CRC; he has moved the motion on behalf of the Select Committee, of which he is the Chairman. If his motion asked us to accept or endorse the contents of the Report, then I too would feel that it is difficult to do, given the size of the report. How can one accept the whole lot in one go? But he has only asked us to "take note" of its contents; that is a very neutral term, which I think is so much better for it.

Regarding Mr Jimmy McGREGOR's amendment motion, I also feel that single-seat single-vote system has its advantages, but it is not perfect. Is it better vis-a-vis the existing double-seat two-vote system? Some people have suggested the demarcation of the territory into two constituencies so that each voter would have a dozen votes in all, but I think this will impose even greater limitations. In this regard, I think that as a basis of a rational discussion, the original motion is acceptable.

MR WONG WAI-YIN (in Cantonese): Mr Deputy President, before I deliver my prepared speech, I would first of all like to make some clarification on a number of points raised by Mr Steven POON. I have known Mr POON for some time and I am sure that he would not intentionally mislead the public. But perhaps because it is really late into the night, he might have failed to hear properly what Mr Fred LI was saying. Mr LI said quite clearly just now that initial discussion was held on the issue of the multi-seat single-vote issue at the 12th,13th, 17th and 18th meetings, but there was no thorough discussion. We can see this from the minutes of those meetings in the Select Committee Report. Meanwhile, Mr Howard YOUNG also mentioned that he first heard about the representation made by the eight organizations on the multi-seat single-vote proposal for the first time from Mr Fred LI's speech. But the fact is that, as Mr POON admitted just now, it was he who first raised this issue at the Committee meetings. Also, Mr POON alleged that our signature campaign to champion the cause of single-seat single-vote system would effectively limit the voter to only one vote. Let me reiterate here that our signature campaign is mainly to oppose the multi-seat single-vote system; we have made no mention of our support for double-seat two-vote system, or single-seat single-vote system. In any case, be it double-seat two-vote, or single-seat single-vote system, it is not inconsistent with our original purpose, which is to request that the voter be allowed to cast as many votes as there are elected seats, or the block vote system we have championed. Now that I have clarified our position, I would like to resume my prepared speech.

Mr Deputy President, I also wonder if I should follow the act of Mr Andrew WONG who has just declared his personal interest. For I happened to be one of the losers in the Legislative Council's first direct elections last year. I lost under the double-seat two-vote system which, as repeatedly stressed by both the Co-operative Resources Centre (CRC) and pro-China people, is plagued with the problem of coat-tail effect. But I have been elected subsequently in the by-election, which was conducted under a single-seat single-vote system. Now I would also like to speak briefly on the issue of coat-tail effect. The CRC members and pro-China people have always made a big issue of the coat-tail effect. I wonder, while they are doing this, if they have really thought about why this all-important effect has only been evident among the successful liberal candidates. Why is it that the same effect has not benefited other candidates? The latter could have just as well made use of the coat-tail effect to win the support of more voters. They have not thought about, nor have they tried to understand, the fact that the less-votes getter of the successfully elected pair actually owes his success to years of hard work in the constituency, that he has not

won as a total newcomer appearing from nowhere. It often turns out that he has done a lot of hard work in the district for many years and he has close working ties with the district community, which explains why he has managed to win the support of his electors. The liberals have not won the support of their electors in one day. We have engaged in social movement for over 10 years now. Since the onset of the development towards representative government in the early 1980s, we have been able, with the support of our electors, to be returned to the district boards. Last year when direct elections were introduced to the Legislative Council for the first time, liberals have won the support of electors again and been elected as legislators. Our success is the result of the unswerving dedication and the wholehearted efforts which the liberals have over the years devoted to the cause of democracy and improvement of people's livelihood. I am sure the wholehearted efforts made by the liberals are hard to understand for our CRC colleagues. Let me give a simple example. I have gone through many motion debates since I joined this Council for nearly a year now. Our meetings usually go on until ten or eleven in the evening. However, I discover that if the motion is not contentious or there is no amendment motion, then the CRC Members will usually leave the Council very early on. In the event that amendments are made to the motion and vote is to be taken, it is when our CRC friends will take the trouble to stay with us until the end of the debate. However, insofar as adjournment debates are concerned, I can see that most of the Members who have stayed behind for them are our liberal friends.

The first argument the CRC has used against the single-seat single-vote system is that 30, or even 60, constituencies have to be demarcated if 30, or 60, elected seats should become available and that with the reduction of the size of the constituency, the representativeness of the elected Member will diminish to an extent that this Council would play no bigger a role than a district board. But I am surprised that, when the CRC champions the cause of multi-seat single-vote, they have made known as their main reason the desire to have more minority representatives elected to this Council so we can have more different voices. They have gone further and made the point that even if the first successful candidate has been elected with 70% to 80% of the votes while the second successful candidate only manages 10%, the latter should equally be given a seat in this Council so that the 10% of electors can be properly represented. However, as Messrs Martin LEE and MAN Sai-cheong were saying just now, we worry that the first and second runners-up are unable to secure even 5% of the votes. That means they would have to have their election deposits forfeited but still that would not stop them from being elected. How are we going to resolve this kind of contradiction, how are we going to live with this kind of

joke and absurdity? I have earlier written to the Constitutional Affairs Branch, but I have yet to get an answer from them. I wish the Secretary for Constitutional Affairs would be able to give me a direct answer in his reply later on, to clarify this point.

On the other hand, if the CRC really takes the view that this Council should accommodate more minority views, then they should support the cause of enabling the liberals to have a minority voice on the Executive Council. Why are they so vehemently opposed to our liberal colleagues joining the Executive Council? Is this not double standards?

MRS SELINA CHOW: Point of elucidation, Mr Deputy President.

DEPUTY PRESIDENT: Are you prepared to give way, Mr WONG?

WONG WAI-YIN (in Cantonese): I wish to finish my speech.

MRS SELINA CHOW: Then could I ask for clarification at the end of his speech?

DEPUTY PRESIDENT: Mr WONG is not prepared to give way and he has the right not to give way.

MRS SELINA CHOW: I respect that right, Mr Deputy President.

MR WONG WAI-YIN (in Cantonese): Another reason why our CRC friends are opposed to a single-seat single-vote system is that boundaries of constituencies have to be redemarcated whenever an election comes up and that the exercise would be time-consuming and cause confusion for both candidates and voters who will find it difficult to adapt to. If that is the case, then our CRC friends should actually lend their full support to the double-seat two-vote system which has just been in operation for the last election and which has so far no apparent shortcomings that would warrant any revision. This would save both candidates and voters the trouble

to re-adapt to a new system.

What I wish to say in closing is that, if the CRC collegues really mean what they say when they support multi-seat single-vote and oppose single-seat single-vote, then there is nothing I could say, except maybe to say that I am saddened. If, however, they are forced to speak against their conscience because they have been under pressure to put forward the proposal, then I would have to say that I am indeed horrified.

Mr Deputy President, with these remarks, I support Mr Jimmy McGREGOR's amendment motion.

MR ALLEN LEE (in Cantonese): Mr Deputy President, after hearing Mr WONG Wai-yin's speech, I would first of all like to ask him on what ground he said that the Co-operative Resources Centre (CRC) is opposed to the appointment of a small number of liberals to the Executive Council. Is it really the case? What factual evidence does he have to support what he claimed?

Mr Deputy President, incidentally, I also received two telephone calls today, one from someone I know, the other from someone I do not know. They wished me to pass on a message to the United Democrats. Unfortunately, I am unable to quote what they said here, for if I did so, I would certainly breach the Standing Order, and I am sure you will correct me immediately. But I think that, first of all, it is not a big deal that two citizens called up a Councillor; I do not think, as Dr HUANG Chen-ya does, that these two callers are necessarily representatives of public opinion. I only take the view that they are expressing their personal opinions.

I also wish to make the point here that the composition of the Select Committee has been decided by secret ballot, on the basis of one-person one-vote. Mr Jimmy McGREGOR was also elected to be a member of the Select Committee through this procedure. I also wish to ask him if he feels ashamed.

Today, we are debating Mr Ronald ARCULLI's original motion and Mr Jimmy McGREGOR's amendment motion. I can see that the spirit of the original motion is to allow sufficient time for political organizations and the general public to cool-headedly and carefully read this complicated report and refrain from immediately and hastily taking a stand on this issue which has far reaching implications. I received three

amendment motions from Mr McGREGOR within a couple of hours. He requested in his first amendment motion the implementation of a double-seat two-vote system in 1995, which entailed the setting up of 10 constituencies. He requested in his second amendment motion the setting up of 20 constituencies so elections can be held on the basis of a single-seat single-vote system. In his last amendment motion, which is the one before us, he requests that a single-seat single-vote system should be adopted for all of the geographical constituencies. It can be seen from this that Mr McGREGOR has been wavering on this issue. What is his real motive? Is it moved to achieve justice? Is this justice or psendo-justice? It is only too obvious.

MR JAMES TO indicated his wish to raise a point.

DEPUTY PRESIDENT: Do you wish to give way, Mr LEE?

MR ALLEN LEE: I would like to continue, Mr Deputy President.

MR ALLEN LEE (in Cantonese): I think that direct elections are only part of the 1995 elections when all Members of this Council would be returned through elections. I hope that the 1995 elections would be a through train which will take us across the 1997 threshold. While it is easy to talk about the concept of through train, it is quite complicated in practical terms because there are a lot of issues which have to be ironed out through Sino-British consultation. But I think that our overall objective should be making this "through train" work to ensure a smooth transition. It is on this basis that we should discuss the advantages and disadvantages of the various election systems. However, the Legislative Council is often a forum for political debate and I think today's debate is no exception to this situation.

Democratic development in Hong Kong up to this point has not gone far beyond the preliminary stage. I believe that we can try whatever election system which has the endorsement of the majority of this Council. I do not like to see any political name calling, particularly on this issue of election system. There are a lot of things which we should do over the next five years if we wish to achieve a smooth transition. I am convinced that a smooth transition is Hong Kong people's common wish. Although the CRC Members of this Council are not returned through direct elections, a lot of

us have worked in this Council for many years and we are very glad that Hong Kong has been able to achieve its present success and international status. Sometimes, we would ask ourselves whether the public is aware of what we have done for them over the years. Perhaps we are without political wisdom for we do not know how to claim credit. But we have a clear conscience. Sometimes staying up late at night, I recall two famous lines from the writings of LU Xun, "I do not care what the critics have to say about me; I only know that I will go on playing my humble role and making my small contribution."

Mr Deputy President, whatever the voting result today, the CRC members will continue to solicit the views of people who are concerned with the future of Hong Kong. We will keep an open mind on the issue of the election system; we would welcome different views expressed by members of the public regarding the election system.

MR RONALD ARCULLI: Mr Deputy President, I have listened to comments made by my honourable colleagues and was particularly impressed that Mr McGREGOR was able to compress so much abuse in such a short speech. I was actually looking forward to logic and reason from him in support of his motion to amend my motion, but alas, that was not to be found. I suppose that if one cannot dazzle others with one's brilliance, one can only try to baffle them with one's buffoonery.

Mr Deputy President, Mr McGREGOR also complained about the absence of dissenting views in the report of the Select Committee. I am surprised, because the Legal Adviser gave us written advice as to the procedure for recording dissenting views and that this was by way of recording them in the minutes of the meeting and not in the report. And indeed, this happened at our last public meeting on 22 June.

Another colleague commented that six out of 12 members of the Select Committee are members of the Co-operative Resources Centre (CRC), and therefore anything that CRC wanted could pass. I simply want to point out that this is another distortion. CRC, Mr Deputy President, had only five votes because as Chairman I could not vote except in case of an equality of vote. And if Members would care to look at Standing Order 62, sub-paragraph 6, they will find this out.

Few of my colleagues in tonight's debate have actually dealt with the criteria that I have referred to regarding boundary demarcation. Some appear to conveniently sweep this aside or ignore these important factors. I again emphasize that we need

to consider the other recommendations as well, for it seems that only a handful of my colleagues have dealt with these in tonight's debate.

I am also most grateful to Mr Steven POON for putting the record straight as far as discussion by the Select Committee on the multi-seat constituency system is concerned. His account tallies with my recollection.

As far as the "coat-tail" effect is concerned, the Committee's view was that this has not been conclusively established; so I do not understand why some Members bother to deny something that has not been established.

The next was that Dr HUANG invited me to participate in direct elections because we have six million voters. So far as I am aware we have 3.7 million people eligible to vote; at present 1.9 million registered to vote. I wonder which country Dr HUANG is talking about because it certainly cannot be Hong Kong.

Lastly, Mr Deputy President, it is late, and I am most grateful to those colleagues of mine who despite tonight's debate have been able to inject a much welcome humour every now and again into this lively debate. It is a credit to all of us that despite accusations, fair or foul, we are still able to recognize humour when we see it.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr Deputy President, when I informed this Council last November that the Administration had commenced a review of the electoral arrangements in the light of our experience of the 1991 elections, I said that we looked forward to working closely with the Select Committee with a view to seeking the best answers that would meet the aspirations of the community. In the event, we have had a series of useful and constructive exchanges with the Select Committee during the past six months. Altogether we presented 15 papers to the Select Committee on various issues including, for example, the establishment of a boundary and election commission, system of voting, demarcation of constituency boundaries, voter registration, and so on.

The Administration's presentations to the Select Committee were to serve two purposes: first, to share with the Select Committee so that the Select Committee would benefit from our research into the whole range of electoral issues under review and, secondly, to stimulate public comments on these issues. In this latter aim, the Select Committee's open sessions provided a useful forum. Judging from the intense

interest on the subjects which both the media and the general public have shown over the past few months, it would seem that these two purposes have both been successfully met.

So, on behalf of the Administration, I would like to thank all members of the Select Committee for the time and effort that they have devoted to this important and worthwhile task. It is a major achievement that the Select Committee has been able to complete a comprehensive examination of the many issues involved within such a short space of time, and to come up with a whole range of detailed recommendations.

I am pleased to see that there is a wide measure of consensus on a large number of the subjects covered by the Select Committee's report. I have however also noted the divergence of views on the system of voting for geographical constituencies, as reflected by Members' speeches in today's debate. Clearly, we will need to study all these with great care, together with any future public comments which we may receive in the next few months. Our goal, surely, is to identify the most equitable and practicable arrangements that would best serve the long-term interest of Hong Kong.

Mr Deputy President, the issues before us are many and complex. Before coming to any conclusions the Administration will want to consider and weigh up all the arguments that have been put forth by Members of this Council as well as by other individuals and organizations. For this reason, and because the report is one from the Select Committee to this Council, the Administration does not believe it is appropriate for the three ex-officio Members to vote on either Mr ARCULLI's motion, or the amendment motion proposed by Mr McGREGOR. They will therefore not participate in the voting.

Question on Mr Jimmy McGREGOR's amendment put.

Voice vote taken.

DEPUTY PRESIDENT: Council will proceed to a division. The division bell will ring for three minutes and the division will be held immediately afterwards.

DEPUTY PRESIDENT: Would Members now please proceed to vote?

DEPUTY PRESIDENT: Do Members have any queries? If not, the results will be displayed.

Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr Andrew WONG, Mr Martin BARROW, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Albert CHAN, Prof Edward CHEN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum and Mr WONG Wai-yin voted for the amendment.

Mr Allen LEE, Mr Stephen CHEONG, Mrs Selina CHOW, Mrs Rita FAN, Mr David LI, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Gilbert LEUNG, Prof Felice LIEH MAK, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Mr Howard YOUNG voted against the amendment.

Mr Vincent CHENG and Mr Eric LI abstained.

THE DEPUTY PRESIDENT announced that there were 28 votes for the amendment and 23 votes against it. He therefore declared that Mr Jimmy McGREGOR's amendment to Mr Ronald ARCULLI's motion was approved.

Suspension of sitting

DEPUTY PRESIDENT: We will deal with Mr K K FUNG's proposed amendment later today. In accordance with Standing Orders I now suspend the Council until 2.30 pm.

Suspended accordingly at twenty-five minutes past Three o'clock on the morning of 16 July 1992.

Note: The short titles of the Bills/motions listed in the Hansard with the exception of the Securities and Futures Commission (Amendment) (No. 2) Bill 1992, Organized and Serious Crimes Bill, Supplementary Appropriation (1991-92) Bill 1992, Securities (Clearing Houses) Bill, Rabies Bill and Lingnan College Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.