

OFFICIAL REPORT OF PROCEEDINGS**Wednesday, 26 June 1985****The Council met at half past two o'clock****PRESENT**

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR EDWARD YOUDE, G.C.M.G., M.B.E.

THE HONOURABLE THE CHIEF SECRETARY
SIR DAVID AKERS-JONES, K.B.E., C.M.G., J.P.

THE HONOURABLE THE FINANCIAL SECRETARY (*Acting*)
MR. PIERS JACOBS, O.B.E., J.P.

THE HONOURABLE THE ATTORNEY GENERAL
MR. MICHAEL DAVID THOMAS, C.M.G., Q.C.

THE HONOURABLE SIR ROGERIO HYNDMAN LOBO, C.B.E., J.P.

DR. THE HONOURABLE HARRY FANG SIN-YANG, C.B.E., J.P.

THE HONOURABLE CHEN SHOU-LUM, C.B.E., J.P.

THE HONOURABLE PETER C. WONG, O.B.E., J.P.

THE HONOURABLE WONG LAM, O.B.E., J.P.

DR. THE HONOURABLE HO KAM-FAI, O.B.E., J.P.

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

THE HONOURABLE ANDREW SO KWOK-WING, O.B.E., J.P.

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.

THE HONOURABLE WONG PO-YAN, O.B.E., J.P.

THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION

THE HONOURABLE WILLIAM CHARLES LANGDON BROWN, O.B.E., J.P.

THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.

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

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

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

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

DR. THE HONOURABLE HENRIETTA IP MAN-HING

THE HONOURABLE DAVID GREGORY JEAFFRESON, C.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE RONALD GEORGE BLACKER BRIDGE, O.B.E., J.P.
COMMISSIONER FOR LABOUR

THE HONOURABLE CHAN YING-LUN

THE HONOURABLE MRS. RITA FAN HSU LAI-TAI

THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN

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

THE HONOURABLE YEUNG PO-KWAN, C.P.M.

THE HONOURABLE KIM CHAM YAU-SUM, J.P.

THE HONOURABLE KEITH LAM HON-KEUNG, J.P.

THE HONOURABLE CARL TONG KA-WING

THE HONOURABLE JOHN WALTER CHAMBERS, J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
DIRECTOR OF EDUCATION

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

THE HONOURABLE DAVID ROBERT FORD, L.V.O., O.B.E., J.P.
SECRETARY FOR HOUSING

THE HONOURABLE IAN FRANCIS CLUNY MACPHERSON, O.B.E., J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE JOHN RAWLING TODD, C.V.O., O.B.E., J.P.
SECRETARY FOR LANDS AND WORKS (*Acting*)

THE HONOURABLE HARNAM SINGH GREWAL, E.D., J.P.
SECRETARY FOR TRADE AND INDUSTRY (*Acting*)

THE HONOURABLE MICHELANGELO PAGLIARI, J.P.
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)

THE HONOURABLE GERALD AIDIAN HIGGINSON, A.E., J.P.
SECRETARY FOR ECONOMIC SERVICES (*Acting*)

DR. THE HONOURABLE RUDY KIAN-KANG KHOO, J.P.
DIRECTOR OF MEDICAL AND HEALTH SERVICES (*Acting*)

ABSENT

THE HONOURABLE FRANCIS YUAN-HAO TIEN, C.B.E., J.P.

THE HONOURABLE ALEX WU SHU-CHIH, C.B.E., J.P.

THE HONOURABLE LYDIA DUNN, C.B.E., J.P.

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

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LI WING

Papers

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

<i>Subject</i>	<i>L.N. No.</i>
Subsidiary Legislation:	
Hong Kong Airport (Control of Obstructions) Ordinance. Hong Kong Airport (Control of Obstructions) (Consolidation) (Amendment) Order 1985-----	174
Hong Kong Airport (Control of Obstructions) Ordinance. Hong Kong Airport (Control of Obstructions) (Consolidation) (Amendment) (No.2) Order 1985-----	175
Registration of Persons Ordinance. Registration of Persons (Application for New Identity Cards) (No. 5) Order 1985 -----	176
Privileges and Immunities (Joint Liaison Group) Ordinance 1985. Privileges and Immunities (Joint Liaison Group) Ordinance 1985 (Commencement) Notice 1985-----	177

Sessional Papers 1984-85:

No. 61—Report by the Trustee of the Police Children's Education Trust Police Education and Welfare Trust for the period 1 April 1983-31 March 1984.

No. 62—Report on the Administration of the Fire Services Welfare Fund with balance sheet and income and expenditure account for the year ended 31 March 1984.

Oral answers to questions**Billiard centres in private clubs**

1. MRS. NG asked in Cantonese:—

政府可否就下述問題發表聲明：

(甲) 對於由私人會所經營的桌球室，政府是否予以監管；及

(乙) 目前有什麼預防措施，以確保一些所謂私人會所不會被利用來逃避申請開辦公眾桌球室所必須符合的規定？

(The following is the interpretation of what Mrs. NG asked.)

Will Government make a statement on:

- (a) whether it exercises any supervision over the operation of billiard centres run by private clubs; and*
- (b) what safeguards are there to ensure that so-called private clubs are not being used to circumvent the licensing conditions applicable to public billiard centres?*

THE CHIEF SECRETARY:—Sir, the Government does not exercise supervision over the operation of billiard centres run by private club, nor do the licensing conditions applicable to public billiard centres apply to private clubs.

The Secretary for Municipal Services, who is looking into whether and how some measure of control should be introduced over the operation of billiard centres by so called private clubs, informs me that the issues are complex but that they are being examined.

MRS. NG asked in Cantonese:—

閣下，在過去兩年內，政府有沒有接獲有關由私人會所或聯誼會所成立的桌球室，在深夜時分發出聲浪，騷擾附近的居民這類的投訴？

(The following is the interpretation of what Mrs. NG asked.)

Sir, in the past two years, has the Government received any complaints about nuisance caused by these billiard centres run by private clubs late in the evening?

THE CHIEF SECRETARY:—Sir, there has been some complaints, but not a great number of complaints. But as I said the Secretary for Municipal Services is now looking into the question of the operation of these billiard centres by private clubs.

MRS. CHOW:—*Is there any complaint attached to the examination referred to in paragraph 2, may I ask?*

THE CHIEF SECRETARY:—Sir, the Secretary for Municipal Services will act as expeditiously as possible but it is a complex subject and of course we are entering into the field of private operations and private rights and interests.

Deposit insurance scheme

2 MR. SO asked in Cantonese:—

政府曾否考慮在本港推行一項存款保險計劃，以保障小存戶，免他們因銀行無力支付存款而蒙受損失？

(The following is the interpretation of what Mr. So asked.)

Would Government consider introducing a deposit insurance scheme in Hong Kong to give protection to small depositors against bank failures?

THE FINANCIAL SECRETARY:—Sir, Mr. SO and other Members of this Council will recollect that the subject of a deposit insurance scheme has been aired on a number of occasions, the latest being during the passage of the Overseas Trust Bank (Acquisition) Ordinance on 7 June 1985 when the Financial Secretary Sir John BREMRIDGE pointed out that there were arguments both for and against the establishment of such a scheme. All I can say this afternoon is that these arguments are being studied yet again and that the matter will be discussed with the Banking Advisory Committee and the Deposit-taking Advisory Committee later this year.

MR. KIM CHAM:—*Sir, will the Government consider the merits and demerits of schemes elsewhere in the world, such as the United States, before arriving at a conclusion?*

THE FINANCIAL SECRETARY:—Yes, Sir, schemes which have been operating elsewhere are relevant to the course of our examination.

Ex-gratia compensation to road accident victims

3. DR. HO asked:—*Would Government make a statement on the progress it has made towards setting up a special fund to aware ex-gratia compensation to road accident victims deprived of legal redress following the collapse of insurance firms?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, since 1980, five motor vehicle insurance companies have become insolvent. The failure to be able to provide indemnity has resulted in considerable hardship for those members of the public who were injured in accidents involving vehicles insured with one of those five companies. Immediate financial relief for those affected was, of course, made available through the provisions of the existing Traffic Accident Victims Assistance Scheme, known as T.A.V.A.S. However, though the T.A.V.A.S. relief has been welcomed, many of the victims have been unable subsequently to receive adequate compensation or relief from the insolvent insurance companies. Consideration has thus been given to see what can be done to help this disadvantaged group of people without imposing an additional or an unacceptable burden on the general taxpayer.

Under examination at present is a proposal to make *ex-gratia* payments from the T.A.V.A.S. Fund to third parties who have suffered bodily injury or death in traffic accidents and who, as a result of the liquidation of the insurance company concerned, have not received payment. The proposed scheme has now

reached an advanced stage of planning. I hope that it will be possible, in the near future, to seek the advice of the Traffic Accident Victims Assistance Advisory Committee on the merits of the proposal before submitting the matter to the Executive Council.

I should perhaps emphasise that the proposal now being worked up is limited to those who have been adversely affected by the insolvency of the five insurance companies to which I referred earlier. In respect of any possible future insolvencies, Government has entered into a provisional agreement with the Motor Insurers' Bureau of Hong Kong to provide for the Bureau to operate an Insolvency Fund Scheme to cover third party death or bodily injury claims against insolvent insurers.

DR. HO:—*Sir, can the Secretary for Economic Services inform this Council as to how soon will the Traffic Accident Victims Assistance Advisory Committee be consulted about the ex-gratia payment proposed?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, as soon as possible, I would hope that would mean within the next several months.

DR. HO:—*Sir, does the Government or the Secretary for Economic Services have any idea on the number of victims who will benefit from the proposed ex-gratia scheme and on the estimated amount of compensation to be awarded?*

SECRETARY FOR ECONOMIC SERVICES:—Sir, I can't give an accurate figure yet of the numbers involved because the time allowed for the lodging has not yet expired. According to the record of the Legal Aid Department, there are about 300 individual claims connected with the five companies to which I referred earlier, which will fall within the scope of the proposed scheme. It is reasonable to assume that those claims will represent a high percentage of the more serious injuries. As the total number of claims is not yet known, it is difficult to give any reliable figure on the total amount, however, it is not expected that the total payments would exceed \$100 million.

Supervision of banks

2. MR. SO asked in Cantonese:—

政府可否告知本局，是否有計劃去改善本港銀行的監管制度？

(The following is the interpretation of what Mr. SO asked.)

Could Government inform this Council what plans it has to improve the supervision of banks in Hong Kong?

THE FINANCIAL SECRETARY:—Sir, the Financial Secretary, Sir John BREMRIDGE, informed this Council on 27 February this year when moving the Appropriation Bill 1985 that a review of prudential supervision of banking in Hong Kong was being carried out following the examination of a report by a team from the Bank of England concerning our existing system.

Whilst existing legislation already gives wide ranging powers to the Banking Commissioner, the process of supervision is and must be subject to continuous examination and improvement so that it is capable of matching developments in the banking and deposit taking sectors. There is no doubt that some changes in requirements placed on banks and deposit-taking companies are needed. The review of these requirements has advanced to the stage of consultations with the Banking Advisory Committee and the Deposit-taking Companies Advisory Committee. Work is in hand in the light of these consultations and we hope that the review will be finished by the end of the summer so that recommendations may then be presented to the Executive Council.

I might add, Sir, that the review will take into account any lessons to be learnt from recent events and, in particular, from the points made by Members of this Council during the debate on 7 June.

MR. F. K. HU:—*Is the Financial Secretary satisfied that the teams of government inspectors have been given adequate training—in the evaluation of the assets of banks and the internal procedures for approval of loans?*

THE FINANCIAL SECRETARY:—Sir, I am not easily satisfied on such subjects as training and skills, but I believe that those involved in this task are skilled and have received proper training. Of course, it can be improved further; that is the task we are now engaged upon.

Water quality of rivers discharging into Tolo Harbour

3. MR. SO asked in Cantonese:—

政府可否就流入吐露港的河流和溪澗的水質，作出聲明？

(The following is the interpretation of what Mr. SO asked.)

Could Government make a statement on the water quality of rivers and streams discharging into the Tolo Harbour?

SECRETARY FOR HEALTH AND WELFARE:—Sir, the water quality of the four principal rivers discharging into Tolo Harbour is regularly monitored by the Environmental Protection Agency, and comprehensive surveys covering minor rivers and streams in the Tolo Harbour and Channel Water Control Zone are carried out from time to time.

The most recent survey, completed in 1982, covered all the 30 streams around Tolo Harbour. The water quality at 22 per cent of the sampling points was found to be 'good', 35 per cent 'medium' and 43 per cent 'bad'. This is nothing to be proud of, but compares quite favourably with the average for the New Territories, which showed that only 15 per cent of the sampling points had 'good' or 'excellent' water quality and 67 per cent 'bad' or 'very bad'. There is no evidence that the situation has changed significantly since the survey was completed.

Regular monitoring of the Lam Tsuen River, Tai Po River, Fo Tan Nullah and Shing Mun River indicates that they are subject to seasonal fluctuations, with higher levels of pollution during the dry winter months and lower levels in summer, when abundant rainfall dilutes and flushes away the pollutant loads. Since 1981, the water quality of the Lam Tsuen River has improved from being consistently 'very bad' to 'good' or 'excellent', at least in the wet season. This is due to the replacement in the lower catchment area of heavily polluting small factories, unsewered houses and livestock industries by planned urban development with proper sewerage. Over this period the other three rivers, originally classified 'good' or 'medium', have not improved. In the case of the Fo Tan Nullah and Shing Mun River, there is some evidence of a deteriorating trend, probably due to connections of industrial effluents to the surface water drainage system.

It is estimated that about 25 per cent of the total pollution load on Tolo Harbour comes from industry, 48 per cent from agriculture, and 27 per cent from domestic sources in areas not served by the sewerage system. Industrial sources include textiles, food and beverages, metal products, electroplating and others. Industry is responsible for practically all of certain toxic materials, including cyanide, now found contaminating Tolo Harbour and the rivers flowing into it, which commonly reach levels which could be toxic to freshwater life in the Shing Mun and Fo Tan rivers. In addition, organic pollutants, such as poly-chlorinated biphenyls and DDT and its metabolites, which are also found, are derived at least in part from industrial sources, as are heavy metals such as chromium and copper. These pollutants are persistent in marine organisms, and can therefore pose potential public health risks.

In view of its use for recreational purposes, the bacterial quality of the Shing Mun River has been carefully assessed by the Environmental Protection Agency. The state of the lower Shing Mun River is definitely unacceptable, with levels of the bacterium *E. Coli*, an indicator of faecal pollution, approaching those expected in the effluent from a biological sewage treatment plant. The levels of pathogens which typically cause skin, eye, ear and wound infections are not exceptionally high, but three diarrhoea-causing bacteria are present in considerable numbers. This amounts to a marginal health risk to existing recreational users of the river. Swimming is definitely not recommended.

The continuation and, indeed, intensification of the Government's efforts on pollution control in this area is vitally important. District working groups have been established in Sha Tin and Tai Po and action is in hand to improve the main rivers by the control of pollution discharges as well as such remedial measures as desilting, refuse clearance and improvements to the flow. The draft Water Pollution Control (General) Regulations, which were recently gazetted for public information and comment, are intended to enable industrial pollution to be contained in the short term and indeed, improved in the longer term. Separate measures are also being developed to deal with the problems of agricultural and toxic industrial wastes. It is intended that these legislative measures, together with the extension of the sewerage networks, should lead to a reduction of the overall pollution load in the area.

Tax written-off as irrecoverable

6. MRS. FAN asked:—*Will the Government provide this Council with a breakdown of the amount of tax assessed as irrecoverable for the financial year 1984-85 and indicate how this figure compares with the amounts assessed as irrecoverable at this time in the three preceding years?*

THE FINANCIAL SECRETARY:—Sir, if I understand Mrs. FAN's question correctly, I think what she has in mind is the amount of tax *written-off* as irrecoverable in the financial year 1984-85 and the three preceding years.

Tax assessed in any financial year would not normally be considered as irrecoverable until all possible recovery procedures had been pursued.

As to the figures, the amount of tax written-off as irrecoverable in the financial year 1984-85 was \$27.46 million. In the three preceding financial years, the amounts written-off were \$10.22 million, \$7.51 million and \$12.14 million respectively.

MRS. FAN:—*Sir, the amount of tax written-off in 1984-85 is in fact double that of the three preceding years. Could the Financial Secretary throw light on the reason for this exceptionally high amount and whether the Government is considering any measures to improve the situation in future?*

THE FINANCIAL SECRETARY:—Sir, as to its being an exceptionally high amount, I think this has to be looked at in perspective. The total of amount of tax collected was \$15 billion, so the \$27.46 million represented only 0.16 per cent in 1984-85. As to the steps that have been taken, we do follow the usual civil remedies. In view of the fact that *initial* defaults amount to about 6 to 7 per cent annually, I think the Commissioner has done very well in the collections which he has made.

Action against U.S. protectionism

7. MR. STEPHEN CHEONG asked:—*Will the Government make a statement to this Council:*
- (a) *on the steps being taken by the Administration to counter the adverse effect of the growing tide of protectionism in the United States;*
 - (b) *on the need to increase the strength and effectiveness of our representative office in Washington; and*
 - (c) *what steps are being taken by Government to ensure that all administrative obstacles are removed in respect of implementation of (b) above whilst recognising that our efforts during the next 18 months will be crucial if we are to have any hope of succeeding in halting the tide of restrictive suggestions by U.S. congressional politicians.*

SECRETARY FOR TRADE AND INDUSTRY:—Sir, the rise of protectionist sentiments in the U.S., particularly recent developments in the textiles sector, is of considerable concern to Hong Kong, and indeed to all those involved in international trade. Protectionism is not a bilateral issue, and should not be seen as such. And in combatting such sentiments there is no doubt that the most effective voices are U.S. companies and pressure groups.

Against this background, Hong Kong is concentrating its efforts on attempting to reduce support for the Thurmond-Jenkins Bill, the most immediate threat to our trade. *First*, Hong Kong seeks—with some success—to encourage and liaise with domestic U.S. interests which would be affected by increased U.S. protectionism through reduced imports or through reduced export opportunities to many countries affected by such measures (because for example of possible retaliation and reduced foreign currency earnings). A major effort is being mounted to activate multinational corporations through their branches in Hong Kong by drawing attention to the damaging effects of the Bill. At the same time, key major companies in Hong Kong are being urged to influence the situation through their lobbyists and high level contacts in the United States. Hong Kong also maintains direct communications with key U.S. officials and politicians. As a matter of fact, Mr. Eric HO was in Washington last week to see senior officials and members of the Congress with a view to influencing their thinking. In all this the activities of our two lobbyists and our offices in New York and Washington are crucial. *Secondly*, Hong Kong participates actively in international efforts to stem the tide, the latest manifestation of which was a joint statement by the developing countries at the G.A.T.T. Council meeting on 5 June, condemning the Thurmond-Jenkins Bill as pressure tactics applied by United States domestic textile interests on the eve of multilateral negotiations, in direct contradiction with United States' commitments under the Multifibre Arrangement, the bilateral agreements and the G.A.T.T. ministerial declaration.

I would add that the overall strategy to influence events relating to the Bill has been formulated in full consultation with the Textiles Advisory Board from the outset.

As regards the remainder of this question, I should like to point out that the Washington Office operates in tandem with and under the general supervision of the Commissioner for Hong Kong Affairs, New York. The two offices, Washington and New York, therefore work in close concert with each other, and have indeed been doing so in an effort to counter the protectionist pressures in question. The post of Commissioner (New York) was recently upgraded in recognition of the increased responsibilities and workload it now carries. For its part, whilst the Washington Office has played a significant and effective coordinating role in this exercise, it is without doubt severely stretched and needs reinforcing as a matter of some urgency to enable it to continue to cope with the mounting pressures protectionism is throwing up.

In consultation with my colleague, Secretary for Administrative Services and Information who is responsible for the staffing and management of Government's overseas offices, I am able to say that arrangements are in hand to augment the Washington Office at appropriate level. The principal difficulty in the way of providing additional staff has been a shortage of funds as no provision was made in the current Estimates. However, savings are anticipated elsewhere which should enable the necessary staff to be provided. As an interim measure, the possibility of providing relief through redeployment of existing resources from other offices is being examined with a view to posting staff to Washington as soon as this can be arranged.

MR. STEPHEN CHEONG:—*Sir, I am gratified to hear that the Secretary agrees that Washington Office has played a significant role. Now he has also admitted that the offices are severely stretched. May I know when it has occurred to the department and the Washington Office that it was being severely stretched?*

SECRETARY FOR TRADE AND INDUSTRY:—*Sir, the initial bid for reinforcement was made last December when Counsellor (Washington) asked for an additional post at the top end of the Master Pay Scale.*

MR. STEPHEN CHEONG:—*Sir, in December, the Administration was then asked for one additional post. Was that it?*

SECRETARY FOR TRADE AND INDUSTRY:—*Yes, Sir.*

MR. STEPHEN CHEONG:—*Sir, I certainly understand that there is a general principle of zero growth, but could the Secretary for Trade and Industry be kind enough to explain how this particular major principle was being applied to an issue that requested one additional post which affected tremendously our international trade prospects?*

SECRETARY FOR TRADE AND INDUSTRY:—Sir, although it was only one post, it is a post at the top end of the Master Pay Scale and the N.A.M.S. value involved could not be fitted into the approved N.A.M.S. value for the Secretary for Administrative Services and Information's overseas offices. Bearing in mind also that the request came towards the end of the financial year, it was not possible to fit that particular request in. And in consultation with my colleague, we have now agreed that savings elsewhere will be possible to enable the post to be provided within the next two or three months.

MR. STEPHEN CHEONG:—*Also, when did the Administration consider the interim measure, that is, the possibility of providing relief through redeployment of existing resources from other offices?*

SECRETARY FOR TRADE AND INDUSTRY:—Sir, this is a recent possibility that is being explored.

MR. STEPHEN CHEONG:—*Sir, I am sorry to drag this out. Could I ask the Secretary for Trade and Industry be kind enough to expedite this particular interim measure in consultation with the Secretary for Administrative Services and Information?*

SECRETARY FOR TRADE AND INDUSTRY:—Sir, I shall endeavour to do so.

Government Business

First reading of bills

REGIONAL COUNCIL BILL 1985

ELECTIONS (MISCELLANEOUS AMENDMENTS) BILL 1985

CUSTOMS AND EXCISE SERVICE (AMENDMENT) BILL 1985

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

Second reading of bills

REGIONAL COUNCIL BILL 1985

THE CHIEF SECRETARY moved the second reading of:—‘A bill to provide for the establishment and incorporation of the Regional Council, its constitution, functions and matters incidental thereto and to make consequential amendments’.

He said:—Sir, I rise to move the second reading of Regional Council Bill 1985 which seeks to provide for the establishment of a Regional Council on 1 April next year to cover the areas not under the aegis of the Urban Council.

In his statement in this Council on 15 February last year my predecessor announced four proposals for the development of local administration in Hong Kong. Among these was the proposal to establish a new Regional Council. In the public consultation which followed his announcement, it became evident that the people, this new body would eventually serve, clearly welcomed the idea of participating directly in the running of local services and facilities. The Government supported this view, and in April this year, a Provisional Regional Council was appointed to prepare the way for the establishment of a full Regional Council.

The draft Bill now before Members provides details of the membership, functions, powers and proceedings of that council. Like its urban counterpart it will be a financially autonomous executive body with legal authority and responsibility for providing services relating to public health, sanitation, hygiene, recreation and culture outside the electoral jurisdiction of the Urban Council. Its functions will thus be quite distinct from those of the Heung Yee Kuk and the New Territories District Boards.

The Bill itself has been largely modelled on the Urban Council Ordinance, and it is therefore my intention to refer only to significant divergences from that Ordinance.

One important difference is that relating to membership. Currently, the Urban Council has a total of 30 members, of whom 15 are directly elected and 15 are appointed by the Governor. The Regional Council will consist of 36 members drawn from four different sources—

- 12 directly elected, constituency-based members;
- 9 representatives elected by the New Territories District Boards, within the area of the Regional Council, from among themselves;
- 3 *ex-officio* members from the Heung Yee Kuk, who will be the Chairman and two Vice-Chairmen; and
- 12 appointed members, three of whom will, as circumstances require, be members of the Heung Yee Kuk, especially chosen to represent the three constituencies of the Kuk. (This latter arrangement was agreed between the Government and the Kuk, and is designed to ensure that there is adequate representation of rural interests and it can be looked at again as time goes on. But I should point out that, with the inclusion of these three members, of the 24 members of the present Provisional Regional Council it so happens that about 14 of them are members of the Heung Yee Kuk).

Elections for the 12 directly elected members will be conducted at the same time as those for the Urban Council in March 1986, and the first elected members will hold office for three years from 1 April 1986.

Elections for the nine representative members of the District Boards will be held in the year of an ordinary District Board election. The New Territories District Boards have already elected nine such representative members to the Provisional Regional Council and the law prescribes transitional arrangements to provide that these persons should become the representative members of the Regional Council upon its inception, thus ensuring that some of the working experience gained by the Provisional Regional Council will be carried forward to the new council. This would mean that the present representative members will hold office until an ordinary District Board election in April 1988.

Of the 12 members appointed by the Governor, again, in order to ensure a smooth transition into the Regional Council, it is intended that some, if not all, of the appointed members serving on the Provisional Regional Council should be the appointed members of the Regional Council for a period yet to be decided. One possibility would be to make the initial appointments for one year only to 31 March 1987. If this were done, then roughly one third of the members of the Regional Council would be liable to be changed at the end of March each year. Thus, of the original terms of office, those of appointed members would expire in March 1987, those of representative members in March 1988, and those of directly elected members in March 1989. This would ensure a degree of continuity of membership on the council which, it is believed, will be of particular benefit in the early years of the council's existence.

The Chairman and Vice-Chairman of the Regional Council will be elected by the members from amongst themselves by secret ballot on an absolute majority voting system. This will take place at the first meeting of the Regional Council held after 31 March in a year the directly elected members are elected. This means that in normal circumstances a Chairman and Vice-Chairman will be elected at three-yearly intervals, beginning in April 1986. However, if an officer so elected is a District Board representative or appointed member with a lesser term of membership remaining, his continuance in office beyond his term of membership will depend on re-election or reappointment as the case may be. On completion of their three-year term of office both Chairman and Vice-Chairman will be eligible for re-election.

Part V of the Bill sets out the powers and functions of the Regional Council. Like its urban counterpart the Regional Council will exercise statutory powers and perform statutory duties relating to licensing and control. The council will also have general powers to promote cultural and sporting activities, including the power to establish venues, promote and sponsor the arts and sports, acquire property, enter into contracts and engage staff. However, the draft Bill differs in one significant respect from the Urban Council Ordinance, under which all the Urban Council's powers are restricted to the urban areas. This has been found

to be unduly limiting. There are, on occasions, activities which the Urban Council properly wishes to organise outside the urban areas and it is likely that the Regional Council will wish to organize similar activities, such as museum visits, for its constituents. Therefore, under this Bill, the Regional Council will only be restricted to its own area of authority in terms of establishing and maintaining public places and facilities relating to recreation and culture. The inclusion of a similar provision in the Urban Council Ordinance will be put to the Urban Council for consideration in the near future. If approved, this will have the further advantage of allowing the two councils to act together, for instance in constructing and running a staff training school.

The Regional Council will discharge its functions through the Regional Services Department, the Director of which will become the council's principal executive officer. The department will, however, remain a government department in the same way as the Urban Services Department.

The Regional Council will be a financially autonomous body, and it will pay to the Government the costs of staff, services and materials provided by the Government. It is intended that the Regional Council's income will be mainly derived from the fees levied in the performance of its statutory functions, together with a, as yet undetermined, percentage of the New Territories' rate. The details of the financial arrangement will of course have to be agreed before the Regional Council is established in April next year, and amendments to the Rating Ordinance providing for a separate Regional Council rate will need to be effected before that date. Furthermore, a Memorandum of Administrative Arrangements between the Government and the Regional Council will also need to be finalised before 1 April 1986 and it is intended that discussions on this will begin in the near future.

The Bill which is before Members has been considered by the Provisional Regional Council and has received its endorsement in principle. The Provisional Regional Council suggested that the arrangement which I have mentioned earlier by which the Government agreed to appoint three of the appointed members from among the members of the Heung Yee Kuk should be included in the law. For reasons which I described earlier, the arrangements for the appointment of these members should, in the Government's view, retain an element of flexibility. The council also suggested that Government should consider the appropriateness of granting absolute privilege to proceedings of the Regional Council, but this suggestion was considered premature.

Sir, I move that the debate be adjourned.

Motion made. That the debate on the second reading of the Bill be adjourned—
THE CHIEF SECRETARY.

Question put and agreed to.

ELECTIONS (MISCELLANEOUS AMENDMENTS) BILL 1985

THE SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION moved the second reading of:—‘A bill to amend the law relating to District Boards, the Legislative Council and the Urban Council and to make provision for elections to the Regional Council and for matters connected therewith’.

He said:—Sir, I move that the Elections (Miscellaneous Amendments) Bill 1985 be read a second time.

This Bill arises from the establishment of the Regional Council and seeks to effect a range of amendments to the electoral legislation to provide for the return of elected members to that council in March 1986. Although the amendments are restricted in the main to extending the provisions of existing legislation to apply to the Regional Council elections, it has been necessary to introduce a number of slight changes; in addition, the opportunity has been taken also to make several amendments of a tidying up nature in order to achieve a greater degree of overall consistency in the legislation.

For the purpose of delineating the jurisdiction of the Urban Council and of the new Regional Council, the Bill proposes that the areas falling under the aegis of these councils should be declared by reference to districts, by order of the Governor in Council, and that the two areas should for the purpose of the Bill be designated respectively the ‘Urban Council area’ and the ‘Regional Council area’. I would stress, however, that Government would be happy to consider the adoption of any alternative designations that may be suggested.

I have mentioned that the Bill provides for declaration by districts of the jurisdictional areas of the two councils to be made by order of the Governor in Council. Following the 1986 elections, it is our intention to examine whether it would not be more appropriate for such declaration to be made by resolution of the Legislative Council.

There are two further amendments which I think also call for a special word of explanation. These are the amendments introduced by clause 16(j) and clause 21(b)(ii).

Clause 16(j) provides that the election of representative members i.e. those elected by the Regional Council area District Boards to serve on the Regional Council, should be exempt from the provisions of the Electoral Provisions Ordinance. The reason for this exemption is that it is intended the election of these members, which will be on a board-by-board basis, should be conducted in accordance with the provisions of the Regional Council Bill and the standing orders of the boards as in the case of the election of their chairmen. Given that these elections will be strictly in-house, it is felt unreasonable to require that they should additionally be subject to the many formalities and procedures applicable to a public election.

Unlike the Urban Council which maintains a link with the Urban Council area District boards by nominating Urban Councillors to serve on the boards, the link in the case of the Regional Council will be by each District Board within its area electing one member to serve on the council. It is thus necessary to provide in the Regional Council area for elected membership both of the Regional Council and of a District Board, and clause 21(b)(ii) makes provision for this. It is understood that the Urban Council is also reviewing its relationship with District Boards.

Another amendment to which I would invite attention is that proposed in clause 26(2). For the reason that the internal elections by District Boards of their chairmen are subject to the provisions of the Prevention of Bribery Ordinance and that the procedure for the election by Regional Council area District Boards of representative members will be identical, it is considered appropriate that both elections should be subject to the same provisions.

Members may also wish to note the provisions of clauses 27 and 28 of the Bill. These provide for amendment of the Election Expenses Order to set a ceiling on the expenses of candidates standing for election to the Regional Council which it is proposed should be fixed at the same level as that for a candidate for election to the Urban Council; and for amendment of the Post Office Regulations to extend the right both to candidates in Legislative Council and Regional Council elections to dispatch one letter, free of postage, to each registered elector within their constituencies. At present, this right is held only by candidates standing for election to the Urban Council or to the District Boards.

Finally, Sir, I should like to touch on the question of the legislative timetable for this Bill. The Electoral Provisions Ordinance provides for the annual registration of electors to commence on 15 August. It is therefore necessary for the Bill to be enacted before the end of July, so as to enable the Regional Council constituencies thereafter to be declared and applicants for registration to be advised, upon application during the period commencing mid-August, of their respective constituencies.

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

Motion made. That the debate on the second reading of the Bill be adjourned—

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION.

Question put and agreed to.

CUSTOMS AND EXCISE SERVICE (AMENDMENT) BILL 1985

THE SECRETARY FOR TRADE AND INDUSTRY moved the second reading of:—‘A bill to amend the Customs and Excise Service Ordinance; to make ancillary amendments to various Ordinances concerning the Commissioner of Customs and Excise; and for connected purposes.

He said:—Sir, I move that the Customs and Excise Service (Amendment) Bill 1985 be read a second time.

With the recent approval of an additional post of Assistant Commissioner of Customs and Excise by the Finance Committee of this Council, there are now three Assistant Commissioners of Customs and Excise each of whom has specific responsibilities for the direction and administration of the Customs and Excise Service. However, the existing Customs and Excise Service Ordinance provides for only one designated Assistant Commissioner (and one designated Deputy Commissioner) to perform statutory functions under it.

The main purpose of the Bill is to remove this restriction and allow more than one Assistant (or Deputy) Commissioner of Customs and Excise to carry out statutory functions under the Ordinance.

The existing disciplinary rules under the Ordinance provide that a rank and file Customs Officer may be dismissed if found guilty of a disciplinary offence but do not provide for his compulsory retirement. This is at variance with the disciplinary punishments that are available to the Police Force, Fire Services and Correctional Services. It is therefore intended that the Customs and Excise Service (Discipline) Rules should be amended to provide for compulsory retirement, and the present Bill stipulates that the power to compel the retirement of Customs Officers, as with the power to dismiss such officers, should not be delegated from the Commissioner.

Finally, the opportunity has been taken to make a number of small amendments consequential to the defederalisation on 1 August 1982 of the old Trade, Industry and Customs Department which resulted in the post of Director of Trade, Industry and Customs lapsing with effect from that date. Since then, many of his functions have been exercised by the Commissioner of Customs and Excise, and the Schedule to the Bill amends the relevant references with effect from the same date.

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

Motion made. That the debate on the second reading of the Bill be adjourned—
SECRETARY FOR TRADE AND INDUSTRY.

Question put and agreed to.

FOREIGN NOTES (PROHIBITION OF CIRCULATION) (REPEAL) BILL 1984

Resumption of debate on second reading (27 June 1984)

Question proposed.

MR. BROWN:—Sir, the Oxford Dictionary defines the noun ‘criminal’ as a person who is guilty of a crime. By that definition Hong Kong is full of criminals, most of whom are probably totally unaware that they have acted unlawfully by using foreign currency notes as a medium of exchange. It is of course common practice—and has been for years—for businesses, particularly those in the tourists trade, to take payments in foreign currencies.

If someone who has used foreign currency notes in Hong Kong was told he was a criminal he would not only feel insulted, but would doubtless consider the whole matter absurd. Sir, it is, and the purpose of this Bill is simply to remove an outdated piece of legislation from the statute book, and bring the law into line with what is actually happening in the market place.

It is perhaps surprising that a Bill with nothing more than a simple, and doubtless well intentioned motive of tidying up our legislation should have aroused so much criticism when it was first introduced into this Council in June last year.

Some believed that it might demonetise the Hong Kong dollar; others worried that the Bill might bring about a massive shift in favour of the use of foreign currencies, and thus affect confidence in our own Hong Kong dollar. The only valid criticism in fact was the timing of the Bill’s introduction, and the Legislative Council Ad Hoc Group formed by Unofficial Members to study the Bill, of which I am the convener, decided that the resumption of debate on the second reading should be held over to this session.

We accepted at the time that with the negotiations on the future of Hong Kong undergoing their last few critical months, members of the public might well believe that there was more to the Bill than met the eye, and the psychological impact that the passage of the Bill might have had at that time was not a matter to be taken lightly.

Sir, I believe the decision to defer the second reading of this Bill was a wise one. However, as I have said there is in fact nothing wrong with the Bill itself. The Foreign Notes (Prohibition of Circulation) Ordinance was enacted in 1913. It was enacted, *inter alia*, to prevent foreign notes from competing with local notes with the advantage of not having to pay stamp duty and to protect the public against a note issue in respect of which Government held no security and over which it possessed no control. None of these original reasons for the Ordinance remains valid. Stamp duty is no longer levied on the note issue and in this day and age, the possible circulation of foreign notes with uncertain backing in terms of precious metal or other security is also no longer a practical concern.

During the past 72 years, Hong Kong has undergone a significant facelift both economically and physically. From a small entrepot, Hong Kong has transformed into one of the world’s major financial centres and a popular tourist resort patronised by over three million visitors per year. In last year

alone, Hong Kong earned an estimated \$13,700 million from the tourist trade. As I have just remarked it is not uncommon for businesses, to take payments in foreign currencies, a practice which is in principle entirely acceptable but technically unlawful under the existing law. Therefore, there is obviously a need to legalise the positions of those who take payment in foreign currencies especially since the Government has not for many years resolutely enforced the prohibition.

Some still feel that the free circulation of foreign currencies may affect confidence in the Hong Kong dollar. If I believe that I would also be worried but I do not believe it. Since the signing of the Sino-British agreement, the local currency has remained stable and is growing stronger every day, a situation which, in my view, is unlikely to be altered by the passage of this Bill. In any case, should Hong Kong, in the unlikely event, face another currency crisis which amounted to a collapse in the confidence of the Hong Kong dollar, I very much doubt that the existence of this Ordinance could do much to alleviate the situation. It certainly had little effect on the 1983 currency crisis which was only defused by pegging the local currency to the US dollar. I am satisfied that there are adequate safeguards in our monetary system to protect the status of the Hong Kong dollar which would, contrary to popular belief, remain the only legal tender of the territory even after the repeal Bill is passed by this Council.

Sir, with the ratification of the Joint Declaration, Hong Kong has officially entered its transition period. The timing element which prompted this Council to defer the passage of the Bill no longer applies. I believe this is the right moment for us to objectively assess the logic and rationale behind the Bill and in my opinion, there will never be a better time than now to deal with this piece of outmoded legislation.

With this remarks, Sir, I support the motion.

MR. SO delivered his speech in Cantonese:—

督憲閣下：香港人很注重「苦弗」，目的是保持健美身材和使身心健康，所以極流行健康舞、晨運、緩步跑、耍太極等運動。這是一個興旺社會的現象！

傳說宋朝的蘇東坡有一天飯後，摸着自己的大腹，叫家人猜他肚子裏藏了些什麼東西。他的愛妾朝雲隨即說他是滿肚子「不合時宜」。蘇東坡大笑，但稗官野史並沒有記載他有沒有做減腹運動。

正如白朗議員所說在一九一三年制訂的禁止外國鈔票流通法案，今天已失去當時立法的目的和阻嚇作用。法例規定除了銀行和持牌找換店外，任何人士一經發覺使用外幣鈔票，便受檢控，最高罰款是廿五元和充公所用的外國鈔票。它既然已變成了一項不合時宜的法案，今天把它撤銷，在原則和技術上都是適當的。何況香港是個活力充沛的社會和世界著名的金融中心，要保持活力和加強地位，便要時常留意「苦弗」，把肚子裏不合時宜的東西去掉。

閣下，本人除了支持本法案外，並希望知道香港還有多少不合時宜的法例，Two more? One more?

(The following is the interpretation of what Mr. So said.)

Sir, the people of Hong Kong pay much attention to 'keeping fit'. Their aim is to keep a good figure as well as a healthy body and mind. Aerobic dance, morning exercises, jogging, Chinese shadow boxing and so on are therefore very popular among them. This phenomenon is the sign of a prosperous society.

Legend has it that SU Dongbo, a literary man of the Song Dynasty, while touching his big belly after a meal one day, asked his family members to guess what was stored inside it. His beloved concubine Zhaoyun immediately replied that it was full of 'antiquated ideas'. Upon hearing that, SU Dongbo laughed heartily. But the book of anecdotes did not mention whether he had done any exercise to slim his belly.

The purpose and deterrent effect of the Bill enacted in 1913 to prohibit the circulation of foreign notes are no longer applicable to our present-day society. Under this Bill, any person other than a bank or a licensed money changer who is found using foreign notes will be prosecuted. The maximum fine is \$25 and the foreign notes used will be confiscated. Since the Bill has already become outdated, it is appropriate to repeal it now as a matter of principle and from the technical point of view. Besides, Hong Kong is a dynamic society and a world-renowned financial centre. In order to maintain its vitality and enhance its status, constant attention has to be paid to 'keeping it fit' and 'throwing away stuff which are useless and outdated'.

Sir, apart from supporting the Bill, I wish to know how many outdated bills there are in Hong Kong. Two More? One more?

MR. STEPHEN CHEONG:—Sir, the purpose of this Bill is to repeal the Foreign Notes (Prohibition of Circulation) Ordinance enacted in 1913. The 72 years old Ordinance prohibited circulation, including selling or receiving, of foreign notes in Hong Kong, save in certain authorised cases.

It is said that the Ordinance has become obsolete and that it would serve no useful purpose to have it remained in our statute book. No one can argue with any suggestion that provisions in any ordinance that is 72 years of age would most certainly need to be reviewed and updated, if necessary. However, it is yet to be proven beyond all doubt that this Ordinance has outlived its usefulness. If we care to cast our memories back to September 1983, we should be able to recall that the Administration did draw the public's attention to the existence of this Ordinance even though they knew that it could not be possible. In the midst of a severe loss of confidence in Hong Kong, there were then wide spread rumours that some shop keepers in Hong Kong had lost total confidence in our currency and were demanding US currency as payment for goods or services rendered.

The Government had to do something to avert a potentially disastrous situation. The act of widely publicising the existence of the Ordinance did have

a positive effect in stabilising the then chaotic situation. However antiquated the Ordinance might be, it did serve some useful purpose. Why then should we choose to discard it totally? Could we not update the Ordinance rather than to throw it out altogether? If the sole objective of repealing the Ordinance is to correct a present day anomaly so as to legalise the current practice adopted by those involved in the tourist trade or trades involving foreign currencies, should the solution not lie in so amending the Ordinance as to correct the anomaly while preserving the spirit of the Ordinance in question.

Sir, I believe the spirit of the Ordinance was to promote and establish within our community the rightful recognition of the importance of our local currency—namely the Hong Kong dollar. If this Ordinance is repealed, I am most concerned that it might be misread that the Administration would, by condoning a totally free circulation of foreign currencies within our community, unwittingly sow the seeds of weakening the significance of our local currency.

One may ask, what is to stop shopkeepers at some point in time in future to demand from our citizens foreign currencies for whatever services rendered now that there is no more prohibition? How would members of the public deal with supermarkets that would only accept US dollars for our daily groceries or the snack shop round the corner demanding sterling pounds for the occasional bowl of noodles? I am told that under those circumstances, the options open to the public would be either to switch to another supermarket or to another snack shop or to go to the bank and exchange Hong Kong dollars for US dollars or sterling pounds before such needs can be met. Unfortunately, if and when there is another confidence crisis in our local currencies, both options would be non options.

It might be argued that if a serious erosion of confidence in the value of our currency occurs, the retention of this Ordinance alone could not prevent wholesale persistent panic actions taken by our people that would precipitate a possible collapse of our systems.

This is true but it is equally true to say that confidence is a delicate and sometimes irrational psychological phenomenon. Very often, undesirable effects on confidence can be triggered off by rumours and in a lot of cases, in order to counter the evils of rumour, a mechanism is needed to provide some breathing space to defuse a potentially disastrous situation. The use of the Ordinance by the Administration in 1983 successfully serves to illustrate this point vividly.

The Ordinance, without any teeth then, was proven to be a useful mechanism to provide the much needed breathing space before the Hong Kong dollar is tagged to the US dollar. So far no argument forwarded by the Administration is convincing enough to justify that this Ordinance needs to be thrown out altogether. I submit that to update the Ordinance is perhaps the more advisable alternative.

With these remarks, Sir, I oppose the motion.

THE FINANCIAL SECRETARY:—Sir, I am grateful to Mr. BROWN and Mr. SO for their support and Mr. BROWN said that the Ordinance had vigorous effect in the 1983 currency crisis. I agree with this view and with respect, I think Mr. CHEONG is overstating the value of the Ordinance at that time but apart from this I believe the alternative course suggested by Mr. CHEONG of updating the Ordinance would present very considerable practical difficulties, particularly in relation to the reinforcement of the provision of the amended legislation. So the repeal of this Ordinance is timely.

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).

FOREIGN JUDGMENTS (RESTRICTION ON RECOGNITION AND ENFORCEMENT) BILL 1985

Resumption of debate on second reading (12 June 1985)

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).

DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) BILL 1985

Resumption of debate on second reading (12 June 1985)

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).

Committee stage of bills

Council went into Committee.

LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) BILL 1985

Clauses 1, 3 to 7, 9, 11, 12, 22, 23, 25 to 28 were agreed to.

Clauses 2, 8 and 21

MR. CHAN YING-LUN:—Sir, I move that clauses 2, 8 and 21 be amended as set out in the paper circulated to Members and for the reasons stated in my speech during the second reading of the Bill.

Amendments to clause 8, which I am now moving, have been the subject of further representations.

The points raised include reservation over the application of Standing Orders to regulate admission, concern over the power of the President to issue administrative instructions without being subject to resolution of the Council, and worry over the wide scope of instructions for ‘other administrative purposes’.

Unofficial Members studying the Bill have examined these points and consider that the amendments to clause 8 have already taken into account these reservations.

The reference to the Standing Orders in regulating admission was an amendment made at the request of public representations, one of which was the Hong Kong Journalists Association. We do not therefore subscribe to the suggestion that it should be deleted from the clause although it is widely accepted they require a total review.

Regarding the suggestion to restrict the power of the President to issue administrative instructions and limiting the scope of such instructions for administrative purposes, we take the view that there are already sufficient safeguards in clause 8 itself and in the Council as a whole. Members of the public can be assured that clause 8(1) clearly states that the Bill is not aimed at excluding the public from sittings of the Council. Clause 8(2) and 8(3) respectively are for the purposes of orderly conduct of meetings and proper management of the precincts of the Chamber. Only those individuals who choose to violate the provision of this clause will be excluded. Moreover, if in case the President were to issue an instruction contrary to the wish of Members without good reasons, such as barring the public from regular meetings, Members would certainly question and challenge him on behalf of the public.

Furthermore, clause 8 as amended gives Hong Kong people more freedom in attending sittings of the Legislative Council than in the United Kingdom Parliament. In the U.K., members of the public cannot enter Parliament as of right. Admission is subject to regulations. In the strangers gallery even the writing of notes is not allowed. Those not sitting properly will be warned and anyone creating disturbance will immediately be expelled.

In conclusion, we are satisfied that clause 8 as amended does not pose a deprivation of the freedom of Hong Kong people from attending or knowing the proceedings of Council meetings.

Sir, I beg to move.

Proposed Amendments

Clause 2

That clause 2(1) be amended—

- (a) by deleting ‘strangers’ from the definition of ‘precincts of the Chamber’; and
- (b) by deleting the definition of ‘stranger’.

Clause 8

That the Bill be amended by repealing clause 8 and substituting the following—

‘Regulation of
admittance to
precincts of
the Chamber

8. (1) Subject to this section, sittings of the Council shall be open to the public.

(2) The right of persons other than members or officers of the Council to enter or remain within the precincts of the Chamber shall be subject to the Standing Orders or any resolution of the Council limiting or prohibiting the enjoyment of such right.

(3) The President may from time to time, for the purpose of maintaining the security of the precincts of the Chamber, ensuring the proper behaviour and decorum of persons therein and for other administrative purposes, issue such administrative instructions as he may deem necessary or expedient for regulating the admittance of persons (other than members or officers of the Council) to, and the conduct of such persons within, the Chamber and the precincts of the Chamber.

(4) Copies of administrative instructions issued by the President under subsection (3) shall be duly authenticated by the Clerk and exhibited in a conspicuous position in the precincts of the Chamber; and such copies when so authenticated and exhibited shall be deemed to be sufficient notice to all persons affected thereby.’

Clause 21

That clause 21 be amended—

(a) by deleting ‘being a stranger’ and substituting the following—

‘other than a member or officer of the Council’;

(b) in paragraph (a) by deleting ‘order of the President’ and substituting the following

—
‘of the Standing Orders or any resolution under section 8(2)’;

(c) by deleting paragraph (b);

(d) in paragraph (c)—

(i) by renumbering it as paragraph (b);

(ii) by deleting ‘order made under section 8(2)’ and substituting the following

—
‘administrative instructions issued under section 8(3), or any direction given thereunder,’;

(iii) by deleting ‘strangers’ wherever it occurs and substituting the following—

‘persons’; and

(e) in the marginal note by deleting ‘strangers’ and substituting the following—

‘persons entering or remaining in precincts of Chamber’.

The amendments were agreed to.

Clauses 2, 8 and 21, as amended, were agreed to.

Clauses 10, 17, 18, 20 and 24

MISS TAM:—Sir, I move that clause 10, 17, 18 and 24 be amended as set out in the papers circulated to Members. In respect of clause 24 of this Bill the Honourable John SWAINE, Q.C. who is a member of the ad hoc group in charge of this Bill, proposed an amendment at the second reading to the effect that clause 24 should read as follows:—‘the Council, the President or any officer of this Council should not be subject to the jurisdiction of any court in respect of the *lawful* exercise of any power conferred on or vested in the Council, the President or such officer by or under this Ordinance or the Standing Orders.’

In moving this amendment I wish to elaborate on the reasons. The effect of this amendment is to give any person who is summoned by the Legislative Council or by a committee of the Council under clause 10(1), 13(1), 13(2), 14(1) or 16(1), to give evidence or produce documents to the Council or a committee, the option to seek a judicial review on whether the Council, the committee or the President has lawfully exercised their power, that is, whether it is within the doctrine of *vires* (or within their power) before having to answer such a question or to produce such documents. If the court should rule in favour of the witness, and hold that the President, the Council or a committee is acting *ultra vires* (or outside of their power), then he will not be required to answer the question or to produce the document in issue.

Likewise with clause 17(a) and (b) which provides the penalty of offences committed under clause 13, the order made by the Council or a committee must be lawful and the question put by them to a witness must be 'lawful and relevant'.

I have in my speech on the second reading of this Bill explained that we had asked for the amendment to clause 24 although it has been explained to the ad hoc group on two occasions that the original clause 24 is a codification of what is inherently necessary to a colonial legislature and that the courts are extremely unlikely to question whether the President, Council or officers of the Council have exercised such powers lawfully.

This amendment will achieve the objective of subjecting the exercise of the Legislative Council's housekeeping and investigatory powers to the courts' scrutiny. It is also the overriding clause under which the 'usage and practice' and the 'resolution of the Council' under clause 15 must operate.

One of the comments made by the Bar Association and the Law Society was that the combined effect of clauses 15 and 24 resulted in an ambiguity.

It was said that clause 24, which ousts the jurisdiction of the courts where this Council has exercised its powers 'lawfully', gave rise to ambiguity as to the powers given to the Council to decide on matters of privilege under clause 15.

In fact, a careful reading of both clauses reveals no ambiguity and no inherent inconsistency. I'll tell the reason why: clause 15 is concerned with rights relating to matters of evidence. The intention of this clause is to enable unusual questions, if no specific provision has been made which offers a solution, to be resolved by looking at the usage and practice of this Council both before and after the enactment of the Bill.

If a situation should arise where guidance is needed by reference back to the past, it is abundantly clear that clause 15 would not permit this Council to act, even if it desired to do so which is manifestly unlikely, on some alleged usage and practice which never in fact existed at any time. If this Council should ever see fit to act in that fashion, it would leave itself open to challenge in the courts on the basis that its action was not 'lawful' within the meaning of clause 24.

*Proposed Amendments***Clause 17**

That clause 17 be amended—

- (a) in paragraph (c) by deleting ‘; or’ and substituting a comma; and
- (b) by deleting paragraph (d).

Clause 20

That the Bill be amended by deleting clause 20.

The amendments were agreed to.

Clauses 10, 17, 18 and 24, as amended, were agreed to.

The deletion of clause 20 was agreed to.

Clauses 13 and 14

DR. HO:—Sir, I move that clauses 13 and 14 be amended as set out in the paper circulated to Members.

The insertion of the word ‘lawfully’ in both clauses is consequential to the amendment to clause 24 which my honourable colleague Maria TAM had just moved; whereas the addition of ‘subject to section 16’ in clause 14(1) is to ensure consistency between the provisions under these two clauses.

The purpose of adding the parenthesis in clause 13 is in response to public calls for qualifying the President’s discretionary power and giving further protection to a witness giving evidence before the Council or a committee. With this amendment, the President shall be bound to excuse the witness from answering a question or producing a paper where such a question or paper is not relevant to the subject of enquiry.

As regards the right of legal representation, this is covered under clause 14(1) where it is stated that a witness shall be entitled ‘to the same right or privilege as before a court of law’. This right or privilege already includes that of legal representation; hence, no amendment on this point is considered necessary.

Sir, I beg to move.

*Proposed Amendments***Clause 13**

That clause 13 be amended—

- (a) by inserting after ‘where any person’ wherever it occurs the following—
‘lawfully’; and

*Proposed Amendment***Clause 14**

That clause 14 be amended by deleting subclause (2) and substituting the following—

‘(2) No person, other than a public officer acting with the consent of the Governor, shall before the Council or a committee—

(a) give any evidence; or
(b) produce any paper, book, record or document, relating to the correspondence concerning—

- (i) any naval, military or air force matter or of any other matter relating to the security of Hong Kong; or
- (ii) the responsibilities of Her Majesty’s Government in the United Kingdom otherwise than with respect to the administration of Hong Kong by its Government,

nor shall secondary evidence be received by or produced before the Council or a committee of the contents of any such paper, book, record or document.’

The amendment was agreed to.

Clauses 13 and 14, as amended, were agreed to.

Clause 15

MR. SO spoke in Cantonese:—

本人動議按事前交各議員審閱的文件內容，修訂條例草案第十五節。

(The following is the interpretation of what Mr. So spoke.)

I move that clause 15 be amended as set out in the paper circulated to Members.

*Proposed Amendment***Clause 15**

That clause be amended—

(a) by deleting ‘shall’ and substituting the following—
‘may’;

(b) by inserting after ‘commencement of this Ordinance’ the following—
‘or applies thereafter by virtue of any resolution of the Council’;

- (c) in the marginal note—
- (i) by deleting ‘Questions’ and substituting the following—
‘Determination of questions’; and
 - (ii) by deleting ‘to be determined in accordance with former usage of the Council’.

The amendment was agreed to.

Clause 15, as amended, was agreed to.

Clauses 16 and 19

MRS. NG spoke in Cantonese:—

督憲閣下：本人謹動議根據各議員傳閱的文件所載，修訂第十六條有關對免陷本身或配偶於罪的特權的限制。正如本人在本草案二讀時指出，原有第十六條的用字，會令人誤解在立法局作證的證人享有不被起訴的權利，現根據高等法院條例第四十四條 A 之條文予以修訂。

本人並建議根據各議員傳閱的文件所載刪除第十九 a 條。至於第十九 b 條，香港大律師公會在評論修訂草案時，曾表示將市民「侮辱」立法局議員列為刑事案，可能威脅香港的言論自由。本人同意這項評論，故此建議根據各議員傳閱的文件所載修訂第十九 b 條，將「侮辱」一詞全部刪除。另外，香港大律師公會認為第十九 b 條裏面「或預期」一詞意思含糊，本人亦同意這項評論，故建議將「或預期」從此條款中刪除。

(The following is the interpretation of what Mrs. NG spoke.)

Sir, I move that clause 16 concerning the limitation on privilege against incrimination of self or spouse be amended as set out in the papers circulated to Members. As I have pointed out during the second reading of the Bill, the wording of the original version of clause 16 may give people the wrong impression that the witness giving evidence in the Legislative Council enjoys an immunity from prosecution. This provision is now amended along the lines of section 44A of the Supreme Court Ordinance.

I also move that clause 19(a) be deleted as set out in the papers circulated to Members. As regards clause 19(b), the Hong Kong Bar Association, when commenting on the amended Bill, has indicated that to regard ‘insults’ of Legislative Councillors by the public as criminal offences is likely to hamper the freedom of speech in Hong Kong. I agree to this comment, and accordingly move that clause 19(b) be amended so as to delete the word ‘insults’ from this clause as set out in the papers circulated to Members. In addition, the Hong Kong Bar Association is of the opinion that the meaning of the words ‘or expected to be brought’ in clause 19(b) is ambiguous. I also agree to this comment, and therefore propose that the words ‘or expected to be brought’ be deleted from this provision.

*Proposed Amendment***Clause 16**

That the Bill be amended by repealing clause 16 and substituting the following—

‘Limitation
on
privilege
against
incrimina-
tion of self
or spouse.

16. (1) In any proceedings in the Council or a committee, any person lawfully ordered to attend to give evidence or to produce any paper, book, record or document before the Council or committee shall not, unless excused under section 13, be excused—

- (a) from answering any relevant question put to that person in the proceedings or producing any such paper, book, record or document; or
- (b) from complying with any order made in or in connexion with the proceedings,

on the ground that to do so may tend to expose that person, or the wife or husband of that person, to proceedings for an offence or for the recovery of a penalty.

(2) Subject to subsection (3), no statement or admission made by a person—

- (a) in answering a question put to him in any proceedings to which subsection (1) applies; or
- (b) in complying with any order made in any such proceedings,

shall, in proceedings for any offence or for the recovery of any penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person.

(3) Nothing in subsection (2) shall render any statement or admission made by a person as there mentioned inadmissible in evidence against that person in proceedings for an offence under section 32 (which relates to false statements on oath made otherwise than in a judicial proceeding) or section 36 (which relates to false statutory declarations and other false statements without oath) of the Crimes Ordinance.’

(Cap. 200.)

Clause 19

That clause 19 be amended—

- (a) by deleting paragraph (a).

- (b) in paragraph (b)—
- (i) by deleting ‘, molests or insults’ and substituting the following—
‘or molests’;
 - (ii) by deleting ‘, insult’;
 - (iii) by deleting ‘proposition’ and substituting the following—
‘motion’;
 - (iv) by deleting ‘or expected to be brought’; and
- (c) by renumbering paragraphs (b), (c), (d) and (e) as paragraphs (a), (b), (c) and (d) respectively.

The amendments were agreed to.

Clauses 16 and 19, as amended, were agreed to.

FOREIGN NOTES (PROHIBITION OF CIRCULATION)(REPEAL) BILL 1984

Clause 1

THE FINANCIAL SECRETARY: —Sir, I move that clause 1 be amended as set out in the paper circulated to Members.

Proposed Amendment

Clause 1

That clause 1 be amended by deleting ‘1984’ and substituting the following—
‘1985’.

The amendment was agreed to.

Clause 1, as amended, was agreed to.

Clause 2 was agreed to.

FOREIGN JUDGMENTS (RESTRICTION ON RECOGNITION AND ENFORCEMENT) BILL 1985

Clauses 1 to 6 were agreed to.

DANGEROUS GOODS (CONSIGNMENT BY AIR)(SAFETY) BILL 1985

Clauses 1 to 7 were agreed to.

Council then resumed.

Third reading of bills

THE ATTORNEY GENERAL reported that the

FOREIGN JUDGMENTS (RESTRICTION ON RECOGNITION AND ENFORCEMENT) BILL and the

DANGEROUS GOODS (CONSIGNMENT BY AIR)(SAFETY) BILL

had passed through Committee without amendments and the

LEGISLATIVE COUNCIL (POWERS AND PRIVILEGES) BILL and the

FOREIGN NOTES (PROHIBITION OF CIRCULATION)(REPEAL) BILL

had passed through Committee with amendments and moved the third reading of each of the Bills.

MISS TAM:—Sir, since the second reading of the Legislative Council (Powers and Privileges) Bill the ad hoc group has received further representations on it, and the names of the individuals or organisations are listed in the appendix to this speech. Some of these organisations and individuals have made suggestions of amendments, and some have asked for a deferment of this Bill until all District Board and members of the public have expressed their views on it, or until there are elected members to this Council in the next session.

The Ad Hoc Group went through all the representations and considered every point raised by them. My colleagues speaking at the committee stage have dealt with clauses on which we reflected the views of the public and asked for amendments. For the clauses which we are not asking for amendments, there need to be reasons given; and to those who have given us their generous comments, there needs to be a reply, and I shall deal with them one by one.

First, the unamended clauses:—

- (1) Clauses 3 and 4: The criticism is that these two clauses overlap and there should be sanctions against any member who abuses his or her position by making defamatory comments in Council or committee. On the first point: after considering the criticism, we are satisfied that clause 3 states

the general principle that there shall be freedom of speech and debate *in the Council*, i.e. the privilege is attached to the Council. And clause 4 gives immunity from legal proceedings against an individual *member* who has made written reports or petitions, bills, resolutions, motions etc. to the Council or a committee. The privilege is enjoyed by the members. There is a distinction between the two and hence both clauses shall remain. As to the second point, it may be more appropriate to deal with it under a code of conduct for members.

- (2) Clause 7(2): It is suggested that the President's power under this clause 7(2) is too wide because without his giving special leave no person can give evidence in court in respect of the contents of the minutes or records of evidence given before the Council or its committee. As I have mentioned before it is envisaged that the President of the Council will be elected by members of the Council and he should be trusted to exercise his discretion to grant such special leaves according to the practice of the Council under clause 7(1). In any event his acts will be subject to the scrutiny of members so that he will be obliged to use his discretion reasonably and judiciously. Hence no amendment is proposed.
- (3) Clause 15: There were questions as to what is the 'usage and practice' of the Council and the relationship between the new clause 23 and the words 'any resolution of the Council'. The usage and practice of the Council has been illustrated by the Honourable Andrew So on 12 June 1985. As to the latter point I have explained at the committee stage that clause 23 (at committee stage, it was clause 24) is an overriding provision in this Bill and that clause 15 must be read with that proviso in mind.
- (4) Clause 24 (clause 25 before the committee stage amendments): There have been questions as to whether an officer of the Council will be 'untrained of police duties and powers' and he may abuse his powers. I trust the answer to that must be that the officer must be trained to understand the limit of his power under this Bill and will carry out his duty under the overall supervision of the President.
- (5) Clause 25 (clause 26 before the committee stage amendments): It is said that the President's powers are too wide if he can exercise them even when the Council has been dissolved. As I have mentioned before, it is envisaged that the President will be elected by the members of this Council. In any event, clause 23 (formerly clause 24) remains operative and the President should lawfully exercise his power even if the Council is dissolved. Clause 25, we believe, is necessary to ensure that the house keeping of the Council is still under control even when the Council is not sitting, and we therefore propose no amendments.

Having dealt with clauses for which we have not asked for amendments, I wish to turn now to the question of deferment. It has been urged upon us that the Bill may still require amendments in one way or the other. I have gone

through the 15 sets of fresh written representations and found that the points of substance have either been covered in the new text or are dealt with by further amendments, e.g. the word 'insult' in old clause 19(b), and Mr. Harvey STOCKWIN'S liberal interpretation of clause 14(2) on Sunday the 23rd. The other comment show a divergence of opinion, e.g. a great majority of organisations accept the new clause 23 as amended. The Civic Association and the Hong Kong Federation of Catholic Students ask for its deletion altogether. The Hong Kong Affairs Society accepts the new text of the Bill; but other organisations continue to pick up points from each other and ask for further amendments. There are also many philosophical points made on how the Legislative Council should develop in the future. Also many District Board members have already made known their views to us without a formal resolution and the Ad Hoc Group has never questioned the weight of their opinion, with or without a formal resolution. It seems clear because there are so much divergence of opinion that even if we delayed the Bill for, say, another two weeks we will still be criticised for failing to satisfy everyone at the end of the day. Different groups are now looking for different issues in this Bill, some legal, some philosophical, some political. We must take a long cool look at its provisions now, which are trimmed down to retain the basic minimum powers needed for this Council to regulate its own affairs and perform its investigatory function as the highest legislative body in this territory, and make the necessary decision to pass the Bill.

The future Legislative Council can amend or repeal this piece of legislation as they see fit; none of us can bind our successors. Although our critics have asked for deferment until there are elected members in this Council, may I say that it is always open to the Legislative Council in November 1985 to amend this Bill according to the needs of circumstances.

The third issue I need to deal with is the powers of the President. There is still a lot of questions on how the President may exercise his powers and whether it is open to him to abuse the powers conferred upon him by this Bill. Let us now examine the facts before us. Your Excellency is the President of this Council exercising the powers vested in you by the Royal Instructions and Letters Patent as the Governor. By November 1985, 24 elected unofficial members will join this Council. The affairs of this Council will be conducted under your leadership and I see no danger of any abuse of power. If we should then look a few years ahead when a President is elected by members of this Council, this President must act in a fair, responsible and reasonable manner and under the scrutiny of all the members. Again, there should be very little danger of abuse of power. Many critics of this Bill fear that the President may be an appointed tyrant to defeat justice and freedom. If so, the Legislative Council can no doubt amend this Bill and strip him of his powers. The ultimate control is in the hands of an elected legislature which is secured under the Sino-British Joint Declaration.

The fourth point is whether we are protecting any vested interest. This Bill has been extensively amended which shows that we are responding to public opinion. Although the original prime objective was to codify the parliamentary practices in common law which is extended or can be extended to a colonial legislature under the doctrine of inherent necessity, the Ad Hoc Group quickly realised that the concept of parliamentary privilege is far removed from the ordinary life of people in Hong Kong. We therefore aimed at retaining what is in fact necessary for this Council to function efficiently and effectively; and cast aside much of what is known to be 'inherently necessary'. The Bill now before Council reflects this practical approach. Indeed, we have received representations on clauses 3, 4, 7(2), 13, 14, 15, 16, 17, 19, 20, 24 and 25 of the original Bill. We have asked for amendments to all, except clauses 3 and 4 and 24 of that original Bill. Those who made representations to us should take account of the fact that we have responded readily to their representations, but I believe it would not be proper for the Legislative Council at any time to act purely in response to pressure.

Fifthly, there are representations made on the future development this Council.

The Chairman of the Bar Association, The President of the Law Society and the Chairman of Justice call for a review of whether with an elected legislature there should be created the office of a speaker of the Legislative Council and the powers, duties and responsibilities of that office; a review of the relationship between the Council and its committees; a review of the relationship between the Council and the executive bodies and whether there should be a committee of privileges or some suitable local equivalent. All these points will need to be considered between now and 1987.

Finally, Sir, it has been urged upon me by a well respected Chinese newspaper editor that the Hong Kong people are extremely sensitive about any restriction of their freedoms, and that it will strengthen their confidence in Hong Kong if we can codify the United Nations Declaration on Human Rights in Hong Kong. I see merit in his argument and would wish to place his request on record for Government's consideration, as a separate issue.

Sir, I support fully the third reading of this Bill.

Appendix

Representations to UMELCO after a new text of the Bill was gazetted on 14.6.1985

Joint Statement by H.K. Bar Association, Law Society of H.K. and H.K. Branch of Justice
Editor-in-Chief of 'Asiaweek'
H.K. General Chamber of Commerce

H.K. Forum

Septentrio Academy and New H.K. Society

Civic Association

Joint Statement by Hong Kong Federation of Catholic Students and Hong Kong Catholic Youth Council

Joint Statement by 50 groups and individuals

Wan Chai District Board

Wong Tai Sin District Board

Kwun Tong District Board

Central and Western District Board

MR. S. L. CHEN: —Sir, there have been a lot of public comments and discussions on the Legislative Council (Powers and Privileges) Bill 1985 since it was first gazetted on 10 May 1985. The Legislative Council Ad Hoc Group set up under the convenership of Miss Maria TAM has conscientiously and meticulously studied all public comments and submissions on the Bill.

Substantial changes in response to these comments have now been proposed to the Bill and these have been incorporated into the revised reversion which was published in the *Government Gazette* on 14 June 1985.

Sir, I wish to reiterate that I support the underlying principle and spirit of the Bill. Having examined the comments and views of the legal and other interested groups and having now heard the answers to them in this debate, I am satisfied that the amendments tabled today have met their criticisms. I am therefore convinced that there are no compelling grounds for deferring the Bill for a few weeks, and even less for deferring it until the next session of the Legislative Council.

A new-style Legislative Council will come into existence in October this year. I believe that the powers and privileges of Legislative Councillors should be set out clearly so that members know exactly where they stand. The Bill will serve as a reference point for the new legislature. From this point of view, I believe that the present Bill with the proposed amendments incorporated is both satisfactory and adequate. Should, however, changes or improvements to its provisions be required in the light of experience, the Bill can always be further amended in future. The laws of Hong Kong are not static; they are updated or amended from time to time.

It has also been suggested that the Standing Orders of the Legislative Council should be reviewed before the Bill is passed. I wish to point out that the Standing Orders are at present under review, but I do not see the need to defer the Bill to await the outcome of the review. Furthermore, the Standing Orders can always be changed if it proves to be necessary.

Sir, during the transitional period, Hong Kong should learn to stand on its own two feet and manage its own affairs. I firmly believe that the Bill is a right step in that direction.

Sir, I support the motion before Council.

MR. ALLEN LEE: —Sir, in my seven years being a Member of this Council, I could not recall an incident that during the third reading of a bill speeches were made. Perhaps seven years is not long enough therefore I asked Sir S. Y. CHUNG whether during the time he was a Member of this Council there were any speeches made during the third reading of a bill. He could not recall any incident as such. I did not have the time to do my research with regard to this aspect of the passage of a bill but if there was an incident, it must be a very rare occasion. Today, the legislature of Hong Kong is making history in that a number of my Unofficial colleagues and I are speaking this afternoon during the third reading of the controversial Legislative Council (Powers and Privileges) Bill 1985.

My colleagues have spoken on the proposed amendments during the second reading of this Bill two weeks ago and additional amendments have been made this afternoon after receiving further representations. These amendments were the result of representations received by the UMELCO Office. The key question that I ask myself is: have we not listened; have we not studied, and have we not analysed? I came to the conclusion that we have listened and listened carefully, we have studied and studied conscientiously, and we have analysed and analysed thoroughly even as Typhoon Hal struck Hong Kong on Monday, 24 June. We have come to a conclusion that there is no further reason for deferment of the third reading of this Bill.

In going through the events leading to the third reading of this Bill, there are two points that I wish to address which, in my opinion, the public ought to know and ought to know them clearly. First of all, I was involved in receiving a representation on human freedom and civil rights with regard to clause 8 which states the Regulation of Admittance to Precincts of the Chamber. It seems that the people who made this representation have a misconception that the Legislative Council wants to impose restrictions to limit the entrance of the general public to the Council Chamber which would be an infringement of human freedom and civil rights. I immediately recalled what the UMELCO delegation went through last May in entering the Parliament of U.K. in London. Firstly, we had to apply for an entrance. Upon obtaining an entrance ticket, we had to go through security checks. We could not take any notes on the House of Commons Debate on the most important subject closest to our heart— the future of Hong Kong. Because of the importance of this subject, we all tried to take some notes on what the MPs were saying during the Debate but we were stopped by the ushers. In particular, my colleague, Mrs. Selina CHOW was frustrated and had a few words with one of the ushers on how important it

was for her to take notes on what the MPs said. But you can guess that she did not get very far if she wanted to stay in the public gallery. They are the house rules that one must obey if one wishes to attend the proceedings of the U.K. Parliament. In my opinion, clause 8 is merely house rules. I have asked the people who made the representation if it would be acceptable to them if we implemented the rules of the U.K. Parliament. I was met with silence.

In addition, people in the legal profession are concerned about the new clause 8(3) that your powers, Sir, as President of this Council, are too wide in scope for the purpose of maintaining the security of the precincts of the Chamber, ensuring the proper behaviour and decorum of persons therein and for other administrative purposes, issue such administrative instructions as you may deem necessary or expedient for regulating the admittance of persons (other than members or officers of the Council) to, and the conduct of such persons within the Chamber and the precincts of the Chamber. With due respect to the legal profession, I invite them to study the Standing Orders of the Council and the Letters Patent and Royal Instructions to the Governor of Hong Kong, in particular with regard to your powers, Sir, if you should ever wish to exercise them in full and which you have the legal right to do so, the Hong Kong Government will be a dictatorial government. Therefore, there is no need to make changes to the new clause 8(3) and I am sure discretions will be used in any event.

Secondly, on Monday, 24 June 1985, a newspaper article appeared on the front page of the South China Morning Post entitled, 'Luce to Hear of Power Fears.' I was shocked to read that a well-known member of the legal profession had sent a telex message to London asking for the British Government to intervene. It was reported that the telex was sent with the backing and support of the Bar Association and the Law Society of Hong Kong. On the same date, the Chairman of the Bar Association and the President of the Law Society issued a separate statement. It stated that they made it clear that they are not looking to London for support but they are happy to consider all helpful suggestions from the MPs or from anyone else. However, they both feel that the issue is one which can be properly adequately dealt with in Hong Kong and Hong Kong must learn to stand on its own feet. The reporting by the press and the statement issued by the Chairman of the Bar Association and the President of the Law Society seem to me ambiguous. Nevertheless, the point that I wish to make is that the legal profession is the very profession during the 1997 crisis of the past few years which made it clear to the public that the independence of judiciary of Hong Kong must be maintained and the law-making process must be within Hong Kong without interference from Beijing. Now, a message was sent to London to ask the British Government to interfere and to intervene. I hope this message was only from an individual of this profession. Otherwise, it is a sad day for Hong Kong that the people involved in this profession which stands tall in our community and which is the very corner stone of the success of our legal system, would now be rocking the boat. Sir, may I compliment and

agree with the Chairman of the Bar Association and the President of the LAW Society on their statement that the issue is one that can be perfectly adequately dealt with in Hong Kong and in any event, Hong Kong has to learn to stand on its own feet. The legislature of Hong Kong this afternoon is standing on its own feet.

Finally, Sir, may I reiterate again that we have listened and listened carefully, we have studied and studied conscientiously and we have analysed and analysed thoroughly and now we are making a decision this afternoon on the passage of this Bill. I am sure we will all learn from this experience. I have a clear conscience in supporting this Bill because there is no sinister motive which was wrongly accused and implied in some of the statements made by individuals and published by the press.

MR. STEPHEN CHEONG: —Sir, although the Attorney General has moved the third reading of four Bills, my comments are really confined to the Legislative Council (Powers and Privileges) Bill 1985.

Sir, I wish to speak on two topics, mainly on clause 14(2) and briefly on the dilemma experienced by the Unofficials in this episode of the Powers and Privileges Bill. One columnist has postulated that the old clause 14(2) would provide the Governor with the power to prevent Legislative Council from involving itself in a wide range of matters, and went on to conclude that ‘The Sino-British Joint Declaration, after all, was silent on the precise future relationship between the China-appointed executive and the elected legislature. Clause 14(2) could be used to usher in complete subordination of the legislature to the executive, and to ensure that Hong Kong’s *de facto* system of bureaucratic authoritarianism extends itself indefinitely.’

Both the Bar Association Chairman and the President of the Law Society, in their last minute joint statement to the press, advocated that this clause should not be passed in its present form and should preferably be dropped altogether.

We, Members of the ad hoc group, have examined with great care the arguments giving rise to this call from the leaders of the legal fraternity to drop this clause.

Our unanimous conclusion is that whilst such postulations may provide some interesting food for thought, the conclusions seems to have been based on false premises. In the emotive spirit under which this Bill has been discussed in the past month, we feel duty bound for the common good of Hong Kong, to try our best to explain first how we perceive the intention of this clause and secondly to sound a note of caution against the blind acceptance of unfounded misgivings and erroneous assumptions as grounds for reflecting the clause.

Clause 14(2) is indeed in a format that has been used traditionally in territories where the responsibility for defence and foreign policy lies with the sovereign state. The aim is to spell out clearly to Legislative Council Members where the limit lies in exercising their future duties. Legislative Council

Members cannot unilaterally command access to files containing written communication (for example, in the form of minutes, memoranda, and letters) on the armed forces, on matters affecting the security of Hong Kong and on matters such as foreign policy that fall directly under the responsibility of H.M.G. up to 1997 and after 1997, the responsibility of the P.R.C.

It must also be emphasised that the dominant word here is ‘correspondence’, which must be treated in a more cautious way than evidence, oral or documentary. To give an example in language a layman may understand, imagine that there were rumours about submarines being built in a dockyard in H.K. Legislative Council Members can ask a public officer appearing before the Council to answer whether or not as a matter of fact submarines were being built. Yet Members would have to stop short of ordering the officer to produce files in relation to why those submarines were being built. The intention of the Bill is to limit the Governor’s power of negative intervention under clause 14(2) to the protection of files relating to defence, security and foreign policy only. It would be grossly unfair and wrong to postulate that if clause 14(2) could be used to usher in complete subordination of the legislature to the executive. Such a postulation is in our view based on the assumption that the chief executive either now or in future would necessarily be an authoritarian creature and that he or she would crave for a subordinated legislature. We believe it was further presumed that the future elected legislature will be quite content to be subjected to such subordination. Both assumptions, though understandable intellectually, would in practice not hold true in Hong Kong especially in the light of the fact that both China and Britain have displayed tremendous efforts and sincerity in reaching an agreement to preserve Hong Kong’s stability and prosperity. Of course one is entitled to doubt, may be even forever, Britain and China’s true intentions towards Hong Kong, yet if one is really so sceptical of the Sino- British Joint Declaration about Hong Kong then no amendment or deletion of any clause can satisfy that inherent stubborn distrust.

The essence of the clause is meant to deal with specific matters such as defence, security or foreign policies which are outside the jurisdiction of Hong Kong. This has always been the case and will always be so. Of course the powers of Legislative Council are limited, but the restrictive effect of this clause bites into a very restricted area. To subscribe to the validity of the arguments put forward by these prophets of doom necessitate a big jump from a presupposition having a very narrow perspective to a wide sweeping conclusion based on a groundless premise. It supposes that the future Legislative Council will succumb to the authoritarian chief executive of the S.A.R. who, according to the Joint Declaration, will be appointed by China after 1997. In short, the narrow context of the Bill is taken out to be compared with the much wider context of the Joint Declaration. Such arguments are misleading at best, and the people of Hong Kong would do well to ponder on the postulations rationally and should not be persuaded by dramatic and sensational arguments to accept questionable logic.

However, despite our rejecting the validity of arguments for dropping clause 14(2) altogether, it has been thought and recognised that the real meaning of the clause especially in relation to the phrase 'the responsibility of H.M.G. to Hong Kong' could be open to misconstruction. Accordingly, amendments were amended in the manner as described in my speech at the committee stage of this Bill. Such amendments hopefully would be reassuring.

Sir, while studying clause 14(2) in depth, it has brought home to me a few home truths about Hong Kong. With your permission, I would like to share them with friends and foes alike. Many of our critics may elect to ignore reality. If they do, it would be totally understandable, for truth can hurt and furthermore, having to scale down their intellectual aspirations to stark reality would probably hurt even more.

The truth is that Hong Kong has never existed as a totally independent territory. She will not and cannot exist in future as a totally independent territory. We survived and thrived under British sovereignty as a colony and we aim to survive and prosper under Chinese sovereignty as a Special Administrative Region. Our legislature, now or in the future, elected or appointed, is and will always be subject to some limitations. We cannot demand nor expect to be given powers which are equal to those enjoyed by independent sovereign states. We should not and cannot for example investigate into areas of defence, national security and foreign policy. Clause 14(2) starkly reminds us of this reality and no one should harbour any illusions as to the reasons for our existence and the route along which we must travel in order to attain stability and prosperity in the future. The people of Hong Kong cannot afford to be blinded by idealistic aspirations for the full trappings of a western-style democracy.

Sir, before I close, I would like to reflect briefly on the experience of the Unofficials who had to face constant dilemma during the deliberation of this Bill. The ad hoc group especially the convener were under tremendous mental pressure from all sides in the past two weeks. We even had to dispel an unfounded theory that this Bill was being used as a political weapon against the convener. A sheer fantasy I might add but nevertheless a damaging one. In short, battle tactics of the jumping-on-to-the-bandwagoners appeared to have worked well in pushing all of us into a corner. If we succumb to demands which are not back by adequate reasonings and were to delay the third reading until the next session, we would run a real risk of selling Hong Kong down the path of inefficient administration with pressure groups happily blaring their so called wishes of the people in every single issue of the day. If we did not concede to the demand that the third reading be deferred, we stand to be accused by vocal and well organised campaigns of discredit. For sure we will be accused of acting irresponsibly against the proclaimed wishes of the people.

It was with a sombre realisation of this difficult dilemma that we decided we have to cast away all our emotional hang-ups like pride, fears and prejudices.

We had to look at all new representations coolly and rationally. We were not so much influenced by the numbers of organisation making representations as we were influenced by the contents of their representations. We did not measure the strength of any representation by just being impressed with the strength of the media coverage and the brilliancy of their tactics in mobilising the media. We allowed ourselves ample time to receive representation from any one in Hong Kong. We debated collectively amongst ourselves, sometimes heatedly, and we knew that the final decision had to be made by Monday, 24 June 1985. Thus amid the threat of gale force winds, we met and deliberated for some hours before reaching a final decision. We believe firmly that we have acted with a clean conscience and that by any standards, we have discharged our duties and responsibilities as legislators fairly, and honorably. Lest people may run the risks of confusing the duties of legislators, be they appointed or elected, with accepting expediently, blindly and timidly all vocal requests, allow me to repeat what I believe to be a simple motto adopted I am sure by all of us in this Chamber and that is

‘If and when Legislative Council Members are first satisfied that they have been conscientious and diligent in their deliberations and in so doing, secondly, have fully taken into consideration of all representations whilst trying, thirdly, to take steps to amend what might have been wrong, then, their duties as legislators would have been discharged honorably.’

Sir, I support the motion.

SIR ROGER LOBO: —Sir, as my friend Mr. Allen LEE has mentioned it is indeed a rare event for this Council to debate the contents of a Bill at the third reading stage. But the Legislative Council (Powers and Privileges) Bill, or (Powers and *Duties*) Bill as some among us would have probably preferred, has attracted a great deal of controversy—much of it misguided in my view—and I hope this final debate will clear away any residual misunderstanding.

I have little to add to the points my colleagues have made in reply to the various sectoral representations we have received. But (as the out-going Senior Unofficial Member) I believe I can speak with some objectivity and there are a number of issues I would like to address.

Perhaps the most persistent call has been for the Bill to be deferred. But I have heard no arguments of substance for this step. The Bill was introduced into *this* Council on 15 May and it is our duty—the duty of this Council—to deal with it. We also believe it is important that the new Council should know where it stands and should have statutory support for its functions from the outset.

As the hard working convener of our ad hoc group has pointed out, there is probably no such thing as a perfect Bill. But many hours and days have been spent on poring over its provisions and the helpful representations we have received. A number of useful and desirable amendments have been made and we are satisfied that we may now, in good conscience, pass the Bill.

It enshrines powers which we adjudge necessary for the orderly and efficient conduct of this Council. But it is not holy writ and if our successors do not like it, they will have the opportunity and be at liberty to amend or repeal it if they deem fit.

It has been argued, as mentioned by Miss TAM and Mr. LEE, that the President's powers under the Bill are too wide and too strong. But they are in fact in many respects more constrained than those the President has hitherto enjoyed under the existing Standing Orders. Moreover, the argument presumes the Unofficial Members have no role to play. The exercise of official powers will always be monitored by the Members of this Council. Elected Members will be joining in October and it will be the duty of this Council to ensure the powers provided under the Bill are never misused.

Sir, it will be obvious that we have carefully examined this Bill in the light of all the representations we have received—our Ad Hoc Group in particular has worked tirelessly—we are unanimous in our support for its provisions. It is a Hong Kong issue; an issue for the people of Hong Kong. It is our avowed objective that Hong Kong people should be left to manage their own affairs and it is regrettable that some critics have chosen to seek outside support for their views. It is also to be deplored that others have chosen to make personal attacks on individual Members of this Council who gain nothing from resistance to vocal and often emotional sectoral interests and seek only to discharge their duties in good faith and in the best interests of the community.

I support the Bill.

THE CHIEF SECRETARY: —Sir, two weeks ago in this Chamber I spoke of the deep concern expressed by many people from many walks of life about the legislation which we are debating today, and, although it is not usual to proceed further to debate the third reading of a Bill, with your permission, Sir, and in the public interest, I feel I must make an additional statement on the general purpose of this Bill and emphasise and explain, once more, the essential intention behind it.

Other Members have spoken in both general and specific terms about each amendment and about the many valuable suggestions which have been made by Members of the legal profession, and by others, since the second reading of the Bill a fortnight ago and, let me add, I agree with the President of the Law Society who is reported as saying 'it is a substantially better Bill' as a result of the scrutiny and suggestions for amendment that have been made and, I might add, it is a substantially better Bill because of the readiness of Members of this Council to consider with great care and patience all the various suggestions that have been made.

I should like now to return once again to the general objectives we seek to achieve in moving this legislation today.

The principal objective is concerned with identity; the need to establish a clear identity for Hong Kong; and the Legislative Council of Hong Kong; and to have that identity firmly established in our own statute law, not to have it diffused in a somewhat unsatisfactory way in various orders and ordinances and the case law, procedures and practices followed by a Parliament thousands of miles away in the United Kingdom. We need to have our own law, here, in Hong Kong.

The legislation is one of a number of practical measures designed to establish this identity; this high degree of autonomy as it has been called in another context.

These measures have included the alternative form of oath endorsed earlier by this Council to enable new members simply to swear their loyalty to the people of Hong Kong. This change, in its turn, removed one of the obstacles to the introduction of elections to membership of this Council. Then, to enable elections to take place, the Royal Instructions have been amended; legislation to provide for various types of election has been introduced and passed into law. Arrangements are being made to see that the greatly enlarged and partly elected Council has the required administrative support and that Members are adequately, but not lavishly, recompensed for the long hours they devote to Council business and the responsibilities of Office. Finally, there is the legislation we are considering today which will set out for Members, in their new, independent Council Chamber, a framework of law describing their rights and defining their obligations in the exercise of those rights. It is the view of the Government, and Members have endorsed this view, that the new Council should have this statement available to guide it when it starts its work. Today's Council has grown and developed from the laws and practices of the past: tomorrow's Council calls for a clearer and more defined identity.

'For last year's words belong to last year's language. And next year's words await another voice.'

Already many committees have been opened to the public—Finance Committee, the Public Accounts Committee, the Estimates Committee, and there are select committees; the widening scope of the Council will doubtless lead to others. How much better that we have available not only to the Council but to members of the public a basis of law in a single Hong Kong Ordinance within which they can operate? If subsequently the Council decides or there is legitimate call for amendment or addition to this law this can be debated by the Council.

On a matter of detail, the question has been raised as to whether legal representatives of witnesses when they attend committees will be admitted: they will. There have also been questions about the procedures to be adopted by select committees. These committees generally cannot look into private affairs, and the private lives of individuals are protected by caluses already included in

the Bill. Finally the jurisdiction of a select committee of this Council is defined by its terms of reference which in turn are stamped with the authority of the legislature itself.

That then, Sir, is the agenda item for today; there is no hidden agenda, no concealed motive. This legislation today is linked in an organic way to the other measures I have described. Few pieces of legislation in recent years have had the detailed scrutiny and the benefit of so much useful comment and advice as this Bill has received. We have proceeded, after the introduction and the first reading six weeks ago, to the endorsement of the principles at the second reading and the consideration of many comprehensive amendments at that second reading after a month of public debate; now, after a further fortnight in which additional improvements have been suggested and considered and, where desirable, the necessary amendments put forward, we come to the end of the third reading of the Bill after a careful clause by clause debate.

At this point, Sir, I would like to pay tribute, on behalf of the Government, to the patient, responsible and tireless manner in which Members of this Council have discharged their responsibilities in relation to this Bill. They have not lost sight of the vital objective which is to create a strong and effective legislature, capable of taking its place in the centre of the Hong Kong we are all seeking to create. They have listened carefully to numerous representations from many quarters, and often they have had to follow up statements which could have been made directly to them but which instead have appeared in the columns of the press. Where these suggestions have been consistent with the aim of creating an effective legislature they have recommended that they should be adopted. But where these representations have not been consistent with this aim they have explained their reasons for not supporting them. Having said that, I would like to stress that this Bill is a Government Bill. It was a Government proposal that was put to this Council. There has been no attempt to take shelter behind Unofficial Members and to shuffle off responsibility for it, or to hide, as has been suggested, behind the skirts of Miss TAM. To that extent this Bill is a shared responsibility. But the passage of this Bill is a matter for this Legislative Council and once it had been introduced into this Council it was for the legislature to make up its mind about it.

Finally, Sir, there is the question of the 1987 review of the progress we have made and will need to make in the development of our representative institutions of government in Hong Kong. Much will depend on how things develop between now and then, but the general scope of that review is to be found in the public documents of the Green and White Papers on the 'Further Development of Representative Government in Hong Kong'. And let me add, in conclusion, that it is my earnest hope that all those who have a right to take part in the election of representatives to sit in this Council when it assembles at the end of October will take this responsibility very seriously.

Sir, I support the third reading of the Bill.

Question put on the Bills and agreed to.

Bills read the third time and passed.

Unofficial Member's Bills

First reading of bills

Royal Bank of Scotland Bill 1985

Lloyds Bank (Merger) Bill 1985

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

Second reading of bills

SIR ROGER LOBO moved the second reading of: —'A bill to provide for the transfer of the undertaking of The Royal Bank of Scotland public limited company to R.B.S.G. public limited company; and for purposes connected therewith'.

He said: —Sir, I rise to move the second reading of the Royal Bank of Scotland Bill 1985, which as the preamble states is to provide for the transfer of the undertaking of the Royal Bank of Scotland public limited company to the Royal Bank of Scotland Group public limit company.

The Royal Bank of Scotland, a U.K. recognised bank and a licensed bank in Hong Kong, proposes to merge its worldwide business with that of Williams & Glyn's Bank, also a U.K. recognised bank but with no banking business in Hong Kong. Both the Royal Bank of Scotland and the Williams & Glyn's Bank are existing subsidiaries of the Royal Bank of Scotland Group and it is proposed to effect the merger by the transfer of the businesses of the two banks to a third subsidiary of the same group, R.B.S.G. plc (the 'New Bank').

Legislation is being promoted in the U.K. to effect the merger there and the purpose of this present Bill is to effect the transfer of the Royal Bank of Scotland's Hong Kong business to the New Bank.

When the merger takes place, the New Bank will take over the name 'The Royal Bank of Scotland plc' from the present Royal Bank of Scotland. There will, therefore, be no effective change in the name under which the Hong Kong banking business transferred from the existing Royal Bank of Scotland to the New Bank is carried on.

By effecting the merger in Hong Kong by way of legislation rather than by other means, substantial cost and time savings will be made to the benefit of the Hong Kong customers of the Royal Bank of Scotland.

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

Motion made. That the debate on the second reading of the Bill be adjourned—SIR ROGER LOBO.

Question put and agreed to.

Lloyds Bank (Merger) Bill 1985

MR. W. C. L. BROWN moved the second reading of: —'A bill to provide for the vesting in Lloyds Bank Plc of the undertaking of Lloyds Bank International Limited; and for other related purposes'.

He said:—Sir, I move that the Lloyds Bank (Merger) Bill 1985 be read the second time.

The purpose of this Bill is to make provision in Hong Kong for the fusion of the undertaking of Lloyds Bank Plc and that of Lloyds Bank International Limited. Lloyds Bank International Limited is a bank licensed under the Banking Ordinance and is a wholly owned subsidiary of Lloyds Bank Plc. Both companies are incorporated in the United Kingdom.

The decision to merge Lloyds Bank Plc and Lloyds Bank International Limited was taken some while ago in London. In accordance with normal practice, it was decided that the merger should be effected by an Act of the United Kingdom Parliament. This Act has subsequently been passed as the Lloyds Bank (Merger) Act 1985.

Consequently, legal advice was taken in all the countries in which Lloyds Bank International Limited operates as to the effect of the Lloyds Bank (Merger) Act 1985. In Hong Kong, the advice was that it was by no means certain it would be effective to vest all the rights and liabilities of Lloyds Bank International Limited in Lloyds Bank Plc and it was therefore suggested that a Hong Kong Ordinance should be enacted in substantially the same terms as the U.K. Act. The Bill laid before this Council seeks to give legislative effects to this proposal.

The Bill, if enacted, will be, in all material respects, identical with the United Kingdom Lloyds Bank (Merger) Act 1985. Clause 4 of the Bill provides for the vesting of the undertaking of Lloyds Bank International Limited in Lloyds Bank Plc on a day or days appointed by the directors of Lloyds Bank Plc. Clause 5 contains a number of supplementary provisions relating, *inter alia*, to

the effect of the vesting in relation to trusts and wills. Clauses 6 to 11 provide for the relationship with customers, borrowers, employees and other third parties and evidence.

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

Motion made. That the debate on the second reading of the Bill be adjourned— MR. W. C. L. BROWN.

Question put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: —In accordance with Standing Orders I now adjourn the Council until 2.30 p.m. on Wednesday, 10 July 1985.

Adjourned accordingly at seven minutes to five o'clock.