OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 3rd June 1970

The Council met at half past Two o'clock

[MR PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE CROSBIE TRENCH, GCMG, MC
THE HONOURABLE THE COLONIAL SECRETARY
SIR HUGH SELBY NORMAN-WALKER, KCMG, OBE, JP
THE HONOURABLE THE ATFORNEY GENERAL
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DAVID RONALD HOLMES, CMG, CBE, MC, ED, JP
THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR CHARLES PHILIP HADDON-CAVE, JP
DR THE HONOURABLE TENG PIN-HUI, CMG, OBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE ROBERT MARSHALL HETHERINGTON, DFC, JP
COMMISSIONER OF LABOUR
THE HONOURABLE TERENCE DARE SORBY, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, MBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE GEORGE TIPPETT ROWE, JP
DIRECTOR OF SOCIAL WELFARE
THE HONOURABLE JAMES JEAVONS ROBSON, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE DONALD COLLIN CUMYN LUDDINGTON, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE TSE YU-CHUEN, OBE, JP
THE HONOURABLE KENNETH ALBERT WATSON, OBE, JP
THE HONOURABLE WOO PAK-CHUEN, OBE, JP
THE HONOURABLE SZETO WAI, OBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE ELLEN LI SHU-PUI, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, JP
THE HONOURABLE HERBERT JOHN CHARLES BROWNE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, QC, JP
THE HONOURABLE GERALD MORDAUNT BROOME SALMON, JP

ABSENT

THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION

IN ATTENDANCE

THE DEPUTY CLERK OF COUNCILS
MR RODERICK JOHN FRAMPTON

Papers

The following papers were laid pursuant to Standing Order No 14(2): —

Subject	*LN No*
Subsidiary Legislation: —	
Fire Services Ordinance.	
Fire Services (Amendment of Fourth Schedule) Regulations 1970	69
Interpretation and General Clauses Ordinance.	
Specification of Public Office	70
Protected Places (Safety) Ordinance.	
Protected Places Declaration (Amendment) Order 1970	71
Legal Aid Ordinance.	
Legal Aid (Amendment) Regulations 1970	72
Crown Rights (Re-entry and Vesting Remedies) Ordinance 1970.	
Crown Rights (Re-entry and Vesting Remedies) Ordinance 1970 (Commencement) Notice 1970	73

Sessional Paper 1969-70: —

No 53—Annual Report by the Commissioner of Registration of Persons for the year 1968-69 (published on 4.6.70).

Oral answers to questions

Rapid Mass Transit Scheme

1. MR SZETO WAI asked: —

> Will Government say what progress has been made by the Consultants on their investigation of a modified Rapid Mass Transit Scheme, when their report will be made known to the public, and when Government expects to make a decision on the scheme's implementation?

MR J. J. ROBSON: —Sir, the Mass Transit Consultants have made excellent progress in their further investigations into an underground railway system for the Colony. Despite the comprehensive and complex nature of their task and the limited time at their disposal, they expect to submit their report on time at the end of July.

Having reassessed the effect of the changes in the projected population for the design year of 1986 (a drop of about one million from previous projections) and after taking into account all reasonable alternative routings, initial and final stages have now been established as also have the precise route alignments and station locations. From the results of the various soil tests which have been carried out, the methods of construction for the greater part of the system have been determined. These indicate that while the stations would have to be constructed by cut-and-cover methods, generally the underground lengths of the running lines should be in bored tunnel. Station and coach layouts have been designed to match the passenger volumes derived from the traffic studies as also have the rolling stock and the signalling and control equipment. Honourable Members may be interested to know that the design of the coaches provides for larger coaches than those of the London underground system, being 10′-6″ in width, and capable of providing trains of at least twice the capacity.

Not yet completed but well advanced are the final cost estimates, the fare structure and the staged programme of construction, all of which are expected to be finalized by the end of this month. One of the special problems which had to be investigated has been heat build-up within the tunnel under climatic conditions such as are experienced in Hong Kong and the possible need for increased ventilation and air-conditioning both of the stations and of the trains.

It is hoped that the Consultants' report can be made available to the public immediately after it has been tabled in this Council.

The cost of the full scheme is not expected to be less than the figure of $3,404 million given in the Consultants' first report nor will the first stage cost less than $1,500 million. Apart from engineering considerations, therefore, there will be serious financial as well as social and legislative problems to be resolved. It is thus not possible for me to estimate the time which Government will require to decide whether an underground railway system is to be built.

MR SZETO: —Sir, would Government consider preparing an abridged translation of this report in Chinese for the benefit of Chinese readers?

MR ROBSON: —This can be considered, Sir, but it will be a monumental task. The last report, as you know, is a very large volume indeed, with very complex diagrams, but it certainly can be considered, Sir.

MR SZETO: —I say an abridged translation of salient points.

MR ROBSON: —Yes, Sir.

Oral Answers

Flood casualties and damage

2. MR SZETO: —

Would Government inform this Council of the extent of the loss of life and damage to property caused by the recent heavy rainstorms, and whether the resulting flooding in the urban areas was due to the inadequacy of our storm-water sewerage system and, if so, what measures Government proposes to take to prevent its future recurrence?

MR ROBSON: —Sir, there were three deaths in the recent storms. A woman and 4-month old baby died at Diamond Hill and a 14-year old girl fell into a nullah at Po Lo Tse New Village in Sai Kung. Two persons were also injured when the walls of their huts collapsed.

From reports I have received it seems that the main damage affected roads. We had the usual landslides and Princess Margaret Road was blocked by debris washed down from the adjacent site formation project which also choked the drainage system and caused flooding. There were also several minor incidents involving collapses of low retaining walls and damage to Block 28 at Tze Wan Shan Resettlement Estate. The total cost of repairs is estimated at around $1 million.

The flooding which took place was localized and generally due to normal street litter blocking the inlets to the drains. However, the Hop Yick Street, Yuen Long, flooding was due to the blocking of the natural drainage system by private site formation.

The rains on the 13th May were quite severe and almost 4¾ inches of rain fell in 65 minutes. For a 5-minute period, however, the intensity of rain was 9 inches per hour. In other words, almost ¾ of an inch of rain fell in five minutes and, with blocked inlets, rain of this intensity quickly floods flat low lying areas.

The main stormwater drains are generally designed to deal with storms of this nature and cheeks made after the recent rains confirm that they functioned correctly. The clearing and desilting of road gully sumps is undertaken by the Urban Services Department and inspection of the drainage system by my staff shows that this work is regularly and effectively carried out.

There is no doubt, however, that during periods of prolonged and intense rain when regular street cleansing is disrupted the low lying reclaimed areas of Hong Kong and Kowloon are particularly vulnerable and it is intended to provide additional drain entry points in these areas.

During the 1966 rainstorms I advised that the best way the public could help the Public Works Department was by keeping drains clean and free from obstructions. If, for instance, the Kai Fong Associations could arrange for their members to keep a watch on road drains in their districts during periods of rain, the risk of flooding in the future would be greatly reduced.

MR SZETO: —Does the honourable Director agree that the increased run-off from the hillsides due to the large number of developments on the hillsides would contribute to the overloading of our sewers which were possibly never designed for it?

MR ROBSON: —There is no doubt, Sir, that increased development does lead to a greater run-off, but the paved area as compared with the natural area I don't think will be so great as to make our present drainage system too small. In fact, checks made have not indicated this. The other point is when you get rainfall of this intensity, that is, 6″ in an hour and ¾″ in 5 minutes, almost 100 per cent runs off no matter whether it is a paved area or not.

MR SZETO: —Thank you.

Driving and vehicle licences

3. DR S. Y. CHUNG asked: —

> Will Government give the number of motorcar driving licence holders and motorcar owner licence holders residing on Hong Kong island as compared to those on Kowloon peninsula and, in the light of these statistics, will Government consider the desirability of establishing a licensing office on the Kowloon peninsula?

THE ACTING FINANCIAL SECRETARY (MR C. P. HADDON-CAVE): —Sir, the total number of driving licences issued at the end of April 1970 was 302,000 and the total number of vehicles registered was 129,000.

I regret, Sir, that information is not readily available on the number of driving licence holders who are resident on Hong Kong Island, in Kowloon and in the New Territories respectively. A geographical breakdown of vehicle ownership is, however, possible: 39% of vehicles or 50,000 are registered in the name of owners with an address on Hong Kong Island; 53% or 68,000 with an address in Kowloon; and 8% or 10,000 with an address in the New Territories.

The Government, Sir, has been conscious for some time of the congested conditions at the Transport Department's Rumsey Street

Licensing Office and the inconvenience of its location for drivers and vehicle owners who reside in Kowloon and the New Territories. Unfortunately, suitable premises for a branch office on the other side of the harbour have not been available until recently. However, with the transfer of the Whitfield Barracks complex to Government ownership, it is now proposed to convert a building near the junction of Austin Road and Nathan Road for this purpose. All other things being equal, the Commissioner for Transport hopes to begin licensing drivers and vehicles in this new branch office before the end of the summer.

Government Business

Motions

SCHEDULE OF WRITE-OFFS FOR THE FINANCIAL YEAR 1969-70

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) moved the following motion: —

> Resolved that the Write-Offs for the Financial Year 1969-70, as set out in the Schedule, be approved.

The Governor's recommendation was signified by the Acting Financial Secretary *pursuant to Standing Order No 23(1)*.

He said: —Sir, the purpose of this resolution is to seek the covering approval of this Council to those write-offs approved by the Finance Committee during the last financial year and which are listed in the Schedule.

There are four items, Sir, which deserve some explanation.

The first is for a sum of $26,080 advanced as compensation to tenants of numbers 19 to 21 Argyle Street. These buildings were declared dangerous by the Building Authority in May 1968 and were ordered to be demolished. In June 1968, after the tenants had vacated the buildings, the owners appealed to the Building Ordinance Appeals Tribunal against the Building Authority's order. As a result, notices requiring the owner to carry out extensive repairs to both buildings were issued in substitution for the demolition notices.

However, it transpired that the 36 tenants who had received advances, totalling $26,080, had all spent the money in moving to new accommodation. The landlord was not a party to the transaction between Government and the tenants, and there were no grounds on which a claim could be made on him. Although it would have been

legally possible to recover the advances from the tenants, it was decided that it would not be practicable or indeed just to do so because their position was similar to that of tenants evacuated from a building which had actually been demolished.

The second item is for a sum of about $60,000 representing rentals collected by a former landowner in Tsuen Wan from tenants on the land after it had been re-entered by the Crown in October 1964 for breach of the lease conditions. The Governor in Council agreed in September 1965 to cancellation of re-entry subject to certain conditions, but the landlord was unable to fulfil the requirements within the prescribed time. Initially, and up to September 1968, no action was taken to secure the rentals for the Crown as it was not considered correct for Government to accept rentals for unlawfully erected structures which were in contravention of the lease conditions and the Building Ordinance. But the former landowner did so. Legal advice confirmed that these rentals were the property of the Crown and as a result the former landowner was requested to pay over the money collected, but he refused to do so. It was decided, however, not to take legal action against him so as not to give the impression that Government was replacing the former owner as a squatter landlord of insanitary and unlawfully constructed premises.

The third item is for a sum of $115,283.36 for arrears of rates due from residents of Tai Uk Wai, which is a building in Tsuen Wan constructed in 1956 by the Public Works Department for villagers of Kwan Uk Tei and Tai Lam villages previously on the site of the Tai Lam Chung reservoir.

The villagers moved from the site of the reservoir in 1956 but it was not possible to complete the final draft lease and Deed of Mutual Covenants until late 1965 because of difficulties encountered in the allocation of the units of the building and in the drafting of the lease itself. The villagers then objected to the standard covenant for the payments of rates and in June 1966 actually petitioned against payment of rates.

It was considered possible that there may have been some misunderstanding between the villagers and Government's representatives on the subject of rating during the negotiations which led to the villagers' removal from Tai Lam Chung, as these negotiations were still in progress up to the last moment before the villagers had to leave. The dispute about rates was also holding up the execution of the Crown lease to the villagers, and it was desirable for it to be executed as soon as possible to allow proper maintenance of the building and alienation of separate premises by the villagers.

In the circumstances it was decided to invite the Finance Committee, as part of a settlement of various points at issue at Tai Uk Wai, to

[THE ACTING FINANCIAL SECRETARY] **Schedule of Write-offs for the Financial Year 1969-70**

write-off a sum of $115,283.36 being the arrears of rates due for the period 1st October 1961, (when the premises were assessed to rates) to 31st May 1969.

The last item is for a sum of $511,273.22 being the balance of the outstanding building loan and interest due from the Victoria Cooperative Building Society Limited. Honourable Members will recall that the Society's property at "Victoria Heights" was extensively damaged by a landslide during the June 1966 floods resulting in a tragic loss of life and considerable damage to the property. In October 1966 the Society indicated to Government that they did not wish, in view of the disaster, to move back into the building and asked for assistance in meeting their outstanding financial obligations to Government, and to the contractor who carried out certain works immediately after the landslide to stabilize the building.

In November 1966 the Finance Committee approved the issue of interest free loans to individual members of the Society for the purpose of meeting each individual's share of the debt owed to the Society's contractors.

In April 1967 the Finance Committee agreed that the Society should make a surrender of the property, free of all encumbrances, to Government which would then attempt to dispose of it by public sale. The terms of sale were made as attractive as possible by widening the user restriction to include institutional as well as private residential purposes. Certain deductions were to be made from the sale proceeds before anything was payable to the Society and these deductions were to be in the following order of priority: firstly, the administrative cost of the sale; secondly, the cost of any essential works carried out by Government to ensure the continued stability of the building; third, repayment of the interest free loan offered to cover the cost of the remedial work which the Society arranged through its architect; fourth, repayment of the Society's outstanding building loan from Government, together with interest; and, lastly, the payment of the difference between the premium paid by the Society for the land and the full market value at the time.

The Society accepted these terms and the property was sold by tender in February 1969 for $1,126,600. This sum covered the first three priority claims and about half of the Society's outstanding building loan, including interest. In April 1969, and this was the last chapter, the Finance Committee agreed that the balance of $511,273.22 should be written off.

Question put and agreed to.

IMPORTATION AND EXPORTATION ORDINANCE

MR T. D. SORBY moved the following motion: —

> Resolved, pursuant to section 14 of the Importation and Exportation Ordinance, that the Importation and Exportation (Registration of Imports and Exports) (Amendment) Regulations 1970, made by the Governor in Council on the 3rd day of March 1970 under section 14 of that Ordinance, be approved.

He said: —Your Excellency, the Importation and Exportation (Registration of Imports and Exports) (Amendment) Regulations were made by the Governor in Council in March 1970, and published for general information in the *Gazette* of 3rd April, with an intimation that they would be submitted for approval by this honourable Council today.

I have already spoken on the need for these provisions when I moved the second reading of the Importation and Exportation (Amendment) Bill in this Council on the 28th of January.

The regulations are primarily concerned with extension of the statutory time limit for lodgment of trade declarations from the present 96 hours to fourteen days, and with the imposition of an on-the-spot money penalty, ranging from $5 to $100, for declarations not submitted within this period. It is the latter that requires the approval of this Council under the Importation and Exportation Ordinance.

At present, failure to lodge a declaration on time puts an offender at risk of prosecution. If honourable Members approve this resolution, as from next Friday, the fifth of June, the time limit for lodgment will become fourteen days and money penalties will be automatically payable for failure to lodge. The combined effect of these two changes should assist my department and the Census and Statistics Department in the task of compiling accurate trade statistics.

These changes were in fact welcomed by merchants and manufacturers when, at the time of introducing the enabling legislation, I made known my intent to move this resolution. Certainly, the much more generous time limit for lodgment of declarations should make it possible for all to comply with the law, other than in exceptional circumstances. And in these cases, I have been empowered to waive or refund payment of the prescribed penalty.

Question put and agreed to.

First reading

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) BILL 1970

MARRIAGE REFORM BILL 1970

EXCHANGE FUND (AMENDMENT) BILL 1970

Bills read the first time and ordered to be set down for second reading pursuant to Standing Order No 41(3).

Second reading

RENT INCREASES (DOMESTIC PREMISES) CONTROL BILL 1970

Resumption of debate on second reading (20th May 1970)

Question again proposed.

MR P. C. WOO: —Sir, the bill under consideration is to make provision for the temporary control of increases in rent of domestic premises and for the security of tenure of these premises. That is to give 2 years' security of tenure to tenants of post-war domestic premises, the rateable value of which is less than $15,000 per year.

Immediately after the Second World War in 1945 a system of rent control was imposed on pre-war premises, the ultimate effect of which seemingly was not thought of at that time and it could hardly be foreseen that rent control of these premises will have a more or less permanent feature in Hong Kong. In effect these premises have been under control for quarter of a century.

The time is long overdue, in my opinion, for the Government to give serious thought to relaxing pre-war premises from the present strict control and allow landlords to receive a realistic return of rent for this type of premises. I do not advocate an immediate decontrol but I do hold the view that decontrol should be made in progressive stages.

However, I am not disputing the present proposal before this Council. Indeed, I do think the bill is necessary in present circumstances. I also agree that premises of over $15,000 annual rateable value should not be protected. After all, the intention of this bill is

to help the less affluent section of the community, that is, tenants who are unable to pay abnormal increases of rent because of their comparatively low earnings.

With regard to the provisions of the bill I have the following observations to make.

Subclause (6) of clause 4 provides that "Where the Commissioner issues a certificate under subsection (5), he shall not issue another certificate under subsection (5) in respect of the same domestic tenement during the continuance in force of this Ordinance". It is not clear whether the second certificate refers to a certificate of a different rateable value or merely a duplicate.

Subclause (2)(*a*) of clause 7 permits a notice to quit to be served on the tenant if in such a notice the landlord specifies “that he requires possession for use as a dwelling by himself, his mother, his father, or any son or daughter of his over the age of eighteen years”. However, I think it would be clearer if after the word "himself" the words "his spouse" be added. There are cases where the landlord is not resident in Hong Kong yet his spouse is, and therefore it is necessary, I think, to allow him to obtain the premises for his spouse.

Subclause (5) of clause 14 provides "For the purposes of this section rent shall be deemed to have been increased if the tenant has made any payments to the landlord other than the regular payments of rent, and such additional payments have been made as a condition of the right to the occupation of the premises". What this clause intends, I think, is to provide for premium or key money paid by the tenant; yet this proviso as drafted could also cover cases where an increase of a very small amount of maintenance charges sometimes of $10 to $20 per month would come within the purview of this subclause. I hope clarification will be made with regard to this.

Finally, the protection of 2 years afforded to the tenant may in certain circumstances, when the premises are free of control, change the standard of such premises. What I mean is that if during the controlled period of 2 years the tenant has subdivided and let the premises to a number of subtenants it would thereby lower the standard of the premises. I think it would be advisable to permit the landlord to recover possession if without his written consent the tenant has subdivided and let the premises after the commencement of the Ordinance. We can find an example in section 24 of the Landlord and Tenant Ordinance (Cap 255). If a similar provision were included in this Ordinance the standard of the premises would be preserved.

Sir, with these observations I support the motion.

Rent Increases (Domestic Premises) Control Bill—resumption of debate on second reading (20.5.70)

MR SZETO: —Sir, since its publication the bill appeared to have been fairly well received by the public though it has also been adversely commented on and branded as a "Landlord's Bill" and described as being slapdash and impractical. Understandably, its opposition stems mainly from tenants of premises which are outside the scope of its application, namely people living in the better class of accommodation as well as the shopkeepers and industrialists.

The bill affords protection to most of the tenancies in existing post-war buildings under private ownership and has my support, though it is my opinion that all domestic tenancies should be given the same sense of security as was effected by the 1963 legislation notwithstanding the somewhat different circumstances. Although the number of domestic tenancies to be excluded from the application of the bill is insignificant—less than 1% of all private tenancies, about 1,400, to my mind it is quite wrong to say that these tenants can be left to protect themselves. It can be assumed that many of these will be faced with the alarming situation of having to meet unreasonable and even extortionate demands of rent increases or to face eviction. Whilst I agree with what the honourable Colonial Secretary has said that not all landlords are rapacious or that all tenants have halos, cases of threats of 100% rent increases have been brought to the attention of the UMELCO Office since the bill was published and before the Security of Tenure Ordinance was enacted. It is acknowledged that the rents of some of the more expensive flats had been artificially depressed in 1967-68 and should therefore be justly and equitably adjusted in conjunction with the current supply and demand of this category of accommodation, but any legislation aiming at the protection of one section of the community while leaving another section, no matter how small, entirely unprotected will give rise to anamolies and inequities. A strange situation will be created in which tenants of better accommodation, while paying higher rates, find themselves exposed not only to the free-play of market forces, but may also subject themselves helplessly to the extortionate demands of unscruplous landlords—a species which, we must agree, does exist. In the circumstances, an equitable solution would be to bring these tenants under the periphery of the vast umbrella of protection of the bill and afford them a sense of security by prescribing differentials in the permissible rent increases. A higher percentage of increase for this class of premises would give the landlords a reasonable, even attractive, return and would still not inhibit future development. It must be emphasized that many of these properties have already had their rents increased in the latter part of 1969 and the circumstances to-day are therefore not entirely similar to those prevailing in 1967-68.

It is appreciated that to have different permissible percentage increases covering the whole range of private domestic premises would be a complex operation, but the task would be greatly reduced if a higher percentage increase is applied only to those properties with rateable values above the prescribed cut-off point as only some 1,400 units are involved, many of which have similar planning and they should not present an unsurmountable task. Alternatively, legislation could provide for the fair and reasonable assessment of the rents of these premises and the Commissioner may be assisted in this task by officers of the Buildings Ordinance Office who possess expert knowledge and records of the planning, areas, amenities, provisions, geographical locations and even building costs of all post-war domestic premises of this category. And finally there is the advice of the Rent Increases Advisory Panel provided in the bill or a Rent Tribunal could be instituted. Admittedly, this process will require a little time, but the fair and reasonable rents, once assessed and certified, can be treated with retrospection.

Sir, with these views I support the bill before Council.

MR WILFRED S. B. WONG: —Sir, the Rent Increases (Domestic Premises) Control Bill implements both the principle of supply and demand and the security of tenure.

There is a common tendency to contend that the principle of the free play of the forces of supply and demand should at all times apply to the price of any commodity or accommodation. Suffice it to say that there is a difference between essential commodities such as foodstuff or housing, which are essential to living, and luxury items which are not essentials of life. We need only to read a little of economic history to note the importance of rent in the economic development of any country and, indeed, the political repurcussions of uncontrolled spiralling rents.

The security of tenure given by "The Security of Tenure (Domestic Premises)" Bill 1970 holds a sharp and unhealthy upsurge which tends to upset the economic stability which Hong Kong has enjoyed for a long time. This bill prolongs the protection for another two years.

While the landlords of Hong Kong are on the whole responsible and reasonable, a few would charge whatever "the traffic can bear" and use every means to increase rents with a policy of "either pay up or get out". The present bill rationalizes the increase on postwar premises and, considering that three years have elapsed since the decontrol of the last legislation, a fifteen percent increase must be considered reasonable for existing premises. It must be remembered that new premises are entirely exempt from the bill.

[MR WONG] **Rent Increases (Domestic Premises) Control Bill—resumption of debate on second reading (20.5.70)**

For premises for which landlords have not increased their rents during the past few years, fifteen percent is not too much in the light of rising cost of replacements. Such a step would keep alive the incentive for the developers who would eventually equate supply with demand.

I support this bill.

DR CHUNG: —Your Excellency, I rise to associate myself with my unofficial colleagues who spoke earlier in support of the Rent Increases (Domestic Premises) Control Bill. I have only one comment to make and it concerns industrial premises.

The honourable Colonial Secretary, in moving the second reading of the bill, explained the reasons why Government did not propose to control increases in industrial rents. It was stated that, firstly, almost 9 million square feet of new factory space would be available for occupation during this year and therefore should bring about an easing of the situation and, secondly, that Government should not favour one group of entrepreneurs at the expense of others. I take his points.

However, there are certain important aspects relating to industrial premises which are not commonly known, particularly to people outside industry. Many factories, because of the nature of their operations, have to invest very heavily on plant fixtures, which at times cost as much as the plant machinery. These plant fixtures, such as, among others, electric wiring, installations for compressed air, gas and steam, arrangements for exhaust, fume and waste, and machine foundations, are not easily moved. If they are moved, it would result in high wastage of material as well as cause much loss of time and consequently of production. People operating such factories would be most susceptible to the excessive demands of greedy landlords.

Recently, the Federation of Hong Kong Industries, assisted by the Commerce and Industry Department, conducted a survey of some major industrial districts to obtain information for an assessment of the rental situation. The survey covered a total of 493 rented industrial premises, and provided quite a large amount of information.

Briefly, around 36% of the factories in the survey had their rents increased by an average rate of about 36% during the period between January 1969 and January 1970. The highest rates of increase were 252% increase asked of a factory in Kwun Tong, 177% imposed on a factory in Tsuen Wan and 146% forced on one in San Po Kong.

The Chinese Manufacturers' Association of Hong Kong also carried out a survey of rents among 194 rented industrial premises in April this year. This survey showed that rents were increased by an average rate of 33% in about 55% of the premises surveyed during 1969-70, and that the highest increases were 257% for a factory in Kwun Tong, 150 % for another factory in Tsuen Wan and 172% for a third one in San Po Kong. It will be seen that the results of the two independent surveys show a close correlation.

One very significant but perturbing fact shown by the survey is the large increase in the ratios taken between the highest and the average absolute rentals for the respective months of January 1964 and January 1970, in five of the major industrial areas, as shown in the following table before honourable Members:

	January 1964			*January 1970*		
	Highest	*Average*	*Ratio*	*Highest*	*Average*	*Ratio*
Hung Hom—To Kwa Wan ...	0.60	0.55	1.09	1.07	0.62	1.73
Tai Kok Tsui—Mong Kok ...	0.75	0.56	1.34	1.19	0.67	1.78
Cheung Sha Wan—Lai Chi Kok	0.86	0.59	1.46	1.05	0.59	1.78
Kwun Tong	0.49	0.44	1.11	1.06	0.48	2.21
San Po Kong	0.49	0.44	1.11	1.20	0.62	1.94

These rentals are for upper floors and expressed in dollars per square foot usable area inclusive of rates. The two worst industrial districts are San Po Kong and Kwun Tong. In both these districts, the highest rental in January 1964 was 49¢ , the average rental 44¢ and the ratio of the highest to the average was 1.11. In January this year, the highest rental in Kwun Tong had gone up significantly to $1.06 whereas the average rental only gone up slightly to 48¢ , but the ratio of the highest to the average rental has increased to as much as 2.21. In the San Po Kong area, the highest rental in January 1970 was as high as $1.20, almost 2½ times the highest of January 1964 as compared to the average rental of 62¢ .

Honourable Members will therefore see that although the average absolute rentals did not increase significantly during the six-year period from January 1964 to January 1970, the much widened gaps between the highest and the average absolute rentals clearly indicate the existence of certain rapacious landlords who have succeeded in forcing up rentals to abnormal proportions. At present, these factory operators are at the mercy of their landlords and have either to accept the excessive rental or to move out at very heavy cost.

The Federation of Hong Kong Industries, after careful consideration of the situation, makes a proposal, which I fully endorse, that "fair rent tribunals" should be set up by Government, so that aggrieved tenants in industrial premises can submit their disputes for impartial arbitration. This would preserve our policy of free enterprise on the

one hand, and prevent the unscrupulous tactics of rapacious landlords on the other. The scope of the tribunals can of course be extended to cover domestic premises with rateable value more than $15,000 a year and all commercial premises if required. The concept of fair rent tribunal is not a new one and has been mentioned recently in both Chinese and English press. I believe it is a good compromise and therefore hope that Government will give this proposal the serious consideration that it deserves.

MR K. A. WATSON: —Sir, we are today considering a bill which, by its very nature, cannot expect to command universal support. No one enjoys having his rights restricted, and no one enjoys having his rent increased, even if that increase is judged to be "fair and reasonable".

However, the success of the present compromise (and a compromise is all we can hope for in a bill of this sort) may be measured by the large degree of acceptance it appears to have received from the public. The main criticisms arise out of ambiguities about what is intended, and doubts about how the bill will operate in practice.

There will undoubtedly be many cases in which the present legislation will appear to be inadequate. A person at the end of a three year lease may feel that, in these hard times, he too should be protected, even though his lease was freely negotiated on the understanding that at the end of the period he would have no further rights to the premises. A landlord may be able to get a fair rent from his protected tenant, but he may have a genuine need to sell the flat, because he must have the money to pay a debt, or because he wants to emigrate, and the inability to give vacant possession will reduce what he would otherwise have been able to get. And, of course, the exclusion from protection of tenants of flats with a rateable value of $15,000 a year or more will expose many people to the type of excessive profiteering this bill is designed to prevent as my honourable Friend Mr SZETO has already pointed out. The argument that there are not many of them, that most of them have their rents paid by big firms who can afford to pay “unreasonable” increases, is cold comfort to the struggling individual who has no such resources.

When one considers the disruptions suffered by the property market in the past five years, the bank failures, the tightening up of credit, the disturbances, and the marked slowing down of building in 1968 and 1969, it is remarkable that our present dislocations are not more widespread. This has been due, I think, to two factors; first, that throughout

this period public housing has continued to be supplied in large quantities, and secondly to the greatly increased number of flats which are in the course of being purchased by instalments, instead of merely being rented. In 1969 the Hong Kong Building & Loan Agency advanced over $32 million to borrowers, and many banks have also lent large sums for this purpose. In addition many developers have made medium and low cost housing available for sale with reasonable repayment rates.

The combination of low rents in public housing, and the increasing number of people buying their flats at agreed repayment terms, has made the overall problem much less serious than it might otherwise have been. For those who are renting, this bill should go a long way to ensure that they will not be victimized by unreasonably high rent increase profiteering. For those outside its protection, we must hope that the high rents demanded will be self-correcting, that they will encourage others to build as quickly as possible until a balance between supply and demand is reached, and rents are no longer inflated by shortages.

Controls will not, by themselves, solve our problems. The only effective cure is an elimination of the shortages by a greatly increased supply. The main region affected is that of large flats, and the reasons for the shortages are obvious. During the five years from 1960 to 1964, the average number of large flats built was 495 per year. In 1968 this figure dropped when 301 such flats were built, and in 1969 there were only 55 such flats completed. In terms of numbers, a thousand more large flats could change the picture overnight. And although we cannot expect these to appear immediately, we are anticipating over 17,000 flats and tenements of all sizes to be completed by private enterprise during the current year.

The bill we are now considering is unlikely to have serious deterrent effect on the supply of new accommodation. The developers will be able to negotiate new rents without restrictions, and will be allowed fair and reasonable increases in future years. If, however, it does have some dampening effect in preventing a huge, unthinking rush to build in the hopes of excessively high profits, leading to supply far exceeding demand, as it did five years ago, this might not be a bad thing. Let us get rid of the present shortages, but after that what is required is a slower, steadier pace, with supply keeping more or less in step with demand.

Many people feel that the swings from excess to shortage, which we have suffered from in the past, should be modified by having a somewhat more permanent type of legislation, one which would give private enterprise the encouragement and incentive necessary to maintain building, but which would control the excessive profiteering which few reputable developers would condone. This is by no means the

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first time rent controls have been imposed in Hong Kong. Fifty-five years ago in February 1915, the Legislative Council was debating the extension of the current Rent Controls. In 1938 there was the Prevention of Evictions Ordinance and in 1945, the Landlord and Tenants Proclamation No 15. The Landlord and Tenants Ordinance itself was introduced in 1947, and there was more legislation in 1952, in 1953 and in 1963. I have no doubt that at other times during the life of this Colony, measures of control have been introduced. Perhaps, therefore, the present form of temporary restriction is all that we need.

Many loopholes may show themselves when this bill is put into practice and I hope that my honourable Friend, the Colonial Secretary, will keep his promise to take swift action if it is shown that the purpose of this bill is being circumvented.

In spite of certain ambiguities, which I hope will be cleared in Committee, in spite of the fact that not all cases of hardship can be avoided, in spite of the fact that some landlords will think the bill has gone too far, and some tenants that it has not gone far enough, it is, I believe, a fair compromise and I am glad to support it.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, at the last meeting of this Council I explained at some length the reasons for which I had limited the scope of the Rent Increases (Domestic Premises) Control Bill 1970. In particular I explained why I did not seek to control increases in industrial or shop rents.

Five of my honourable Friends have commented again on certain of these reasons, and I will reply to them in a moment. First, however, I wish to refer to a number of minor amendments to the bill which I shall be proposing at the committee stage. These amendments arise partly from further consideration by the draftsman of various provisions of the bill and partly from the helpful and constructive comments of my honourable Friends, Mr P. C. WOO and others, who have commented since the bill was given its first reading and commented constructively. None of the amendments seek to change the intentions of the bill. They merely clarify the meaning and rectify omissions.

First I shall be proposing an amendment to clause 3 subclause (4). As the present wording stands, it is impossible for a landlord to give notice later than six months before the actual expiry of the legislation. Clearly, this is an oversight and the wording should be changed, so as to permit notice to be given not more than six months before the Ordinance expires.

I shall also be proposing an amendment to clause 3 subclause (5)(*c*) to remove the double negative to which exception has been taken in the press and elsewhere. The purpose of the reference to the holding legislation was, and remains, to ensure that tenancies or sub-tenancies which were protected by the holding legislation, and which were the subject of notices to quit which had not expired before 30th January 1970, are not excluded from the protection of the present bill unless the individual tenancy or sub-tenancy is above the cut-off point. This is merely clarification.

I agree with my honourable Friend, Mr Woo, that clause 4 subclause (6) requires clarification. I shall be proposing an amendment to allow the Commissioner to issue a copy of a lost certificate stating the rateable value of the premises in question.

As I mentioned at the last meeting of this Council, I shall be proposing an amendment to clauses 11 and 12 to give the District Court and the Commissioner on a review the power to award an increase in rent, where a landlord appeals against a refusal to award an increase.

I shall also be proposing an amendment to clauses 14 and 15 to ensure that the period of 12 months, which must elapse between two increases in the rent of tenancies governed by this Ordinance, begins either on the date of the last increase in rent or the date of the commencement of the tenancy, whichever is the later.

Turning now to points raised in the various speeches which we have heard this afternoon, I refer, first, to the suggestion that a landlord should be enabled to recover premises required for use as a dwelling by his wife; I think the word spouse is used—it's an ugly word. (*Laughter*). Here I still feel that we should follow the 1963 legislation, which in turn reflected the precedent of similar legislation in many, indeed most, other parts of the world, and avoid reference to a "wife" or “spouse”. Quite apart from difficulties of definition, I am not convinced that we should, as a matter of policy, give legal recognition to the requirements of a husband and wife who wish to occupy separate premises. I would also suggest, to meet an individual point made by my honourable Friend, Mr Woo, that in the case of a temporary absence from Hong Kong of a landlord this should not preclude the landlord recovering possession for his family, including his wife, subject of course to the greater hardship rule which the courts would decide, or perhaps I should say on which the courts would rule.

My honourable Friend, Mr Woo, has also asked me to clarify whether a maintenance charge comes within the purview of clause 14 subclause (5). This clause follows exactly a similar clause 14(3) of the 1963 legislation and was intended to cover key money. I agree that it

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could also be said to cover an increase in maintenance charges. Thus, if a landlord has already increased rent merely by way of an increased maintenance charge, then I am afraid he will have to wait 12 months before obtaining a further increase in rent. However, I would be opposed to amending the definition of "rent" in the bill to meet this point, since I am advised that not only would it greatly complicate the legislation but, very much more important, it would give almost unlimited scope for abuse.

My same honourable Friend has also asked whether a landlord can recover possession if a tenant has, without the consent of the landlord, subdivided and sublet the premises after the commencement of the Ordinance. Assuming this action constitutes a breach of the conditions of the tenancy, my honourable Friend's point is covered by clause 7 subclause (1)(*b*) of the bill.

My honourable Friend, Mr SZETO Wai, has argued strongly against the exclusion of tenancies with an annual rateable value of $15,000 a year or more. I can only say in reply that before deciding on a cut-off point at all, and before choosing a rateable value of $15,000 as that point, we considered most carefully the many arguments for and against this approach. As I have said, the Government is satisfied that the real solution to rent increases is the provision of more domestic accommodation and this in turn depends upon the private developer, particularly so far as the better class of property is concerned. It is therefore essential that Government's intervention in controlling rent increases should be limited as far as is possible in scope, as it will be in duration. The Governor in Council is satisfied that the proposed cut-oft point of $15,000 annual rateable value is necessary and that it will ensure that control is confined to those tenants who are most in need of protection.

I would add that the honourable Mr SZETO Wai's idea of differential levels of permissible rent increases is most attractive and has been very closely examined. However I am satisfied that, though it might have been suitable in the past, and may well be suitable in future circumstances, is not workable in the circumstances with which we are dealing at the moment. The fact is that the incidence of rent agreements and rent increases has been so uneven both in amount and in location that no average permissible increase can be found for the different categories of property. We have therefore unwillingly had to propose that the Commissioner of Rating and Valuation and his staff, and perhaps subsequently the courts, will have to consider each application

for an increase on its own merits. This, of course, does meet Mr SZETO Wai's point but makes a great deal of work for the officials concerned.

I would take this opportunity of repeating what I have said before about the 15% permissible increase which determines whether or not the tenant, as well as the landlord, can ask for a review or appeal against a rent increase certificate. 15% is not, repeat not, to be regarded as the "norm" for rent increases. Individual increases could well be less or more than this figure, or might not be permitted at all. Landlords and tenants alike should not be misled by persistent and misleading comments on the new legislation, which imply that 15% is the normal rent increase in the 1970 bill just because 10% came to be so regarded in 1963. I would urge tenants in particular not to be misled by suggestions from landlords, or from their friends, or from the press that they agree to a 15% increase because it is what the Rating and Valuation Department will award in any case. The right course of action, when tenants are unable to reach agreement on a rent increase, is to insist that landlords apply for the official rent increase certificate.

Turning now to the able and constructive speech by my honourable Friend, Dr S. Y. CHUNG, I must say that I am grateful to Dr CHUNG for summarizing so clearly other available evidence to support my own conclusion that average rentals for industrial premises have not increased significantly between 1964 and 1970, although there have, as he rightly says, been individual cases of apparently very large rental increases. It so chances that we have been able to identify and investigate one of the increases to which Dr S.Y. CHUNG referred and it is, I think, typical of a large number of such increases; that is to say, a factory owner already had a flat for a factory which he rented at a reasonable market rent. In 1966 his landlord was on his knees begging him to take over the two lower flats which he did at more or less a nominal rental. The resulting increase on those two flatted factories is, of course, extraordinary when expressed in terms of percentage, but he is not paying any more for the two lower flats than he was previously paying for the upper flat. For these and other reasons, I would not myself attach undue importance to the extraordinary cases that are quoted, though the Commissioner of Rating and Valuation on my behalf will be delighted to investigate any that are brought to his notice. The bulk of the high rent increases uncovered in the joint Federation/Commerce and Industry Department survey appear to have been based on a very low or even nominal initial rent negotiated at the bottom of the flatted factory market. In 1967 average flatted factory rents were down to 24 cents per square foot in Tsuen Wan and 35 cents per square foot in Kwun Tong and Aberdeen. The current rents now being paid by these factories are not out of line with the current market rates for the district where they are located.

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The same honourable Member referred also to the Federation's suggestion of fair rent tribunals. I did explain in my earlier speech that the Government is going to re-examine draft legislation to provide security of tenure for business premises paying a fair market rate and this undertaking I reiterate to the honourable Member. I shall be glad to have the Federation's suggestion looked at in this context, but I must stress what I said before—such legislation would be complex and the administrative arrangements to make it work would take time to put in hand. It would take time, too, to enact and if we did decide to go ahead it would certainly do nothing to assist tenants wishing to pay less than the proper market rent and I am sure my honourable Friend, whose views on this question I know well, would not desire any such outcome.

My honourable Friend Mr WATSON has made what I regard as a valuable contribution to this debate and for once I think I can agree with almost everything my honourable Friend has said. (*Laughter*). He is absolutely right of course in saying that the bill is a compromise and he is also right in saying that, or implying that, it is to an extent empirical. We shall, as we go along, discover loopholes. I can only assure him and other honourable Members that, as they are discovered, we will do our best to plug them.

Public comment made since I last spoke and the speeches which we have heard in this Chamber lead me, before I finish, to underline four important points which I think have perhaps escaped public notice:

First, no landlord can raise the rent of any tenancy protected by the legislation (except by agreement with the tenant) without first obtaining a certificate from the Rating and Valuation Department.

Second, persons whose tenancies are covered by the legislation are given security against rent increases for one year from the date of the last increase before the legislation became law and two years from the date of an increase agreed by the tenant or certified by the Rating and Valuation Department under the legislation.

Third, if a landlord wishes to evict a sitting tenant in order to secure the premises for his own use, then the tenant has a right to go to the Court which will determine whether the landlord or the tenant will suffer the greater hardship if the landlord's request is granted.

Fourth, tenants who are uncertain whether their tenancies have an annual rateable value of $15,000 or more and are thus excluded

from the protection of this legislation, should apply to the Rating and Valuation Department for information on their rateable values before yielding to any demand for increased rent or vacant possession.

Finally, anyone in doubt about the intentions of the legislation should consult the simple booklet which will be published in English and Chinese, or seek advice from the various Public Enquiry Counters, CDO, Tenancy Inquiry Bureaux, the Rating and Valuation Department or from District Offices in the New Territories.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

MULTI-STOREY BUILDINGS (OWNERS INCORPORATION) BILL 1970

THE ATTORNEY GENERAL (MR D. T. E. ROBERTS) moved the second reading of: —"A bill to facilitate the incorporation of owners of flats in multi-storey buildings, to provide for the management of such buildings and for matters incidental thereto or connected therewith."

He said: —Sir, the usual practice in Hong Kong, where separate premises in a multi-storey building are sold, is for each purchaser to buy an undivided share in the land on which the building is built, or is to be built, and to be given the right to exclusive possession of a particular part of the building, which, for simplicity's sake, I will refer to as a flat, though the same principles apply to premises used for any purpose whether they are residential or not. The buyer of the flat also becomes a tenant in common of the whole building, as do all other flat owners, and collectively they become subject to the general liabilities of property owners.

This system of co-ownership, however, particularly where buildings with large numbers of individual flat owners are concerned, has given rise to considerable difficulties in the management of those common parts of the building, which are not in the exclusive possession of any one owner, and in the exercise and the discharge of the liabilities which are common to all flat owners. The underlying cause of these difficulties has been the absence of a legal body which can act, or be required to act, on behalf of all the co-owners.

In some instances, a deed of mutual covenant, which is a document defining the rights of the various owners among themselves, provides for a system of management of the building which circumvents

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some of these problems, but even in these cases efficient management can be frustrated by a lack of co-operation by some of the owners, over whom no effective sanction exists.

The Government therefore decided that legislation should be prepared, to enable the owners of premises in multi-storey buildings to form themselves into a corporation, which would have power to deal on their behalf with matters of common interest to them as co-owners and in particular with the control and management of the common parts of the building. The bill before Council today is the third, and the most important, measure introduced this year to deal with the ackward problems which arise in relation to the legal position of parts of multi-storey buildings, the others being the Crown Rent and Premium (Apportionment) Ordinance and the Crown Rights (Re-entry and Vesting Remedies) Ordinance.

In May last year a draft bill, with the same short title as the one before Council today, was published in the *Gazette* and comments were invited from members of the public. In particular, the views of a number of prominent bodies were sought, among them the Urban Council, the Heung Yee Kuk, the Law Society, the Hong Kong branch of the Royal Institute of Chartered Surveyors and a number of property owners and property management companies and residents' associations. In addition, City District Officers distributed copies of the draft bill, an Explanatory Memorandum and a "Layman's Guide", in both English and Chinese, to building management associations, kaifongs and other groups and persons who had expressed an interest in the legislation.

Comments were received from many organizations and individuals and I should like to express the thanks of the Government to them for the careful consideration which they often gave to the draft and the useful suggestions which they put forward. While there was general agreement that legislation was essential to deal with the problems of multi-storey buildings, there was, understandably, a marked divergence of opinion as to what should be done. Some urged the Government to assume liability for the common interests of owners in all multi-storey buildings, whereas others argued that the law should leave no choice to owners but should oblige them to form themselves into a corporation in every case.

After giving full consideration to the various views which have been put forward, the Government remains of the opinion that, on balance, it is preferable to provide owners with machinery which they can operate if they so wish, rather than to impose it on them, a course which would inevitably oblige the Government also to establish an enforcement organization. I very much hope that, in practice,

owners will quickly see the advantage to themselves of the adoption of the provisions of this bill and will take the steps necessary to bring it into effect in relation to their buildings.

The bill provides for the establishment of a corporation to manage the affairs of a multi-storey building in two stages. Firstly, by virtue of clause 3 of the bill, a meeting of the owners of flats in the building may be convened by any person who is managing the building in accordance with the deed of mutual covenant, by anyone authorized to convene a meeting by the deed, or by the owners of not less than 5% of the shares in the building. Secondly, where a meeting is convened under clause 3, then a management committee may be appointed, in accordance with any provision in the deed of mutual covenant to that effect or by a resolution of a meeting of the owners of not less than half of the shares in the building.

Clause 4 provides an alternative method of appointing a management committee, in case that provided by clause 3 which I have mentioned is not effective. By clause 4, an application may be made by the owners of 20% or more of the shares, or by the Attorney General, to the District Court for an order that a meeting of owners be held for the purpose of appointing a management committee. The court will, if it makes such an order, direct one of the owners to convene a meeting to appoint a management committee. At this meeting, a majority of those owners who vote, personally or by proxy, is required to establish such a committee. It will be seen that jurisdiction to deal with matters arising under the bill has been conferred on the District Court, instead of on the Supreme Court, as was provided in the earlier bill.

I should perhaps say that it is not intended that the powers of the Attorney General to apply to the court should be freely used, since the bill is designed to provide machinery of a voluntary nature for flat owners and not to force them to form themselves into corporations. It is likely, therefore, that the Attorney General will exercise his power to apply to the court only in very exceptional circumstances, for instance, if the condition of the building is something of a public scandal, if efforts to use the other methods available in clauses 3 and 4 have failed and if a substantial number of the owners whose opinions can be ascertained favour the establishment of a corporation.

A management committee must, within 14 days of the appointment, under clause 3 or 4 apply to the Land Officer for the registration of the owners as a corporation. The Land Officer, if satisfied that the management committee has been properly established and that the information required by clause 7 of the bill has been supplied to him, will then issue a certificate of registration, the effect of which is to convert the owners of shares in the building into a body corporate

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capable of suing and being sued in its own name. Clause 8 of the bill provides for the meetings and procedure of a corporation to be governed by the Third Schedule to the bill.

In Part IV, which deals with the powers and duties of a corporation I would like to draw attention to clause 14, which ensures that the control of the management committee remains in the hands of the owners, since any resolution passed at a meeting of the corporation is binding on the management committee and all the owners and the owners can, by resolution at a meeting, remove any member of the management committee from office.

The position of tenants of flats has been commented upon by various organizations and individuals, and the Government is acutely aware of the very real and reasonable interests of tenants in the proper management of the buildings in which they live. However, the inescapable fact remains that because the financial burden of management must necessarily remain on the shoulders of the owners of the buildings, the decisions regarding such management can only be taken by them.

Nevertheless, it is felt that some method should be devised whereby the views of the tenants shall be heard by the management committee of the corporation. For this purpose, clause 15 has been inserted in the bill to enable an association of tenants or occupiers of a building, approved for this purpose by the Secretary for Home Affairs, to requisition a meeting of the management committee of the corporation not more than once in every 3 months and to appoint a "tenants' representative" to speak at such meetings on behalf of the tenants on matters concerning the management of the building. It will be open to associations of tenants which are already established to seek approval under this clause and so benefit from its provisions. Otherwise, however, the bill does not affect the status or activities of existing tenants' associations, many of which have played a valuable part in fostering a community spirit in large buildings and in helping to maintain them in an orderly and clean condition.

The effect of the incorporation of owners of a building is to make the corporation responsible in law for the liabilities of the individual owners in relation to the common parts of the building. To take a practical example, let us assume that the common staircase of a building needs to be repainted. The work will be ordered by the management committee, on behalf of the corporation, which will then become legally liable to pay for it. The corporation will defray the cost of repairs from a general fund, which it will establish for this purpose under clause 20. The fund will consist of contributions from the various

owners, who will pay the proportion provided for by the need of mutual covenant or, failing any provision in the deed to that effect, according to their respective shares in the building.

If an owner fails to pay his share of the expenses of the corporation, then he can be sued in the ordinary way for a debt owed to the corporation. Alternatively, by clause 19, the corporation can sell the owner's interest in the land or register a charge against it, if the deed of mutual covenant provides for sale or charge which is not an uncommon power in documents of this kind.

Clause 23 provides another method whereby a corporation can recover money due to it from an owner who is not occupying a flat in the building. In such a case, the corporation may call upon the occupier of the flat to deduct the amount due to it from any rent which he is liable to pay to the owner and hand it over instead to the corporation. However, the occupier cannot be required under this provision to pay to the corporation more than he would have been obliged to pay to the owner. Where the occupier does comply with such a notice, this will be regarded as amounting to the payment by him of this amount to his rent. It should also be noted that unpaid contributions to the corporation's funds can, by clause 24, be recovered by distraint under the Distress for Rent Ordinance.

Part V enables the owners present at a meeting of the corporation to dissolve a management committee and to appoint instead an administrator, who would then enjoy all the powers and duties of a management committee and of the chairman and secretary of the committee. This provision is inserted as a safeguard against the breakdown in the management of the building simply because the management committee is composed of busy owners, who cannot find sufficient time to deal properly with the problems which arise in the maintenance of a large building. Clause 31 also enables the Court, on application made by an owner, a registered mortgagee or by the Attorney General, to dissolve a management committee and appoint an administrator.

As I have indicated, the bill does not establish a compulsory statutory management scheme for multi-storey buildings. What it does do is to afford to owners of flats the opportunity to benefit from the establishment of a legal entity which can discharge on their behalf the various duties which they find it difficult to perform at present, because so little can be done without the concurrence and assistance of all co-owners. The establishment of such corporations will also make it easier for those departments which are concerned with public health and safety to enforce the law which is applicable to multi-storey buildings. If properly used, this bill should enable owners of flats to deal more effectively with the problems which arise in multi-storey buildings and so to improve the conditions under which they live.

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In order to help flat owners to understand this new legislation, the Secretary for Home Affairs is preparing a special pamphlet, Chinese and English versions of which should be available soon. Also, the Registrar General's officers, City District Officers and District Officers in the New Territories will be ready to give as much help and advice as they can.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Explanatory Memorandum

This Bill makes provision whereby owners of multi-storey buildings may have themselves registered as a corporation, and upon such incorporation the statutory management scheme provided for by this Bill will apply to their building.

2. Clauses 1 and 2 contain the short title and interpretation provisions respectively.

3. Clause 3 provides for the convening of a meeting of owners in accordance with the deed of mutual covenant or by the owners of not less than five *per cent* of the shares in the building (which is defined to include the land on which it is built) for the purpose of appointing a management committee. At this meeting a management committee may be appointed in accordance with the deed of mutual covenant or upon the resolution of the owners of a majority of the shares.

4. Clause 4 provides an alterative method of appointing a management committee. Under this provision an application may be made by the owners of at least 20% of the shares or by the Attorney General to the District Court for an order that a meeting of owners be held for the purpose of appointing a management committee. If the court makes such an order, the appointment of a management committee may be made by the resolution of the majority of votes of owners voting personally or by proxy at the meeting.

5. Clause 5 deals with notices of meetings convened under clause 3 or 4 and the voting rights of owners at such meetings.

By clause 6, the composition and procedure of management committee is to be governed by the Second Schedule.

6. A management committee which has been appointed under clause 3 or 4 shall apply to the Land Officer (who is so defined as to include, in the case of buildings situate in the New Territories, an Assistant Land Officer) for the registration of the owners as a corporation under this Bill (clause 7).

7. The Land Officer, if satisfied as to the statutory requirements, shall issue a certificate of registration, whereupon the owners become a body corporate and the management committee appointed under clause 3 or 4 is deemed to be the first management committee of the corporation. Clause 8 further provides that the Third Schedule shall have effect with respect to the meetings and procedure of a corporation.

8. The Land Officer may refuse to register a corporation under a name which he considers undesirable (clause 9). The change of name of a corporation, and the consequences arising from such change, are dealt with in clause 10.

9. A management committee is required to display a copy of the corporation's certificate of registration and a notice stating the situation of the registered office at each entrance to the building and outside the registered office (clause 11).

10. Clause 12 requires the Land Officer to maintain a register containing particulars in respect of each corporation, which register will be open to public inspection. A certificate of registration issued by the Land Officer upon the incorporation of owners is conclusive evidence thereof (clause 13).

11. At a meeting of a corporation any resolution may be passed with respect to the control, management and administration of the common parts of the building, which resolution shall be binding upon all the owners and the management committee (clause 14).

12. Clause 15 provides that an approved association (which is defined in subclause (4)) may resolve to requisition not more than one meeting of the management committee in any period of three months. The approved association must appoint one person as the tenants' representative and that person is entitled to be heard by the management committee on matters concerning the management of the building.

13. By clause 16 all the rights and duties of the owners in relation to the common parts of the building are to be exercised by or enforced against the corporation and accordingly any

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[*Explanatory Memorandum*]

matters relating to the common parts may be dealt with by the corporation.

14. Clause 17 provides that execution to enforce judgments or orders against a corporation may be levied upon the corporation's property or, with leave of the court, against any owner. Clause 18 specifies the duties and powers of a corporation.

15. Clause 19 provides that where a deed of mutual covenant contains a provision whereby an owner's interest in the land may be sold or charged in the event of that owner's default in payment of any sum due under that deed, the power to effect such sale or to register such charge shall be vested in the corporation.

16. Clause 20 requires a corporation lo establish a general fund for financing its functions under the deed of mutual covenant and this Bill, and for payment of any Crown rent etc. payable in respect of the building as a whole. This clause also authorizes the establishment of a contingency fund.

17. A management committee shall determine the amount to be contributed by the owners to the funds established under clause 20 for a period not exceeding twelve months, and the amount so determined may not be increased by the management committee except for the purpose of raising sufficient money to meet the cost of complying with an official notice or order. (clause 21).

18. Clause 22 provides that the amount determined under clause 21, shall subject to the deed of mutual covenant (if any), be payable by the owners according to their respective shares, and the management committee shall determine the dates upon which such amount shall be paid. This clause further provides that the amount payable by an owner under this clause shall be a debt due from him to the corporation.

19. If an owner is not occupying his flat and he fails to pay any amount due from him under clause 22, that sum may be recovered from the occupier of the owner's flat up to the amount of the rent due from him to the owner. Upon payment of any such sum the occupier may, unless he has made an agreement to the contrary with his immediate landlord, deduct the same from the rent due by him. If the occupier is not holding direct from the owner, any person who has received rent subject to a deduction under this clause may, in like manner as the occupier, deduct such sum as has been deducted from the rent paid to him

from the rent payable by him. Any deduction which has been made in accordance with this clause shall operate as a discharge, to the extent of the sum so deducted, of the liability for rent of the person making such deduction.

20. Unpaid contributions to the corporation's funds may be recovered by way of distraint under the Distress for Rent Ordinance (clause 24).

21. Clause 25 provides that where an owner has failed to pay an amount due under clause 22 and a registered mortgagee of that owner's flat pays such amount, he may recover the same from the owner as if it formed part of the principal sum due under the mortgage. A management committee is required by clause 26 to certify the amounts payable under clause 22 and the amount actually paid when requested to do so by an owner, mortgagee or occupier.

22. Clause 27 obliges a management committee to keep proper books of account and to prepare annual income and expenditure accounts and balance sheets to be laid before the corporation's annual general meeting. The books of account shall be available for inspection by owners and mortgagees at all reasonable times. By clause 28 any insurance policy effected by the corporation and the last premium receipt in respect thereof are to be produced by the management committee to any owner or mortgagee upon his written request.

23. Clause 29 provides that the powers and the functions of the corporation shall be discharged by the management committee. The owners may resolve to dissolve the management committee if an administrator, who under clause 32 has all the powers of the management committee, is appointed at the same time (clause 30).

24. Clause 31 provides for the appointment of an administrator or a new administrator by the District Court upon application made to it by an owner, a registered mortgagee, an administrator or the Attorney General.

25. By clause 33 a corporation may be wound up under the Companies Ordinance as if it were an unregistered company, and clause 34 provides that, upon such winding up, the owners will be liable to contribute according to their respective shares to the assets of the corporation up to an amount sufficient to pay all the liabilities of the corporation.

26. Clause 35 prohibits the use of the words “Incorporated Owners” or its Chinese equivalent by any person not being a corporation registered under this Bill, and clause 36 provides

Multi-storey Buildings (owners Incorporation) Bill—second reading

[*Explanatory Memorandum*]

penalties for giving false statements or information in connexion with certain matters.

27. Resolutions passed at meetings shall not be invalid by reason only of an accidental omission to give notice to any particular person (clause 37). The secretary of a management committee must keep a register containing the names and addresses of owners and mortgagees. This register will be open to inspection only by such owners and mortgagees (clause 38).

28. An owner's share shall be determined according to the provisions, if any, of an instrument registered in the Land Office, or if there are no such provisions, then according to such owner's proportionate share in the building (clause 39).

29. Clause 40 provides for the management committee's power of entry into and inspection of flats in the building for the purpose of maintaining etc. the common parts and for other purposes connected with the interests of the owners as a whole.

30. Clause 41 empowers the Governor in Council to make regulations and clause 42 gives the Governor power to amend the Second and Third Schedules, by order published in the *Gazette*.

31. Clause 43 makes it clear that the Bill does not interfere with an owner's normal right to deal with his share in the building.

32. The First Schedule specifies those parts of a building which, subject to the deed of mutual covenant, form the common parts. This Schedule is not necessarily comprehensive but is intended to list those parts of a building usually regarded as common parts.

33. The Second Schedule contains provisions as to the composition and procedure of management committees, and the Third Schedule provides for the meetings and procedure of corporations.

MARRIAGE REFORM BILL 1970

THE SECRETARY FOR HOME AFFAIRS (MR D. R. HOLMES) moved the second reading of: —"A bill to make provision with regard to customary marriages, concubinage, modern marriages and the dissolution of marriages, to repeal the Chinese Marriage Preservation Ordinance and for connected purposes."

He said: —Sir, I do not propose, Sir, to describe at length the provisions of this bill. They are fully set out in the Explanatory Memorandum and they have been the object of prolonged and repeated publicity. Indeed the problems with which the bill seeks to deal have for many years been widely discussed and have formed the subject of numerous White Papers and Committee reports. So much so that, according to our honourable colleague, Mrs Ellen LI, the tempo of advance towards legislation in this field has been so slow that the process has been as it were perceptibly punctuated, and delayed, by the successive retirements of Secretaries for Chinese Affairs, and indeed of Governors, she has said, Sir.

I claim no credit for playing a part in breaking this melancholy progression. If we had been dealing with a static situation, however complicated, there would have been no excuse for not legislating years ago. However the situation has not been static: public attitudes and preferences and practices have been undergoing changes and as a result of this we were able to conclude last year (and the conclusion would not have been legitimate before then) that the principal and central provision of the bill could be much simpler, and in my view much more satisfactory, than had previously been thought to be possible.

This central provision is to the effect that once the Ordinance comes fully into force, that is to say on and after the day to be appointed by Your Excellency under section 3, there shall be only one legal form of marriage in Hong Kong, namely the form prescribed by the Marriage Ordinance, that all who marry in Hong Kong will do so in accordance with this form, and that all marriages will be monogamous.

Once it proved possible to simplify in this way the main provision of the Ordinance, all the connected matters fell into place more or less as transitional provisions.

Chinese customary marriages, which have always had legal validity and which will continue to have such validity if entered into before the Appointed Day, are not affected except that provision is proposed for the voluntary registration of such marriages for the convenience of those who may need ready documentary proof.

Chinese modern marriages, or open marriages, which at one time were very popular but which technically have no legal validity at all, will be validated if the bill is passed, and again registration facilities will be provided for those who need them. I would stress, however, that their validation in no way depends upon their being registered.

In relation to these two variant forms of marriage, that is to say customary marriages and open marriages, certain special divorce provisions are proposed. These apply only to these two forms of marriage

and the ordinary divorce law of the Colony will continue to apply to other forms of marriage. The point here is that these two forms of marriage were traditionally entered into on the understanding that divorce by mutual consent would be open to the parties, and it is therefore thought proper to preserve in the bill, for these two types of marriage only, the right to a divorce of this kind. In relation to open marriages it is provided also that the parties may have recourse in addition to the provisions of the Matrimonial Causes Ordinance, that is to say they may seek a divorce in the Courts in the ordinary way. This is not extended to customary marriages because these are potentially polygamous and the provisions of the Matrimonial Causes Ordinance could not be applied, without considerable and complicated modification, to marriages of this type.

I think I need say no more, Sir, about these two variant forms of marriage except to repeat that after the Appointed Day it will not be legally possible to contract new marriages of either type, so that as time goes on fewer and fewer such marriages will exist and in due course the provisions I have described will become entirely spent.

Returning now to the principal provision of this bill, I think Members may wish to be assured that facilities for Registry marriages will be expanded to deal with any increase in volume that may result if this legislation is enacted. The Registrar General has drawn up plans for the expansion which he thinks will be needed in the immediate future. I am informed that the additional recurrent expenditure proposed is of the order of $300,000 a year and that a further $150,000 may have to be spent on minor capital works. Full details will be placed before the Finance Committee shortly. One customary practice which, although it may be declining in importance is by no means falling into disuse, is the selection of an auspicious day for a marriage. Naturally the selected day sometimes falls on a Sunday and, quite apart from the indications of the horoscopes, Sunday is often for practical reasons a convenient day for a marriage. In recognition of this the City Hall registry has already for five years been open on Sunday mornings for the performance of marriage ceremonies. Subject to suitable staffing arrangements being possible the Registrar General is planning to open the Kowloon Marriage Registry on Sunday mornings also for the same purpose.

Last, Sir, —and I should be tempted to say least were it not that this aspect of these matters is usually picked out for the headlines—I should refer to the institution of concubinage. In the past (and the position will remain the same until the Appointed Day) the husband in a customary marriage (but not in any other form of marriage) has been

free so far as the law is concerned to take a concubine, and limited recognition has been accorded by law to a woman who has assumed that status in accordance with the ceremonies and practices established by Chinese custom in the context of customary marriage. The bill before Council seeks to preserve the status and rights of existing concubines and their children, but as from the Appointed Day it will not be possible for any woman to enter into that state, so that in due course the institution will die out altogether. The question has been raised whether these rights should not be defined, whether the procedures necessary for the assumption of a concubine's status should not be embodied in the law, and even whether existing concubines should not be registered. In my judgment, Sir, since we have managed for 130 years without these definitions, and without any form of codification or registration, it would be quite incongruous to attempt to introduce them in the present bill, of which the main purpose in this connexion is to abolish the institution as soon as this can be done without causing distress or hardship.

Finally, Sir, with reference to the Appointed Day, I have been authorized to inform Council that it is Your Excellency's present intention, if this Ordinance is enacted, to appoint a day approximately one year after the Ordinance comes into force. I should add, Sir, that well before that day comes we hope to introduce legislation dealing with other connected matters of personal law, especially with intestate succession, in which connexion, as Members are aware, a draft bill has already been published in English and Chinese for public discussion and comment.

Question proposed.

Motion made (pursuant to Standing Order No 30). That the debate on the second reading of the bill be adjourned—THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER).

Question put and agreed to.

Explanatory Memorandum

The purpose of this Bill is to reform the law of marriage and dissolution of marriage with particular reference to customary marriages, concubinage, modern marriages and the dissolution of customary and modem marriages. Many of the provisions give effect to the McDouall-Heenan Report on Chinese Marriages in Hong Kong.

2. Clause 4 provides that after a day to be appointed by the Governor all marriages entered into in Hong Kong shall be monogamous in character and may be entered into only in accordance with the Marriage Ordinance. This provision is prospective

Marriage Reform Bill—second reading

[*Explanatory Memorandum*]

in effect and does not affect in any way the validity of marriages entered into before the day appointed by the Governor. Marriages entered into after the appointed day in Hong Kong will only be legally recognized as valid marriages if they are performed under the Marriage Ordinance.

3. Clause 5 provides that after the appointed day no person may acquire the status of a concubine, but the provision expressly saves the rights of concubines (and their children) lawfully taken before the appointed day.

4. Clause 6 puts an end to *kim tiu* (兼祧) marriage after the appointed day.

5. Clause 7 gives effect to a Recommendation of the McDouall-Heenan Report that customary marriages should be defined by reference to the traditional customs in that part of Hong Kong where the marriage took place or the customs of the place of origin of the family of either party. Clause 7(3) confirms the validity of customary marriage entered into before the appointed day by persons subject to Chinese law and custom.

6. Clause 8 validates modern marriages entered into before the appointed day. A modern marriage is defined for the purposes of the Ordinance as a marriage celebrated in Hong Kong before the appointed day by open ceremony as a modern marriage and in the presence of two witnesses.

7. Clauses 9 to 13 offer the facility of post-registration to parties to customary marriages and validated modern marriages entered into before the appointed day. It is not intended that registration of such marriages should be in any way compulsory. Application would be to the Registrar of Marriages normally by both parties to the marriage. Disputes may be resolved by one party applying to the District Court for a declaration as to the existence of a marriage.

8. Clause 14 declares to be valid any dissolution before the appointed day of a validated modern marriage by the mutual consent of the parties signified by the signature of both parties in the presence of two witnesses.

9. Clause 15 makes provision for the manner of dissolution of customary marriages and validated modern marriages after the appointed day. Both customary marriages and validated modern marriages may be dissolved by the mutual consent of the parties in accordance with the procedure in later clauses of the Bill.

Validated modem marriages may also be dissolved in accordance with the Matrimonial Causes Ordinance.

10. Clauses 16 to 20 contain the procedure whereby customary marriages and validated modern marriages subsisting on the appointed day may thereafter be dissolved by mutual consent. This procedure is based on that recommended in the McDouall-Heenan Report.

11. The first step is for notice of intention to dissolve the marriage to be given in the present manner by both parties to the marriage.

12. Clause 17 provides for the parties to the marriage to appear a month after giving notice before one of a number of public officers who are to be designated for the purpose by the Governor. The function of the designated public officer is to interview the parties and if they satisfy him that they understand the effect of dissolution of marriage and freely and voluntarily desire to dissolve the marriage, to sign a form to that effect and deliver it to the parties.

13. Upon delivery to them of the form signed by the designated public officer, the parties may in accordance with clause 19 sign in Hong Kong in the presence of each other and two witnesses an agreement for the dissolution of the marriage and such an agreement will take effect from the time of registration with the designated public officer.

14. Under clause 20 the parties are obliged to register an agreement dissolving a marriage with the designated officer and unless and until they do, any such agreement would be of no legal effect.

15. Clause 21 places the obligation of maintaining the register of marriages dissolved by consent under this Part of the Ordinance upon the Secretary for Home Affairs to whom returns must be made by designated public officers.

16. Clause 24 empowers the Governor to make procedural regulations.

17. Clause 25 repeals the Chinese Marriage Preservation Ordinance as recommended in the MeDouall-Heenan Report.

18. Clause 26(1) contains a number of related amendments to the Matrimonial Causes Ordinance. Jurisdiction is given to the court in respect of the matters contained in sections 3 to 7 of that Ordinance in cases where either of the parties had a substantial connexion with Hong Kong at the relevant time. The clause would also add a new section 7A to the Matrimonial Causes

Marriage Reform Bill—second reading

[*Explanatory Memorandum*]

Ordinance. This new section would confer jurisdiction on the court in respect of ancillary relief and the protection of children in the cases of validated modern marriages and customary marriages dissolved under Part V of this Bill as if the marriages had been dissolved by decree of the court except that no jurisdiction is given in respect of alimony payable to a former wife where there already exists an agreement in relation thereto contained in the agreement for dissolution of the marriage.

19. With effect from the appointed day, clause 26(2) repeals and replaces section 38 of the Marriage Ordinance in order to remove a minor consequential inconsistency. The new section will continue the present provision whereby parties to an existing customary marriage may, so long as their marriage is monogamous in fact, re-marry under the Marriage Ordinance.

EXCHANGE FUND (AMENDMENT) BILL 1970

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) moved the second reading of: —"A bill to amend the Exchange Fund Ordinance."

He said: —Sir, honourable Members will recall that, by clause 2 of the Exchange Fund (Amendment) (No 2) Bill 1968, it was proposed that the limit of the amount the Financial Secretary may borrow for the account of the Exchange Fund should be varied by resolution. In the event, this clause had to be deleted at the committee stage of the bill as the legal complications connected with the proposal had not been resolved. They have still not been, although I think it will be possible to introduce an appropriate amending bill into this Council after further consultations with the Secretary of State.

Meanwhile, it has become necessary to increase the Exchange Fund's borrowing powers as soon as possible so that any increase in the sterling assets of Hong Kong banks may be converted into official sterling assets and thereby brought within the scope of the United Kingdom sterling guarantee arrangement. I believe that the amount of actual cover sought by participating banks will shortly exceed the present limit on the Exchange Fund’s borrowing powers of $3,000 million (which is the equivalent of £ 206.25 million). This is because the sterling holdings of the banks are likely to rise over the next few months after remaining fairly steady at around £ 200 million during the past year, despite the very substantial increase in deposits of more than $2,000 million. The main reason for this was the bank's advances policy and the high rates prevailing in Europe and elsewhere on Euro-dollar deposits.

The purpose of the bill before honourable Members is to increase the limit of the Financial Secretary's borrowing powers for the account of the Exchange Fund from $3,000 million to $3,500 million (which is the equivalent of £ 240.625 million). This should be sufficient for the foreseeable future.

I should add that, by virtue of paragraph XXVI (3) of the Royal Instructions the Governor may not assent to this bill, if passed, unless previously authorized to do so by the Secretary of State. That authority has already been sought and obtained.

MR Q. W. LEE: —Sir, the bill before Council seeks to increase further the borrowing powers of the Financial Secretary for account of the Exchange Fund. Questions have every now and then been asked, by laymen of course why the Exchange Fund has to borrow. It is not inappropriate therefore that opportunity should be taken of the present amendment for a few words to be said again to satisfy the interest of the public. There are actually two main points. First, the Exchange Fund does not, strictly speaking, have to borrow, at least not initially. It merely accepts deposits in HK dollars, quite passively, from the commercial banks who wish to have their Sterling assets guaranteed. With these Hong Kong dollars so deposited in it, the Exchange Fund acquires Sterling for redeposit in its name in these banks. These Sterling funds thus, as explained just now by my honourable Friend the Financial Secretary, become the official reserves of Hong Kong which are qualified for cover under the Sterling Guarantee. This is a well thoughtout mechanism through which the Exchange Fund is able to extend the benefit of the UK Sterling Guarantee to the banks. Secondly why do the "borrowing powers" have again to be increased, now for the fourth time? Economic indicators point to the continued accumulation of money in Hong Kong as reflected in the increase of bank deposits. For the four months ending April this year, the increase was approximately HK$1,000 million. After having employed a portion of the increase of their deposits to finance commerce and industry, the banks, as required by the Banking Ordinance, have to maintain a minimum certain percentage of liquid assets. With the exception of non-authorized banks most of these liquid funds have necessarily to be invested in Sterling. Non-authorized banks may of course have their funds invested in non-Sterling currencies. But with the Euro Dollar interest rate now almost the same as that of Sterling, there could be some increase of bank reserves in Sterling. It is natural therefore that they would have to seek additional cover for their Sterling assets under the Sterling Guarantee arrangement, hence, the borrowing powers of the Financial Secretary for account of the Exchange Fund have to be appropriately increased.

[MR LEE] **Exchange Fund (Amendment) Bill—second reading**

Sir, I must now compliment the Financial Secretary's prompt action and attention in finalizing the proposed amendment, which is necessary in the interest of a healthy banking system and monetary stability of Hong Kong.

I have pleasure to support the motion before Council.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Explanatory Memorandum

This Bill raises the limit of the amount which the Financial Secretary may borrow for the account of the Exchange Fund from 3,000 to 3,500 million Hong Kong dollars.

INLAND REVENUE (AMENDMENT) BILL 1970

Resumption of debate on second reading (20th May 1970)

Question again proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

EMPLOYMENT (AMENDMENT) (NO 3) BILL 1970

Resumption of debate on second reading (20th May 1970)

Question again proposed.

DR CHUNG: —Your Excellency, my honourable Friend, the Commissioner of Labour, in moving the second reading of the Employment (Amendment) (No 3) Bill 1970 in this Council two weeks ago indicated that no objections had been raised by any of the various organizations which he normally consulted on labour legislation. The absence of objections was probably due to a misunderstanding between the Labour

Department and the two major industrial associations, namely, the Federation of Hong Kong Industries and the Chinese Manufacturers Association of Hong Kong. A Joint Committee of the Federation and the CMA, formed to study this particular bill, had in fact been waiting for a copy of the revised text of the proposed bill in the light of a letter dated 29th April 1970 from the Commissioner of Labour to the Executive Director of the Federation.

Nevertheless, these two industrial organizations, though they agree with the spirit of the bill, have now forwarded their objections to certain clauses contained in the bill to Government.

First, it is considered that the new section 34A, whereby any employee may apply to a District Judge to issue a warrant for the apprehension and possible detention and committal to prison of his employer, could be used by an employee of his own will or through some outside influence to defame an employer. It is noted that there is no penalty where an employee makes an application without reasonable ground or with intention to slander his employer.

The only redress for a wrong in this case would be for an employer to apply under sub-paragraph (1) of paragraph 10 of the Second Schedule to the District Judge for costs and compensation which, if I understand correctly, is limited to a maximum of $10,000. Furthermore, according to sub-paragraph (3) of the same paragraph 10, an order for compensation shall be a bar to any action by the employer against any person for damages. These measures do not appear to provide enough of a deterrent against possible abuse of the section by the employee, and the industrial associations propose, and I agree, that in order to deter malicious litigation, provision should be made for the District Judge to order that an applicant be sent to prison if an application is found to have been made without reasonable ground.

I now come to my second point. Section 13 of the principal Ordinance stipulates that wages shall become due on the expiry of the last day of the wage period and shall be paid as soon as is practicable but in any case not later than seven days thereafter. New section 20A(2) of the proposed bill specifies that any employer who ceases to believe upon reasonable grounds that he will be able to pay all the wages due by him shall forthwith terminate the employment of his employees in accordance with its terms.

In the circumstances of Hong Kong, small and medium-sized factories often have temporary problems with cash turnover, and are therefore particularly vulnerable to Section 13 of the principal Ordinance and the new section 20A(2). An employer may on occasion find it necessary for reasons beyond his control to delay briefly the payment of wages. Such a delay may be caused by a postponement of shipment, deferred payment by clients or late arrival of letter of credit.

[DR CHUNG] **Employment (Amendment) (No 3) Bill—resumption of debate on second reading (20.5.70)**

If it happens that an employer has not sufficient working capital, he will find himself, so to speak, jumping from the frying pan into the fire because on the one hand he does not have the money to pay his employees' wages in time and, on the other hand, he is not able financially speaking to terminate the contract of his workers *in accordance with its terms*.

Such a situation would be injurious to both employer and employee. I therefore feel it desirable that, having regard to the reality of the local situation, some flexibility should be allowed under the new section 20A, so that an employer need not dismiss his employees if the employees agree to and accept a delay in payment of wages.

My third and final point, Sir, is about the applicability of this bill to a limited company. An employer, in accordance with section 2 of the principal Ordinance, is defined as any person who has entered into a contract of employment to employ any other person as an employee and the duly authorized agent, manager or factor of such first mentioned person. In a limited company, a manager is quite often a salaried employee. If a limited company owes its employees wages, does it mean the manager, who is an employee, and who himself may even be owed wages by the company, could be apprehended and brought before a District Judge for possible detention or even committal to prison? I hope my honourable Friend, Mr HETHERINGTON or Mr ROBERTS will clarify this point.

MR T. K. ANN: —Your Excellency, while I agree to the spirit of this bill that unscrupulous and treacherous employers must be dealt with severely, I am in complete agreement with the points raised by my honourable Friend, Dr S.Y. CHUNG.

We all recognize that before the law everyone is equal, irrespective of his social status. In this sense, an employee is no difference from an employer. It seems that the "fair and equity" principle does not apply in this bill in its present form.

If punitive treatment is to be applied to the employer alone with a view to adjusting the relations between an employee and an employer, much care needs to be exercised, otherwise abuse could multiply itself much to the chagrin of the good intentions of the legislators. We must be mindful of the fact that the number of employees by far outnumbers that of employers, and it is not just a matter of contention between one plaintiff and one defendant.

My honourable Friend, the Commissioner of Labour, in his speech made at the sitting of this Council on 20th May 1970, hoped that the aggrieved employee would in practice seek guidance from the Labour Relations Service. I must say that there is no guarantee that every applicant for the issue of a warrant will unfailingly do so. Things must be looked at from both ends. Hundreds of millions of dollars are being paid out by employers in Hong Kong every month in the form of wages and under other labels, such as allowance, gratuity, overtime, bonus, *etc.* Two flagrant cases in the past year should not reflect the good conduct of the very many.

An employee's relationship with his employer is a mere internal one. Sir, it would be ill-advised to disregard the fact that an employer also has external relationships with other economic units. Any havoc, intentional or unintentional, worked upon the name and fame of the employer who represents the economic unit in its external relationship, could inflict hardship or irreparable losses to the unit as a whole, whereby other employees of the same unit, who must be in the majority, could thus suffer through no fault of their own.

Sir, by saying the above, I am driving at a point that no other Government administrative branch knows or has the chance of knowing better the factual relationship between the employees and the employer of a particular firm or company, which I here refer to as an economic unit, than the Labour Department. It appears that any gross arrears of wages payment should be part of the knowledge of the Labour Department, so that when the District Judge makes investigation on any application, he can have reliable source from which to draw the necessary information. The corollary of this argument is that the potential applicant should first notify the Labour Department of the fact that his wages and other moneys due from his employer are now in arrears, before he is permitted to file an application to a District Judge for the issue of a warrant. This will enable the Labour Department to make investigations, ascertain facts, and effect reconciliation, if possible, before going to court.

Sir, it appears to me that the gist of this bill lies with the interpretation put on the first sentence of the proposed section 34A by the potential applicant as to whether the employer is *about* to leave the Colony with *intent* to evade payment of wages and other moneys due to him. To leave the interpretation of the words “about” and “intent” to the employee, who may misunderstand or misread the situation, or act on hearsay or rumors, not speaking of malice, is too dangerous. And that no provision has been made to prohibit the employee from telling the public about his application while it is still under investigation by the District Judge, could further lead to wanton abuse. It is not infrequent in Hong Kong that an employee refuses to receive his

[MR ANN] **Employment (Amendment) (No 3) Bill—resumption of debate on second reading (20.5.70)**

wages because of dispute about the amount. This could further complicate the matter.

Sir, as I see it, the claim for payment is of first importance. Therefore, before a warrant is issued, three facts must be established with authenticity: (1) the actual debt, (2) employer's intent to evade payment, (3) his imminent departure from the Colony, in that order. Without this prescribed procedural sequence, I am afraid that confusion may arise and the employees will still not be more fully protected.

MR R. M. HETHERINGTON: —-Sir, my honourable Friend, Dr CHUNG, refers to correspondence between the Federation of Hong Kong Industries, the Chinese Manufacturers' Association of Hong Kong, and me prior to the introduction of the bill into the Legislative Council. The facts are as follows. On 13th March 1970, I sent identical letters to both these organizations. Copies of the bill, as then drafted, were attached for information. In my letters, I wrote that, if the organization concerned wished to comment on the bill, I would be grateful to know as soon as possible.

The Chinese Manufacturers' Association of Hong Kong wrote to me on 7th April stating that it had strong reservations about the practicability and repercussions of the provisions, which it was still studying, but raising no specific objections against them. The Federation of Hong Kong Industries did not acknowledge my letter. The draft bill was considered by the Executive Council and, on its advice, you, Sir, directed that it should be re-drafted chiefly for the purpose of bringing the procedure for applying for a warrant for the arrest of an absconding employer as closely as possible into line with The Rules of the Supreme Court. The revised bill was subsequently re-considered by the Executive Council and, on its advice, you, Sir, ordered that the bill, with some further minor changes, should be introduced into this Council. None of the changes made affected the substantial proposals in the original draft. Eventually, on 25th April, the Federation of Hong Kong Industries wrote to me stating that it had learned that the draft bill was being amended and reserving its comments pending consideration of the revised text. I replied, on 29th April, that some amendments were to be made to the text but these largely concerned only procedural matters and did not materially affect the substance of the proposals. I promised to send copies of the revised text as soon as it was available but I was unable to obtain them before the bill was published in the Government Gazette on 8th May. As you know, Sir, I introduced the bill into this Council on 20th May. The Federation of Hong Kong Industries subsequently wrote to the Colonial Secretary

on 26th May raising objections to the bill, some of which have been mentioned by my honourable Friend, Dr CHUNG, in his speech. The Chinese Manufacturers' Association of Hong Kong also wrote to me on 27th May raising similar objections to the bill. I replied to this letter on 1st June.

The first of the three points made by Dr CHUNG about the bill was a recommendation that, in the procedure for the apprehension of an absconding employer, prescribed by clause 7, provision should be made for the District Judge to order that an applicant should be sent to prison if an application is made by an employee without reasonable grounds. As I explained, when introducing the bill, the procedure prescribed follows closely Order 44A of The Rules of the Supreme Court 1967 which deals with the arrest of an absconding debtor. I mentioned, when I spoke a fortnight ago, that the main difference between the procedure prescribed and the Supreme Court Rules is that, under the procedure, an application may be made before an action has been initiated against the absconding employer, although such an action must be commenced within the following fourteen days, instead of after an action has been initiated, as required under the Rules. I should, perhaps, have mentioned another difference. The Supreme Court Rules give a right to a defendant, who has been unjustifiably arrested, to be awarded compensation not exceeding $1,000 but debar him from initiating any action for damages if he receives compensation. He can, of course, elect to sue for damages in a civil action provided that he has not received compensation under the Rules. Under the procedure prescribed by clause 7 of the bill, a judge may award compensation and costs up to the amount which he could award in an action for damages. This may be as high as $10,000. The defendant may still elect to initiate a civil action for damages provided that he has not received compensation under this procedure. i suggest that the procedure under clause 7 is a sufficient deterrent against the possibility of malicious applications. The Supreme Court Rules do not provide for the imprisonment of an applicant although they do permit the judge to detain an absconding debtor in custody. I see no reason why there should be, under the prescribed procedure in this bill, any other more stringent penalties than those applied to applicants under the existing Supreme Court procedure.

The second point concerns a proposal for the amendment of new section 20A to permit an employer not to dismiss his employees if they agree to and accept a delay in the payment of wages. Section 13 of the principal Ordinance requires that wages shall be paid as soon as is practicable after the expiry of the last day of the wage period but, in any case, not later than seven days thereafter. Before wages become due, an employer will know if he is able or unable to pay them. Whether he is ultimately able to pay or not, he will commit an offence

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under section 31 if he fails, without reasonable excuse, to pay in accordance with section 13. If he finds at any time that he is unable to pay wages earned, new section 20A requires him to terminate the contracts of employment with his employees in accordance with the terms of the contracts. It is possible that my honourable Friend may have misunderstood the purpose of this new section. It is not concerned with the payment of wages in compliance with section 13. It is concerned with imposing an obligation on an employer, in certain unsatisfactory circumstances, to take immediate steps to terminate contracts of employment. The purpose is to prevent a situation from continuing and, probably, worsening by the inability of the employer to pay wages earned. Whether or not the claims of employee for wages earned are eventually met or not is a separate issue. In these circumstances, I consider that the suggested amendment to new section 20A is inappropriate because it would not assist in furthering the purpose of the new section to terminate an unsatisfactory situation and could exacerbate it if the debts due to the employer for goods or services rendered continue to remain unsettled.

DR CHUNG: —Sir, on a point of clarification, I don't think my honourable Friend understands my point here.

HIS EXCELLENCY THE GOVERNOR: —Do you wish to give way to Dr CHUNG?

MR HETHERINGTON: —Yes, Sir.

HIS EXCELLENCY THE GOVERNOR: —Right.

DR CHUNG: —My point is the proposed section 20A(2) of the Ordinance. Any employer who ceases to believe upon reasonable grounds that he will be able to pay all the wages due by him shall forthwith terminate the employment of his employees in accordance with the terms of employment. This means he must pay the employees and discharge them and, if necessary, pay redundancy. If the employer cannot pay the wages at the beginning how can he financially be able to terminate employment of the employees? This is why I said, Sir, that in this case he will find himself, I mean the employer, so to speak jumping from the frying pan into the fire.

MR HETHERINGTON: —Sir, on that point I don't think we see eye to eye. The point is that if the employer believes that he is unable to pay the wages he must give notice of the termination of the contract, not necessarily pay the wages.

DR CHUNG: —Sir, could I clarify my point?

HIS EXCELLENCY THE GOVERNOR: —I think you made it perfectly clear, Dr CHUNG. I don't think you may interrupt again.

MR HETHERINGTON: —Sir, the third point raises problems relating to limited companies arising from the definition of an employer in section 2 of the principal Ordinance. This definition includes the duly authorized agent, manager, or factor of an employer. I am advised that the procedure under new section 34A is inappropriate against a corporation itself. While it is true that a director, manager, or an authorized agent of a corporation could be subject to the procedure, it would be difficult, in practice, to prove that he was leaving Hong Kong with intent to evade payment of wages, especially if the corporation continued to operate. In any case, I consider that, despite this difficulty, an employee should be entitled to invoke the procedure against such directors, managers, or authorized agents. However, the procedure is more appropriate against individual employers. It is against such employers that it is more likely to be invoked because once they have left Hong Kong their employees have effectively lost the opportunity to take measures to recover wages earned. This is not the case with corporations.

I was pleased to hear that my honourable Friend, Mr ANN, agrees with the spirit of the bill. He appears to doubt the necessity for new section 20A on the grounds that two flagrant cases in the past year would not justify the provision. What I actually said in my speech two weeks ago was that clause 3 would have greatly strengthened the hands of conciliation officers in, at least, two disputes during the past year. I was alluding to the disputes involving Goodman Corporation (Engineers and Builders) Limited and Fairwear Woollen Knitting Factory which caused considerable public concern. It should not be inferred that there were only two disputes of this type. There have, in fact, been, among the 3,000 or so dealt with annually by the Labour Relations Service, other disputes which have attracted little or no public interest but in which clause 3 would have also greatly helped. I can assure Mr ANN that my conciliation officers and I believe that it would be a most helpful provision in the resolution of labour disputes.

Mr ANN also made several suggestions regarding the procedure set out under clause 7. One was that there should be provision to prevent any publicity being given to an application by an employee for a warrant for the arrest of an absconding employer. A similar suggestion was made by the Federation of Hong Kong Industries in its letter of 26th May 1970 to the Colonial Secretary, to which I have already referred. Leaving aside the question of whether or not such a provision would be

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in the best public interest, such applications are likely, by the nature of the circumstances, to be dealt with expeditiously and it is extremely doubtful if there would be much chance of publicity between the time of the application and the time of the order made by the District Judge. Another suggestion by Mr ANN was that an employee should first notify the Labour Department of wages and other moneys due and now in arrears before being permitted to file an application. New section 34A refers to wages earned and other moneys due and, in respect of wages earned, specifically excludes the issue of whether or not the payment of wages is yet due. An employee may make an application at any time if he has reason to believe that he is unlikely to be paid wages earned. As I said in my speech two weeks ago, I hope that employees will first come to the Labour Department for advice before invoking the procedure which could have serious consequences for both parties. It would be our aim, as it always is, to attempt to mediate and reconcile them. However, I think that the employee should be free to make an application if he wishes and not necessarily be bound by our advice. Clause 7 requires an application to be supported, in accordance with form I of Part II of the Second Schedule, by information detailing the amounts owing to the employee and by an affidavit. I suggest that these requirements adequately ensure that the District Judge is placed in a position to consider the application.

Sir, as I have said earlier, the procedure under clause 7 closely follows that set out in Order 44 of The Rules of the Supreme Court 1967 dealing with the arrest of an absconding debtor. This Order has, I understand, proved satisfactory for its purpose. I believe that a similar procedure, with the modifications which I have already described, should effectively protect the interests of both employees and employers without further amendment.

DR CHUNG: —Sir, on a point of clarification on another point. The Federation did acknowledge the letter of March 13 from my honourable Friend, the Commissioner of Labour, on April 25. I admit, however, that it was a bit late.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

MERCHANT SHIPPING (AMENDMENT) BILL 1970

Resumption of debate on second reading (20th May 1970)

Question again proposed.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

IMPORT AND EXPORT BILL 1970

Resumption of debate on second reading (6th and 20th May 1970)

Question again proposed.

MR OSWALD CHEUNG: —Sir, when my honourable Friend Mr SORBY opened the debate on this bill, he emphasized that the underlying purpose and philosophy of this bill was to enable him effectively with minimal supervision to carry out the provisions of the bill, and it is in the light of the statement that he made then that I want to seek some information on the need for certain of its provisions and to draw attention to others.

First, I would refer to the new definition of the word "import" in section 2 of the bill. At present the word "import" means "to bring, or cause to be brought, any article into Hong Kong" but the extended definition extends to it mean "to bring any article into Hong Kong for the purpose of exporting the article or part thereof". I wonder why it is thought necessary so to extend the definition of that word. Is it intended to include articles which are merely brought into Hong Kong in transit? If it is so intended, why are we concerned with such an article at all? A ship, for example, may call here enroute to another port with a cargo of strategic goods, legitimately ordered by someone in a country further on, legitimately exported by another country and, if such a shipment is brought into Hong Kong in transit, the Ordinance is transgressed and the strategic goods in question are liable to forfeiture. Or take for example a consignment of gold by air, legitimately ordered by one country from another country from which it is legitimately exported, carried by an aircraft which had no intention of landing in Hong Kong at all but forced to put down at Kai Tak by reason of inclement weather or other reason beyond the pilot's control. That consignment of gold is subject to mandatory forfeiture under the provisions of our Ordinance. The Full Court recently—when I say recently

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I mean recently in legal terms—in 1967, drew attention to the hardship and the possible injustice that a provision of his kind might cause, and I should have thought that the legitimate interests of this Colony could be protected without widening the definition of the word "import"; indeed, I think consideration ought to be given to cutting down and narrowing the meaning of the word so that it bears the ordinary meaning it bears in other countries, which is that it should mean the bringing of goods here with the intention that they should stay here. I would be prepared to concede that it might be widened to include goods which are brought here with the intention that some act, such as repacking or reshipping, should be done preparatory to re-exporting. One mischief, which I understand the administration wants power to deal with, is the case of gold smuggling. A smuggler touches down at Kai Tak. If he is not caught, he slips the gold into Hong Kong; if he is caught, he will say (if my proposal is adopted) the gold is in transit. I recognize that my Friend has a problem there and I recognize the need to deal with it, but I would suggest that the way to deal with it is to deal with it specifically, rather than to foul up the definition of a key word in the Ordinance in the process.

The second provision of the bill to which I want draw attention to is clause 4, which empowers my Friend before issuing a licence, either an import or an export licence, to require the applicant to deposit with him such sum of money as the Director may specify. There has been correspondence between my Friend and the Bar Association on this particular clause, and my Friend has agreed to limit the amount which might be required as a deposit to 50% of the value of the goods. Not unnaturally, I looked at the explanatory memorandum in this bill and found that it is stated that this is part of an existing provision, corresponding to section 6 of the existing Ordinance. I myself have some doubt whether section 6—which empowers my Friend to make the issue of a licence subject to certain conditions—whether the existing Ordinance enables him to require an applicant to deposit a sum of money as a condition, but, granted that it does, I ask, what is the need? What circumstances have arisen which makes my Friend want these powers? If my Friend may allow me to say something he said to me yesterday, he has no recollection whatsoever of any applicant since 1960 ever having been required to deposit a sum of money as a condition for the issue of a licence, and I must say that in the last 20 years I have never come across in my professional work any such case. I don't know, but I would ask what mischief does my Friend want to deal with in seeking these powers. I can see what can be done under these powers: the first thing that sprang to my mind when I read the section was the scheme imposed in the

United Kingdom a year or two ago whereby an importer was required to deposit a sum of money as a condition for importing goods because the United Kingdom at that time had to redress its balance of payments. I am not aware that there is any such need in Hong Kong. Perhaps my Friend would clarify what is the purpose of the section and perhaps we can then deal with the matter at the committee stage.

Thirdly may I refer to clauses 7 and 10 of the bill. Clause 7 says the owner of a vessel, aircraft or vehicle—which for simplicity's sake I'll refer to simply as the owner—in or on which any prohibited article is imported shall retain possession of the prohibited article until certain events occur, and section 10 says the owner of a vessel shall not accept any prohibited article for export on the vessel until a licence is produced to him. Sir, that is very right and proper in each case if the owner of the vessel knows he has got a hot potato on his hands, but what, may I ask, if he does not know that what he has got is a prohibited article. As, for example, where cargo is misdescribed in a bill of lading, or in an airway bill a tractor, built to military specifications, (which is on the strategic goods list) is described in the bill of lading as a commercial tractor. It is not a practicable or indeed a fair proposition to require every shipping line or airline to examine every package they receive before shipment. It has been put to my Friend that he should be content to provide that an offence should only be deemed to be committed if it is knowingly committed, but he has rightly said to me that it would make the enforcement of the Ordinance supremely difficult. May I suggest, therefore, that it would be reasonable to do what is done in other Ordinances with other offences, namely to put on the defendant the burden of proof that he did not, and had no reasonable cause to, suspect the article in question was of a prohibited nature. This could be done quite simply by putting in a proviso to that effect in subclause 2 in each case.

A similar problem arises over clause 18, which deals with unmanifested cargo, taken from the Unmanifested Cargo Regulations at present in force. Again this is a perfectly proper provision in those cases where the cargo is not on the manifest at all, as when an airline brings in a couple of suitcases of dangerous drugs without those two suitcases being on the manifest at all. The Courts have considered a number of cases of this kind in the last 20 years and they have held that the liability imposed by the Unmanifested Cargo Regulations is absolute, and airlines and shipping companies so far as I know do not quarrel with those decisions. However, the clause as drafted covers the case where the cargo has been misdescribed in the manifest, in which case an absolutely innocent person stands in jeopardy of being convicted of a criminal offence, which I don't think is in the public interest. It may be that I misread the clause and that there is no intention to impose criminal liability on the owner of the vessel in a case like that. But I

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shall welcome a reply from my Friend whether that is the intention or not. If it is not our intention, I suggest that the clause be redrafted to put our intention beyond doubt.

Next I wish to raise a pure matter of legal drafting in clause 27, which is intended to provide for the forfeiture, or should I say more accurately the possibility of forfeiture, of a vessel or a vehicle actually used in connexion with a contravention of the Ordinance or the forfeiture of goods in respect of which there has been a contravention or attempted contravention of the Ordinance. If I am right in so thinking, a simple transposition of the words—simple redrafting—I think it would meet the problem I raise.

Then there is a technical legal matter arising out of clause 34. It says that in any proceedings under this Ordinance the onus of proving the place from which an article has been imported shall lie on the defendant. Perhaps my honourable Friend the Attorney General would consider how in practice it can be done under the existing rules of evidence without flying somebody to Hong Kong from the other side of the world. Perhaps this is a case where provision might be made for relaxing the rules of evidence and provide that bills of lading and invoices might be *prima facie* evidence of the matters therein stated.

I am much obliged to the Government for postponing the debate on the second reading of this bill a further fortnight than originally scheduled, in order that this bill might be looked at by, amongst other people, the Committee of the Bar Association, but I am sure that the postponement has enabled certain queries to be raised and, if my Friends agree, for certain matters to be corrected, if it is not the intention to impose such sweeping liabilities as a first reading would suggest.

THE ATTORNEY GENERAL (MR ROBERTS): —Sir, perhaps I might briefly deal with the point raised by my honourable Friend on clause 34 of the bill. This is a clause which has its origins in an English Act of 1876 and has been present in this form in English legislation for almost a hundred years. It has also been in force in Hong Kong since 1952. I must confess that I have not heard of it causing any particular difficulty in practice. I can see that in theory what my Friend says is true, that there may be certain difficulties thrown on the defendant in establishing the origin of goods. One can suggest a number of ways in which he might deal with this problem, though some of them undoubtedly would be expensive. The simplest method is to produce a witness from the country of origin itself, who would testify that the goods had been despatched from the country, though in some cases

this would be extremely expensive and difficult. It is also possible, I suppose, to produce the evidence of witnesses who know that this kind of article does originate from a particular country and, subject to certain difficulties which might arise of a technical evidenciary nature, to do this by means of various kinds of documents—by bills of lading, by production of correspondence, by the production of manifests. All of these are possible ways in which an accused person could discharge the onus which this section throws upon him. However, we will certainly, between now and the committee stage, consult with the honourable Member to see whether there is any way acceptable to him in which we could reduce the difficulties which might be thrown upon a defendant under this particular part of clause 34.

MR SORBY: —Sir, I am grateful to my honourable Friend for the suggestions and the points he has raised on this bill; it demonstrates the interest which I am very glad to see around. I will do my best, and have done my best so far in the very short time in fact available to me, to look into some of the points he has raised.

I would, first of all, just like to point out that I am not in practice quite the monster that he has depicted in my dealings with the commercial community and I would just like to mention the quite unsolicited testimonial to this effect that I had from the honourable Mr HERRIES on the last occasion. I think in practice the Importation and Exportation Ordinance we have at present is administered with reasonable decency and does not in fact attract too much criticism; but having said that, I would like to deal with these specific points raised by my honourable Friend.

First of all, the question of the definition of import. In fact, the definition of “import” as it stands under the bill is as follows. It means to bring—I repeat what my honourable Friend has said—it means to bring or cause to be brought any article into Hong Kong and also it means to bring or cause to be brought any article into Hong Kong for the purpose of exporting the article or any part thereof. One might say, perhaps, it is unnecessary to have that second clause because anything that is brought in is already imported, whether it is for the purpose of export or not. In practice, in fact, the bill is quite definite on this subject. In the existing Ordinance the definition of “import” does in fact go no further than bringing or causing to be brought any article into Hong Kong. But the other side of the picture, the export side, is covered in the definition of "export" which specifically mentions that it includes stuff which has been brought in for the purpose of export. To some extent therefore, it is quite definitely done to make sure that transit cargo is in fact covered by the definition of import. My honourable Friend has said that transit cargo should not in a free

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port be covered and should in fact be specifically excluded, but I must point out that it is in a way because it is a free port and we have no customs control and would have to go in, in a very big way, for alternative customs control unless we were able to keep some tag on imports. In practice, therefore, the control of imports is an essential element in the administering of our import and export controls. In practice, goods in transport, if they are properly manifested, are not subjected in any way to interference although they may be kept under surveillance if they are prohibited goods. We must know something about the intention in respect of those goods, when they come in, and be in a position to apply controls if any attempt is made to land the goods while in transit. In other words, they must be kept under some sort of surveillance and I would be most reluctant to adjust the definition of import to exclude goods in transit. This, I think, is an essential element in the whole structure of this bill.

As far as his next point is concerned, clause 4; the question of the Director being empowered to require a deposit of money for issuing a licence. I hasten to say, Sir, that I have no intention or wish to develop the concept of the import deposit scheme which is still in force in England; and I think that there would be sufficient public outcry to ensure that the Director did not attempt such a thing on his own, even though the law might in fact give him authority to do so. However, the point which my honourable Friend has made, that I could not remember any case certainly since 1960 where a deposit had been required, is perfectly correct. I have ascertained subsequently that it is in the memory of one of my staff that such deposits were required in 1952 in cases connected with the transit of dutiable strategic commodities. We have no records before the War, so we don't know what happened then but it is in fact the case that a clause to this effect, certainly by implication, permitting the Director to demand a deposit has been in existence since the present Ordinance was enacted in 1915. However, I think myself that it is unnecessary really—now having really thought about it—it is really unnecessary to have this particular clause, and I will propose at the committee stage that it be deleted. I would like on the other hand to incorporate an enabling provision giving power to make regulations, that is power for the Governor in Council to make regulations for providing for such deposit, if necessary; and I think that power should be subject to confirmation by resolution of this Council. I will therefore propose at the committee stage that some such amendment be made.

Clauses 7 and 10 I take together. My honourable Friend has pointed out the difficulty that arises for the carrier of goods to make

sure that they are not allowed off the vessel or aircraft without a licence if they are in fact licensable articles. I accept that this is a very difficult position and I am prepared to move an amendment at the committee stage to permit the defendant in a case concerning this to satisfy the court that he could not reasonably, shall we say, know that the articles he released, or accepted for shipment in case of export, were prohibited articles. I will propose that an amendment be made at the committee stage. I think this would satisfy my honourable Friend.

On clause 15 my honourable Friend has drawn attention also to the question of uncertainty in the case of any person who imports any unmanifested cargo, or exports any unmanifested cargo, and who shall be guilty of an offence, being liable on conviction to a fine and for imprisonment. He has pointed out that he thinks it is a perfectly satisfactory clause provided that it is used where the cargo is deliberately unmanifested; but he finds it difficult to accept in the case where cargo is incorrectly manifested because it has been misdeclared. How is he to know? This is certainly a difficult matter because this clause is fundamental to the whole operation and concept of this Ordinance. I do however accept that it is a difficult position and I would like to consider this matter before the committee stage and, if I can arrange for something that will satisfactorily meet my honourable Friend's point, I would be glad to propose that an amendment be made.

My honourable Friend has suggested an amendment to clause 27 in connection with the forfeiture of vehicles or vessels used in connection with the contravention of the Ordinance. I would be prepared to meet my honourable Friend's point, which I think is certainly a very valid one, and to restore the position to that under the existing Ordinance; which certainly would, I think, meet his point.

I think, Sir, that covers all the points that were made on this. I apologize for the somewhat scrappy way in which I have had to answer them, but I have had rather little time in which to make up my mind about these things and to consult the Attorney General.

Question put and agreed to.

Bill read the second time.

Bill committed to a committee of the whole Council pursuant to Standing Order No 43(1).

Committee stage

Council went into Committee.

RENT INCREASES (DOMESTIC PREMISES) CONTROL BILL 1970

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 and 2 were agreed to.

Clause 3.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I move that clause 3 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

3 (*a*) That subclause (4) be amended by deleting "less" and substituting the following—

"more".

(*b*) That subclause (5) be amended in paragraph (*c*) by deleting "; but not" and substituting the following—

", but shall apply".

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clause 4.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I move that clause 4 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

4 That subclause (6) be amended by inserting, after "Ordinance", the following—

", but may issue a copy of any certificate so issued".

The amendment was agreed to.

Clause 4, as amended, was agreed to.

Clauses 5 to 10 were agreed to.

Clause 11.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I move that clause 11 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

11 That subclause (4) be amended—

(*a*) in paragraph (*c*), by deleting the comma at the end thereof and substituting the following—

"; or" ;

(*b*) by adding, after paragraph (*c*), the following—

"(*d*) if the earlier certificate refuses to award any increase, award such increase in rent as he considers fair in the circumstances of the tenancy:

Provided that no increase shall exceed that specified in the application under section 10, ".

The amendment was agreed to.

Clause 11, as amended, was agreed to.

Clause 12.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I move that clause 12 be amended as set forth in the paper before honourable Members.

Proposed Amendment

Clause

12 That subclause (4) be amended—

(*a*) in paragraph (*b*), by deleting the full stop at the end thereof and substituting the following—

"; or";

(*b*) by adding, after paragraph (*b*), the following—

"(*c*) if the certificate confirms the refusal to award any increase in rent, order such increase in rent as it considers fair, having regard to the matters set out in subsection (5) and to any determination it makes in a dispute as to facts relevant to the assessment:

Provided that no increase shall exceed that specified in the application under section 10. ".

Rent Increases (Domestic Premises) Control Bill—committee stage

The amendment was agreed to.

Clause 12, as amended, was agreed to.

Clause 13 was agreed to.

Clause 14.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I move that clause 14 be amended as set forth in the paper before honourable Members. Proposed Amendment Clause

Proposed Amendment

Clause

14 That subclause (1) be amended—

(*a*) in paragraph (*b*), by deleting the full stop at the end thereof and substituting a comma;

(*b*) by adding, after paragraph (*b*), the following—

"whichever is the later.".

The amendment was agreed to.

Clause 14, as amended, was agreed to.

Clause 15.

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER): —Sir, I move that clause 15 be amended as set forth in the paper before honourable Members. Proposed Amendment Clause

Proposed Amendment

Clause

15 That the proviso to subclause (5) be amended in paragraph (*a*) by—

(*a*) deleting the semicolon at the end of sub-paragraph (ii) and substituting a comma;

(*b*) adding, after sub-paragraph (ii), the following—

"whichever is the later;".

The amendment was agreed to.

Clause 15, as amended, was agreed to.

Clauses 16 to 26 were agreed to.

EXCHANGE FUND (AMENDMENT) BILL 1970

Clauses 1 and 2 were agreed to.

HONG KONG EXPORT CREDIT INSURANCE CORPORATION (AMENDMENT) BILL 1970

Clauses 1 and 2 were agreed to.

PUBLIC HEALTH AND URBAN SERVICES (AMENDMENT) BILL 1970

Clauses 1 to 4 were agreed to.

SUPREME COURT (AMENDMENT) (NO 2) BILL 1970

Clauses 1 and 2 were agreed to.

Council then resumed.

Third reading

THE COLONIAL SECRETARY (SIR HUGH NORMAN-WALKER) reported that the Rent Increases (Domestic Premises) Control Bill 1970 had passed through Committee with certain amendments and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ACTING FINANCIAL SECRETARY (MR HADDON-CAVE) reported that the

Exchange Fund (Amendment) Bill 1970

Hong Kong Export Credit Insurance Corporation (Amendment) Bill 1970

had passed through Committee without amendment and moved the third reading of each of the bills.

Question put on each bill and agreed to.

Bills read the third time and passed.

MR D. R. W. ALEXANDER reported that the Public Health and Urban Services (Amendment) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

THE ATTORNEY GENERAL (MR ROBERTS) reported that the Supreme Court (Amendment) (No 2) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

Unofficial Member's Bill

Committee stage

Council went into Committee.

CHURCH OF ENGLAND TRUST (AMENDMENT) BILL 1970

HIS EXCELLENCY THE PRESIDENT: —With the concurrence of honourable Members we will take the clauses in blocks of not more than five.

Clauses 1 to 11 were agreed to.

Council then resumed.

Third reading

MR WONG reported that the Church of England Trust (Amendment) Bill 1970 had passed through Committee without amendment and moved the third reading of the bill.

Question put and agreed to.

Bill read the third time and passed.

ADJOURNMENT

Council adjourned *pursuant to Standing Order No 8(5)*.

5.23 p.m.

NEXT SITTING

HIS EXCELLENCY THE PRESIDENT: —Council will accordingly adjourn. The next sitting will be held on 17th June 1970.

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

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