

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 13th February 1974****The Council met at half past two o'clock**

[Mr PRESIDENT in the Chair]

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR CRAWFORD MURRAY MACLEHOSE, KCMG, MBE
THE HONOURABLE THE COLONIAL SECRETARY
MR DENYS TUDOR EMIL ROBERTS, CBE, QC, JP
THE HONOURABLE THE FINANCIAL SECRETARY
MR CHARLES PHILIP HADDON-CAVE, CMG, JP
THE HONOURABLE THE ATTORNEY GENERAL
MR JOHN WILLIAM DIXON HOBLEY, QC, JP
THE HONOURABLE THE SECRETARY FOR HOME AFFAIRS
MR DENIS CAMPBELL BRAY, JP
THE HONOURABLE DAVID RICHARD WATSON ALEXANDER, CBE, JP
DIRECTOR OF URBAN SERVICES
THE HONOURABLE JAMES JEAVONS ROBSON, CBE, JP
SECRETARY FOR THE ENVIRONMENT
THE HONOURABLE JOHN CANNING, JP
DIRECTOR OF EDUCATION
DR THE HONOURABLE GERALD HUGH CHOA, CBE, JP
DIRECTOR OF MEDICAL AND HEALTH SERVICES
THE HONOURABLE IAN MACDONALD LIGHTBODY, CMG, JP
SECRETARY FOR HOUSING
THE HONOURABLE DAVID HAROLD JORDAN, MBE, JP
DIRECTOR OF COMMERCE AND INDUSTRY
THE HONOURABLE LI FOOK-KOW, JP
SECRETARY FOR SOCIAL SERVICES
THE HONOURABLE GEORGE PETER LLOYD, CMG, JP
SECRETARY FOR SECURITY
THE HONOURABLE DAVID AKERS-JONES, JP
DISTRICT COMMISSIONER, NEW TERRITORIES
THE HONOURABLE DAVID WYLIE MCDONALD, JP
DIRECTOR OF PUBLIC WORKS
THE HONOURABLE WOO PAK-CHUEN, CBE, JP
THE HONOURABLE SZETO WAI, CBE, JP
THE HONOURABLE WILFRED WONG SIEN-BING, OBE, JP
THE HONOURABLE WILSON WANG TZE-SAM, OBE, JP
DR THE HONOURABLE CHUNG SZE-YUEN, OBE, JP
THE HONOURABLE LEE QUO-WEI, OBE, JP
THE HONOURABLE OSWALD VICTOR CHEUNG, OBE, QC, JP
THE HONOURABLE ANN TSE-KAI, OBE, JP
THE HONOURABLE ROBERTO HYNDMAN LOBO, OBE, JP
THE HONOURABLE MRS CATHERINE JOYCE SYMONS, OBE, JP
THE HONOURABLE PETER GORDON WILLIAMS, JP
THE HONOURABLE HILTON CHEONG-LEEN, OBE, JP
THE HONOURABLE GUY MOWBRAY SAYER, JP
THE HONOURABLE LI FOOK-WO, OBE, JP

ABSENT

THE HONOURABLE JAMES WU MAN-HON, JP

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL

MR KENNETH HARRY WHEELER

Papers

The following papers were laid pursuant to Standing Order 14(2): —

<i>Subject</i>	<i>LN No</i>
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Subsidiary Legislation:

Quarantine and Prevention of Disease Ordinance.	
Quarantine and Prevention of Disease (Scale of Charges) (Amendment) Regulations 1974	15
Public Health and Urban Services Ordinance.	
Food Business (Amendment) By-laws 1974	18
Public Health and Urban Services Ordinance.	
Yuen Long Stadium Order 1974	19
Emergency (Control of Oil) Regulations 1973.	
Emergency (Advertising, Display and Floodlighting) (Restriction) (Amendment) Order 1974	20
Television Ordinance.	
Television (Period of Validity of Licence) (Rediffusion Television Limited) Order 1974	21
Public Health and Urban Services Ordinance.	
Library (New Territories) Regulations 1974	22
Stock Exchanges Control Ordinance 1973.	
Recognized Stock Exchanges Order 1974	23

Sessional Papers 1973-74: —

No 45—Annual Report by the Accountant General for the year 1972-73
(published on 13.2.74)

Subject

No 46—Report of the Brewin Trust Fund Committee on the Administration of the fund for the year ended 30th June 1973 (published on 13.2.74).

No 47—Annual Report of the Li Po Chun Charitable Trust Fund for the period 1st September 1972 to 31st August 1973 (published on 13.2.74).

Oral answers to questions**Implementation of McKinsey recommendations**

1. MR LEE asked: —

Will Government release information as to how far it has been possible to implement the McKinsey recommendations?

THE COLONIAL SECRETARY: —Sir, on 29th November last year, at the end of the debate on the Governor's address, I gave some details of the reorganization of the Colonial Secretariat, on which we had embarked after receiving the report of the management consultants.

During the past month, we have been reviewing the progress made in implementing the recommendations of the consultants. When this is complete, I will arrange for all Unofficial Members to receive a note on the subject.

MR LEE: —Sir, may I ask my honourable Friend whether the note will be released for public information?

THE COLONIAL SECRETARY—Certainly, I have no objection to doing that.

Consumer Advisory Service

2. MR CHEONG-LEEN asked: —

(a) Is the Consumer Advisory Service which provides daily price movements on rice, vegetables and fish only at the wholesale level designed to serve the wholesale trader or the general consumer?

[MR CHEONG-LEEN] **Oral answers**

(b) Will it be possible to provide price movements at the retail level—if not daily then at least once every three days?

THE FINANCIAL SECRETARY: —Sir, when I spoke in this Council on 29th November last year, during the debate on Your Excellency's annual address, I referred to suggestions that there was "profiteering" by retailers of essential foodstuffs. I said that, while I was not convinced that this was, or normally could be, taking place on any large scale, I was prepared to accept that there was potential scope for "profiteering" in special circumstances such as when panic buying occurs as a result of a rumour to the effect that there is a shortage of a particular commodity.

It was for this reason that I arranged for daily reports to be prepared on the availability and wholesale prices of rice, marine fish, fresh vegetables and pork. I said that and I quote: "with experience in interpreting changes in this information . . . the housewife will be able to see clearly for herself whether retail margins are reasonable".

The publication of retail rather than wholesale prices would not enable the consumer to assess whether or not "profiteering" is taking place; but even the release of both wholesale and retail prices is unlikely to help the individual housewife since the retail prices would be averages or ranges based on information collected from a large number of retail outlets over a wide geographical area, and would not, therefore, provide adequate guidance as to the prices that could reasonably be expected in the shops in which she normally deals.

I would like to emphasize, Sir, that the Government monitors developments of prices, supplies and traders' margins and so on very carefully, and that, as I said on 29th November, I do think there would be merit in the appropriate UMELCO group periodically meeting, and being briefed by, the Government officers associated with this monitoring process.

MR CHEONG-LEEN: —Sir, since November until the present, have any instances or complaints of profiteering come to the attention of the Financial Secretary or any other Government department?

THE FINANCIAL SECRETARY: —If my honourable Friend, Sir, means have we received formal notice of evidence of profiteering taking place based on some kind of well-organized survey, the answer is "no". If he means have I heard allegations of profiteering, the answer is "yes".

MR CHEONG-LEEN: —And have these allegations been looked into pretty thoroughly, Sir?

THE FINANCIAL SECRETARY: —We monitored changes in prices and profit margins, individual allegations by word of mouth and in the newspapers. We do not in fact investigate.

MR CHEONG-LEEN: —Sir, is there any reason as to why they are not investigated?

THE FINANCIAL SECRETARY: —Sir, it is necessary to have substantive allegations before one can indulge in any kind of systematic investigation, but I am sure that my honourable Friend the Director of Commerce and Industry keeps a particularly close watch on the rice market, and any other allegations he receives, I am sure, are investigated because they tend to be of a more organized nature.

Civil Service Pensions (1)

3. MR WONG asked: —

Will Government confirm that the 8 % increase with effect from 1st April 1973 has been paid to all Civil Service pensioners?

THE COLONIAL SECRETARY: —Sir, the 8% increase in pensions was announced in October 1973. The increase has been paid to local pensioners since November 1973. Arrears for the period April to October 1973 will be paid at the end of this month. The Crown Agents paid the increase to some overseas pensioners in January, and will pay the remainder in February. Arrears will be paid by the Crown Agents within the next two months.

Civil Service Pensions (2)

4. MR LEE asked: —

Will Government introduce legislation to increase the minimum uncommuted pension payable to civil servants retiring at the age of 55 so that the minimum amount will be equal to that receivable under the Government Public Assistance Scheme?

Oral answers

THE COLONIAL SECRETARY: —No Sir. The pension of a public officer is based on his retiring salary and his length of service. It is therefore earned by him and it would not be appropriate for a supplement of the kind suggested to be added to it.

A public officer is of course eligible on equal terms with all other members of the community for benefits provided under the Public Assistance Scheme.

Consumption and stocks of fuel oil

5. MR LOBO asked: —

- (a) What is the percentage difference between the actual consumption of fuel oil by the power companies in Hong Kong compared to expected consumption over the period 15th December 1973 to 1st February 1974?
- (b) What is the percentage change in the Colony's fuel oil stocks in the same period?

THE FINANCIAL SECRETARY: —Sir, between 15th December 1973 and 1st February 1974 the power companies had expected to consume about 198,000 tons of fuel oil: in fact they consumed only about 167,000 tons, that is to say their consumption was about 16% below their expectation. Honourable Members will appreciate the difficulties of predicting electricity consumption and hence of fuel oil consumption by the power companies, depending as it does on climatic considerations, the incidence of holidays and so on and so forth. Bearing these factors in mind, it appears that oil consumption for electricity generation during this period was reduced by around 12% in anticipation of the reduction of 15% in our normal 1974 oil supplies which was our expectation in December of last year and the 10% reduction in normal supplies from traditional sources which we now expect to experience in 1974.

Reduced oil consumption by the power companies over the seven weeks in question was the result of an amalgam of deliberate economies achieved by both the public and the power companies aimed at preserving unrestricted availability of electricity to industry. These economies were: a ban on the use of electric lights for advertising, display or floodlighting for recreation, sport and entertainment between the hours of 7 p.m. and 10.30 p.m. (the latter hour being extended to

11.30 p.m. as from the 1st of this month); a total ban on the floodlighting of buildings and structures; the adoption of Summer Time on 30th December 1973 instead of 21st April 1974; radio and television publicity broadcasts; distribution of leaflets, stickers and advertising in newspapers; a reduction in the power companies' spinning reserve by about 50%; and a reduction of 2% (4 volts) in the power companies' voltage emission.

As regards the second part of my honourable Friend's question, I do not have a figure of fuel stocks for 15th December 1973 and 1st February 1974. The nearest dates that I can get to those are 17th December 1973 and 4th February 1974 and I trust that will satisfy my honourable Friend. On 17th December 1973 fuel oil stocks had sunk to their lowest point since the oil shortage began and were 318,400 tons. On 4th February 1974 fuel oil stocks were 393,500 tons an increase over this period of 24%.

Fuel oil does not, of course, flow steadily into Hong Kong but is delivered spasmodically in tanker-loads of up to 50,000 tons. Consequently, slight delays in planned deliveries or earlier than planned deliveries can cause wide fluctuations in stock levels between particular dates. To illustrate my point, if we compare stocks of fuel oil on 10th December last with stocks on 4th February there was an increase of 15%.

Stocks rose between mid-December and end-January because the cutback in supplies which we had anticipated did not in fact begin to occur until the end of January. Accordingly, the fuel oil which was not used in the generators went into stocks. However, the 10% cutback from traditional sources expected for 1974 has now begun. It is only prudent that we should keep the percentage reduction in fuel oil consumption above the expected percentage reduction in fuel oil supplies because, in present world uncertainties we cannot be sure that the cutback will be only 10%. The outlook could change at very short notice for reasons very obviously quite beyond our control.

Stocks of fuel oil

6. DR CHUNG asked: —

Will Government inform this Council the local stock expressed in number of days' usage as at end January 1974 and end September 1973 respectively of (a) kerosene, (b) petrol, and (c) automotive diesel oil?

Oral answers

THE FINANCIAL SECRETARY: —Sir, the figures my honourable Friend has asked for are as follows: stocks of kerosene at the end of September 1973 were sufficient for approximately 44 days' normal consumption, whilst at the end of January 1974 they were sufficient for 49 days'. Stocks of petrol at the end of September 1973 were sufficient for approximately 30 days' normal consumption, whilst at the end of January 1974 they were sufficient for 36 days'. As regards automotive diesel oil I have figures only for combined stocks of industrial and automotive diesel oil. Stocks on this basis were 33 days' normal consumption at the end of September 1973, whilst at the end of January 1974 they were sufficient for 30 days'.

Stocks inevitably vary from time to time as deliveries from tankers depart from schedules but stocks of these products give no cause for any anxiety and, with additional supplies expected to start coming from China towards the end of this month, there is every reason to believe that stocks will be maintained at satisfactory levels.

DR CHUNG: —Sir, is my honourable Friend satisfied that the oil companies have not diverted, and will my honourable Friend ensure that they will not divert, their supplies for Hong Kong to other territories where they can obtain higher prices?

THE FINANCIAL SECRETARY: —I have no reason to doubt, Sir, that the oil companies will continue to regard this market as an important one and will continue to supply it to the best of their ability.

Community Service Orders

7. MR WANG asked: —

Will Government now introduce legislation to enable the courts to make community service orders?

THE ATTORNEY GENERAL: —Sir, when my honourable Friend first asked a question on this subject in June 1972, legislation to enable courts to make community service orders was being introduced in England. The answer given to my honourable Friend at that time was that the Government considered it wise to see how the idea worked out there before a decision is taken about the introduction of such a scheme in Hong Kong.

The matter has been examined since then by a departmental working party. There are, as might be expected, differing views as to the suitability and practicability of such a scheme for Hong Kong. The present position is that advice has now been sought as to how the idea is working out in practice in England.

MR WANG: —Sir, can the views expressed by the working party be made known to Unofficial Members?

THE ATTORNEY GENERAL: —I think, Sir, that the views are not yet sufficiently well formed. I don't think there will be any objections as soon as they are.

Rice prices

8. MR CHEONG-LEEN asked: —

- (a) What has been done lately to keep the level of rice prices stable?
- (b) Can a system be set up whereby members of the general public can lodge complaints of overcharging by a rice retailer or wholesaler at any CDO or New Territories Administration Office?

MR JORDAN: —Sir, the Commerce and Industry Department continues to watch the international supply position for rice very carefully. Bearing in mind the high quality of rice that our consumers demand and our total dependence on imports, I am satisfied that we are securing our rice supplies at prices as favourable as world market conditions permit. We certainly can buy rice at lower prices and during our period of supply difficulty last year we did so. This cheap rice has been made available on the local market for over six months but very little of it has been sold. The department maintains a careful watch over price mark-ups at all levels of the trade and departmental inspectors visit between 70 and 100 retail outlets every working day—and of course they cover different areas each day—to ensure that price tags are displayed on rice offered for sale and that prices generally match the quality of rice on offer.

Most retail shops are offering rice in the price range \$1.50 to \$2.10 per catty, and in the light of import costs and the trade's overheads, I think this is about right. But it is the practice of almost all rice shops

[MR JORDAN] **Oral answers**

to blend rice of different qualities and it is important that the consumer should buy selectively.

If I may turn now to the second part of my honourable Friend's question, I don't really think there is a need to set up a system for dealing with complaints about overcharging. The most effective way for the customer to deal with what he considers to be overcharging is to take his custom elsewhere. After all there are between four and five thousand retailers competing for the consumers' business. While we will of course investigate any complaints we receive, whether they come direct to us or through the City District Offices or the New Territories Administration, I think the consumers' best safeguard is the existence of competition in the retail trade.

MR CHEONG-LEEN: —Sir, has Government investigated complaints by rice retail associations as to alleged profiteering on the part of wholesalers?

MR JORDAN: —Sir, I have received no specific complaints from retailers about the wholesalers. I know, of course, that some retailers have been getting some publicity recently for their wish to purchase direct from importers. We had this before in 1965 and the importers then agreed to deal with two associations of retailers and have done so since then. I don't think this had any marked effect on the retail price of rice. I understand that the importers are prepared to continue in the same way. It is quite clear that the importers are prepared to sell direct to retailers but it is a question of the terms on which they do so. Clearly the quantities must be reasonable and there is also the question, of credit—to whom they will grant credit and on what conditions; and this is, I know, at present under discussion between various groups of retailers and the importers.

Foreign Domestic Servants

9. MR ANN asked: —

Has Government any information on the number of young foreign women who are employed in Hong Kong as domestic servants?

SECRETARY FOR SOCIAL SERVICES: —Sir, from records kept by the Immigration Department it appears there are in Hong Kong at present about 1,000 female domestic servants of all ages from overseas, including something under one hundred Commonwealth citizens. About 900 of these persons come from the Philippines.

MR ANN: —Sir, may I ask whether my honourable Friend envisaged that there would be a large increase of domestic servants from the Philippines?

SECRETARY FOR SOCIAL SERVICES: —Sir, I don't think that there has been a large increase as such but they have been coming in frequently during the last two or three years.

Kennedy Road Junior School

10. MR WILLIAMS asked: —

When can we expect the Kennedy Road Junior School project at Stubbs Road near to Victoria Heights to be upgraded to Category A of the Public Works Programme and on what date does Government anticipate the project to be completed?

MR McDONALD: —Sir, a proposal to upgrade the project to Category A has been put to the Secretariat and I understand that it will be considered by the Public Works Sub-Committee of Finance Committee in April. If approved, it is anticipated that building works will be completed by the end of August 1975.

Subvented Voluntary Organizations

11. MR LI asked: —

In view of the steep increase in prices, what steps are being taken to assist subvented voluntary organizations to meet their current expenditure on salaries?

SECRETARY FOR SOCIAL SERVICES: —Sir, there are two main methods of subventing voluntary organizations, namely by discretionary grant and by deficiency grant. Examples of organizations subvented on a

[SECRETARY FOR SOCIAL SERVICES] **Oral answers**

deficiency grant basis are aided schools and certain major medical organizations. On the other hand, all organizations receiving a social welfare subvention and most of those receiving a medical subvention do so on a discretionary grant basis. Organizations on deficiency grant receive sufficient funds to assist them in applying to their own staff salary increases approved for comparable posts in the Public Service. Those on discretionary grant do not, although these increases in costs (including salaries) are taken into account when determining the subvention for an ensuing year. Subventions to discretionary grant organizations are aimed at helping the organizations concerned but they are normally expected to meet contingencies by raising additional funds from other sources if necessary.

Sir, there is a difference in principle between these two kinds of subventions. In the case of deficiency grant, Government takes an active role in the administration of the organizations which includes control not only on the number and grades of staff required, but also of their salary scales and appointments. But these controls are not exercised in respect of voluntary agencies assisted on a discretionary basis.

Representations have been received on behalf of the medical and social welfare organizations subvented on a discretionary grant basis, requesting supplementary subventions to enable them to pay salary increases to their staff. These representations are being studied carefully in the light of the considerations I have already outlined and I can assure my honourable Friend and brother that replies will be sent as soon as possible.

MR LI: —Sir, will my honourable Friend . . . (*laughter*) the Secretary for Social Services tell this Council that if and when replies are being sent to these representations favourably, salary adjustment will be back-dated so that they will be treated alike as their Government counterparts?

SECRETARY FOR SOCIAL SERVICES: —Sir, if I may say so the supplementary is hypothetical. It assumes that there will be a favourable answer which I am not in a position to commit myself.

Government business

Motions

CROSS-HARBOUR TUNNEL ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: —

That the Cross-Harbour Tunnel (Amendment) By-laws 1974, made by the Cross-Harbour Tunnel Company Limited on the 2nd January 1974, be approved.

He said: —Sir, I rise to move the first motion standing in my name on the Order Paper.

The Cross-Harbour Tunnel Company has amended its by-laws to give tunnel officers supplementary powers to those contained in the Cross-Harbour Tunnel (Amendment) Ordinance enacted on 12th December 1973; including the right to demand information on the name, address and driving licence number of a person who is alleged to have been driving a vehicle at the time of an offence in the tunnel area. Under section 62(2) of the Cross-Harbour Tunnel Ordinance all by-laws made shall be subject to the approval of this Council and may be effected by a resolution of this Council.

The opportunity has been taken to amend the Third Schedule to the Magistrates Ordinance so that a defendant may plead guilty by letter to any offence against the Cross-Harbour Tunnel by-laws. This amendment may be effected by a resolution of this Council under section 18(7) of the Magistrates Ordinance, and I shall be doing this shortly on behalf of my honourable Friend the Attorney General.

Question put and agreed to.

MAGISTRATES ORDINANCE

THE FINANCIAL SECRETARY moved the following motion: —

That the Third Schedule to the Ordinance be amended by adding thereto the following new item—

"6. *Cross-Harbour Tunnel.*

Any offence against the Cross-Harbour Tunnel By-laws."

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

Question put and agreed to.

First reading of bill**MASS TRANSIT RAILWAY PROVISIONAL AUTHORITY BILL 1974**

Bill read the first time and ordered to be set down for second reading pursuant to Standing Order 41(3).

Second reading of bills**MASS TRANSIT RAILWAY PROVISIONAL AUTHORITY
BILL 1974**

THE ATTORNEY GENERAL moved the second reading of:—"A bill to provide for the establishment of the Mass Transit Railway Provisional Authority and for connected matters."

He said:—Sir, while negotiations with the Japanese Consortium leading up to the signing of a contract for the construction of the Mass Transit Railway proceed, other necessary steps are being taken so that there will be no delay if terms are agreed. First among these is the engagement of senior staff.

So far, as honourable Members know, the negotiations connected with the railway have been in the hands of a Steering Group under the chairmanship of my honourable Friend the Financial Secretary. The Group is made up of Government officers with one exception. It is not a body which can enter into contracts of employment or other legal arrangements which may be necessary before the corporation which will eventually own and operate the railway is established.

It is, therefore, necessary, Sir, to make some interim arrangement and that is the purpose of this bill. It seeks to establish a Provisional Authority consisting of the Financial Secretary and other members appointed by the Governor. The members of the Authority will be incorporated so that, in particular, the Authority may enter into contracts. Its powers and duties are set out in clause 5. They are limited because the Authority is a provisional one only. The Authority's resources will consist of the monies in the Mass Transit Fund, finance which it may raise through bank borrowing and credits on the supply of materials purchased abroad.

It is intended that initially almost all members of the Authority will be Government officers, but some of them may be replaced in due

course by some of the chief officers to be engaged by the Authority for the future Mass Transit Railway Corporation. Furthermore, Sir, I should emphasise that the composition of the Provisional Authority does not indicate in any way the composition of the Board of the future Corporation.

Finally, Sir, the bill will amend the Companies Ordinance so as to protect particularly the words "mass transit" and "underground railway" by enabling the Registrar of Companies to refuse to register another company whose name includes those words or others likely to suggest a connection with the Mass Transit Railway.

Motion made. That the debate on the second reading of the bill be adjourned—THE ATTORNEY GENERAL.

INDEPENDENT COMMISSION AGAINST CORRUPTION BILL 1974

Resumption of debate on second reading (30th January 1974)

Question proposed.

MR WOO: —Sir, when the debate on the second reading of the Prevention of Bribery Bill 1970 was resumed on 18th November 1970, four of the Unofficial Members spoke in this Council.

In his address, the then Senior Unofficial Member, the honourable Sir Yuet-keung KAN, spoke about what he termed the most controversial point at issue—the question of whether the effort to combat corruption should be left in the hands of the Anti-Corruption Branch of the Royal Hong Kong Police. —He said there could be no doubt that a very large section of the community held the view that it should not be, and added that the Unofficial Members were of the same opinion and that ideally there should be a separate and independent body to deal with anti-corruption. Sir Yuet-keung then went on to comment on the reasons given by Government for not creating a new body for anticorruption work at that time. Finally, he indicated that although the Unofficial Members shared the public feeling that the fight against corruption should not be left in the hands of a branch of the Police, they realised that there was no alternative until a practical solution was found to the difficulties of setting up a new body. Accordingly the Unofficial Members agreed that the Anti-Corruption Branch of the Police should continue to be entrusted with the work for a period of,

[MR WOO] **Independent Commission Against Corruption Bill—resumption of debate on second reading (30.1.74)**

say, three years, provided the target committee was reorganized and strengthened, and that at the end of three years Government should review the whole situation and make concrete proposals to this Council.

I believe it would be fair comment to say that, following the enactment of the Prevention of Bribery Ordinance, a great effort was made to bring to book at least some of the corrupt individuals whose activities had continued for many years. But before the three year period had elapsed then came the shock of GODBER'S escape. I hope I will not be misunderstood in saying that this was a blessing in disguise. It highlighted a situation which could no longer be tolerated. It brought into the open the widespread existence of corruption which had for so long been suspected by so many people. It impelled a vigorous re-examination of the whole question of the fight against corruption.

Sir Alastair BLAIR-KERR was appointed as a Commissioner to enquire into the circumstances in which GODBER was able to leave Hong Kong, to report on the effectiveness of the existing law and to suggest necessary action. His comprehensive reports have been published in full.

During the course of his enquiries, Sir Alastair wrote to UMELCO to invite the views of the Unofficial Members of the Executive and Legislative Councils on the possible changes which should be made to enable the fight against corruption to be more effectively carried out. The Unofficials on 6th July last year set up an *ad hoc* group of Members to go into this. This group took into consideration the nature and type of anti-corruption agencies which have been established in three nearby countries, and one which is functioning in a major city in the USA. On 27th July 1973 the report of the UMELCO group was sent to Sir Alastair. Sir, I would like to read out an extract from the report: I quote—

"The *ad hoc* group feel that there is a strong case for divorcing the Anti-Corruption Branch from the Police. The reasons are self-evident. There is a strong public demand for this to be done and on that score alone it would be advantageous for Government to demonstrate that it does respond to public opinion. Furthermore there is a general feeling that, so long as the Branch is part of the Police, it cannot discharge in a fully effective manner that part of its task which involves rooting out corruption within the Police

Force itself. This suggestion may be unfair but the fact is that it is generally thought to be the case: and no amount of assurance is likely to convince the public otherwise. Hence it should be pointed out that the group have not reached their conclusion because of the Godber incident, nor has that incident swayed their views. What has affected their deliberations is the knowledge that in this matter of corruption it is absolutely necessary in the first place to obtain public confidence and willingness to come forward.

The group do not believe that the removal of this comparatively small branch (in terms of numbers) would affect the overall solidarity of the Police or their ability to cope with emergencies. Neither is it thought that the reputation or morale of the Police Force would suffer. Indeed, the group were told that in those overseas places referred to above where the anti-corruption organizations have been separated from the police force, the image of the Police has been enhanced by losing a 'dirty' job and one which tends to lead to criticism of the personnel involved. The spotlight is more likely to be turned upon the new agency, leaving the Police Force to that extent less subject to criticism and in a better position to carry on with its main work of law enforcement and prevention of crimes of other natures."

The views of the *ad hoc* group were in line with those of the great majority of public organizations and bodies who likewise were invited to send in their views. The extent of support for a new independent Commission Against Corruption was and is overwhelming. Sir, here is the bill which will set it up and which will translate into actuality the conception of a fearless independent body which so many people have for so long been asking for.

It goes without saying, therefore, that Mr Cater and his staff will receive all possible support from the Unofficial Members of this Council. We have already given support to his plans for future staffing of his organization and a vast recruitment campaign is now under way. Those who have criticised the new organization as being in effect the old one in new guise are hardly being fair. It is of course inevitable that many of the personnel previously engaged on this task should continue to be employed on it during the interim period when new staff are being recruited and selected. The urgency of the recruitment campaign must not obscure the even greater need for most careful selection of the individuals who are to work in the new organization in the years ahead. Obviously one of the key points is to recruit staff whose integrity will be beyond suspicion.

[MR WOO] **Independent Commission Against Corruption Bill—
resumption of debate on second reading (30.1.74)**

The Unofficial Members believe that such integrity will indeed be attained. They know, too, that the new Commissioner will keep a most careful eye on the use of the new powers which this bill confers upon the Commission. They are wide and extensive powers and it will always be necessary to take care to ensure they are not abused. It is because of our trust in Mr Cater that we agree to the granting of these powers, but I must add a warning. In the years ahead it will be necessary for this Council to keep a very close eye on the use of these powers so as to ensure that they are not used arbitrarily or unreasonably.

I have no doubt, Sir, also that Mr Cater will receive oral support from the vast majority of people who live in Hong Kong. But the bright new image of the independent Commission needs to be supplemented by more than that. A new outlook on corrupt practices is called for in the hearts and minds of every member of the community. It is only by widespread determination to eradicate the evil that success can be achieved. In practice this means that any person who has knowledge of corruption must be prepared to come forward to furnish the information to the new Commission. Large numbers of people have been afraid to do this in the past for fear of repercussions against themselves. The success of the new Commission will turn in large part on the extent to which adequate protection can be provided for all those who are prepared to come forward. I urge the new Commission to give priority of attention to this matter.

On a small matter—though nevertheless an important one—the most recent version of the Chinese name of the Commission is interpreted in some quarters as the name of a body which will concentrate its efforts solely on corruption in the Government Service. As the Commission will also be empowered to investigate corruption in the private sector, it is suggested that a more appropriate Chinese name should be adopted which will fully indicate the scope of its work.

Sir, I support the motion.

MR CHEONG-LEEN: —Sir, I wish to make a few observations on the Independent Commission Against Corruption Bill which will be enacted into law today.

First of all, we have heard it repeated all too often that corruption has always been a way of life with the Chinese.

My view is that Hong Kong is no more corrupt than most cities in Southeast Asia, but the difference is that we in Hong Kong can speak openly about it and can through the press and in public forum heartily criticize the Government on corruption. In other places, one can do so only at risk of being deported or put in jail.

Therefore corruption is not an exclusive characteristic of the Chinese; it is just part of human nature whether in Hong Kong or in any other major city in Asia or elsewhere.

Secondly, when people speak about corruption in Hong Kong they generally have in mind corruption in Government and to a lesser extent corruption in commercial life.

As the Colonial Secretary has said, the Commission will initially concentrate on corruption in Government departments, especially those departments with the reputation of being the most corrupt.

It is common knowledge what are the major sources of corruption: narcotics, gambling and prostitution. Other sources are to be found in illegal hawking, the building industry, the restaurant trade, transport, etc.

This priority that is given to Government departments is to be commended, because if the major sources of corruption can be eliminated in Government, the people will have a more positive impression that our Government is clean, incorruptible, and a Government of which they can be proud and which is deserving of their confidence.

Thirdly, the setting up by the Commission of a Community Relations Department to involve the public in the Commission's work is a positive way to eliminate some of the administrative sources of corruption.

To get active public co-operation, the Commission should remember that it must have the full confidence and trust of aggrieved members of the public and of those who are able and willing to come forward and give vital facts on corruption in Government departments. Top secrecy will have to be preserved and complainants and informants given every protection against exposure and victimization.

Fourthly, maximum precautions ought to be taken to ensure that no one working in the Commission or whose services are terminated

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by the Commissioner will be allowed to criminally make use of any information he or she may have been privy to; the seriousness of this aspect of the Commission's responsibilities cannot be over-emphasised, as it goes to the very core of the people's confidence in the Commission.

Finally, I would like to emphatically say that the majority of Hong Kong's civil servants are honest and dedicated, and therefore I assume that the Commission will be working in such an effective way that it does not stalemate the initiative and decisiveness of the hard-working and loyal civil servants who have the true interests of Hong Kong at heart.

Sir, I support the motion.

Question put and agreed to.

Bill read the second time.

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

**HONG KONG EXPORT CREDIT INSURANCE
CORPORATION (AMENDMENT) BILL 1974**

Resumption of debate on second reading (30th January 1974)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

**PREVENTION OF BRIBERY (AMENDMENT)
BILL 1974**

Resumption of debate on second reading (30th January 1974)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

OFFICIAL LANGUAGES BILL 1974

Resumption of debate on second reading (30th January 1974)

Question proposed.

MR WOO:—Sir, this bill may be described as the culmination of the work of the Chinese Language Committee which, under the able chairmanship of the honourable Sir Kenneth FUNG Ping-fan, made four reports on the subject of the use of the Chinese language in official business in Hong Kong. During the process of the consideration of those four reports the Unofficial Members have made clear their support of the reports and their desire to press forward with the implementation of the new language policy. That policy is enshrined in this bill, making both English and Chinese official languages of the Colony for communication between the Government and members of the public.

We welcome this bill, Sir, for the reason stated by the Secretary for Home Affairs in his speech in this Council on 30th January last. That is to say, it demonstrates the Government's earnest intention that the language problem shall of itself no longer present any difficulty in communication between Government and the people.

The bill has avoided any attempt to define an official spoken Chinese dialect or language and I can find no reference to this aspect in the mover's speech. I take it that in referring to an adequate supply of trained interpreters the Secretary for Home Affairs means officers who will be able to interpret the main Chinese spoken dialects into English and vice versa. However, Cantonese is the dialect used by the great majority of people in Hong Kong and it is in this language that most people will expect to communicate in their oral dealings with Government officials. This brings me to a point on clause 5 of the bill by which the proceedings in the lower courts may be conducted in either the English language or the Chinese language as the court thinks fit. I would be grateful for an assurance that the parties and witnesses

[MR WOO] **Official Languages Bill—resumption of debate on second reading (30.1.74)**

will in practice be permitted to speak in Cantonese or any other Chinese dialect if they should wish to do so.

Sir, I support the motion.

MR CHEONG-LEEN: —Sir, I rise to speak on the Official Languages Bill 1974.

For the first time in our history, legislation is now enacted in this Council to declare Chinese together with English as the two official languages of Hong Kong.

From this day onward, the question at issue will not be whether Chinese is an official language, but whether the Chinese language is being used effectively as a medium of communication in Government's relations with the Chinese speaking members of the community.

This will naturally be the responsibility of the Chinese Language Branch of the Home Affairs Department.

For practical reasons the enactment of legislation had been held over until now due to the need to build up since 1971 the required complement of interpretation and translation services.

Such building up has already taken place, and the Home Affairs Department will henceforth be charged with the role of implementing the Official Languages Bill of 1974.

I would urge that attention be given to the following points: —

- (1) No undue delay should take place arising from any Government department answering members of the public in the Chinese language.
- (2) Steps should be taken to improve and standardize the quality of Chinese communications with the public, such as by avoiding the use of esoteric and outmoded terms or by giving too literal a Chinese translation of the English original with the resulting wide—and sometimes amusing—disparity of meaning and intent. The forthcoming publication of the glossary of terms in both English and Chinese commonly used by Government departments—nearly 30,000 terms altogether—will be a step in the right direction.

- (3) As soon as it is practicable, all communications in the Chinese language from Government departments to the public should be typewritten instead of handwritten.
- (4) A long-term programme has to be drawn up to improve the standard of Chinese among the Hong Kong population. This cannot be accomplished overnight as it may require strategic decisions to be taken by Government, such as providing 9 years' of general education for Chinese students using Chinese as the medium of teaching, and with English as an effective second language to be taught even at the primary school stage level.

Finally, since Cantonese is the most commonly spoken dialect in Hong Kong it is only fitting that Cantonese be used in speaking at meetings of Legislative or Urban Councils, or of other Government boards or advisory bodies.

However, the point has been made from time to time that the Mandarin dialect (國語) is today the national dialect of the Chinese people and therefore it should be given equal status as the Cantonese dialect in Hong Kong. This is a point which could be borne in mind by Government for implementation at an appropriate time.

In the years to come it will be even more fully realized than it is today that the Official Languages Bill of 1974 will have done much to reaffirm the cultural dignity and pride of the Chinese residents of Hong Kong.

Sir, I support the bill.

MR BRAY: —Sir, it is good to see the quite general public support for this bill repeated in Council by my honourable Friends Mr P. C. WOO and Mr CHEONG-LEEN. The points they make are well taken for this is a matter in which good intentions need backing up by meticulous attention to detail.

Both Members saw that the bill does not mention the spoken version of the Chinese language. Neither does it, for that matter, say anything about English, Welsh, Scottish, Irish, Australian, American or other dialects of the English language. Nor, I suppose, is the language one can only call "Chinglish" used for communication among so many civil servants recognized as official. This is because the main

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purpose of the bill is to state in broad terms the equal status of the two languages. It is intended that the use of dialect will be governed by the practicability of situations. We fully recognize that Cantonese is the Chinese dialect used by the great majority of the people in Hong Kong and I would confirm that Cantonese will be used by the Government in its oral dealings with Cantonese speakers. Those who can only speak other Chinese dialects will not be discriminated against and I am glad to confirm that under clause 5 of the bill, parties and witnesses in court will be permitted to speak in any Chinese or English dialect they wish.

I should however like to say that subclause (3) of clause 5, as originally drafted, has gone further than intended in invading the rights of the courts. It suggests that any party to or witness in proceedings in any court has a right to use a language other than the official languages of Hong Kong. This is not the intention. What is intended is that any party to or witness in proceedings in any court may use either of the official languages as he pleases and in any dialect, but only other languages when the court permits, and to clarify this point I shall move an amendment in the committee stage to delete subclause (3) of clause 5 and replace it with a new subclause.

Turning now to the remaining points made by my honourable Friends, I should like to assure honourable Members that it is now general Government policy to reply to Chinese communications in Chinese. It always was silly to answer Chinese letters in English and the more sensible departments have conducted their correspondence in Chinese for over twenty years to my knowledge. The Chinese Language Branch of the Home Affairs Department has also started taking steps to improve and standardize the quality of Chinese communications even though here we tread on delicate ground. We shall also use Chinese typewriters more but I hope that we shall preserve beautiful calligraphy for the most important letters in Chinese even if we have dropped the quill written copperplate English still preserved in some English institutions. Interpreter/ Translators will be trained in Mandarin and in other spoken Chinese dialects, but we do not contemplate classes in Scottish, Australian or American English. The use of Chinese as the medium of teaching has been proposed by the Board of Education in its report on the expansion of secondary school education and it is being studied and considered as a separate issue.

Sir we are all determined to use these two languages for communication in the most effective way we can. No doubt those who enjoy this sort of thing will find doctrinaire lapses from time to time but I do not believe anyone nowadays finds himself seriously inconvenienced in his communication with the Government if he has a reasonable command of Chinese or English.

Sir, I move that the bill be read a second time.

Question put and agreed to.

Bill read the second time.

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

PRISONS (AMENDMENT) BILL 1974

Resumption of debate on second reading (30th January 1974)

Question proposed.

Question put and agreed to.

Bill read the second time.

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

Committee stage of bills

Council went into Committee.

INDEPENDENT COMMISSION AGAINST CORRUPTION BILL 1974

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in a group.

Clauses 1 to 18 were agreed to.

SECURITIES BILL 1973**Resumption of the Committee stage (30th January 1974)**

THE FINANCIAL SECRETARY: —Sir, before dealing with the proposed amendments in Parts VIII to XIII of this bill in continuation of this omnibus speech introducing committee stage amendments, I should like to revert briefly to Parts I to VII. Conventionally, amendments to a long title, or the introduction of new clauses or sub-clauses, are taken when all other amendments have been moved. Since Standing Orders have been suspended I am taking the opportunity now of commenting on such amendments relating to Parts I—VII with my honourable Friend the Attorney General's permission.

The long title is being amended by the substitution of "federation of stock exchanges" for "Federation of Hong Kong Stock Exchanges".

The new clause 2B incorporates sub-clause (2) of clause 2 and also defines the term "subsidiary" for the purposes of the bill instead of referring to the definition of other pending legislation.

In clause 23 the word "actively" has been inserted in four places before the words "carrying on a business".

As regards sub-clause (5) of clause 37 I have to make it quite clear that the purport is to deal only with those malpractices which have been committed wilfully, negligently or as a result of indifference or conscious disregard.

Finally, a further new clause is being inserted as clause 59A, allowing the Commissioner to give exemption from registration to investment advisers whose business falls into either of two limited categories.

Turning now to Parts VIII to XIII of the bill, I shall deal with all proposed amendments of any consequence, but not minor drafting points.

Clauses 70 and 71 as published have been combined and clarified in a single new clause 70. This specifies the action a dealer must take when he makes an offer to acquire or dispose of securities, unless he is absolved by sub-clause (4). It is now proposed that an offer should be made in English or Chinese instead of in English, with a translation in Chinese or English instead of in Chinese. The Commissioner will continue to be empowered to dispense with the translation.

The exemptions have been extended to cover an offer made to a solicitor or professional accountant or any other person belonging to a

class prescribed in regulations; and also any client with whom the dealer has dealt on at least three occasions in the past three years instead of five occasions in the past two years.

It is already implicit in the bill that the re-arranged clause 70 does not apply to business transacted on a stock exchange but, as there has been some misunderstanding on this point, a new provision has been added to make this quite quite clear.

Clause 71, in the form I now propose, is similar in content to clause 72 as published and states that a dealer shall not enter into any contract with a person as a result of a call on that person unless he has been invited to call and unless, prior to entering any contract, he provides the person with all the information he would be required to give under the proposed clause 70. If the dealer does not do so the client may rescind the contract within 28 days. Sub-clause (3) details permissible exceptions similar to those of sub-clause (4) in the previous clause.

Clause 72, dealing with the hawking of securities, has been amended substantially to bring out the distinctive feature of hawking, namely, going from place to place and repeating the offer. Again, there are exemptions, and it is permitted for a person to call on bankers, solicitors, professional accountants, registered dealers or investment advisers. The Commission may also specify securities which are to be exempt from this clause.

Clause 73 as amended now makes it clear that a dealer has to issue a contract note, whether he acts as principal or agent, in respect of every contract for the purchase, sale or exchange of securities. The clause has been simplified by the deletion of several provisions.

By clause 74, a dealer is not to engage in option or forward trading, but I now propose that this prohibition may be lifted in certain circumstances to be provided for in regulations. Short selling is also forbidden in clause 78, but again I am now proposing that exceptions may be made by regulation. Short selling and forward trading will thus be allowed in certain well defined circumstances since it is not the intention to impede such normal and proper activities as jobbing, trading in odd lots and arbitrage in securities overseas. The basic principle of a 24-hour settlement is retained, but I now propose that, if a broker has infringed this, it will be a defence for him to show that he had taken all reasonable steps to complete the transaction within 24 hours. This is, of course, in addition to the let-out regulations I have

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just mentioned, as it may well be, in practice, that such regulations will not cover every reasonable contingency.

By an amendment proposed to clause 75 a client may require a dealer to provide him with a copy of a contract note in respect of a transaction done for him and also a copy of the client's account. The dealer may impose a charge for the copies.

Where a dealer or investment adviser refers in any circular or other written communication to any securities, he must, by an amendment to clause 77, state whether he has an interest in the shares but he need not give specific details of the interest.

I propose that clause 79 be amended to permit a dealer, including an exempt dealer, to deposit clients' securities not only with the dealer's bank, but in any other institution which provides facilities for the safe custody of documents, if the Commissioner is satisfied that those facilities are adequate. In addition, the Commissioner may, on application in writing, exempt a dealer from the provisions of subclause (1) but, in granting such exemption he may impose such conditions as he thinks fit. So, subject to approval, a dealer may retain securities if the facilities he provides are considered adequate.

I propose that sub-clause (5) of clause 81 should be amended so that the retention periods for records and contract notes are reduced from 7 years and 5 years to 6 years and 2 years respectively. Sub-clause (6) has been deleted and a consequential amendment has been made to sub-clause (7).

The period of time within which amounts are required to be paid into a trust account is being extended from one to four bank trading days by an amendment to clause 82. All sums derived by way of interest from the retention of a trust account shall, subject to any agreement to the contrary, belong to the person to whom the dealer is accountable.

Clause 85 now requires all trust accounts held by a dealer to be audited. The proposed period of 14 days within which a dealer must replace an auditor who has ceased to act for him has been amended to read "as soon as practicable thereafter". An additional sub-clause makes a person ineligible if he belongs to a class prescribed in regulations. The penalty provision in sub-clause (2) has been deleted.

In clause 86, the period within which a dealer has to lodge an auditor's report has been extended to four months, and a further month may be allowed if the Commissioner is satisfied that there is good reason for this. I now propose that the dealer should lodge the documents with the Commissioner instead of the committee of his stock exchange. I should like to make it abundantly clear that I put forward this amendment at the request of the Stock Exchanges themselves.

In clause 87, it is now incumbent for an auditor to report to the Commissioner any contravention he has discovered as soon as practicable after such discovery instead of within 7 days; the penalty provision in sub-clause (2) has been deleted.

Clause 89 has been amended so that when the Commissioner decides to appoint an auditor to report on a broker's account, following a complaint from a client that the dealer has not met his obligations, the Commissioner must first give the dealer an opportunity to give an explanation. By a further amendment he may appoint the dealer's own auditor, if he so wishes.

The penalty provision in sub-clause (2) of clause 92 is deleted.

That completes, Sir, my proposed amendments to certain clauses in Parts VIII to IX. I now turn to Part X which is perhaps the most controversial part of the bill dealing as it does with the establishment and operation of a compensation fund.

The proposals, both as put forward originally in the bill, and as now amended, have engendered a great deal of discussion and debate, some of which has tended to be misguided. Indeed, the necessity of having any statutory compensation scheme at all has been questioned; but the Government has accepted the recommendation of the Companies Law Revision Committee on this point and firmly adheres to it. Moreover, as I stated in my speech on the second reading, the Government is adamant that a substantial sum of money must be set aside and kept in near liquid form so that investors will have confidence that their legitimate claims will be met.

In principle, the compensation scheme is simply a form of insurance to protect the investor up to a stated level in case a member of a stock exchange defaults; and the fund from which compensation is to be paid is to be made up of a contribution from each of the exchanges on the basis of a uniform sum for each individual member.

[THE FINANCIAL SECRETARY] **Securities Bill—resumption of the committee stage (30.1.74)**

The scheme originally proposed in the bill has been substantially amended in an effort to meet the opposition of the exchanges, but the basic principles have been maintained. Instead of a separate fund for each stock exchange it is now proposed to have a single common fund, which is an improvement from the investor's point of view.

The idea of a compensation fund is not new to the exchanges as each has one at the moment. One of the terms under which they were granted recognition under the Companies Ordinance was that each should maintain an "appropriate" compensation fund, though the actual size and conditions of operation were not then specified. These were left to the discretion of the exchanges pending the enactment of security provisions; and the provisions which the Government considers necessary to give investors adequate protection are those now before honourable Members for their consideration.

Since the arguments surrounding these proposals have been essentially in the form of a dialogue with the stock exchanges a salient fact has been obscured, namely, that the primary and immediate purpose of this bill is to give more protection to the investor rather than to protect the interests of the broking community. I hasten to add that it is not the Government's intention in any way to frustrate the legitimate activities of our brokers. Indeed, brokers have every right to be protected from unscrupulous clients and staff, but it is the Government's view that this should be achieved primarily by their own arrangements rather than by statutory means. Discussion on the bill generally, and of Part X in particular, must be rational and, bearing in mind our objectives, kept in perspective.

Under clause 97 a fund will be established and maintained by the Commission. A committee of the Commission, comprising five persons of whom at least two will be members nominated by the Federation, will administer the fund under clause 98.

Clause 99 defines the sources of the monies which will constitute the fund.

The Commission is charged in clause 100 with opening accounts at one or more banks and in clause 101 with maintaining proper accounts and of ensuring an annual audit of the accounts, a copy of which has to be sent to the Council of the Federation and to each stock exchange.

Each exchange is obliged under clause 102 to deposit with the compensation fund in respect of each of its members a sum equal to \$25,000 in cash and an irrevocable bank guarantee for a further \$25,000. However, in respect of this latter requirement, the Commission may exempt an exchange from compliance if it is satisfied that the exchange is operating a satisfactory guarantee system protecting its own members.

I must point out that the onus is on each exchange to provide money to the fund. How each exchange raises this money, whether as a charge on each member or as a transfer from the reserves of the exchange or in some other way, is entirely a matter for each exchange to decide. To put it mildly there has been a lot of misunderstanding on this point and I hope I have made the position quite clear; it certainly is clear in the bill as drafted.

Clause 103 gives certain powers of investment of monies in the fund to the Securities Commission and provides for the annual payment to stock exchanges of the earned income of the fund after payment of expenses.

Reinforcing the deposit principle of the compensation fund is the provision in clause 104 to repay the deposit when the broker dies or otherwise ceases to be a member of his particular stock exchange.

When a payment is authorized from the fund, in accordance with a recommendation from the Council of the Federation, the fund is to be replenished initially by the stock exchange to which the defaulting member belongs. If, however, because of insolvency or any other reason the stock exchange concerned is unable to do so, recourse can be had, under clause 105, to each remaining stock exchange. It is provided that the total amount that may be deposited in such circumstances shall not exceed \$50,000 per member and, indeed, could be lower depending upon the sum to be found. The maximum liability, therefore, of remaining members in respect of obligations of a defaulting exchange is set at a maximum of \$50,000 per member.

The Commission may not require such further deposits until it has first exhausted all relevant rights of action and other legal remedies either against the stock broker, member firm or corporate member against whom the claim was made, or against the stock exchange primarily liable. It should be remembered that, should such an eventuality arise, the non-defaulting stock exchanges will only be "bailing out" the clients of the defaulting exchange if the total due to those clients exceeds the total deposit which has been made by the defaulting

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exchange (a point which appears to have been overlooked in some of the faintly cantankerous arguments against this scheme.)

Clause 106 establishes in general terms when, and for what purposes, payments may be paid from the fund.

By virtue of clause 107 a person who has lost money by reason of a default arising from dealing in securities, shall be entitled to submit a claim against the fund. I should make it quite clear, at this point, that claims may be submitted in respect not only of a default arising from dealings within the 24-hour settlement, but also from any default arising from the retention of securities for safe-keeping or from the various other services provided by a broker, whether for specific consideration or otherwise. It is the Government's considered view that a person should be entitled to claim against the fund as a result of a default arising from any activity or service concerned with trading in securities which is permitted by the exchanges. I am only too well aware that others hold a distinctly contrary view, but it would be a mockery of the whole concept of a compensation fund if it covered only part of this field.

The Commission will have the power in clause 108 to increase the total amount payable in respect of any one broker—at present restricted to \$1 million—if they believe the assets of the fund so permit; but only after consultation with the Council of the Federation. The Commission has no responsibility or function in connection with any claim made against the Compensation Fund. This is entirely the province of the Council of the Federation and places a heavy responsibility on that body. The Compensation Fund Committee of the Securities Commission is only responsible for the actual administration and investment of the fund itself and has nothing to do with claims. Once a claim has been established to the satisfaction of the Council of the Federation the Compensation Fund Committee of the Securities Commission will, upon the request of the Council, release the sum requested. Clauses 110-112 cover the manner in which claims are to be processed by the Council of the Federation.

Where a claim has been partially or totally disallowed by the Federation, clause 113 allows proceedings to be taken in court to establish a claim against the fund.

Clause 119 gives power to the Commission to return contributions upon the winding up of a stock exchange.

Finally, Sir, I would ask honourable Members to bear in mind as they reflect upon Part X of the bill as now drafted that, during the second reading debate, I undertook to have the compensation scheme reviewed in two years' time and I do earnestly suggest that debate on this whole subject should now be drawn to a decent close for the time being.

Turning now to Part XI which deals with inspections and investigations, clause 120 is being amended to enable the Commissioner to require a person to produce a register, document or books so that the Commissioner is able to exercise his power of inspection for which the clause provides.

Clause 123 is being amended to increase from 48 hours to 14 days, the period within which a person subsequently returning to Hong Kong may be charged with an offence. Provision is made for reasonable access to be made available for a person whose documents have been seized, to enable copies to be made, or extracts taken.

Clause 125 is being amended to clarify the conditions in which the Commission may appoint an investor . . . I beg your pardon—an inspector—a Freudian slip (*laughter*) whilst clause 116A deals with the delegation of powers of the inspector; and clause 127 now specifies in detail what has to be done when an inspector completes his report.

Clause 129 is being amended to make provision for the right to claim costs incurred by a prescribed person in connection with an investigation in the event of no proceedings being taken.

Clauses 132-135 have been redrafted considerably to categorize clearly those practices which are deemed to create false trading in securities by the employment of fraudulent or deceptive devices; the fixing of prices; and the making of false or misleading statements about securities. More emphasis has been given to the intention underlying the practice so that there is less possibility of proper and reasonable practices by dealers falling within the scope of the provisions of these clauses. Nevertheless, they will be difficult to apply as experience elsewhere has shown. There can never be a complete answer to this problem because one can never put a single dividing line between those practices which are acceptable and those which are not. In reality, there are varying degrees of acceptability and, in each case, there will have to be some discretion in deciding where the line is to be drawn; but, as now proposed, the clauses should help to prevent the more distinctly objectionable practices.

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Although certain amendments have been made to clause 137 to improve the original provisions they do not in any way affect what I advised honourable Members at the second reading. This clause will not be implemented until such time as we have been able to assess the United Kingdom legislation and consider the extent to which it is applicable to Hong Kong; and, in any event, as I undertook when replying to my honourable Friend Mr P. C. Woo during the debate on the second reading, not before this Council has had an opportunity to discuss further the proposals.

Clause 139 is being amended to allow an insurance underwriter to use the term "underwriter".

The amendments being made to the remaining clauses 140, 143, 144, 146 and 147 are, honourable Members will be pleased to hear, of a minor nature.

The First Schedule is being amended to include a requirement that an offer shall specify the last price paid in respect of securities on the last trading day of each of the six months immediately preceding the date of the offer.

Paragraphs 4-8 have been deleted since they are primarily concerned with a situation which arises when a takeover is in view. Provision for such a contingency will be included in a separate bill concerned specifically with takeovers. A major consequence of these deletions is that paragraph 9 becomes paragraph 4.

Other amendments to the First Schedule and all those to the Second Schedule are very minor.

Sir, honourable Members will, no doubt, sigh with relief that I have no further amendments to move. But before sitting down (and I must admit I shall do so with a sense of relief myself) I must thank all honourable Members for their forbearance and fortitude and, in particular, I must thank the Members of the *ad hoc* group who have so painstakingly studied the original proposals and the amendments to the amendments, to the amendments thereto. However, I cannot be too hopeful as to the future. In a bill as complex as this, dealing as it does with a constantly evolving industry, it is inevitable that further amendments will be necessary—perhaps sooner rather than later. Indeed, should the Securities Commission and the Government be persuaded

that certain amendments are necessary even before a part is implemented then we would be prepared to introduce them; but I hasten to say that this would not be agreed to lightly for the provisions of the bill as enacted must now in my view be tested by experience.

I am confident, Sir, that, given the necessary goodwill, this bill will be of long term benefit not only to the investing community, but also to the securities industry itself.

Sir, I beg to move that the bill be amended as set forth in the paper before honourable Members.

MR WOO: —Sir, when I spoke on the second reading of this bill on 9th January last I said that much of the bill as it then stood was not acceptable to the Unofficial Members. However, the main principles of the bill have always been supported by us and therefore the Unofficial Members voted in favour of the second reading of the bill on the understanding that adequate time would be provided for a thorough examination of the extensive and important amendments needed before the bill could be passed into law. I should place on record the fact that time has indeed been provided for that purpose and that a very thorough and detailed examination has been completed of the vast number of amendments to which my honourable Friend the Financial Secretary referred to in his committee stage speech—this being in itself, Sir, a useful procedural innovation. The group of Unofficial Members formed to deal with the bill have had to work hard. We have had some very long meetings with the Officials and with the stock exchanges. Although there have been criticism of some provisions put forward by the stock exchanges which we have felt unable to meet, the number of points on which mutual agreement has not been reached is very small. Great efforts have been made by the Officials and the Unofficials alike to meet the legitimate objections of the stock exchanges and other interested parties to the legislation as first drafted. The extent of the amendments before Council today stands testimony of this. I feel therefore that we can all confidently vote in favour of the amendments and allow this amended bill to pass into law.

During the course of the lengthy discussions to which I have referred there have been differences of opinion. It would be quite extraordinary had this not been the case with legislation of such a nature, much of which is new and complex. But the final result is a piece of legislation which should serve both to ensure proper and adequate regulation of stock exchange transactions in Hong Kong and

[MR WOO] Securities Bill—resumption of the committee stage (30.1.74)

to enhance the international reputation of Hong Kong as a financial centre. I hope, therefore, and here I address myself primarily to the stock exchanges and to all the stockbrokers who will be affected when the new law comes into force, that they will accept the bill as it is finally to be enacted in good spirit and with the determination to cooperate with the Commissioner for Securities in putting these provisions into effect.

MR SAYER: —Sir, while I realize that I am probably in a minority of one, there is a subclause in Part I of the bill which in my view should have been retained. I refer to subclause (4) of clause 2 with particular reference to subclause (c) thereof. This defines a person as having an interest in securities if his wife, or any of his wife's children under 18 years of age, is a beneficial owner of the securities whether alone, jointly or in common with others. The deletion of this clause could lead to widespread evasion of the aims of the bill if those affected by it are so inclined. There is no need to look for other loopholes as this one is so obvious as to make the bill largely ineffective. I appreciate that it could be difficult to enforce this provision, but in my view, this is not sufficient reason for its exclusion and it should be there, at least as a reminder that to deal through the medium of wives or relatives is a direct contravention of the bill's aims and objectives. My honourable Friend Mr P. C. Woo has spoken of the great amount of time and effort spent in dealing with the various interested parties concerned with the bill and, like my fellow Unofficial Members, I now support its passage into law in its present form. I would, however, urge that when future amendments are introduced as they inevitably will be, consideration be given to including the subclause I have referred to which seems to me to be of paramount importance if the public here in Hong Kong and overseas are to have confidence in our stock exchanges.

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in groups.

Clauses 4-7, 10, 15-16, 18-19, 22, 26, 28, 32-33, 38-39, 41-42, 44, 50, 53, 56-58, 60, 62, 66-68, 76, 80, 83-84, 90, 95, 121-122, 124, 126, 128, 130, 136, 138, 141-142 and 145 were agreed to.

THE FINANCIAL SECRETARY: —Sir, I move that the clauses specified in the paper before honourable Members be amended as set out in the paper

Proposed Amendments

Clause

- 1 That clause 1 be amended by deleting from subclause (1) "1973" and substituting "1974".
- 2 A. That subclause (1) of clause 2 be amended—
 - (a) by deleting from the definition "constitution" “, and the rules or by-laws of the company”;
 - (b) by deleting the definition of "control”;
 - (c) by inserting, after the definition of "corporate member", the following—

“"corporation" means any company or other body corporate formed or incorporated either in Hong Kong or elsewhere; but does not include—

 - (a) any body corporate that is incorporated in Hong Kong and is a public authority or an organ or agency of the Crown;
 - (b) any corporation sole;
 - (c) any credit union registered under the Credit Unions (Cap. 119.) Ordinance;
 - (d) any corporation registered under the Multi-storey (Cap. 344.) Buildings (Owners Incorporation) Ordinance;
 - (e) any corporation which has been exempted by regulations from the provisions of this Ordinance that affect corporations, or any corporation that belongs to a class of corporations that has been so exempted;”;
 - (d) by deleting the definition of "dealer" , and substituting the following—

“"dealer", subject to section 80(1), means a person who carries on a business of dealing in securities, whether he carries on any other business or not; but does not include—

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- (a) a solicitor or professional accountant whose carrying on business as a dealer is wholly incidental to the practice of his profession;
- (b) except where specifically provided in this Ordinance, an exempt dealer;
- (c) a person who carries on a business of dealing in securities only through a registered or exempt dealer;”;
- (e) by deleting from the definition of "dealer's representative" "company" and substituting "corporation";
- (f) by inserting in the definition of "dealing in securities" after "(whether acting as principal or agent)," the following—

"subject to section 2A.”;
- (g) by deleting the definition of "defalcation", and substituting the following—

"defalcation" means a misapplication of money, securities, or other property;”;
- (h) by deleting from the definition of "exempt dealer" the words "by the Commissioner";
- (i) by deleting the definition of "Federation", and substituting the following—

“"Federation" means the Hong Kong Federation of Stock Exchanges constituted under Part IV;”;
- (j) by inserting, after the definition of "financial year" the following—

“"foreign stock exchange" means a stock exchange which is permitted to operate in a country or territory outside Hong Kong by the law of that country or territory or, in the case of a country or territory which has no written law relating to stock exchanges, is not prevented from operating by the law of that country or territory;”;

Clause

(k) by deleting the definition of "investment adviser" and substituting the following—

“"investment adviser" means any person who—

- (a) for direct remuneration carries on a business of advising other persons concerning securities; or
- (b) for direct remuneration as part of a regular business issues or circulates analyses or reports concerning securities; or
- (c) pursuant to a contract or arrangement with a client, undertakes on behalf of the client the management of a portfolio of securities, including the arranging of purchases, sales, or exchanges of securities through a dealer or exempt dealer,

but does not include—

- (i) a licensed bank;
- (ii) a solicitor or professional accountant whose carrying on business as an investment adviser is wholly incidental to the practice of his profession;
- (iii) the proprietor or publisher of, or any contributor to, a *bona fide* newspaper, magazine, journal, or other periodical publication that is generally available to the public otherwise than on subscription who only in that *bona fide* newspaper, magazine, journal, or periodical publication advises other persons concerning securities, or issues or promulgates analyses or reports concerning securities, not being the proprietor or publisher of, or a contributor to, a newspaper, journal, magazine, or other periodical publication whose principal or only object is to advise others concerning securities, or to issue or circulate analyses or reports concerning securities;

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- (iv) a dealer or exempt dealer to the extent that his giving of investment advice is incidental to his carrying on business as a dealer or exempt dealer;
 - (v) a trustee company registered under Part VIII of the Trustee Ordinance;
 - (vi) an exempt investment adviser;"
- (l) by deleting from the definition of "investment representative" "company" in each case where it appears and substituting "corporation";
- (m) by deleting the definition of "member";
- (n) by deleting from the definition of "mutual fund company" "company" wherever it appears and substituting "corporation";
- (o) by deleting from the definition of "rules" ", and any provision of the constitution of the exchange";
- (p) by deleting the definition of "securities" and substituting the following—
- ““securities" means any shares, stocks, debentures, loans, funds, bonds, or notes of, or issued by, any body, whether incorporated or unincorporated, or of any government or local government authority, and includes—
- (a) rights, options, or interests (whether described as units or otherwise) in or in respect of any of the foregoing;
 - (b) certificates of interest or participation in, or temporary or interim certificates for, receipts for, or warrants to subscribe to or purchase, any of the foregoing; or
 - (c) any instruments commonly known as securities;
- but does not include—
- (i) any shares or debentures of any company which is a private company within the

Clause

meaning of section 29 of the Companies Ordinance;

- (ii) any interest arising under a partnership agreement or proposed partnership agreement (other than an agreement creating a limited partnership), unless the agreement or proposed agreement relates to an undertaking, scheme, enterprise, or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises, or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement, or unless the agreement is or would be an agreement, or is or would be within a class of agreements, prescribed by regulations for the purposes of this paragraph;
 - (iii) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interests arising under any such receipt, certificate, or document;";
- (q) by deleting the definition of "shares" and substituting the following—
- “"share" means a share in the capital of a corporation; and includes the stock or any part of the stock of a corporation;”;
- (r) by deleting the definition of "stockbroker" and substituting the following—
- “"stockbroker" means a dealer who is a member of a stock exchange, whether as an individual member, partner of a member firm, or director of a corporate member;”;
- (s) by deleting the definition of "stock market" and substituting the following—
- “"stock market" means a place where persons regularly meet together to negotiate sales and

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purchases of securities—(including prices), or a place at which facilities are provided for bringing together sellers and purchasers of securities; but does not include the office of a stockbroker, or of a member firm or corporate member of a stock exchange;”;

- (t) by deleting the definition of "transaction".
- B. That subclause (2) be deleted.
- C. That subclause (3) be amended by deleting "company" in each case where it appears and substituting "corporation".
- D. That subclause (4) be deleted.
- E. That the following new subclause be added—

“(6) A person shall not be treated as carrying on a business of dealing in securities by reason only of the fact that he is a member of a partnership which carries on such a business.”

- 3 That clause 3 be amended—
 - (a) by deleting from subclause (1) "and 134" and substituting ", 77, and 132";
 - (b) by deleting from subclause (4) "company" in each case where it appears and substituting "corporation";
 - (c) by deleting subclause (5);
 - (d) by deleting from subclause (6) "subsections (4) and (5) of this section, and of subsection (2) of section 134" and substituting "subsection (4) of this section, and subsection (4) of section 132";
 - (e) by deleting from subclause (6) "company" in each case where it appears and substituting "corporation";
 - (f) by deleting from subclause (6)(a) "section 2(2)" and substituting "section 2B";

Clause

- (g) by inserting in subclause (8), after paragraph (a), the following—
- "(aa) for the purposes of section 77, an interest in securities of a person who holds that interest only by virtue of his having control over the securities as a manager, agent, trustee, or nominee for another;"
- (h) by deleting from subclause (8)(b) "134(2)" and substituting "132(4)";
- (i) by deleting from subclause (8)(c) "or section 134" and substituting ", section 77, or section 132".
- 8 That clause 8 be amended—
- (a) by deleting from subclause (1) paragraph (a) and (b) and substituting the following—
- "(a) one shall be the Commissioner;
- (b) another shall be the Registrar of Companies; and
- (c) the remaining five shall be persons appointed by the Governor.";
- (b) by deleting from subclause (2) "(1)(b)", and substituting "(1)(c)";
- (c) by deleting from subclause (3) "(1)(b)", and substituting "(1)(c)".
- 9 That clause 9(1) be amended by deleting "(8)(1)(b)" and substituting "8(1)(c)".
- 11 That clause 11 be amended—
- (a) by deleting paragraph (b), and substituting the following—
- "(b) without prejudice to any duties imposed or powers conferred on any other person in regard to the enforcement of the law relating to securities, to be responsible for ensuring that the provisions of this Ordinance and the Protection of Investors Ordinance 1974, and the provisions of any other Ordinance so far as they relate to securities, are complied with;"

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- (b) by deleting from paragraph (c) "members of";
- (c) by deleting from paragraph (e) "and members of stock exchanges".

12 That clause 12 be amended—

- (a) by inserting in subsection (1), after "Commission may", the following—
 - “, after consultation with the Federation,”;
- (b) by deleting from subsection (1) paragraphs (a), (b), and (g);
- (c) by deleting paragraph (f) of subclause (1) and substituting the following—
 - “(f) the qualifications for membership of stock exchanges and the maximum number of persons that may be admitted to membership of any stock exchange;”;
- (d) by deleting subclause (1)(j);
- (e) by inserting, after subclause (2), the following—
 - "(3) Nothing in this section prevents the Federation or any stock exchange from making rules on any matter mentioned in subsection (1) if those rules have been approved by the Commission and are not repugnant to any rule made by the Commission under subsection (1)."

13 That clause 13 be amended—

- (a) by adding as subclause (2) the following—
 - "(2) An authorization under subsection (1) may be granted subject to such conditions as the Commission considers fair and reasonable";
- (b) by deleting from subclause (1)(c) "companies" and substituting "corporations".

14 That clause 14 be amended—

- (a) by deleting from subclause (2) "Part V" and substituting “sections 36 and 98,”;

Clause

(b) by inserting in subclause (3), after "any person", the following—

"(including a stockbroker)";

(c) by adding the following subclause—

"(6) A committee established under subsection (1) may elect any of its members to be chairman and may, subject to any direction of the Commission, regulate its procedure in such manner as it thinks fit."

17 That clause 17 be amended—

(a) by deleting subclause (2);

(b) by deleting from subclause (7)(a) "company" and substituting "corporation";

(c) by adding the following new subclause—

"(8) Any person who, without lawful authority or reasonable excuse, contravenes subsection (1), subsection (5), or subsection (7) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months."

20 That clause 20 be amended by inserting, after "stock market" where those words first appear, the following—

"in Hong Kong".

21 That clause 21 be amended by adding the following—

(Cap.
221.)

"(4) The provisions of section 102 of the Criminal Procedure Ordinance (which makes provision for the disposal of property connected with offences) shall apply to any thing which has come into the possession of the Commissioner under this section in the same way as it applies to property which has come into the possession of the Police."

23 That clause 23 be amended—

(a) by deleting paragraphs (c) and (d) of subclause (3) and substituting the following—

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"(c) that the constitution of the company makes satisfactory provision for the exclusion from membership of the company of—

(i) a person who is not a registered dealer;

(ii) a person who is a director or employee of a licensed bank;

(iii) a person who is a solicitor or professional accountant holding a current practising certificate;

(iv) a person who performs any occupation, or carries on any business, for the time being prescribed by rules;

(v) a person who was not born in Hong Kong or who has not been ordinarily resident in Hong Kong for 5 out of the 7 years immediately preceding his application for membership of the company, unless he is, in the opinion of the Commission, a person of good reputation experienced in dealing in securities;

(vi) a corporation or firm which does not carry on a business solely as a dealer or as a dealer and investment adviser;

(vii) a corporation of which any director was not born in Hong Kong or has not been ordinarily resident in Hong Kong for 5 out of the 7 years immediately preceding the application of the corporation for membership of the company, unless the director is, in the opinion of the Commission, a person of good reputation experienced in dealing in securities;

(viii) a corporation, unless each director of the corporation who actively participates in the corporation's business of dealing in securities is also a member of the company;

(ix) a corporation the liability of whose members is limited, unless each director of the corporation who actively participates in the

Clause

corporation's business of dealing in securities is jointly and severally liable for the debts and obligations of the corporation, whether incurred before or after he became a director of the corporation;

(x) a firm of which any partner, being an individual, was not born in Hong Kong or has not been ordinarily resident in Hong Kong for 5 out of the 7 years immediately preceding the application of the firm for membership of the company, unless that individual is, in the opinion of the Commission, a person of good reputation experienced in dealing in securities;

(xi) a firm of which any partner is a corporation if that corporation is one which would be required to be excluded from membership of the company by virtue of sub-paragraph (vii);

(xii) a firm, unless each of the partners of the firm who actively participates in the firm's business of dealing in securities is also a member of the company;

(Cap. 37.) (xiii) a limited partnership registered under the Limited Partnerships Ordinance, unless each partner who actively participates in the partnership's business of dealing in securities is a general partner;"

(b) by deleting subclause (3)(f)(ii) and substituting the following—

"(ii) a provision prohibiting any member of the company who is a director of a corporation from acting as a dealer in the shares of that corporation";

(c) by deleting subclause (3)(g)(ii) and substituting the following—

"(ii) undertakes to operate its stock market only at a place in Hong Kong approved by the Commission;"

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(d) by deleting subclause (3)(h) and substituting the following—

"(h) that the company will make the deposits required to be made to the compensation fund established under Part X;"

(e) by deleting subclause (4) and substituting the following—

"(4) The Commission may, on application being made to it in writing by a company approved or deemed to be approved under this section, authorize the company to admit to membership—

(a) an individual who is not eligible for membership of the company by reason of his not being born in Hong Kong or not fulfilling the residential requirement for membership of the company if, in the opinion of the Commission he is a person of good reputation experienced in dealing in securities;

(b) a corporation of which any director was not born in Hong Kong or has not been ordinarily resident in Hong Kong for 5 out of the 7 years immediately preceding the application of the corporation for membership of the company, if the director is, in the opinion of the Commission, a person of good reputation experienced in dealing in securities;

(c) a firm of which any partner—

(i) is an individual who was not born in Hong Kong or has not been ordinarily resident in Hong Kong for 5 out of the 7 years immediately preceding the application of the firm for membership of the company; or

(ii) is a corporation of which any director was not born in Hong Kong or

Clause

has not resided in Hong Kong for 5 out of the 7 years immediately preceding the application of the firm for membership of the company, if, in the opinion of the Commission, the individual or, as the case may be, the director is a person of good reputation experienced in dealing in securities."

(f) by deleting subclause (6) and substituting the following—

"(6) Every company to which subsection (5) relates shall, not later than 6 months after the commencement of this Part, satisfy the Commission that it has complied with the requirements of paragraphs (b), (c), (d), (e), (f), (g) and (h) of subsection (3), except that in relation to paragraph (c) the company is not required to amend its constitution so to provide for the exclusion from membership of the company of any of those persons mentioned in sub-paragraphs (iii), (v), (vii), (x) and (xi) of that paragraph who were members of the company at the commencement of this Part and who would, but for this exception, be liable under the constitution of the company to be excluded from that membership.

(7) If any company to which subsection (5) relates fails to satisfy the Commission as required by subsection (6), the Commission may, at any time while the requirements of subsection (6) remain unsatisfied, revoke the approval deemed to have been given under subsection (5)."

24 That clause 24 be amended—

(a) by deleting from subclause (1)(b) "section 23(3)(c), (d) and (e)" and substituting "paragraphs (c) and (e) of section 23(3)";

(b) by inserting in subclause (1)(d), after "stock market", the following—

"in Hong Kong";

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- (c) by deleting subclause (1)(e) and substituting the following—
 "(e) that the stock exchange has failed to make any deposit or payment into the compensation fund as required under Part X; or".
- 25 That clause 25 be amended by inserting, after "Commissioner may", the following—
 ", after consultation with the Federation,".
- 27 That clause 27 be amended by deleting from subclause (1)(b) "section 37(2)(b), (c) or (d)" and substituting "paragraph (b) or paragraph (c) of section 37(2)".
- 29 That clause 29(1) be amended by deleting "Federation of Hong Kong Stock Exchanges" and substituting "Hong Kong Federation of Stock Exchanges".
- 30 That clause 30(1) be amended by deleting "Federation of Hong Kong Stock Exchanges" and substituting "Hong Kong Federation of Stock Exchanges".
- 31 That clause 31 be amended—
 (a) by deleting from subclause (1) "of such first meeting" and substituting "of the date on which it was constituted"; and
 (b) by deleting from subclause (4) "in each year thereafter after the anniversary of such meeting" and substituting "and in each year thereafter after the anniversary of the date on which it was constituted".
- 34 That clause 34 be amended by inserting, after paragraph (g), the following—
 "(ga) to fix the hours of trading on stock exchanges;
 (gb) to determine all matters relating to the levying of brokerage in respect of transactions on stock exchanges, including the fixing of a uniform rate of brokerage in relation to all stock exchanges;
 (gc) to establish a uniform procedure for the transaction of dealings between members of one stock exchange and members of another;".

Clause

35 That clause 35 be amended—

(a) by deleting from subclause (2) "any persons who are members of stock exchanges" and substituting "persons who are not members of the Council";

(b) by adding the following—

"(3) The Federation may, and if so directed by the Commission shall, make rules on any matter within its functions.

(4) Every rule made under subsection (3) shall be binding on and be enforceable against each stock exchange and against the members of each stock exchange, except to the extent that any such rule purports to exempt any specified stock exchange or any members or class of members of a stock exchange from its operation.

(5) The Federation may cause any rules made under subsection (3) to be promulgated in such manner as it thinks fit.

(6) All rules made under subsection (3) shall, subject to subsection (7), come into operation on the date on which they are made or on such later date as may be specified in the rules.

(7) No rule made under subsection (3) (not being a rule made at the direction of the Commission) shall come into operation unless it has been previously approved by the Commission."

37 That clause 37 be amended—

(a) by deleting "malpractice" wherever it appears and substituting "misconduct";

(b) by inserting in subclause (1), after "committee" the following—

“or any member of the committee”;

(c) by deleting from subclause (2)(c) "\$5,000", and substituting "\$10,000";

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- (d) by deleting paragraph (d) of subclause (2);
 - (e) by inserting, after subclause (4), the following—
 - "(4A) Where a stock exchange has been proceeded against before a court of law in respect of an offence arising out of misconduct, the Disciplinary Committee shall not impose a fine under subsection (2)(c) in relation to that misconduct.";
 - (f) by inserting in subclause (5), after paragraph (a), the following—
 - "(aa) any wilful contravention by a stock exchange or the committee of a stock exchange of the constitution or rules of the exchange;".
- 40 That clause 40(4) be amended by deleting "\$5,000", and substituting "\$10,000".
- 43 That clause 43 be amended by deleting "Disciplinary Committee", and substituting "Commission".
- 45 That clause 45 be amended by deleting subclause (1), and substituting the following—
 - "(1) Except so far as specifically provided, this Part does not apply to an exempt dealer or to an exempt investment adviser, or to the representative of an exempt dealer or exempt investment adviser, but—
 - (a) subject to section 59A, nothing in this subsection exempts an exempt dealer who carries on a business as an investment adviser from being registered as such under this Part; and
 - (b) subject to section 59, nothing in this subsection exempts an exempt investment adviser who carries on a business of dealing in securities from being registered as a dealer."
- 46 That clause 46 be amended—
 - (a) by deleting subclause (1) and substituting the following—
 - "(1) A person (whether an individual or a body corporate, or a member of a partnership or director

Clause

of a body corporate) shall not carry on a business in Hong Kong of dealing in securities, or hold himself out as carrying on such a business, unless he is registered as a dealer under this Part."

(b) by deleting subclauses (3) and (4).

47 That clause 47 be amended—

(a) by deleting subclause (1) and substituting the following—

"(1) A person (whether an individual or a body corporate, or a member of a partnership or director of a body corporate) shall not in Hong Kong act as an investment adviser or hold himself out to be an investment adviser unless he is registered as an investment adviser under this Part."

(b) by deleting subclauses (3) and (4).

48 That clause 48 be amended by inserting in subclause (1), after "representative" in each case where it appears, the following—

"in Hong Kong".

51 That clause 51 be amended—

(a) by deleting from subclause (1) "an amount of \$100,000 with the Accountant General" and substituting "with the Commissioner such amount as is prescribed in regulations";

(b) by deleting from subelause (2) "company" in each case where it appears and substituting "corporation";

(c) by deleting from subclause (2)(c) "defalcation" and substituting the following—

"breach of trust, defalcation, fraud, or misfeasance";

(d) by deleting from subclauses (2) to (13) "Accountant General" in each case where those words appear and substituting "Commissioner";

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- (e) by deleting subclause (6) and substituting the following—
- "(6) The following persons are exempt from being required to deposit the amount required under subsection (1)—
- (a) any dealer who is a stockbroker;
 - (b) any corporate member or member firm of a stock exchange;
 - (c) any corporation carrying on a business as a dealer each of whose directors who is engaged in dealing in securities has deposited the amount so required; and
 - (d) any other dealer who belongs to a class of dealers exempted from the provisions of this section by regulations."

52 That clause 52 be amended by deleting from subclause (1)(b) "company" and substituting "corporation".

54 That clause 54 be amended by deleting "company" in each case where it appears, and substituting "corporation".

55 That clause 55 be amended—

 - (a) by deleting "company" wherever it appears, and substituting "corporation";
 - (b) by deleting "malpractice" wherever it appears and substituting "misconduct".

59 That clause 59 be amended—

 - (a) by deleting from subclause (2)(a) "company" and substituting "corporation";
 - (b) by deleting subclauses (4) and (5) and substituting the following—

"(4) Without prejudice to subsection (1), the Commissioner may, by notice in the *Gazette*, declare—

 - (a) any licensed bank;

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(b) any trustee company registered under Part VIII of the Trustee Ordinance; or

(c) any person belonging to class of persons, or carrying on a type of business, prescribed in regulations for the purposes of this paragraph,

to be an exempt dealer for the purposes of this Ordinance.

(5) The Commissioner may at any time revoke a declaration made under subsection (4)."

61 That clause 61 be amended—

(a) by deleting from subclauses (1) and (2) "registered" wherever it appears;

(b) by deleting from subclause (3) "company" in each case where it appears and substituting "corporation", and by deleting "forthwith" and substituting "within 7 days after that event";

(c) deleting from subclause (4) "forthwith" and substituting "within 7 days after that event".

63 That clause 63 be amended—

(a) by deleting "company" in each case where it appears and substituting "corporation";

(b) by deleting "resident" and substituting "domiciled".

64 That clause 64 be amended by deleting subclause (1) and substituting the following—

"(1) This Part applies to and in relation to—

(a) a person who is—

(i) a dealer;

(ii) a dealer's representative;

(iii) a investment adviser; or

(iv) a investment representative; and

(b) securities listed on a stock exchange and any other securities of a class prescribed in regulations for the purposes of this subsection."

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- 65 That clause 65 be amended by deleting subclause (1) and substituting the following—

"(1) A person to whom this Part applies shall maintain a register of the securities in which he has an interest and of the particulars relating to their acquisition and disposal in a manner and form approved by the Commissioner."

- 77 That clause 77 be amended—

- (a) by deleting subclause (1) and substituting the following—

"(1) Where, in a circular or other written communication issued in Hong Kong by him to more than one person, a dealer or an investment adviser (including an exempt dealer or investment adviser) makes a recommendation, whether expressly or by implication, with respect to any securities or any class of securities of a corporation, he shall include in the circular or other communication, in type not less bold and not less legible than that used in its text, a statement as to whether or not he has, at the date specified in the circular or communication pursuant to subsection (4), an interest in any of the securities of that corporation.

(1A) Subsection (1) does not require in the case of a circular or other written communication issued by a stockbroker the inclusion of a statement in relation to an interest that consists of the right to charge commission as provided by the rules of the stock exchange of which he is a member on the sale or purchase of the securities or class of securities that are being recommended.";

- (b) by deleting subclauses (4) to (8) and substituting the following—

"(4) Every circular or other written communication to which this section relates shall be dated and shall contain on its face the name of the dealer or investment adviser who issues it.

Clause

(5) A dealer or investment adviser who issues a circular or communication to which this section relates shall retain a copy of it bearing his signature in such manner, and for such time or until the happening of such event, as may be prescribed by regulations.

(6) For the purposes of this section, a circular or other written communication shall be deemed to have been issued by the person whose name is contained on its face.

(7) In this section a reference to securities does not include a reference to the stock or debentures of, or bonds made available by, a government or a local government authority, or to securities guaranteed by a government or a local government authority.";

- (c) by deleting from subclause (9) "rules may be made under section 12" and substituting "regulations may be made under that section", and by deleting from subclause (9)(a) "or with a stock exchange, or with both,";
- (d) by deleting subclause (10) and substituting the following—

“(10) Any dealer or investment adviser, whether registered or exempted from registration, who—

- (a) issues a circular or other written communication in contravention of subsection (1) or subsection (4);
- (b) contravenes subsection (3); or
- (c) fails to retain a copy a circular or other written communication as required by subsection (5),

shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(11) An offence against subsection (10) is not committed by reason only that a circular or other written communication is issued to a person whose business involves the acquisition, disposal, or holding of securities.".

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78 That clause 78 be amended—

(a) by inserting, after "securities" where it first appears in subclause (1), "at or through a stock exchange";

(b) by deleting "or" at the end of subclause (4)(b), by deleting the full stop at the end of subclause (4)(c) and substituting "; or", and adding the following—

"(d) a sale of securities falling within a class of transaction prescribed by regulations for the purposes of this paragraph."

79 That clause 79 be amended—

(a) by deleting subclause (1) and substituting the following—

"(1) Where securities that are not the property of a dealer (including an exempt dealer) and for which the dealer, or any nominee controlled by the dealer, is accountable are held for safe custody in Hong Kong, the dealer shall, subject to subsection (1A), either cause the securities—

(a) (not being bearer securities) to be registered as soon as practicable in the name of the person to whom the dealer or nominee is accountable or in the name of the dealer's nominee; or

(b) to be deposited in safe custody in a designated account with the dealer's bankers or with any other institution which provides facilities for the safe custody of documents to the satisfaction of the Commissioner.

(1A) The Commissioner may, on the application of a dealer in writing, exempt the dealer from the provisions of subsection (1), but in granting the exemption may impose such conditions as he thinks fit."

(b) by deleting the second sentence in subclause (2), and inserting, after subclause (2), the following—

Clause

"(2A) An authority conferred under subsection (2) shall specify the period for which it is current, but shall not in any event, subject to subsection (2B), remain in force for a period of more than 12 months.

(2B) An authority conferred under subsection (2) may be renewed in writing for one or more further periods not exceeding 12 months at any one time."

81 That clause 81 be amended—

- (a) by deleting from subclause (3)(a)(vi) "and the distinctive numbers of the documents";
- (b) by deleting subclause (5), and substituting the following—
 - "(5) A dealer shall retain—
 - (a) for a period of not less than 6 years, the records referred to in subsection (1); and
 - (b) for a period of not less than 2 years—
 - (i) each contract note received by him or made out to himself as principal; and
 - (ii) a copy of each contract note made out by him as agent.";
- (c) by deleting subclause (6);
- (d) by deleting from subclause (7)", and any matter recorded by a stock exchange in relation to a stockbroker pursuant to subsection (6)," and by deleting "or stockbroker".

82 That clause 82 be amended—

- (a) by deleting from subclause (1) in each case where they appear the words "one bank trading day" and substituting "4 bank trading days";
- (b) by deleting from subclause (1)(a) "and" where it last appears, by deleting from subclause (1)(b) the full stop and substituting ", and", and by adding to subclause (1) the following—
 - "(c) subject to any agreement to the contrary, all amounts derived by way of interest from the

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retention in a trust account of any amount mentioned in paragraph (a) or paragraph (b).";

(c) by deleting subclause (3) and substituting the following—

"(3) Money required by this section to be paid into a trust account shall be so paid within 4 bank trading days after it is received by the dealer.";

(d) by inserting, after subclause (3), the following—

"(3A) All sums derived by way of interest from the payment of money by a dealer into trust account under this section shall, subject to any agreement to the contrary, belong to the person to whom the dealer is accountable.".

85 That clause 85 be amended—

(a) by inserting in subclause (1), after "accounts", the words "(including all trust accounts required to be kept by the dealer under section 82)", and by deleting "within 14 days" and substituting "as soon as practicable thereafter";

(b) by deleting subclause (2);

(c) by deleting from subclause (3)(b) "or" where it last appears,

(d) by deleting paragraph (c) and substituting the following—

"(c) where the dealer is a corporation, he is an officer of the corporation or is in the employment of any officer; or

(d) he belongs to any other class of persons prescribed in regulations for the purposes of this paragraph.".

88 That clause 88 be amended—

(a) by deleting from subclause (1) "independent"; and

(b) by deleting from subclause (6) "recovered in a court of competent jurisdiction as a debt due to the Commissioner" and substituting the following—

Clause

"sued for and recovered by the Commissioner as a debt in any court of competent jurisdiction".

89 That clause 89 be amended—

(a) by inserting in subclause (1), after "Commissioner may", the following—

“, after first giving the dealer opportunity to give an explanation of the failure,”;

(b) by deleting from subclause (1) "independent".

91 That clause 91 be amended by deleting "company" in each case where it appears and substituting "corporation".

92 That clause 92 be amended by deleting "(1)" in subclause (1), and by deleting subclause (2).

93 That clause 93 be amended—

(a) by deleting from subclauses (1) and (2) "section 88 or section 89", and substituting in each case "this Part";

(b) by deleting "company" in each case where it appears in subclauses (1) and (2), and substituting "corporation".

94 That clause 94 be amended—

(a) by inserting at the end of subclauses (1)(a) and (2)(a) "or", by deleting from the end of subclauses (1)(b) and (2)(b) the semicolon and the word "or" and substituting a comma, and by deleting subclauses (1)(c) and (2)(c);

(b) by adding the following—

"(3) Any person who, with intent to prevent, delay, or obstruct the carrying out of an examination and audit under this Part, leaves, or attempts to leave, Hong Kong shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 2 years."

120 That clause 120 be amended by inserting, after subclause (1), the following—

"(1A) For the purpose of enabling the Commissioner to exercise his powers under subsection (1) the

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Commissioner may require any person whom he has reason to believe to be in possession of any register, document, or books mentioned in that subsection to produce to him that register or document or, as the case may be, those books."

123 That clause 123 be amended—

(a) by deleting from subclause (3) "48 hours" and substituting "14 days".

(b) by inserting, after subclause (3), the following—

"(3A) A person from whom a document has been seized under subsection (1) shall, unless the document is already the subject of an order made under subsection (4), be entitled at all reasonable times to inspect and to take copies of or extracts from the document."

125 That clause 125 be amended by deleting subclause (1) and substituting the following—

"(1) Where it appears to the Commission that—

(a) it is desirable for the protection of the public, or of holders of securities; or

(b) it is in the public interest because fraud or misfeasance or other misconduct by a person who has dealt in securities or given investment advice is alleged,

to appoint an inspector to investigate any matters concerning dealing in securities or the giving of investment advice, the Commission may, by instrument in writing, appoint a person as an inspector to investigate those matters and to report on them in such manner as the Commission directs."

129 That clause 129 be amended—

(a) by deleting from subclause (1) "company" and substituting "prescribed person";

(b) by deleting subclause (2) and substituting the following—

Clause

“(2) An application referred to in subsection (3) may be made to a court by or on behalf of—

- (a) the Commission or the Attorney General in the course of proceedings in that court instituted in the name of a prescribed person under section 127(8), or
- (b) the Attorney General on, or within 14 days after, a conviction by the court in proceedings certified by the Attorney General, for the purposes of the application, to have been instituted as a result of an investigation by an inspector;

and the court may make such order with respect to the application and its subject matter as it thinks fit.” ;

(c) by adding the following new subclauses—

"(4) If no proceedings under section 127(6) are commenced against a prescribed person, or, where the prescribed person is a corporation, against any director of the corporation, within 6 months after the completion of an investigation by an inspector, the prescribed person may apply to a court for an order for the payment of costs incurred by him in connexion with the investigation; and the court may, if it finds that the investigation was not warranted, order the Commission to pay to the prescribed person such sum, not exceeding the amount of costs actually incurred by the prescribed person in respect of the investigation, as it thinks just.

(5) A copy of an application made under subsection (4) shall be served on the Commission and the Commission shall be entitled to be heard at the proceedings to determine the application."

131 That clause 131(5) be amended by deleting "save", and substituting "except".

137 That clause 137 be amended—

- (a) by deleting subclauses (1) to (4) and substituting the following—

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"(1) Where a person, through his association with a corporation, has knowledge of specific information relating to the operations or the securities of the corporation and that information has not been generally made available, whether by public announcement, circular, or otherwise, but, if it had been, might reasonably be expected to have materially affected the market price of the securities of the corporation, he shall not—

- (a) deal directly or indirectly in those securities in Hong Kong if by so doing he gains an advantage, whether by making a profit or avoiding a loss, for himself or for another person; or
- (b) disclose that information to another person for the purpose of enabling that other person to use the information to deal in Hong Kong directly or indirectly in those securities and thereby gain an advantage, whether by making a profit or avoiding a loss, for himself or for another person.

(2) Where a person, through his association with a corporation, has knowledge of specific information relating to the operations or securities of any other corporation which—

- (a) has not been generally made available, whether by public announcement, circular, or otherwise, but, if it had been, might reasonably be expected to have materially affected the market price of those securities; and
- (b) relates to any transaction (whether executory or anticipated) involving both of those corporations or involving one of them and the securities of the other,

he shall not deal in those securities in Hong Kong if by so doing he gains an advantage, whether by making a profit or avoiding a loss, for himself or

Clause

another person, nor shall he disclose that information to another person for, the purpose of enabling that other person to use the information to deal in Hong Kong directly or indirectly in those securities and thereby gain an advantage, whether by making a profit or avoiding a loss, for that other person or another.

(3) Where a person obtains, whether directly or indirectly, knowledge of specific information relating to the operations or securities of a corporation from or through a person whom he knows, or has reasonable grounds for believing, to have an association with the corporation and that information has not been generally made available, whether by public announcement, or otherwise, but, if it had been, might reasonably be expected to have materially affected the market price of the securities of the corporation, the first-mentioned person shall not deal directly or indirectly in those securities in Hong Kong if by so doing he gains an advantage, whether by making a profit or avoiding a loss, for himself or another person.

(4) Where subsection (1), subsection (2), or subsection (3), has been contravened and an advantage referred to in either of those subsections is gained from a dealing in securities to which the contravention relates, a person who gained the advantage shall, whether or not a person has been prosecuted for or convicted in respect of the contravention, be—

- (a) liable to any other person for the amount of any loss incurred by that other person by reason of the gaining of the advantage; and
 - (b) liable to the corporation which issued those securities for any profit accrued to the first-mentioned person as a result of the gaining of that advantage.";
- (b) by deleting from subelause (7) "company" and substituting "corporation";

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(c) by deleting from subclause (9) "company" in each case where it appears and substituting "corporation", by deleting from that subsection "(1) and (2)" and substituting "(1) to (3)", and by deleting from that subclause "section 2A(5) of the Companies Ordinance" and substituting "section 2B" .

(d) by deleting subclause (10) and substituting the following—

"(10) Subject to subsection (11), any person who contravenes subsection (1), subsection (2), or subsection (3) shall be guilty of an offence, and shall be liable on conviction on indictment to a fine of \$50,000 and to imprisonment for 2 years.

(11) This section does not prohibit a person from dealing in any securities if—

(a) his sole purpose is the acquisition of qualification shares required by him as a director or intending director of a corporation;

(b) he enters into the dealing as agent for another person and has neither selected nor advised on the selection of the securities to which the dealing relates;

(c) he enters into the dealing in good faith in the performance of an underwriting agreement with respect to the securities to which the dealing relates;

(d) he enters into the dealing in good faith in the exercise of his functions as trustee of a pension fund established wholly or primarily for the benefit of employees of the corporation to whose securities the dealing relates or of a corporation deemed by section 2B to be a related corporation; or

(e) he enters into the dealing in good faith in the exercise of his functions as a personal

Clause

representative, liquidator, receiver, or trustee in bankruptcy.

(12) No dealing shall be void or voidable by reason only that it was entered into in contravention of this section."

139 That clause 139 be amended by adding the following—

"(5) A person who carries on a business as an insurance underwriter does not contravene subsection (2) by reason only that he takes or uses the title "underwriter" in circumstances that make it clear that he is not holding himself out as being an underwriter within the meaning of section 2."

140 That clause 140 be amended—

- (a) by deleting from subclauses (1) and (4) "registered" in each case where it appears;
- (b) by inserting in subclause (1), after "person", the following—
"in Hong Kong".
- (c) by deleting from subclause (1)(c) "company" in each case where it appears and substituting "corporation".

143 That clause 143 be amended—

- (a) by deleting paragraph (i) of subclause (1);
- (b) by deleting from paragraph (1) of subclause (1) "77(5)" and substituting "77(4)";
- (c) by inserting in subclause (1), after paragraph (n), the following—
"(na) providing for the remuneration of an auditor appointed under section 89, and for the costs of an audit carried out under that section;"
- (d) by deleting from subclause (4)(b) "or" where it last appears, by deleting from subclause (4)(c) the fullstop and substituting "; or", and by adding the following—
"(d) shall not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons."

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144 That clause 144 be amended by deleting "company" in each case where it appears and substituting "corporation".

146 That clause 146 be amended by deleting paragraph (b) and substituting the following—

"(b) any amount or sum specified in Part X".

147 That clause 147 be amended by deleting from subclauses (2), (4) and (5) "1973" in each case where it appears and substituting "1974".

The amendments were agreed to.

Clauses 1-3, 8-9, 11-14, 17, 20-21, 23-25, 27, 29-31, 34-35, 37, 40, 43, 45-48, 51-52, 54-55, 59, 61, 63-65, 77-79, 81-82, 85, 88-89, 91-94, 120, 123, 125, 129, 131, 137, 139-140, 143-144 and 146-147 as amended, were agreed to.

THE FINANCIAL SECRETARY: —Sir, I move that the clauses set out in the paper before honourable Members be substituted for the clauses in the bill having the same numbers.

*Proposed Amendments**Clause*

36 That clause 36 be deleted and the following clause be substituted—

"Constitu-
tion of
Disciplinary
Committee.

36. (1) There shall be a committee, to be known as the Securities Commission Disciplinary Committee, appointed in accordance with this section to exercise the powers and perform the functions conferred on it by this Ordinance.

(2) The Disciplinary Committee shall be appointed by the Commission, and shall consist of five persons of whom—

(a) one shall be the member of the Commission appointed under section 8(1)(c) who is qualified in law, or if there is more than one such member, one of those members;

Clause

(b) two shall be other members of the Commission (other than the Commissioner);

(c) two shall be persons nominated by the Federation.

(3) The member of the Disciplinary Committee referred to in subsection (2)(a) shall be chairman of the Disciplinary Committee.

(4) A quorum of the Disciplinary Committee shall be four persons.

(5) A decision of the majority of the members of the Disciplinary Committee shall be the decision of the Committee. In the event of there being no majority, the decision of the chairman and one other member of the Committee shall be the decision of the Committee."

69 That clause 69 be deleted and the following clause substituted—

"Power of Commissioner to supply copy of register.

69. The Commissioner may supply a copy of any such register, or a copy of an extract from it, to the Attorney General, who may, if he has reason to believe that an offence under this Ordinance may have been committed, deliver the copy to any person whom he thinks fit for the purposes of an investigation or a prosecution of the offence."

70 to 72 That clauses 70 to 72 be deleted and the following clauses substituted—

"Offers by dealers.

70. (1) A dealer shall not in Hong Kong communicate an offer to acquire or dispose of securities of a corporation unless—

(a) the offer—

(i) is written in the English or Chinese language; or

(ii) if communicated verbally, is reduced to writing in the English language and delivered to the person or persons to whom it was made not later than 24 hours after the verbal communication; and

(b) the offer—

(i) specifies the name and address of the offeror and, if any person is making the offer on behalf

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of the offeror, the name and address of that person;

(ii) contains a description of securities sufficient to identify them;

(iii) specifies the terms of the offer (including where appropriate the amount of consideration proposed to be paid for securities acquired pursuant to the offer);

(iv) where a dividend has been declared or recommended in respect of the securities, or it is anticipated that a dividend will be so declared or recommended before the transfer of the securities, states whether the securities are to be transferred with or without that dividend;

(v) specifies whether, in the event of a person accepting the offer, the offeror will pay any stamp duty which that person will become liable to pay in respect of the contract note as a result of the transaction;

(vi) bears a date which is not more than 3 days before the date on which the offer is communicated;

First Schedule.

(vii) if the offer relates to the acquisition of securities, satisfies the requirements of the First Schedule;

Second
Schedule.

(viii) if the offer relates to the disposal of securities, satisfies the requirements of the Second Schedule;

(ix) where a report of an expert in connexion with the offer is included in or annexed to the offer, contains a statement to the effect that the expert has consented to the inclusion or annexure, and has not, before the communication of the offer, withdrawn that consent;

(c) the offer includes a translation, as the case requires, in the Chinese or English language of all the particulars required under paragraph (b), except where the Commissioner has previously

Clause

agreed that the requirements of this paragraph may be dispensed with in any particular case.

(2) A document containing an offer to which subsection (1) relates which includes a statement purporting to be made by an expert shall not be communicated unless the expert has given and has not, before communication of a copy of the offer, withdrawn his written consent to the communication of the offer with the inclusion of the statement in the form and context in which it is included.

(3) Subject to subsection (5), any dealer who communicates an offer for the acquisition or disposal of securities without having complied with subsection (1) or subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000.

(4) Where any person has accepted an offer for the disposal or acquisition of securities under this section and the offer has been made without the requirements of subsection (1) or subsection (2) having been complied with, that person may, subject to the rights of any *bona fide* purchaser of the securities for value, rescind the acceptance, by notice in writing, within 28 days after the date of the discovery of the failure to comply or of the date when, with reasonable diligence, the failure to comply ought to have been discovered.

(5) Without prejudice to the provisions of section 2A, this section does not apply to—

- (a) any offer to dispose of securities of a corporation to persons who already hold securities of that corporation;
- (b) any offer by a dealer if the offer is made to a person with whom, or on whose behalf, the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the offer; or
- (c) any offer made to—
 - (i) a person whose business involves the acquisition or disposal or holding of securities; or
 - (ii) a solicitor or professional accountant; or

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(iii) any other person who belongs to a class of persons prescribed in regulations for the purposes of this paragraph;

(d) any offer made by a stockbroker in the ordinary course of trading on the exchange.

(6) where a dealer communicates an invitation which invites a person to acquire or dispose of any security held by that person in a corporation, then for the purposes of this section—

(a) that invitation is deemed to be an offer; and

(b) an offer to acquire or dispose of that security made by that person in response to the invitation is deemed to be an acceptance by that person of an offer to acquire or, as the case may be, an offer to dispose of the security,

and references in this section to "acceptance" shall be construed accordingly.

(7) An offer to acquire or dispose of a right to acquire or dispose of a security or an interest in a security is deemed to be an offer to acquire or dispose of a security; and a reference to a person who holds securities includes a reference to a person who holds a right to acquire a security or an interest in a security.

(8) For the purposes of this section "expert" includes an engineer, valuer, professional accountant, and solicitor, and any other person whose profession gives authority to a statement made by him.

(9) For the purposes of this section an offer to acquire or dispose of securities in consideration or part consideration for other securities is deemed to be both an offer to acquire and an offer to dispose of securities.

Calls by
registered
dealers.

71. (1) Subject to subsection (3), a dealer shall not during, or as a consequence of, a call on any person, whether at his place of residence or his place of employment or otherwise, enter into any contract for the sale of securities unless he—

(a) calls on the person at the invitation of that person; and

Clause

(b) before entering into the contract provides the person with a written statement containing all the information which he would have been required to give to that person if the contract had been entered into as a result of an offer made under section 70.

(2) Any dealer who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 2 years.

(3) Subsection (1) does not apply to—

(a) any contract for the sale of securities of a corporation with a person who already holds securities of that corporation;

(b) any contract for the sale of securities by a dealer with a person with whom the dealer has transacted the sale or purchase of securities on at least 3 occasions during the period of 3 years immediately preceding the date of the contract; or

(c) any contract for the sale of securities with—

(i) a person whose business involves the acquisition or disposal or holding of securities;

(ii) a solicitor or professional accountant;

(iii) any other person who belongs to a class of persons prescribed in regulations for the purpose of this paragraph.

(4) Where any contract for the sale of securities is entered into in contravention of subsection (1), the purchaser may, subject to the rights of any *bona fide* purchaser of the securities for value, rescind the contract by giving notice in writing to the seller within 28 days after the date on which the contract was entered into.

(5) In this section "call" includes a visit in person and a communication by telephone.

Hawking of securities.

72. (1) Subject to subsections (2) and (3), a person shall not, whether on his own behalf or otherwise and whether by appointment or otherwise, call from place to place—

(a) making or offering to make with any person—

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(i) an agreement for or with a view to having that other person purchase specific securities; or

(ii) an agreement the purpose or pretended purpose of which is to secure a profit to that other person from the yield of specific securities or by reference to fluctuations in the value of specific securities; or

(b) inducing or attempting to induce any other person to enter into an agreement of the type referred to in sub-paragraph (i) or sub-paragraph (ii) of paragraph (a),

whether or not in calling from place to place he does any other act or thing.

(2) Subsection (1) does not apply to a person in so far as—

(a) he calls at the place of another person who is a banker, solicitor, professional accountant, registered or exempt dealer, registered or exempt investment adviser or registered dealer's representative or registered investment representative; and

(b) whether as principal or agent, he makes, or offers to make, with that other person an agreement referred to in subsection (1) or induces, or attempts to induce, that other person to enter into, such an agreement.

(3) Nothing in this section applies to securities or any class of securities which have been exempted by the Commission for the purposes of this section provided that any conditions subject to which the exemption was granted have been fulfilled.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$50,000 and to imprisonment for 2 years.

(5) If in any proceedings for an offence against subsection (4) it is proved that the accused did any of the acts mentioned in paragraph (a) or paragraph (b) of subsection (1) on two or more occasions within any period of 14 days.

Clause

he shall, until the contrary is proved, be deemed to have been, calling from place to place.

(6) In this section "to call" includes to visit in person and to communicate by telephone."

73 That clause 73 be deleted, and the following clause substituted—

"Issue of
contract
notes.

73. (1) Every dealer (including an exempt dealer) shall, in respect of every contract for the purchase, sale, or exchange of securities entered into by him in Hong Kong (whether as principal or agent), not later than end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and—

(a) where the contract was entered into as agent, deliver the contract note to the person on whose behalf he entered into the contract; or

(b) where the contract was entered into as principal, retain the contract note for himself.

(2) A contract note made out by a dealer under subsection (1) shall include—

(a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he so carries on business;

(b) where the dealer is acting as principal, a statement that he is so acting;

(c) the name of the person to whom the dealer is required to give the contract note;

(d) the date of the contract, and the date on which the contract note is made out;

(e) the quantity and description of the securities that are being acquired or disposed of;

(f) except in the case of an exchange, the price per unit of the securities;

(g) the amount of consideration payable under the contract or, in the case of an exchange, particulars of the securities exchanged sufficient to identify them;

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- (h) the rate or amount of commission (if any) payable in respect of the contract;
- (i) the amount of stamp duty (if any) payable in connexion with the contract and, where applicable, in respect of the transfer;
- (j) the date of settlement.

(3) Any dealer (including an exempt dealer) who completes a contract for the purchase, sale, or exchange of securities without having complied with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000."

74 That clause 74 be deleted and the following substituted—

"Dealers not to engage in option or forward trading.

74. (1) Except as provided in regulations, a dealer (including an exempt dealer) shall not transact in Hong Kong, or hold himself out as being prepared to transact in Hong Kong—

- (a) any dealing whereby the dealer confers on any person an option to purchase from or sell to the dealer any securities listed on a stock exchange in Hong Kong; or
- (b) any dealing in any such securities which is completed later than the end of the next trading day after the dealing was entered into.

(2) Any dealer who contravenes subsection (1) shall, subject to subsection (3), be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

(3) It shall be a defence to any criminal proceedings brought under subsection (2) in respect of a dealing mentioned in paragraph (b) of subsection (1) for the accused to prove that he took all reasonable and practicable steps to secure completion of the transaction within the period permitted by that paragraph.

(4) A contract entered into in contravention of subsection (1) shall not be enforceable by either the dealer or the other contracting party."

Clause

75 That clause 75 be deleted and the following clause substituted—

"Dealers to
provide
certain
information
etc. to client.

75. (1) Subject to subsection (2), every dealer (including an exempt dealer) shall, on being requested to do so by any person on whose behalf he has transacted a dealing in securities—

(a) provide that person with a copy of the contract note relating to the dealing, and a copy of his account with the dealer; and

(b) if the Commissioner on the application of the person so directs, make available for inspection by that person, at all reasonable times during the dealer's ordinary hours of business, dealer's copy of the contract note and the person's account with the dealer.

(2) Subsection (1) does not require a dealer (including an exempt dealer) to—

(a) provide, or keep available for inspection, a copy of any contract note which relates to a dealing transacted more than 2 years before the date of the request; or

(b) provide a copy of, or keep available for inspection, any account which relates to a dealing transacted more than 6 years before the date of the request.

(3) Any such dealer may impose a charge not exceeding an amount prescribed by regulations for a copy of a document provided pursuant to subsection (1).

(4) Any dealer who, without reasonable excuse, fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000."

86 That clause 86 be deleted and the following clause substituted—

"Dealer to
lodge
auditor's
report.

86. (1) A dealer shall, in respect of the financial year beginning before and ending after—

(a) the day on which this section commences; or

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- (b) the day on which the dealer commences to carry on business as a dealer,

whichever is the later day, and in respect of each subsequent financial year, prepare a true and fair profit and loss account and a balance sheet made up to the last day of the financial year and cause those documents to be lodged with the Commissioner not later than the 31st day of July next following the end of the financial year, together with an auditor's report containing the information prescribed by regulations.

(2) Notwithstanding subsection (1), the period within which the documents referred to in subsection (1) are required to be lodged may be extended by the Commissioner for a period not exceeding one month, where an application for the extension is made by the dealer and the Commissioner is satisfied there are special reasons for requiring the extension.

(3) An extension under subsection (2) may be allowed subject to such conditions, if any, as the Commissioner thinks fit to impose.

(4) Any dealer who fails to lodge the documents required by this section with the Commissioner within the time allowed by or under this section shall be guilty of an offence and shall be liable on conviction to a fine of \$5,000.

87 That clause 87 be deleted, and -the following clause substituted—

"Auditor to send report directly to Commissioner in certain cases.

87. If, during the performance of his duties as auditor for a dealer, an auditor—

- (a) becomes aware of any matter which in his opinion adversely affects the financial position of the dealer to a material extent;
- (b) discovers evidence of a contravention by the dealer of section 79, section 81 or section 82,

he shall, as soon as practicable thereafter, send to the Commissioner and to the dealer a report in writing of the matter or, as the case may be, concerning the contravention."

Clause

127 That clause 127 be deleted and the following clause be substituted—

"Report of
inspector. **127.** (1) On completion of an investigation under section 125, the inspector shall report his findings to the Commission and shall deliver a copy of the report to the Attorney General.

(2) Subject to subsection (3), the Commission shall give a copy of the inspector's report to the prescribed person whose affairs were investigated by the inspector.

(3) Subject to subsection (4), the Commission shall not give a report to a prescribed person if the Attorney General believes that legal proceedings that have been, or that in its opinion might be, instituted might be prejudiced by the report.

(4) The court before which legal proceedings are brought against a prescribed person for or in respect of matters dealt with in a report under this section may order that a copy of the report be given to that person.

(5) The Commission may, if it is of the opinion that it is in the public interest to do so, cause the whole or any part of a report under this section to be printed and published.

(6) If, from a report under this section, it appears to the Attorney General that an offence may have been committed by a person and that a prosecution ought to be instituted, the Attorney General shall cause a prosecution to be instituted.

(7) Where it appears to the Attorney General that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (6), require a prescribed person to give all assistance in connexion with prosecution that he is reasonably able to give.

(8) If from a report under this section it appears to the Commission or to the Attorney General that proceedings ought in the public interest to be brought by a prescribed person for the recovery of damages in respect of fraud, misfeasance, or other misconduct in connexion with the affairs of the prescribed person or for the recovery

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of property of the prescribed person, either the Commission or the Attorney General may cause proceedings to be instituted accordingly in the name of the prescribed person.”.

132 to That clauses 132 to 135 be deleted and the following substituted—
135

"False
markets and
trading. **132.** (1) A person shall not intentionally create or cause to be created, or do anything with the intention of creating—

- (a) a false or misleading appearance of active trading in any securities on any stock market in Hong Kong; or
- (b) a false market in respect of any securities on any such stock market.

(2) For the purposes of subsection (1)(b), a false market is created in relation to securities when the market price of those securities is raised or depressed or pegged or stabilized by means of—

- (a) sales and purchases transacted by persons acting in collaboration with each other for the purpose of securing a market price for those securities that is not justified either by the assets of the corporation which issued the securities or by the profits (including anticipated profits) of the corporation;
- (b) any act which has the effect of preventing or inhibiting the free negotiation of market prices for the purchase or sale of the securities; or
- (c) the employment of any fictitious transaction or device or any other form of deception or contrivance.

(3) A person shall not with the intention of depressing, raising, or causing fluctuations in the market price of any securities effect any purchase or sale of any such securities which involves no change in the beneficial ownership of those securities.

(4) A purchase or sale of securities involves no change in beneficial ownership within the meaning of subsection

Clause

(1) if a person who held an interest in the securities before the purchase or sale, or a person associated with him in relation to those securities, holds an interest in the securities after the purchase or sale.

(5) A person shall not circulate or disseminate, or authorize or be knowingly concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities will or is likely to rise or fall because of the market operations of one or more persons which, to his knowledge, are conducted in contravention of subsection (1).

Employment of fraudulent or deceptive devices etc. **133.** A person shall not, directly or indirectly, in connexion with any transaction with any other person involving the purchase, sale, or exchange of securities—

- (a) employ any device, scheme, or artifice to defraud that other person; or
- (b) engage in any act, practice, or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person.

Restrictions on fixing etc. prices for securities. **134.** A person shall not, either alone or with one or more other persons, effect any series of transactions for the purchase or sale of securities, or the purchase and sale, of any securities for the purpose of pegging or stabilizing the price of securities of that class in contravention of any regulations made for the purposes of this section.

False or misleading statements about securities. **135.** A person shall not, directly or indirectly, for the purposes of inducing the sale of the securities of any corporation, make with respect to those securities, or with respect to the operations or the past or future performance of the corporation—

- (a) any statement which is, at the time and in the light of the circumstances in which it is made, false or misleading with respect to any material fact and which he knows or has reasonable ground to believe to be false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading

Clause

"default", in relation to the failure of a stockbroker, or a member firm or corporate member of a stock exchange to perform a legal obligation, means a default arising from—

- (a) the bankruptcy or insolvency of the stockbroker or member firm or, as the case may be, the winding up or insolvency of the corporate member;
- (b) any breach of trust committed by the stockbroker, member firm, or corporate member; or
- (c) any defalcation, fraud, or misfeasance committed by the stockbroker, member firm, or corporate member or any servant employed by that stockbroker, member firm, or corporate member;

"legal obligation" includes an obligation arising under a contract or quasi-contract or under a trust (including a constructive trust);

"stockbroking business" includes any trust carried on in conjunction with, or as an adjunct to, a stockbroking business, and also includes the retention of securities whether for safe-keeping or otherwise, and whether specific consideration or otherwise.

(2) A reference in this Part to a claimant or person making a claim includes, in the event of his death, insolvency, or other disability, a reference to his personal representative or any other person having authority to administer his estate.

Establishment of compensation fund.

97. The Commission shall establish and maintain a compensation fund, to be known as the Stock Exchanges Compensation Fund, for the purposes set out in this Part.

Securities Commission Compensation Fund Committee.

98. (1) There shall be a committee, to be known as the Securities Commission Compensation Fund Committee, which shall be responsible, subject to this section, for the administration of the compensation fund.

(2) The Committee shall consist of five persons appointed by the Commission, of whom at least two shall be members of the Commission and two shall be persons nominated by the Council of the Federation.

(3) The Commission shall nominate one of the members of the Committee who is also a member of the Commission to be chairman of the Committee.

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(4) The Committee shall exercise on behalf of the Commission such of the powers, duties, and functions of the Commission under this Part as may from time to time be delegated to the Committee by the Commission; but the Commission may not delegate its power of delegation under this section or its powers under section 108.

(5) Any power, duty, or function delegated under this section may be exercised by members forming a majority of the Committee as if by this Part that power, duty, or function had been conferred on a majority of the members of the Committee.

(6) Any delegation under this section may at any time be varied or revoked.

(7) The Commission may at any time remove any member of the Committee appointed by it under this section and may fill any vacancy in the Committee however arising.

(8) Subject to any direction of the Commission, the Committee may regulate its procedure in such manner as it thinks fit.

Money constituting the compensation fund.

99. (1) The compensation fund shall consist of—

- (a) all money paid to or deposited with the Commission by stock exchanges in accordance with the provisions of this Part;
- (b) all money recovered under any guarantee entered into under this Part;
- (c) all money recovered by or on behalf of the Commission by the exercise of any right of action conferred by this Part;
- (d) all money borrowed under subsection (2);
- (e) all other money lawfully paid into the fund.

(2) The Commission may from time to time borrow for the purposes of the compensation fund from any lender and may charge any investments acquired under section 103 by way of security for any such loan; but the aggregate sum owing at any one time in respect of any such loans shall not exceed \$1,000,000.

Clause

Money to be kept in bank account. **100.** (1) The Commission shall open at one or more licensed banks a separate bank account or separate bank accounts and shall, pending its application in accordance with this Part, pay into or transfer to that account or those accounts all money forming part of the compensation fund.

Accounts of fund. **101.** (1) The Commission shall keep proper accounts of the compensation fund, and shall in respect of the financial year beginning before and ending after the day on which this section commences, and in respect of each subsequent financial year, prepare a revenue and expenditure account, and a balance sheet made up to the last day of that year.

(2) The Commission shall appoint an auditor to audit the compensation fund.

(3) The auditor so appointed shall annually audit the accounts of the compensation fund and shall audit, and prepare an auditor's report in respect of, each balance sheet and revenue and expenditure account prepared under subsection (1) and shall submit the report to the Commission.

(4) Not later than the 31st day of July in each year the Commission shall cause a copy of the audited balance sheet, revenue and expenditure account, and the auditor's report to be sent to the Council of the Federation and to each stock exchange.

Stock Exchanges to make deposits in respect of members. **102.** (1) Every stock exchange shall, subject to the provisions of this Part, deposit with the Commission and keep deposited in respect of each stockbroker belonging to that exchange—

(a) a sum of \$25,000 payable in cash; and

(b) a guarantee, in such form and complying with such conditions as may be prescribed by rules, given by a licensed bank guaranteeing the payment to the compensation fund, on the demand of the Commission, of the sum of \$25,000.

(2) The amount and subject to subsection (3), the guarantee referred to in subsection (1) shall be deposited—

(a) in respect of every stockbroker who is a member of a stock exchange at the date of commencement

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of this Part, not later than one month after that date; and

- (b) in respect of every stockbroker who is admitted as a member of a stock exchange after the commencement of this Part, not later than one month after the date on which he is admitted to membership of the exchange.

(3) The Commission may, if it is satisfied that a stock exchange is operating a system whereby the obligations of any stockbroker belonging to the exchange to any other stockbroker belonging to that exchange will be met or substantially met in the event of his failing to fulfil those obligations or any of them, exempt the exchange from compliance with depositing the guarantee required under subsection (1)(b).

(4) Any amount due under this section may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

Balance of
sums in
bank account
may be
invested.

103. (1) The Commission may invest any money which forms part of the compensation fund and is not immediately required for any other purposes provided for by this Part either—

- (a) on fixed deposit with a licensed bank; or
- (b) in securities in which trustees are authorized by law to invest trust funds.

(2) As soon as practicable after the end of each financial year, the Commission shall ascertain the total amount of interest (if any) derived from the investment of money under subsection (1) in respect of that financial year and shall then, after deducting an appropriate amount to meet the expenses incurred or involved in the administration of the compensation fund, apportion the balance of the interest between the contributing stock exchanges in proportion to the amounts that they have contributed to the fund and pay to each exchange its portion of that balance.

Clause

Repayment
of deposits
in certain
cases.

104. (1) Where a stock exchange has deposited a sum of money or a guarantee with the Commission under section 102 in respect of a stockbroker and that stockbroker dies or otherwise ceases to be a member of the stock exchange, the Commission shall, unless the money or guarantee is required to satisfy any claims or liabilities arising before the stockbroker died or otherwise ceased to be a member of the exchange, within 6 months after the death of the stockbroker or his ceasing to be a member of the exchange, deliver to the exchange the sum or guarantee deposited in respect of the stockbroker.

(2) If—

- (a) any money or guarantee has been delivered to a stock exchange pursuant to subsection (1); and
- (b) the exchange obtained the guarantee by means of a direct levy imposed on the stockbroker in respect of whom the money or guarantee was deposited,

the exchange shall, if that stockbroker has satisfied all financial obligations due from him to the exchange and is otherwise in good standing with the exchange and is not bankrupt or insolvent, deliver the money or guarantee to him or, if he has died, to his personal representative.

Replenish-
ment of fund
in certain
cases.

105. (1) Subject to subsection (4), if at any time resort has to be made to any money or guarantee deposited under section 102 in order to satisfy any claim made against the compensation fund in relation to a stockbroker, or to a member firm or corporate member of a stock exchange, the exchange to which the stockbroker, member firm, or corporate member belongs, or belonged at the time of the default giving rise to the claim, shall, on being required to do so by the Commission, replenish the fund by depositing with the Commission an amount that is equal to that paid in connexion with the satisfaction of the claim, including any legal and other expenses paid or incurred in relation to the claim.

(2) Subject to subsections (3) and (4), if any stock exchange, whether because of insolvency or any other reason, is unable to deposit the amount required under subsection (1), each remaining stock exchange shall, if required

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to do so by the Commission, replenish the compensation fund by depositing in respect of each stockbroker belonging to the exchange a sum equal to that proportion which the amount not deposited in accordance with subsection (1) bears to the total number of stockbrokers belonging to the remaining exchanges.

(3) A stock exchange may not be required, pursuant to subsection (2), to deposit any sum or sums representing an amount exceeding \$50,000 in respect of each stockbroker belonging to the exchange; and if on one or more occasions a stock exchange has, pursuant to that subsection, deposited a sum or sums representing that amount, the exchange shall not be liable to deposit further sums under that subsection.

(4) The Commission may not require a stock exchange—

(a) to make a deposit under subsection (1) in respect of any payment made to satisfy a claim under this Part unless it has first exhausted all relevant rights of action and other legal remedies, conferred by section 116, against the stockbroker, member firm, or corporate member in relation to whom or to which the claim arose; or

(b) to make a deposit under subsection (2) unless it has first exhausted all relevant rights of action and other legal remedies against the stock exchange that is primarily liable by virtue of subsection (1).

(5) Any amount required to be deposited under this section may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

Payments
out of the
fund.

106. (1) Subject to this Part, there shall from time to time be paid out of the compensation fund as required and in the following order—

(a) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the Council of the Federation or the Commission of the rights, powers, and authorities vested in them by this Part in relation to the fund;

Clause

- (b) the expenses incurred or involved in the administration of the fund;
- (c) the amounts of all claims, including costs, allowed by the Council of the Federation or established against the Federation under this Part; and
- (d) all other money payable out of the fund in accordance with this Part.

(2) If at any time the money deposited in the compensation fund is insufficient for any payment under subsection (1), the Commission may require the guarantor under any guarantee deposited with it under section 102(1) to pay to the Commission all or any part of the sum guaranteed, in which event the guarantor shall pay the amount so required.

(3) Any amount required to be paid under subsection (2) may be sued for and recovered by the Commission as a debt in any court of competent jurisdiction.

Claims
against the
fund.

107. (1) Where any person claims that—

(a) a stockbroker, or a member firm or corporate member of a stock exchange, has, by reason of a default committed in the course of or in connexion with the stockbroking business of that stockbroker, member firm, or corporate member, failed to perform a legal obligation owed to that person in relation to any money, securities, or other property to which that person is entitled or in which he has a beneficial interest (whether existing or contingent); and

(b) because of that failure, that person has sustained pecuniary loss,

he shall be entitled, subject to this Part, to claim compensation from the compensation fund.

(2) Subsection (1) does not entitle any stockbroker, or any member firm or corporate member of a stock exchange, to make a claim against the compensation fund.

(3) Except as otherwise provided in this Part, the total amount that may be paid under this Part to all persons who suffer loss through any default mentioned in subsection (1) shall not in any event exceed \$1,000,000 in respect

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of each stockbroker concerned in or connected with the default; but for the purposes of this subsection any amount paid from the compensation fund shall, to the extent that the fund is subsequently reimbursed in respect of any such payment (not being a deposit made under section 105), be disregarded.

(4) A person shall not have a claim against the compensation fund in respect of a default committed before the commencement of this Part.

(5) Subject to this Part, the amount which any claimant is entitled to claim as compensation from the compensation fund is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of and incidental to the making and proving of his claim) less the amount or value of money or other benefits received or receivable by him in reduction of the loss from any source other than the compensation fund.

(6) In addition to any compensation payable under this Part, interest shall be payable out of the compensation fund on the amount of the compensation, less any amount attributable to costs and disbursements, at such rate as may be determined by the Commission from time to time, which shall be calculated from the day on which the default was committed and continue until the day on which the claim is satisfied.

(7) For the purposes of this section—

(a) "stockbroker" includes a person who has been, but, at the time of any default mentioned in subsection (1), had ceased to be, a member of a stock exchange if, at the time when the claimant entered into the transaction or course of dealing giving rise to the claim, the claimant had reasonable grounds for believing that person to be a member of the exchange,

(b) "member firm" includes a firm which has been, but, at the time of any default mentioned in subsection (1), had ceased to be, a member firm of a stock exchange if, at the time at which the claimant entered into the transaction or course of

Clause

dealing giving rise to the claim, the person claiming compensation had reasonable grounds for believing that firm to be a member firm of a stock exchange;

- (c) "corporate member" includes a corporation which has been, but, at the time of any default mentioned in subsection (1), had ceased to be, a corporate member of a stock exchange if, at the time when the claimant entered into the transaction or other course of dealing giving rise to the claim, the claimant had reasonable grounds for believing that corporation to be a corporate member of a stock exchange.

Powers of Commission to increase payments made in respect of claims.

108. (1) If, after consultation with the Council of the Federation and after taking into account all ascertained or contingent liabilities of the compensation fund, the Commission considers that the assets of the fund so permit, it may by notice published in the *Gazette* increase the total amount which may be claimed from the fund under section 107; and from the date of that publication, until the notice is revoked or varied, the amount specified in the notice shall be the maximum amount that may be claimed under that section.

(2) A notice under subsection (1) may be varied or revoked by the Commission by notice published in the *Gazette*.

Rights of innocent partner etc. in relation to the fund.

109. (1) Notwithstanding anything to the contrary in this Part, where all persons submitting claims under section 107 have been fully compensated in accordance with the provisions of this Part for the loss sustained by them as a result of the failure of a partner of a member firm or a director of a corporate member to perform a legal obligation, any other partner of that firm who has made payment to any person in compensation for loss sustained by him as a result of that failure or, where a corporate member or director of a corporate member has made such a payment, that corporate member, or director, shall be subrogated to the extent of that payment to all the rights and remedies of that person against the compensation fund if the Council of the Federation considers, having regard to all the circumstances, that he—

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- (a) was in no way party to the default which resulted in the failure to perform that obligation; and
- (b) acted honestly and reasonably in the matter.

(2) If any partner of the firm, or any corporate member or director of a corporate member, is aggrieved by the decision of the Council of the Federation under subsection (1), he or it may, within 28 days after receipt of notice of the decision, appeal to the Commission against the decision.

(3) An appellant shall, on the same day as lodging a notice of appeal with the Commission, lodge a copy of the notice with the Council of the Federation.

(4) The Commission shall inquire into and decide on the appeal and, if the Commission considers having regard to all the circumstances that the appellant—

- (a) was in no way a party to the default in question; and
- (b) acted honestly and reasonably in the matter,

it may direct that the appellant shall, to the extent of any payment made by him, be subrogated to all the rights and remedies in relation to the compensation fund of the person to whom he or it has made payment in compensation.

Notice calling for claims against the fund.

110. (1) The Council of the Federation may cause to be published in one or more English language newspapers and one or more Chinese language newspapers, published daily and circulating generally in Hong Kong, a notice specifying a date, not being earlier than 3 months after publication of the notice, on or before which claims for compensation from the compensation fund may be made in relation to the person specified in the notice.

(2) Where any person wishes to claim compensation under this Part, he shall lodge his claim in writing with the Council of the Federation—

- (a) if a notice under subsection (1) has been published, on or before the date specified in the notice; or

Clause

(b) if no such notice has been published, within 6 months after the claimant became aware of the default giving rise to the claim.

(3) Any claim which is not made within the time limited by subsection (2) shall, unless the Council of the Federation otherwise determines, be barred.

(4) An action for damages shall not lie against the Federation or against any member or employee of the Federation or against any member of the Council of the Federation by reason of any notice published for the purposes of this section in good faith and without malice.

Power of the
Council of
Federation
in respect of
claims.

111. (1) Where the Council of the Federation is satisfied that a claim made under section 107 is a proper claim, it shall, subject to this Part, make a determination allowing the claim.

(2) If the Council is not satisfied as to the propriety of a claim under section 107, it shall make a determination disallowing the claim or, if it is satisfied only as to the propriety of part of such a claim, it shall make a determination allowing the claim as to that part.

(3) Where the Council of the Federation makes a determination under subsection (1) or subsection (2), it shall forthwith serve notice of its determination in writing on the claimant or on his solicitor and deliver a copy of the notice to the Commission.

(4) If the Council of the Federation disallows or only partially allows a claim against the compensation fund, the determination of the Council shall specify the reasons for the disallowance or, as the case may be, partial allowance.

(5) If, in the case of any particular claim, after taking into account all ascertained and contingent liabilities of the compensation fund, the Council of the Federation considers that the assets of the fund so permit, it may, with the prior approval of the Commission, allow in respect of a claim which is in excess of the total amount limited by or under section 107 such additional sum in or towards the compensation of the claimant as it thinks fit.

(6) The receipt of a copy of a notice under subsection (3) notifying the allowance or partial allowance of a claim

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is sufficient authority for the Commission to pay to the claimant the amount allowed under this section.

Council of Federation may require production of securities, etc.

112. (1) The Council of the Federation may at any time require any person to produce any securities, documents, or statements of evidence necessary—

- (a) in order to substantiate any claim made against the compensation fund; or
- (b) for the purpose either of exercising its rights against a stockbroker, or against a member firm or corporate member of a stock exchange, or against any other person concerned; or
- (c) for the purpose of enabling criminal proceedings to be brought against any person in respect of a default, being a default which is or involves the commission of a criminal offence.

(2) Where any claimant required to produce any securities, documents, or statements of evidence under subsection (1) fails to produce them the Council of the Federation may, if it is satisfied that securities, documents, or statements are in the possession of, or available to, the claimant, refuse to allow the claimant's claim until such time as he produces them.

Court proceedings to establish a claim against the fund.

113. (1) Subject to subsection (2), a person whose claim has been disallowed, or only partially allowed, under section 111 may, at any time after the service under that section of the notice notifying the disallowance or partial allowance, commence proceedings against the Federation to establish his claim against the compensation fund.

(2) Except with leave of the Court, no proceedings against the Federation in respect of a claim which has been disallowed, or only partially allowed, under section 111 may be commenced after the expiration of 3 months after the service of the notice under subsection (3) of that section.

(3) Any proceedings brought against the Federation to establish a claim against the compensation fund shall be by action as for a debt due from the Federation.

Clause

- Supplementary provisions relating to proceedings brought under section 113.
- 114.** In any proceedings brought under section 113, —
- (a) all defences that would have been available to the person or persons in relation to whom the claim arose shall be available to the Federation;
 - (b) all questions as to costs shall be in the discretion of the Court; and
 - (c) evidence which would be admissible against the stockbroker or any other person by whom it is alleged a default was committed is admissible to prove the commission of the default, notwithstanding that the stockbroker or other person is not the defendant in or a party to those proceedings.
- Form of court order establishing claim.
- 115.** Where, in any proceedings brought against the Federation to establish a claim against the compensation fund, the Court is satisfied that the default on which the claim is founded was actually committed and that the claimant otherwise has a valid claim, the Court shall by order—
- (a) allow the amount of the claim or such part of the claim as it thinks proper;
 - (b) declare the fact and date of the default and the amount allowed under paragraph (a); and
 - (c) direct the Commission to pay to the claimant the amount declared under paragraph (b).
- Subrogation of the Commission to rights, etc., of claimant on payment from fund.
- 116.** On the Commission making any payment out of the compensation fund in respect of any claim under this Part, —
- (a) the Commission shall be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss sustained by him by reason of the default on which the claim was based; and
 - (b) the claimant shall have no right under bankruptcy or legal proceedings or otherwise to receive in respect of the loss any sum out of the assets of the stockbroker, member firm, or corporate member concerned, or where the loss was caused by the defalcation, fraud, or misfeasance of a clerk or

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servant of a stockbroker, member firm, or corporate member, the assets of that clerk or servant, until the Commission has been reimbursed the full amount of its payment.

Payment of claims only from the fund. **117.** No money or other property belonging to the Commission or to the Federation or to a stock exchange, other than the compensation fund, shall be available for the payment of any claim under this Part, whether the claim is allowed by the Council of the Federation or is made the subject of an order of the Court or otherwise.

Provision where fund is insufficient to meet claims or where claims exceed total amount payable. **118.** (1) Where the amount at credit in the compensation fund is insufficient to enable the payment of the whole amount of all claims against it which have been allowed or in respect of which orders have been made, then the amount at credit shall, subject to subsection (2), be apportioned between the claimants in such manner as the Council of the Federation or, as the case may be, the Court thinks equitable; and any such claim, so far as it remains unpaid, shall be charged against further receipts of the fund and paid out of the fund when there is again money available in the fund.

(2) Where the aggregate of all claims against the compensation fund which have been allowed, or in respect of which orders of the Court have been made, in relation to the default giving rise to the claims exceeds the total amount which may be paid under this Part in respect of the stockbroker or stockbrokers concerned in the default, that total amount shall be apportioned between the claimants in such manner as the Council of the Federation or, as the case may be, the Court thinks equitable; and, on payment out of the fund of that total amount in accordance with that apportionment—

(a) all such claims and any order of the Court relating to them; and

(b) all other claims which may subsequently arise or be made in connexion with the default,

shall be absolutely discharged.

Clause

Power of Commission to return Contributions on winding up stock exchange. (Cap. 32.)

119. In the event of a stock exchange being wound up under the Companies Ordinance, the Commission may, in its absolute discretion, after the satisfaction of all outstanding liabilities against the compensation fund, pay to the liquidator of the exchange the whole or any part of the amounts contributed by the exchange under this Part, together with any income accrued in respect thereof, and on any such payment being made those amounts shall form part of the assets of the exchange and be available to the liquidator for distribution in accordance with the Companies Ordinance."

Part X, as amended, was agreed to.

THE FINANCIAL SECRETARY: —Sir, I move that new clauses 2A, 2B, 59A and 126A as set out in the paper before honourable Members stand part of the bill.

Proposed Addition

2A and 2B That there be inserted, after clause 2, the following—

"Saving for certain transactions. (Cap.32.)

2A. (1) For the purpose of determining whether or not a person has dealt in securities or has communicated an offer to acquire or dispose of securities, no account shall be taken of his having (whether as principal or as agent)—

(a) effected any dealing through, or made an offer to acquire or dispose of securities to, a registered dealer or a registered dealer's representative, or an exempt dealer or an exempt dealer's representative;

(b) issued a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance, or in the case of a company incorporated outside Hong Kong, complies with or is exempted from compliance with Part XII of that Ordinance;

(c) issued any document relating to securities of a corporation incorporated in Hong Kong that is

Securities Bill—resumption of the committee stage (30.1.74)*Clause*

not a registered company, being a document which—

(i) would if the corporation were a registered company be a prospectus to which section 38 of the Companies Ordinance applies, or would apply if not excluded by subsection (5)(b) of that section or by section 38A of that Ordinance; and

(ii) contains all the matters which, by virtue of Part XII of that Ordinance, it would be required to contain if the corporation were a company incorporated outside Hong Kong and the document were a prospectus issued by that company;

(d) issued a form of application for shares or debentures of a company, together with—

(i) a prospectus which complies with, or is exempt from compliance with, Part II of the Companies Ordinance or, in the case of a company incorporated outside Hong Kong, complies with or is exempt from compliance with Part XII of that Ordinance; or

(ii) in the case of a corporation incorporated in Hong Kong which is not a registered company, a document which contains the matters specified in paragraph (c)(ii);

(e) issued a prospectus which has been approved by the Commissioner in relation to a mutual fund corporation or unit trust authorized by the Commission under section 13;

(f) issued a form of application for the shares of a mutual fund corporation or the units of a unit trust, being a mutual fund corporation or unit trust which has been authorized by the Commission under section 13, together with a prospectus approved by the Commissioner;

or of his having as principal, acquired, subscribed for, or underwritten securities, or effected transactions with a person whose business involves the acquisition and disposal, or the holding, of securities (whether as principal or as agent).

Clause

(2) The Commissioner may, an application being made to him in that behalf, approve a prospectus for the purposes of subsection (1)(e).

(3) Any approval under subsection (2) may be given subject to such conditions as the Commissioner thinks fit.

Definition of related corporation.

2B. (1) Where a corporation—

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation,

that first-mentioned corporation and that other corporation are, for the purposes of this Ordinance, deemed to be related to each other.

(2) For the purposes of subsection (1), a corporation shall, subject to subsection (3), be deemed to be a subsidiary of another corporation if—

- (a) that other corporation—
 - (i) controls the composition of the board of directors of the first-mentioned corporation;
 - (ii) controls more than half of the voting power of the first-mentioned corporation; or
 - (iii) holds more than half of the issued share capital of the first-mentioned corporation (excluding any part which carries no right to participate beyond a specified amount or a distribution of either profits or capital); or
- (b) the first-mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.

(3) For the purposes of subsection (2), the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision, that other corporation shall be deemed to have power to make such an appointment if—

Securities Bill—resumption of the committee stage (30.1.74)*Clause*

- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or
 - (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.
- (4) In determining whether one corporation is a subsidiary of another corporation—
- (a) any shares held by or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as exercisable by that other corporation;
 - (c) any shares held or power exercisable by any person by virtue of the provisions of any debenture of the first-mentioned corporation or of a trust deed for securing any issue of any such debenture shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business."

Clause

59A That there be inserted, after section 59, the following—

"Exempt investment advisers. **59A.** (1) The Commissioner may declare any person to be an exempt investment adviser for the purposes of this Ordinance if he is satisfied that the business of that person complies with the following requirements, that is to say—

- (a) the investment advice is given only to a person whose business involves the acquisition and disposal or the holding of securities; or
- (b) the investment advice is given only to persons residing outside Hong Kong.

(2) The Commissioner may at any time revoke a declaration under subsection (1)".

126A That there be inserted, after clause 126, the following—

"Delegation of powers, etc., by inspector. **126A.** (1) An inspector may by instrument in writing—

- (a) delegate all or any of his powers or functions under this Part except this power of delegation, the power to administer an oath, and the power to examine on oath; and
- (b) vary or revoke a delegation given by him.

(2) A power or function delegated by an inspector may be exercised or performed by the delegate in accordance with the instrument of delegation as in force from time to time.

(3) A delegate shall, at the request of a prescribed person, produce the instrument of delegation for inspection.

(4) A delegation under this section by an inspector of a power or function does not prevent the exercise of the power or the performance of the function by the inspector."

The addition of new clauses 2A, 2B, 59A and 126A, were agreed to.

THE FINANCIAL SECRETARY: —Sir, I move that the First Schedule be deleted and the new First Schedule as set out in the paper before honourable Members be substituted.

Securities Bill—resumption of the committee stage (30.1.74)*Proposed Amendments*

First
Schedule That the First Schedule be deleted, and the following substituted—

"FIRST SCHEDULE [ss. 70 & 146.]

REQUIREMENTS TO BE SATISFIED

IN RELATION TO OFFERS TO ACQUIRE SECURITIES

1. If the securities to be acquired are currently listed or quoted on a stock exchange (including a foreign stock exchange), the offer shall, subject to paragraph 2, —

- (a) state this fact and specify the exchange or exchanges on which the securities are currently listed or quoted;
- (b) specify the last price paid in respect of the securities on the latest practicable date before the date of the offer;
- (c) specify the last price paid in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer,
- (d) specify the highest and the lowest prices paid in respect of the securities during the period of 6 months immediately preceding the date of the offer;
- (e) where the offer has been the subject of a public announcement, whether in a newspaper or in any other form of news medium or otherwise, specify the last price paid in respect of the securities on the last trading day before the public announcement, or, if the securities were not dealt in on that day, on the last trading day on which they were dealt in.

2. If the securities proposed to be acquired are not listed or quoted on a stock exchange (including a foreign stock exchange), the offer shall contain—

- (a) any information that the offeror may have as to the number and nominal value of those securities that have been sold in Hong Kong during the

period of 6 months immediately preceding the date of the offer and the prices yielded by those sales, or, where the offeror has no such information, a statement to that effect; and

- (b) particulars of any restriction in the constitution of the corporation which issued the securities on the right to transfer the securities which has the effect of requiring the offerees, before transferring securities held by them in the corporation, to offer those securities for purchase to members of the corporation or to any other person, and, where there is any such restriction, the arrangements (if any) being made to enable the securities to be transferred in pursuance of the offer.

3. Where the securities proposed to be acquired are those of a corporation incorporated or domiciled outside Hong Kong and any holders of those securities reside in Hong Kong, and those securities are listed or quoted on a stock exchange of the country or territory in which the corporation is incorporated, the offer shall state this fact and specify the stock exchange on which they are listed or quoted.

4. The offer shall contain, in a prominent position in printing not smaller than eight point Times, a notice in the following form—

'IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser.' "

The First Schedule, as amended, was agreed to.

THE FINANCIAL SECRETARY: —Sir, I move that the Second Schedule be amended as set out in the paper before honourable Members.

Proposed Amendments

Second
Schedule That the Second Schedule be amended—

Securities Bill—resumption of the committee stage (30.1.74)

(a) by deleting paragraphs 1 to 3, and substituting the following—

" 1. If the securities offered are currently listed or quoted on a stock exchange (including a foreign stock exchange) and will be uniform in all respects with the securities so currently listed or quoted, the offer shall—

- (a) state that fact and specify the exchange on which those securities, or the securities with which they will be uniform, are currently listed or quoted;
- (b) specify the last price paid in respect of the securities on the latest practicable date before the date of the offer;
- (c) specify the last price paid in respect of the securities on the last trading day of each of the 6 months immediately preceding the date of the offer;
- (d) specify the highest and the lowest prices paid in respect of the securities during the period of 6 months immediately preceding the date of the offer;
- (e) where the offer has been the subject of a public announcement, whether in a newspaper or in any other form of news medium or otherwise, specify the last price paid on the last trading day before the public announcement, or, if the securities were not dealt in on that day, on the last trading day on which they were dealt in.

2. Where the securities offered are those of a corporation incorporated outside Hong Kong and—

- (a) are listed or quoted on a stock exchange in the country or territory where the corporation was incorporated; or
- (b) are yet to be issued but will be in all respects uniform with the securities already so listed or quoted,

the offer shall specify that fact and the name of the stock exchange on which those securities, or the securities with which they will be uniform, are so listed or quoted.

3. The offer shall, in the case of securities of a corporation which are not listed or quoted on a stock exchange (including a foreign stock exchange), or which are not uniform in all respects with securities so listed or quoted, —

- (a) give particulars of any restriction in the corporation's constitution which has the effect of requiring a holder of the corporation's securities to offer them for purchase to members of the corporation or any other person before transferring them in pursuance of the offer;
- (b) except where the offer is accompanied by a document which conforms with Part II or Part XII of the Companies Ordinance in relation to the corporation whose securities are the subject of the offer, contain the particulars specified in paragraph 4 of this Schedule or be accompanied by a statement in writing containing those particulars.";
- (b) by deleting from paragraph 4 "3(a)" and substituting "3(b)", and by deleting "company" in each case where it appears and substituting "corporation";
- (c) by deleting from paragraph 4(1)(a)(iii) "resident" and substituting "domiciled";
- (d) by deleting from paragraph 5 "company" in each case where it appears and substituting "corporation";
- (e) by deleting from paragraph 5(c)(i) "convenient place" and substituting "place in Hong Kong",
- (f) by inserting in paragraph 5(e)(iii), after "listed", the words "or quoted" and, after "stock exchange" where those words first appear, the words "(including a foreign stock exchange)";

Securities Bill—resumption of the committee stage (30.1.74)

(g) by adding the following—

"6. The offer shall contain in a prominent position, in printing not smaller than eight point Times, a provision in the following form—

IMPORTANT

If you are in doubt as to any aspect of this offer, you should consult a stockbroker or other registered dealer in securities, a bank manager, solicitor, professional accountant, or other professional adviser.' "

The Second Schedule, as amended, was agreed to.

THE FINANCIAL SECRETARY: —Sir, I move that the Long Title be amended as set out in the paper before honourable Members.

Proposed Amendments

Long title That the long title be amended by deleting "Federation of Hong Kong Stock Exchanges", and substituting the following—

"federation of stock exchanges".

The Long Title, as amended, was agreed to.

PROTECTION OF INVESTORS BILL 1973

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in groups.

Clauses 1-6.

THE FINANCIAL SECRETARY: —Sir, I move that the Protection of Investors Bill be amended as set forth in the paper before honourable Members.

Minor amendments are made to clauses 1 and 2. Clause 3 has been expanded and re-arranged extensively, and more clearly relates the offences to any statement, promise or forecast.

Clause 4 is being amended to exclude from its application securities which will be disposed of only outside Hong Kong or to those directly involved in Hong Kong in the business of dealing in these securities.

To ensure that the exceptions in sub-clause (2) of clause 4 are co-extensive with the exceptions contained in the Companies Ordinance a minor amendment is proposed.

To permit the owners of documents which are seized to have access to them, and to take copies for the purposes of their business, it is proposed to make provision for reasonable access in sub-clause (3A) of clause 6.

As a matter of convenience, I propose to deal also with a proposed amendment to clause 8. This is being re-arranged and expanded to include, for the purposes of this sub-clause, the meaning of "fraudulent, reckless, or negligent misrepresentation" in respect of any statement promise or forecast. It is appreciated that the inclusion of the term "forecast" might be seen to pose serious difficulties for market analysts and writers in financial papers. I would like to assure those directly concerned with this aspect of our securities market that their legitimate activities will in no way be inhibited. If this were so, it would be the reverse of what we seek, since the dissemination of in-depth and objective analytical studies and commentaries has been sadly lacking in the past; but there have been most welcome signs of improvement in recent months and the last thing the Government would wish to do would be to frustrate responsible commentaries and forecasts—on the contrary those responsible for them should be given every encouragement.

Proposed Amendments

Clause

- 1 That clause 1 be amended by deleting "1973", and substituting "1974".
- 2 That clause 2 be amended—
 - (a) by deleting "1973" in each case where it appears, and substituting " 1974";
 - (b) by inserting, after the definition of "Commissioner", the following—

““corporation" has the same meaning as in the Companies Ordinance;”.

Protection of Investors Bill—committee stage*Clause*

- 3 That clause 3 be amended by deleting paragraphs (a) to (d) of subclause (2), and substituting the following—
- “(a) any statement—
- (i) which to the knowledge of its maker was false, misleading, or deceptive; or
 - (ii) which is false, misleading, or deceptive and was made recklessly;
- (b) any promise—
- (i) which the maker of the promise had no intention of fulfilling;
 - (ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled;
 - (iii) which was made recklessly;
- (c) any forecast—
- (i) which to the knowledge of the maker of the forecast was not justified on the facts known to him at the time when he made it; or
 - (ii) which was not justified on the facts known to the maker of the forecast at the time when he made it and was made recklessly;
- (d) any statement or forecast from which the maker of the statement intentionally or recklessly omitted a material fact, with the result that the statement was thereby rendered untrue, misleading, or deceptive, or, as the case may, the forecast was thereby not capable of being justified or was thereby rendered misleading or deceptive.”.
- 4 That clause 4 be amended—
- (a) by inserting in subclause (2)(a), after "complies with" in both places where it appears the following—
“or is exempt from compliance with”;
 - (b) by inserting in subclause (2)(c)(i), after "complies with" in both places where it appears the following—
“or is exempt from compliance with”;
 - (c) by deleting subclause (2)(e);

Clause

- (d) in subclause (2)(f) by deleting "1973", and substituting "1974";
- (e) in subclause (3)(a) by deleting "1973" in each case where it appears, and substituting "1974";
- (f) in subclause (3)(a)(ii)—
- (i) by deleting "company" in each case where it appears, and substituting the following—
- "corporation";
- (ii) by deleting "section 2A of the Companies Ordinance", and substituting the following—
- "section 2B of the Securities Ordinance 1974";
- (g) in subclause (3)(a) by deleting sub-paragraph (vii) and substituting the following—
- "(vii) with respect to securities intended to be disposed of to persons outside Hong Kong or to be disposed of in Hong Kong only to persons whose business involves the acquisition, disposal, or holding of securities, whether as principal or as agent; or";
- (h) in subclause (5)(b) by deleting "1973", and substituting "1974".
- 5 That clause 5 be amended in subclauses (1)(a) and (3)(b) by deleting "1973", and substituting "1974".
- 6 That clause 6 be amended—
- (a) in subclause (3)(b) by deleting "48 hours" and substituting the following—
- "14 days";
- (b) by inserting, after subclause (3), the following new subclause—
- "(3A) The person to whom a document seized under subsection (1) belongs shall, unless the document is the subject of an order under subsection (4), be entitled at all reasonable times to take copies of or extracts from it."

Protection of Investors Bill—committee stage

Clauses 1-6, as amended, were agreed to.

Clause 7 was agreed to.

Clause 8.

THE FINANCIAL SECRETARY: —Sir, I move that clause 8 be amended as set out in the paper before honourable Members.

*Proposed Amendments**Clause*

8 That clause 8 be amended—

(a) by deleting subclauses (1) and (2), and substituting the following—

"(1) Any person who, by any fraudulent, reckless, or negligent misrepresentation, induces another person—

(a) to enter into any agreement—

(i) for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or

(ii) the purpose or effect, or pretended purpose or effect, of which is to secure to any of the parties to the agreement a profit from the yield or securities or by reference to fluctuations in the value of securities or property other than securities; or

(b) to take part in any investment arrangements in respect of property other than securities,

shall be liable to pay compensation to that other person for any pecuniary loss that he has sustained by reason of his reliance on the misrepresentation.

(2) For the purposes of subsection (1) "fraudulent, reckless, or negligent misrepresentation" means—

(a) any statement—

Clause

- (i) which to the knowledge of its maker was false, misleading, or deceptive;
 - (ii) which is false, misleading, or deceptive and was made recklessly; or
 - (iii) which is false, misleading, or deceptive and was made without reasonable care having been taken to ensure its accuracy;
- (b) any promise—
- (i) which the maker of the promise had no intention of fulfilling;
 - (ii) which, to the knowledge of the maker of the promise, was not capable of being fulfilled;
 - (iii) which was made recklessly or without reasonable care having been taken to ensure that it could be fulfilled;
- (c) any forecast—
- (i) which to the knowledge of the maker of the forecast, was not justified on the facts known to him at the time when he made it;
 - (ii) which was not justified on the facts known to the maker of the forecast at the time when he made it and was made recklessly or without reasonable care having been taken to ascertain the accuracy of those facts; or
- (d) any statement or forecast from which the maker of the statement intentionally, recklessly, or negligently omitted a material fact of which he had knowledge or ought to have had knowledge, with the result that the statement was thereby rendered untrue, misleading, or deceptive, or, as the case may be, the forecast was thereby not capable of being justified or was thereby rendered misleading or deceptive.";

Protection of Investors Bill—committee stage*Clause*

- (b) by deleting from subclause (3) the full stop and substituting a semicolon and adding the following—

"but a person shall not, by reason only that the directors of a company or other body corporate act on advice given by him in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.";

- (c) by inserting after subclause (4) the following new subclauses—

"(5) This section does not confer a right of action in any case to which section 40 of the Companies Ordinance applies.

(6) An action may be brought under this section whether or not a person has been charged with or convicted of an offence under this Ordinance."

Clause 8, as amended, was agreed to.

Clause 9 was agreed to.

**HONG KONG EXPORT CREDIT INSURANCE CORPORATION
(AMENDMENT) BILL 1974**

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in a group.

Clauses 1 to 8 were agreed to.

PREVENTION OF BRIBERY (AMENDMENT) BILL 1974

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in groups.

Clauses 1 and 2 were agreed to.

Clause 3.

THE ATTORNEY GENERAL: —Sir, I move that clause 3 be amended as set out in the paper before honourable Members. It was represented to me that, as the proposed new subsection (2) of section 10 stands, it is capable of the construction that mere closeness of relationship could be sufficient to raise the presumption that an accused person is in control of resources held by another. That was never intended and I believe that the revised subsection removes any doubt.

Proposed Amendments

Clause

- 3 That clause 3 be amended by deleting the proposed new section 10(2) and substituting the following—

"(2) Where a court is satisfied in proceedings for an offence under subsection (1)(b) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift from the accused, such resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused."

The amendment was agreed to.

Clause 3, as amended, was agreed to.

Clause 4.

THE ATTORNEY GENERAL: —Sir, I move that clause 4 be amended as set out in the paper.

The first amendment corrects a drafting error. The second deletes words which are now considered unnecessary and could lead to difficulties in the interpretation of the proposed new section 12(3).

Proposed Amendments

Clause

- 4 That clause 4 be amended—

(a) in paragraph (b), by deleting "such person or public body" and substituting the following—

"the Crown"; and

Prevention of Bribery (Amendment) Bill—committee stage*Clause*

- (b) in paragraph (c), by deleting from the proposed new section 12(4) "may relate to any pecuniary resources or property held by any person in trust for or otherwise on behalf of the convicted person and".

The amendments were agreed to.

Clause 4, as amended, was agreed to.

Clauses 5 and 6 were agreed to.

Clause 7.

THE ATTORNEY GENERAL: —Sir, I move that clause 7 be amended as set out in the paper.

The proposed new section 14A of the principal ordinance will enable the Commissioner of the Independent Commission Against Corruption to prohibit a suspect or an accused person from disposing of specified property without the Commissioner's consent. The additional new clause now proposed gives the suspect or accused person a right to apply to the District Court if he is aggrieved by a refusal of the Commissioner to consent to dealings with restrained property.

The second amendment is for the removal of doubt. It has been suggested that the wording of the proposed new section 14B is such that it may not extend to monies owed by a bank to a suspect or an accused person. This came as something of a shock to me, Sir, for I need hardly remind honourable Members that a prime purpose of the section is to enable the Commissioner to restrain dealings with bank accounts. Although I myself think that the section is adequate as it stands, the matter is too important to take any chances. I hope that the revised subsection (1) will achieve our aims, and this change, Sir, has necessitated a number of other minor amendments.

The third main amendment will give the District Court complete discretion as to the period of notice to be given to the Commissioner of applications for the revocation or variation of restraining orders or for directions.

Proposed Amendments

7 That clause 7 be amended—

(a) by adding after the proposed new section 14A the following new section—

"Reversal or variation of Commissioner's decision. **14AA.** (1) A person on whom a notice under section 14A(1) has been served who is aggrieved by the refusal of the Commissioner to give a consent thereunder or by the imposition of any terms or conditions to any such consent may at any time apply to the court for an order to reverse or vary the decision of the Commissioner.

(2) An applicant under subsection (1) shall give to the Commissioner such notice of the day fixed for the hearing of the application as a judge of the court may order.

(3) On the hearing of an application under subsection (1), the court may—

(a) reverse the decision of the Commissioner and consent to the disposal of or other dealing with any property specified in the notice subject to such terms and conditions as it thinks fit; or

(b) vary any of the terms and conditions imposed by the Commissioner to a consent under section 14A(4).

(4) In this section and in sections 14B, 14C and 14D "court" means the District Court."

(b) in the proposed new section 14B—

(i) by deleting subsection (1), and substituting the following—

"(1) If, on application *ex parte* by or on behalf of the Commissioner, the court is satisfied that—

(a) any property is due to a person (hereinafter in this section and in sections 14C and 14D referred to as the "suspected person"), who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Ordinance or against whom a prosecution for such an offence

Prevention of Bribery (Amendment) Bill—committee stage*Clause*

has been instituted, from another person (hereinafter so referred to as the "third party"); or

(b) a third party is holding any property for or on behalf of or to the order of a suspected person,

the court may make an order under this subsection (hereinafter so referred to as a "restraining order")." ;

(ii) in subsection (2), by deleting "held by him for or on behalf of or to the order of the suspected person" and substituting the following—

"specified in the restraining order";

(iii) in subsection (5), by deleting "held for or on behalf of or to the order" wherever it occurs.

(iv) in subsection (6), by deleting "he disposes of or otherwise deals with any property held by him for or on behalf of or to the order of the suspected person" and substituting the following—

"he knowingly disposes of or otherwise deals with any property specified in the restraining order"; and

(v) by deleting subsection (7);

(c) in the proposed new section 14C, by deleting subsection (3) and substituting the following—

"(3) The applicant under subsection (2) shall give to the Commissioner such notice of the day fixed for the hearing of the application as a judge of the court may order."; and

(d) in the proposed new section 14D, by deleting "notice of the day fixed for the hearing of the application not less than seven days prior thereto" and substituting the following—

"such notice of the day fixed for the hearing of the application as a judge of the court may order".

Clause 7, as amended, was agreed to.

Clauses 8 to 13 were agreed to.

OFFICIAL LANGUAGES BILL 1974

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in groups.

Clauses 1 to 4 were agreed to.

Clause 5.

THE SECRETARY FOR HOME AFFAIRS: —Sir, I move that clause 5 be amended as set out in the paper before honourable Members.

This will make it clear that it is only with the consent of the court that a language other than the official language may be used by parties or witnesses in proceedings.

*Proposed Amendments**Clause*

5 That clause 5 be amended by deleting subclause (3) and substituting the following—

"(3) Notwithstanding subsections (1) and (2), any party to or witness in proceedings in any court may use either the English language or the Chinese language, or such other language as the court may permit."

Clause 5, as amended, was agreed to.

Clauses 6 and 7 and the Schedule were agreed to.

PRISONS (AMENDMENT) BILL 1974

HIS EXCELLENCY THE PRESIDENT: —We will take the clauses in a group.

Clauses 1 to 7 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

Independent Commission Against Corruption Bill 1974

the Hong Kong Export Credit Insurance Corporation (Amendment) Bill 1974

and the Prisons (Amendment) Bill 1974

had passed through Committee without amendment and that the

Securities Bill 1974

the Protection of Investors Bill 1974

the Prevention of Bribery (Amendment) Bill 1974

and the Official Languages Bill 1974

had passed through Committee with 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.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —In accordance with Standing Orders, I now adjourn the Council until 2.30 p.m. on Wednesday, the 27th of February.

Adjourned accordingly at fifteen minutes past four o'clock.