OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 6 July 1988

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (*PRESIDENT*)
SIR DAVID CLIVE WILSON, K.C.M.G.
THE HONOURABLE THE CHIEF SECRETARY
SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.
THE HONOURABLE THE FINANCIAL SECRETARY
MR. PIERS JACOBS, O.B.E., J.P.
THE HONOURABLE THE ATTORNEY GENERAL
MR. JEREMY FELL MATHEWS. J.P.
THE HONOURABLE LYDIA DUNN, C.B.E., J.P.
THE HONOURABLE PETER C. WONG, C.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 WONG PO-YAN, C.B.E., J.P.
THE HONOURABLE DONALD LIAO POON-HUAI, C.B.E., J.P.
SECRETARY FOR DISTRICT ADMINISTRATION
THE HONOURABLE CHAN KAM-CHUEN, O.B.E., J.P.
THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., Q.C., 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, C.B.E., J.P.
THE HONOURABLE CHAN YING-LUN, J.P.
THE HONOURABLE MRS. RITA FAN HSU LAI-TAI, O.B.E., J.P.
THE HONOURABLE MRS. PAULINE NG CHOW MAY-LIN, J.P.
THE HONOURABLE PETER POON WING-CHEUNG, M.B.E., J.P.
THE HONOURABLE YEUNG PO-KWAN, O.B.E., C.P.M., J.P.
THE HONOURABLE KIM CHAM YAU-SUM, J.P.
THE HONOURABLE JACKIE CHAN CHAI-KEUNG
THE HONOURABLE CHENG HON-KWAN, J.P.
THE HONOURABLE HILTON CHEONG-LEEN, C.B.E., J.P.
DR. THE HONOURABLE CHIU HIN-KWONG, O.B.E., J.P.
THE HONOURABLE CHUNG PUI-LAM
THE HONOURABLE HUI YIN-FAT
THE HONOURABLE RICHARD LAI SUNG-LUNG

DR. THE HONOURABLE CONRAD LAM KUI-SHING
THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
THE HONOURABLE DESMOND LEE YU-TAI
THE HONOURABLE DAVID LI KWOK-PO, J.P.
THE HONOURABLE LIU LIT-FOR, J.P.
THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
THE HONOURABLE PANG CHUN-HOI, M.B.E.
THE HONOURABLE POON CHI-FAI
PROF. THE HONOURABLE POON CHUNG-KWONG
THE HONOURABLE HELMUT SOHMEN
THE HONOURABLE SZETO WAH
THE HONOURABLE TAI CHIN-WAH
THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING
THE HONOURABLE ANDREW WONG WANG-FAT
THE HONOURABLE LAU WONG-FAT, M.B.E., J.P.
THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT
THE HONOURABLE EDWARD HO SING-TIN, J.P.
THE HONOURABLE GEOFFREY THOMAS BARNES, J.P.
SECRETARY FOR SECURITY
THE HONOURABLE PETER TSAO KWANG-YUNG, C.P.M., J.P.
SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION
THE HONOURABLE CHARLES ROBERT SAUNDERS, J.P.
SECRETARY FOR LANDS AND WORKS (*Acting*)
THE HONOURABLE DOMINIC WONG SHING-WAH, J.P.
SECRETARY FOR EDUCATION AND MANPOWER (*Acting*)
THE HONOURABLE ADOLF HSU HSUNG, J.P.
SECRETARY FOR HEALTH AND WELFARE (*Acting*)

ABSENT

THE HONOURABLE HU FA-KUANG, O.B.E., J.P.
DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.
THE HONOURABLE THOMAS CLYDESDALE, J.P.
THE HONOURABLE HO SAI-CHU, M.B.E., J.P.
THE HONOURABLE TAM YIU-CHUNG
DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR. LAW KAM-SANG

Papers

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

Subject	*L.N. No.*
Subsidiary Legislation:	
Public Health and Municipal Services Ordinance Pleasure Grounds (Regional Council) (Amendment) By-Laws 1988	175/88
Public Health and Municipal Services Ordinance Pleasure Grounds (Regional Council) (Amendment) (No.2) By-Laws 1988	176/88
Tate's Cairn Tunnel Ordinance 1988 Tate's Cairn Tunnel (Designation of Agreements) Notice 1988	177/88
Sessional Paper 1987-88:	
No. 64—Report of Changes to the approved Estimates of Expenditure approved during the final quarter of 1987-88—Public Finance Ordinance: section 8.	

Address by Member presenting paper

Report of Changes to the approved Estimates of Expenditure approved during the final quarter of 1987-88—Public Finance Ordinance: section 8

FINANCIAL SECRETARY: Sir, in accordance with section 8(8)(*b*) of the Public Finance Ordinance, I now table for Members' information a summary of all changes made to the approved estimates of expenditure for the final quarter of the financial year 1987-88.

Supplementary provision of $1,826.5 million was approved. It was fully offset either by savings under the same or other heads of expenditure or by deletion of funds under the additional commitments subheads. This included supplementary provision of $1,193.6 million for the 1987 Pay Adjustment and Pay Improvement Package for Model Scale 1 staff in respect of the Civil Service and government subvented organisations.

Approved non-recurrent commitments were increased by $82.8 million during the period, and new non-recurrent commitments of $773.2 million were also approved.

In the same period, a net increase of 848 posts was approved.

Items in the summary have been approved either by Finance Committee or under delegated authority. The latter have been reported to the Finance Committee in accordance with section 8(8)(*a*) of the Public Finance Ordinance.

Oral answers to questions

Transport links with China

1. MR. CHEONG-LEEN asked: *In view of Hong Kong's rapidly expanding trading and economic activities in the south China region, especially in the Guangdong Province, will Government inform this Council whether there are plans to extend, as a matter of urgency, Hong Kong's rail links and other forms of transport links with southern China?*

SECRETARY FOR TRANSPORT: Sir, in the past few years, much has been done to improve the transport infrastructure to cope with our increasing economic links with China, especially the Guangdong Province.

As a result of these improvements, our transport links are, broadly speaking, adequate in meeting the present demand. Where there is pressure for immediate provision of facilities, interim measures have been adopted to provide short-term relief whilst expansion plans are being actively pursued. Long-term development plans are also being examined under the Second Comprehensive Transport (CTS) and the Port and Airport Development Strategy (PADS) Studies.

Rail links

On rail, Kowloon Canton Railway Corporation's (KCRC) freight terminals, located at Hung Hom, Ho Man Tin, Mong Kok, Sha Tin and Fo Tan, occupy a total area of about 18 hectares. In 1987, they handled a total of 2.3 million tonnes of cargo in addition to 2.12 million heads of livestock. Rail freight is expected to continue to grow and double in the next five years. The KCRC has employed consultants to look into the construction of additional freight facilities on the Hung Hom Bay reclamation. To match the expansion plan for Hung Hom, a new marshalling yard at Lo Wu is being planned. These projects are under joint consideration by Government and KCRC.

For passengers, a total of 23.5 million passenger movements was recorded at Lo Wu in 1987, an increase of 24 per cent over the previous year. The new Lo Wu station opened since January last year offers much improved facilities. To cope with the increasing cross border passenger movements, a fifth through train in addition to the four regular ones has been introduced. Other measures include the introduction of express trains to Lo Wu and further expansion of facilities at Lo Wu Terminal.

Road links

The total annual number of vehicles crossing the border has increased to over 3 million last year. Of the two border points, Man Kam To is the main crossing with a two-way daily flow of about 9 000 vehicles, 98 per cent of which are goods vehicles and container trucks. Sha Tau Kok has a daily flow of about 1 400 vehicles of which 84 per cent are goods vehicles and container trucks.

As an interim measure, Man Kam To Road is being widened to provide one southbound lane and two northbound lanes to allow traffic queuing to be confined to one lane, leaving the remaining lane for other traffic. The widening work will be completed at the end of this month. In addition, a temporary vehicle holding area for 500 vehicles has been completed in Sheung Shui. Another holding area for 100 vehicles will soon be available to Hong Kong bound vehicles.

The third crossing point at Lok Ma Chau is being constructed jointly with the Chinese. Stage one comprising a dual two-lane bridge, a border control complex and two vehicle holding areas is due for completion in April next year. Stage two involving a second bridge will be completed in early 1990. The total planned capacity is 40 000 vehicles a day.

There are also plans to upgrade Sha Tau Kok Road. Construction is expected to start next year. Based on present projections, these improvements and new works will be adequate to meet demand until the end of the century.

Sea links

Sea and river transport has also been growing. A total of about 47 000 river vessels entered into the port of Hong Kong with a throughput of 9.4 million tonnes in 1987, representing an average increase of about 15 per cent per annum over the last five years.

A total of 8 400 m of sea frontage is now available for cargo handling facilities. Additional cargo handling areas will be provided in the next few years at Ap Lei Chau, Rambler Channel. Chai Wan and Quarry Bay. By 1992, an additional 1 300 m of sea frontage will be available.

Finally, on cross border ferry traffic, a new China Ferry Terminal at Tsim Sha Tsui will come into operation in September this year, replacing the existing terminals at Tai Kok Tsui and Central. The new terminal can handle 4 400 passengers per hour, with a maximum designed capacity for over 19 million passengers per year, an eight-fold increase over the current patronage.

MR. CHEONG-LEEN: *Sir, since there are large segments of our population in Hong Kong who have emanated from places such as Xiamen and Shantou and since there appear to be growing economic and other ties between Hong Kong and these two cities, have discussions been going on to improve road and sea links with these two cities and if not yet, will it be possible to initiate such discussions?*

SECRETARY FOR TRANSPORT: Sir, we have had an annual meeting with the Guangdong and Shenzhen authorities over the last two years on exchange of information concerning traffic planning and projections and these annual meetings will continue. We think that this will be helpful to both sides to improve our communication network. I take Mr. CHEONG-LEEN's point entirely and hope to extend these links with the other provinces as soon as it is convenient and can be arranged.

MR. EDWARD HO: *Sir, will the Secretary inform this Council what is the present status regarding the additional freight facilities at the Hung Hom Bay, as I understand the consultants' study has already been completed for some time? Would further delay in a decision jeopardise KCR's freight handling capacity?*

SECRETARY FOR TRANSPORT: Sir, the present position is that the Government and the corporation are entering into detailed discussions on finalising the future freight handling yard at Hung Hom. However, this depends on the feasibility of the freight terminal as well as the commercial viability of its operations. The Government will shortly be inviting consultants to investigate as a matter of urgency the viability of the freight terminal and as soon as this is completed, by October this year, we hope we should be able to decide on the extent and the timing of the construction of the project, as well as the financing of it.

DR. LAM (in Cantonese): *Sir, in paragraph 5 of the Secretary's reply, it is said that over 3 million vehicles have passed through the border last year. I would like to know how many of these vehicles are registered with China, how many will enter the urban area and what effect will they have on the traffic congestion in Hong Kong in these areas?*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, most of the cross-border goods vehicles are from Hong Kong. Goods vehicles from China comprise a very small number. At present we are studying the effect of these goods vehicles on the traffic in Hong Kong. The Transport Department has started a survey on cross-border goods vehicles and it is hoped that the report will be completed within this year so that we will be able to assess freight traffic and its effect on Hong Kong and how best to improve links.

MR. ANDREW WONG: *Sir, the Secretary has concentrated on freight handling facilities. May I enquire about the time occupied by freight cargo on the railways and would consideration be given to triple-tracking the KCR, at least so far as the Hong Kong section is concerned?*

SECRETARY FOR TRANSPORT: Sir, I think the present freight cargo operation at the KCR terminal at Hung Hom is quite efficient but clearly it is possible to further improve the handling as well as the financial operations of the freight

yard. This is a matter which the corporation is actively looking into. As regards the future need for a third track, the corporation's projections are that the present track is sufficient to meet demand until the end of this century but if in the future there is a need for a third track, I am sure we will look into it.

MR. CHEUNG (in Cantonese): *Sir, are there any plans to provide facilities at Sha Tau Kok and Lok Ma Chau similar to that at Man Kam To, namely, a vehicle holding area so that there will be less congestion?*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, the design for the new Lok Ma Chau link will be similar to that of Man Kam To which includes a vehicle holding area enabling many goods vehicles to stop and wait. It is expected that the present facilities are adequate. Three hundred and sixty goods vehicles can stop in the vehicle holding area and this should meet demand.

MR. ANDREW WONG: *Sir, I did not make myself clear. I was trying to ask what percentage of real time is used by trains which are carrying freight or cargo. I do not mind a written answer.*

SECRETARY FOR TRANSPORT: I think, Sir, the brief answer is that on the percentage of value in terms of Hong Kong and China trade, land transport which includes road and rail links, occupies 69 per cent; in terms of tonnage land transport, including rail and road, it occupies 36 per cent but I do not have a breakdown between rail and road. I will find out the details for Mr. WONG.

MR. ANDREW WONG (in Cantonese): *Tracks are used by trains. I would like to know the percentage of the time of these tracks that is taken up by freight traffic. If these figures are not available, please let me have them in writing.*

SECRETARY FOR TRANSPORT: Sir, I will have to ask the KCRC. (See Annex I)

Adult education

2. MRS. NG asked (in Cantonese): *Will Government inform this Council what measures it has taken to promote adult education in Hong Kong and how effective these measures are?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I shall limit my reply to adult education in a general sense and will exclude therefore training courses for employment purposes.

The Government promotes adult education directly through courses run by the Education Department, and indirectly by subventing courses provided by voluntary agencies.

The Adult Education Section of the Education Department runs both formal and non-formal courses for adults in the evening. Formal courses cover those in basic general education at the primary level; secondary school courses leading to the Hong Kong Certificate of Education Examination; courses in English Language leading to the Hong Kong Certificate of Education Examination or to the University of London Ordinary Level Examination; a diploma course in Higher Chinese Studies; and refresher training courses in cultural subjects for serving teachers.

There are numerous non-formal courses run by the Education Department in the evening. They include practical courses in basic household skills and other courses of a cultural, recreational and educational nature. The general aim is to assist interested adults in developing talents and skills, and in making sensible use of their leisure time.

Present enrolment in the Education Department's adult education courses stands at around 40 000 people per year. These courses are run at 54 locations all over the territory.

I now turn to the subvented sector. Since 1980, a subvention scheme has been in operation to assist voluntary agencies to run adult education courses. Today, 59 agencies are receiving subventions for 177 courses involving some 13 000 participants. These courses generally supplement or complement those run by the Education Department.

Sir, on the question of effectiveness, it is difficult to be scientific. The demand is there and the enrolment rates are high. Once enrolled in a course, most adult students attend regularly and only a small number drop out completely. In any case courses are introduced upon indication of demand. The feedback from participants and post-course evaluation by the Education Department and voluntary agencies concerned will enable decisions to be taken as to whether a particular course should be continued or whether changes and improvements need to be made.

MRS. NG (in Cantonese): *Sir, in paragraph 3 of the reply it is evident that the Government attaches much importance to training in English and Chinese languages. I know that many employees join courses to sit for examinations organised by the Institute of Linguists. I wonder if the Education Department runs such courses?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, formal courses are provided by the Education Department where there is general demand. As I said, there are already English courses provided up to Form VI or the GCE level, but if there is an indication of strong demand for other language courses and so on, the Education Department will consider running such courses.

Consultation period for Education Commission Report No.3

3. MR. SZETO asked (in Cantonese): *The publication of the Education Commission Report No.3 has been repeatedly deferred. Although it contains some issues which have significant and far-reaching effects, the consultation period will only last for two months. Moreover, as some people in the education field will be on leave during the consultation period while others will be busily engaged in their work before taking leave, it is unlikely that the report can be comprehensively and thoroughly discussed. In these circumstances, will Government inform this Council whether the consultation period will be extended if there is a strong request from the education sector and the community at large?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, since the publication of Education Commission Report No.3 on 16 June, the Education and Manpower Branch has been monitoring public opinion. We have also been involved extensively in briefing and discussing with various interested groups. Many people have expressed their opinion in one form or another. Several groups have indicated to us that they will not be able to respond within the two-month consultation period because of real logistical difficulties. Having considered all these requests, we have just decided to extend the consultation period by another two months. This means that the four-month consultation period for report No.3 will end on 15 October this year. The extension will, I believe, give members of the public and various interested groups adequate time to present their views on the two subjects listed for consultation.

MR. SZETO (in Cantonese): *Sir, the end of September also happens to be the end of the consultation period for the draft Basic Law. In the interim, there will be a lot of preparation work in connection with the consultation of the draft Basic Law. Moreover, many people have asked for an extension of the consultation period to six months. Now the Government says that the consultation period will be extended to four months. Is it possible for the Government to consider extending the consultation period to half a year?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the reasons given to us so far for extending the consultation period are mainly logistical, that is, in organising meetings and discussions during July and August when some people are away on leave or on holiday. We have, therefore, concluded for the moment that an extension until mid-October should get round all these various difficulties. We have not heard of other requests or reasons.

MR. MARTIN LEE: *Sir, does the Administration not think it proper to further extend the consultation period by at least one month, so that the Members on the incoming Legislative Council could debate this very important report?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, there is some indication to me already that this Council wishes to debate Education Commission Report No.3 in about two weeks' time, so to that extent a debate would have taken place by mid-October and we should have obtained quite a lot of input on the subject.

MR. MARTIN LEE: *My question is whether the Administration thinks it proper or desirable to further extend the period of consultation by at least another month to enable the incoming legislature to debate this report in the light of public opinion?*

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I cannot comment on whether it is proper or improper for the next Council to debate this matter, but certainly if there is a need for further debate, the debate can take place in this Council, whether or not public responses have been fully received on the subject.

Obscene comic books

4. MR. CHAN YING-LUN asked (in Cantonese): *Will Government inform this Council whether it is aware that comic books with violent and sexually explicit contents are being sold or distributed openly to young readers, and what actions have been taken, since the Control of Obscene and Indecent Articles Ordinance came into effect on 1 September 1987, to ensure that no such publications are published or sold in contravention of the Ordinance, and that suspected articles are submitted to an Obscene Articles Tribunal for classification?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, we are aware that comic books depicting violence and sex have been available at certain commercial outlets for some time. In a recent survey of 32 newspaper vendors and street stalls, three were found to be selling articles classified as class II, that is indecent, or III, that is obscene, in contravention of the Ordinance.

Officers of the police force, the Customs and Excise Department and the Commissioner for Television and Entertainment Licensing are the delegated authority to refer materials for consideration by the Obscene Articles Tribunal. In addition, the Commissioner for Television and Entertainment Licensing responds to complaints on such comics from the public as well as from district boards. Since the Control of Obscene and Indecent Articles Ordinance came into effect on 1 September 1987, the Obscene Articles Tribunal has (as at 25 June) considered 197 comic books. Six were classified class I (that is suitable for general circulation), 123 as indecent and 68 as obscene. There have been nine successful prosecutions involving 131 comic books. Fines imposed by the courts have ranged from $500 to $12,000, with most offenders having been fined about $1,000.

The Commissioner for Television and Entertainment Licensing has staff members employed full-time in patrolling outlets which sell comics. In addition, the police, subject to local resources and priorities, take enforcement action against outlets suspected of selling obscene material. Most cases now under investigation are initiated by the Commissioner for Television and Entertainment Licensing's staff; however, complaints and referrals from district boards and the public are a valuable additional to the source of information.

Sir, those who peddle obscene material to young people are criminals and, like criminals, they take steps to conceal their activities. With the co-operation of the police and the public, we have had sufficient successful prosecutions to convince retailers that there is a significant risk on selling obscene or indecent material to young people.

MR. CHAN YING-LUN (in Cantonese): *Sir, I would like to ask a question concerning paragraph 2. There have been nine successful prosecutions. Have any publishers been involved and have there been any recidivist publishers being prosecuted for more than one occasion and has Government paid special attention to these publishers?*

SECRETARY FOR ADMINISTRATION SERVICES AND INFORMATION (in Cantonese): Sir, all prosecutions involve vendors. As far as the publishers are concerned, we can, if necessary, use the Obscene Articles Tribunal to ascertain whether the publications are in contravention of the Ordinance.

MR. YEUNG: *Sir, what procedures should the public follow if they wish to make complaints to the Commissioner for Television and Entertainment Licensing?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, they can either telephone the office of the commissioner or write to him and the matter will be taken up by him.

MR. DESMOND LEE: *Sir, may I refer to the second last paragraph of the answer and ask how many complaints have been referred by district boards during the last year and how many of these complaints led to prosecutions?*

SECRETARY FOR ADMINISTRATIVE SERVICES AND INFORMATION: Sir, I do not have those figures; I shall supply the figures to Mr. LEE in writing. (See Annex II)

Pedestrian escalator link between Central and Mid-levels

5. MISS TAM asked: *Will Government inform this Council whether it will proceed with the hillside escalator link between Central and Mid-levels so as to relieve traffic in the area which has been and will be increasing as a result of the development of residential property in the Mid-levels?*

SECRETARY FOR TRANSPORT: Sir, the project is in Category AB of the Public Works Programme. Consultants were appointed in November last year to undertake its planning, design and construction. A draft preliminary design report is now being considered within Government, and it is hoped to finalise it shortly, after which detailed design and gazetting under the Roads (Works, Use and Compensation) Ordinance will follow.

However, in view of the escalating capital costs, now estimated at $105 million (excluding land resumption cost), plus annually recurrent costs of $1 million, a review of the cost effectiveness of the project will need to be made. An environmental impact study will also be undertaken. Once these studies have been completed, Government will be in a better position to decide on the timing for the construction of the project.

MISS TAM: *Sir, in view of the many qualifications mentioned in paragraph 2 of the Secretary's reply, can I ask whether the Government is committed to this project, and if the answer is affirmative, how soon can we expect a decision to be made for the go-ahead?*

SECRETARY FOR TRANSPORT: Sir, funds are not yet committed until and unless the project is in Category A of the Public Works Programme. At this stage, I can assure Miss TAM that subject to adequate resources allocated to me under my programme areas, and subject to its cost-effectiveness, I intend to proceed with it by early 1991.

MR. EDWARD HO: *Sir, if the Government is not sure of the timing, why has the Secretary stated in paragraph 1 that 'detailed design will follow shortly'?*

SECRETARY FOR TRANSPORT: Sir, the normal procedure for Category AB items in the Public Works Programme is to proceed with detailed design first, and subject to these designs being produced we can then proceed to seek funds.

So this is a necessary step but it does not commit Government to the funding of the project until all the other procedures and assessments have been followed, including the allocation of funds.

MR. SOHMEN: *Sir, to put the Secretary's reply in context in connection with the projected annual recurrent costs, how much road space can be maintained annually for $1 million?*

SECRETARY FOR TRANSPORT: Sir, this $1 million recurrent cost is not large in relation, of course, to the road maintenance which is about $300 million per year. But I think the question really is the capital cost which originally was $75 million. It is now $105 million excluding land resumption costs at about $28 million. So one has to decide whether, in the light of these extra costs, it is really cost-effective to proceed at this stage without careful study.

DR. LAM (in Cantonese): *Sir, from the angle of being fair and to stop some members of the public from thinking that the Government is holding prejudice against some sectors of the public, is it possible for the Administration to consider building a similar project in some other localities in the territory where the topographical situation is more or less the same to the Mid-levels, for example, Choi Wan Estate, Tsz Wan Shan Estate or Chuk Yuen North Estate and so on?*

SECRETARY FOR TRANSPORT (in Cantonese): Sir, this pedestrian escalator link is a pilot project in Hong Kong. It is the first time that we will try out such a project. We are interested to see whether the pilot project is successful. Our plan is that if pedestrians from Mid-levels can go to the Central district without using cars, then we will be able to save road space as well as resources for building the escalator link.

If the scheme is successful, we will consider extending the project to other localities, such as Tsz Wan Shan and Choi Hung Estates.

MRS. CHOW: *Sir, in the Secretary for Transport's answer to Mr. Peter POON's question on the same subject on 29 October 1986, he mentioned the 1989-90 financial year as the time during which the project would be implemented. May I know whether this schedule has slipped, and if so, why it has slipped? Has it done so justifiably? How much further it is expected to slip? Will he give a commitment here and now not to let it slip any further? Would he not agree that the more it is allowed to slip, the more expensive it will be?*

SECRETARY FOR TRANSPORT: Sir, my predecessor's reply on 29 October 1986 refers only to a rough guess of an earliest start in the 1989-90 financial year. It was only a rough guess. At that time the project was in Category C of the Public Works Programme; in other words, approval in principle only. There was no slippage. Since that time, we have been actively looking into the detailed designs and the detailed implications of the project and, as I said in the main reply, the consultants were appointed only last year to finalise the planning, design and construction. What is now causing us some concern, as I said just now, is the increasing costs of the project and the limited funds available in the overall Public Works Programme to construct projects of this kind. But, as I said, subject to this being cost-effective, and subject to funds being made available, I would definitely wish to proceed with it as early as I can, that is, by early 1991.

MR. PETER POON: *Sir, I think it would be false economy to use the availability of funds as an excuse to delay the project year after year because if we delay further, there will be more excuse for asking for more funds. The traffic situation in Mid-levels...*

HIS EXCELLENCY THE PRESIDENT: The question, please, Mr. POON.

MR. PETER POON: *My question is coming. The traffic situation is very, very tight now and it will be even worse in the years to come because more buildings are coming up. Can the Secretary give a commitment that he will seek more funds and to implement such a scheme as soon as possible?*

SECRETARY FOR TRANSPORT: Sir, I do wish very much to have more funds, but this is subject to the Chief Secretary's Allocation Committee. So I cannot commit myself or the Chief Secretary to this particular request, but I will do my best, Sir.

Power failures

6. MR. POON CHI-FAI asked (in Cantonese): *As power failures would cause inconvenience to the public, and disruption of production and financial losses to factories, particularly in summer, will Government inform this Council, whether it, in co-operation with the power companies,*

(a) compiles statistics and collates information to enable the relevant parties to identify the causes of power failures;
(b) has any contingency plan to deal with large-scale blackouts; and
(c) has devised any measures to prevent power failures?

FINANCIAL SECRETARY: Sir, the first part of Mr. POON's question deals with the compilation of statistics on power failures. This is carried out by the power companies. Whenever there is a failure, inquiries are made by the company concerned in order to ascertain the causes so that measures can be adopted to prevent future recurrence. The findings of these inquiries are reported to the Government. There are, of course, many possible causes of power failures. These include equipment breakdown, damage to power lines from severe weather conditions, third party interference and faults within consumer installations.

With regard to contingency planning for large-scale blackouts, the second part of Mr. POON's question, the power companies have established procedures designed to restore power to affected areas as quickly as possible. Priority is, however, given to essential services including the mass transit railway, Kowloon-Canton Railway and the airport. Key government buildings such as hospitals and police stations have their own standby generators to ensure the maintenance of essential electricity supply during any power loss. The police and the fire services have shown that they can respond effectively to any large scale power blackouts.

Finally, Sir, with regard to measures to prevent power failures. The power companies have always been very conscious of their responsibility to provide a reliable electricity supply to their consumers. All reasonable measures are taken

to minimise power failures, such as the use of reliable equipment and back-up facilities, a regular maintenance programme and the timely replacement of aging and overloaded equipment. In addition, consumers are advised to rectify any faults found in their own installations. The implementation of all these measures has enabled the companies to maintain a very good record in terms of supply reliability. Although minor localised blackouts inevitably occur from time to time, large-scale power failures have, fortunately, been an extremely rare occurrence in Hong Kong.

MR. POON CHI-FAI (in Cantonese): *Sir, the insufficient loading of electricity will not only lead to power failures, but it will also lead to fire hazards. How will the Administration prevent the problem of overloading or outdated facilities, and to prevent such accidents? Moreover, the older public housing estates and squatter areas suffer power failures quite often during the nightime, sometimes from 8.00 pm to 9.00 am the next day, that is, longer than 10 hours. Has the Government shown any concern for such problems and what will the Administration do to prevent sufferings of the people affected? If this is due to the substandard design of such facilities, what measures will the Government take to solve the problem?*

FINANCIAL SECRETARY: Sir, there are many points in Mr. POON's supplementary question; I will try and deal with them as far as I can.

As far as fire hazards are concerned, arising from the overloading of installations, the Government does, of course, advise people through public announcements and in many other ways to install proper equipment, so that overloading should not occur.

There is, of course, a responsibility on consumers to do all that they can to prevent the sort of overloading that I think Mr. POON had in mind.

As far as the older public housing estates are concerned, I have not any details to give this afternoon and so I would like to look into this further and give perhaps a more specific answer to what Mr. POON has said. (See Annex III) Nevertheless, we certainly are conscious of the need to ensure that the wiring and the installations in the public housing estates are up to an appropriate and proper modern standard. The Director of Electrical and Mechanical Services has, I believe, a programme under which he inspects buildings, Mr. POON has asked whether we are concerned? Yes, of course, we are concerned and I shall convey that concern again to the Director of Electrical and Mechanical Services.

PROF. POON: *Sir, according to the second paragraph of the answer, it appears that the airport does not have its own standby generator. Would the Secretary explain why the airport does not have its own emergency generating equipment?*

FINANCIAL SECRETARY: Sir, I cannot give an explanation this afternoon. I think the airport is, as I have said in my answer, a facility that is given some priority, so that if there is a failure there, steps are taken as quickly as possible to restore a power supply. I will look into the possibility of the airport having its own separate generator. I doubt whether it is necessary but I will certainly examine that point.

MR. LAU (in Cantonese): *Sir, if there is a power failure, can it be established whether it is due to negligence or mis-management by the power companies? And, if this is the case, is it possible for the public or the industrialists to claim compensation from the power companies to cover the loss due to the power failure? If this is possible, will the public be informed about the real cause of power failures?*

FINANCIAL SECRETARY: Sir, as far as I am aware, there has been no evidence of any negligence or mis-management. Whether or not there is any possibility of a claim against the companies depends, of course, on the supply contract between the companies and the consumer. Members may wish to note that the power companies, in their supply rules, state that they will not be responsible in any way for any interruptions of supply, or for any damage, loss or inconvenience occasioned directly or indirectly by total or partial interruptions of supply however arising.

MR. SOHMEN: *Sir, does the fact that Hong Kong has two separate power companies to supply electricity to the territory have any bearing on the reduction of the risk of large-scale power failures in Hong Kong?*

FINANCIAL SECRETARY: Undoubtedly, Sir. The fact that there are two companies does provide some measure of comfort. The supplies are inter-connected as Mr. SOHMEN knows, and if there is a failure in one supply, it can sometimes be made good by the other.

Structural safety of school buildings

7. MRS. FAN asked: *In the light of a recent accident when a wall collapsed in a school dormitory and killed a Form IV student, will Government inform this Council whether regular inspections are carried out by the government departments responsible to ensure the structural safety of school buildings in the territory and what improvements, if any, could be made to prevent the recurrence of similar accidents?*

SECRETARY FOR LANDS AND WORKS: Sir, inspections of school premises are carried out by relevant government departments, although these are not specifically for the purpose of ensuring structural safety.

Government and aided schools are, on average, inspected about every five years by either the Architectural Services Department or the Housing Department, depending upon whether the premises are within a housing estate or not. These inspections are primarily to ascertain maintenance requirements, for which the two departments are responsible, but the government inspectors do also carry out, at the same time, a superficial examination of the buildings for any tell-tale signs of structural distress.

In the case of private schools, there is a requirement under regulation 15 of the Education Regulations 1971, that, for schools situated in buildings which, having regard to the loadings for which they were designed, are not generally suitable for use as school premises, school supervisors must arrange for their buildings to be inspected periodically by a qualified architect. The purpose of these inspections is to ensure that the buildings are structurally safe, particularly in the case of older buildings or, for example, where timber joints are used in the flooring.

For private schools in purpose-built premises, there is no requirement under these regulations for such inspections, and it is the responsibility of the schools themselves to ensure that the buildings are safe.

All schools are regularly inspected by district education officers from the Education Department, and I have been advised by the Director of Education that, following the incident to which Mrs. FAN refers, it has been arranged that, during these inspections, the opportunity will be taken to remind school authorities that they should take appropriate action if they notice any signs of structural weakness.

In government and aided schools, the school authorities will report to the Director of Education any structural defects which they think might pose a risk. The director will then arrange for the government maintenance surveyor to inspect the building, investigate any problems, and advise on remedial action.

As a result of these arrangements, school premises are, in general, maintained in a reasonable state of repair and structural failures are very rare. In the unlikely event of a school building deteriorating to the point where it became positively unsafe, however, the Buildings Ordinance Office is empowered under section 26 of the Buildings Ordinance to take immediate action to close the affected part until it is rendered safe. Alternatively, where a building has been identified as showing signs of structural deterioration, the Buildings Ordinance Office may serve an order on the owners of the building to appoint a qualified person to investigate the extent of the problem, and to carry out remedial works. In the case referred to by Mrs. FAN, the wall which collapsed was an internal non-load-bearing partition and the structure of the building was not at risk.

Sir, there are about 2 700 schools in Hong Kong and it is the Government's view that it should be the schools' responsibility to ensure that their premises are

properly maintained in a safe condition. The Government will continue to provide advice and assistance in the manner that I have described, and, on the whole, considers that the existing procedures, correctly adhered to, are satisfactory.

MRS. FAN: *Sir, the Secretary informed us that the existing procedures, if correctly adhered to, are satisfactory, and that it is the school's responsibility to ensure that school premises are maintained in a safe condition. Is the Secretary implying that the accident referred to is totally the responsibility of the school and it is of no concern to the Government?*

SECRETARY FOR LANDS AND WORKS: Sir, I would prefer not to discuss the specific case because in view of the fact that there was a fatality in this accident, I am not sure at this point in time whether or not this case could be sub-judice.

On the general point though, I would have to say of course that the Government is concerned. Indeed, the Government is concerned about the condition of any buildings, and indeed, the Dangerous Buildings Division of the Buildings Ordinance Office has been very concerned with this problem over a number of years.

The problems of unsafe structures and unsafe buildings, is undoubtedly a major one and it is one that the Government wishes to address. In the case referred to by Mrs. FAN, the partition that collapsed could just as easily have been a bookcase. It is very difficult for the Buildings Ordinance Office to decide how far it should go in its examinations of such structures.

And indeed, Sir, in this Council last week, I was asked a similar question regarding water-tanks attached to buildings, and I answered then that there was a distinction between building works and fixtures. I am looking into this, Sir, and I shall be giving an answer to that particular question shortly.

MR. SOHMEN: *Sir, could the Secretary please identify the specific legislation under which schools have the responsibility to ensure that their buildings are safe?*

SECRETARY FOR LANDS AND WORKS: Sir, the regulations I referred to are the Education Regulations under the Education Ordinance. As I mentioned in my main answer, Sir, this actually only refers to schools which are not in purpose-built premises. Schools which are in purpose-built premises, that is to say, buildings which were built specifically for school use, would come under the Buildings Ordinance and would have to be constructed and maintained in accordance with the Buildings Ordinance.

MR. SZETO (in Cantonese): *Sir, according to media coverage, this particular partition was not originally part of the premises. It was actually an addition to the premises. Could this Council be informed when such additions were made, whether*

the department concerned was informed, whether approval was given by the department and whether the department did any inspection?

SECRETARY FOR LANDS AND WORKS: Sir, I do not know specifically the answer to that. As far as I am aware the Buildings Ordinance Office was not informed. We were aware of the fact that this school was undertaking a number of improvements and repairs and in fact these have been ongoing over several years.

The particular structure to which Mr. SZETO refers, I suspect, was not referred to Buildings Ordinance Office but I am not absolutely certain about that. I might add, Sir, that since the recent accident, the Buildings Ordinance Office has been to the school and has investigated the situation there; it is issuing an advisory letter to the school principal, advising him to appoint an authorised person to have a look at the situation there and to draw up proposals for any remedial measures to the remaining structures which may be required. These will be submitted to the Buildings Ordinance Office for consideration.

MRS. FAN: *Sir, I appreciate the difficulty in drawing a line when interpreting which should come under the control of the Buildings Ordinance. However, this is a situation which is a danger to life and limb, so may I ask the Secretary, apart from this advisory letter, whether the Government would take any other actions based on the lesson learnt from this accident. And will the Government take steps to assist the school authorities in detecting such weaknesses, taking into account the fact that the ability to serve as a school principal does not include the ability to detect structural faults?*

SECRETARY FOR LANDS AND WORKS: Sir, that is a fairly comprehensive question. I think I must repeat what I said in my main answer, Sir, and that is, that the Government's view, essentially, is that the owners of buildings must be responsible for their own buildings. In the case of schools, Sir, the school authorities themselves are the best people to see what is going on around them. They are in the building all the time and should be able to detect whether there are problems. Indeed, if an inspector from a government agency were to go into a school, the only way that he could ascertain complete safety would be to carry out very extensive and expensive tests on the structure. I am sure that that really would not be a practicable proposition. So, I feel that the responsibility must lie with them. On the point of assistance. Sir, there is no problem with government schools and aided schools. They can approach the Director of Education and he will arrange for assistance through the Director of Architectural Services who would be quite happy to advise. But in view of the large numbers of school premises that we are talking about, I think that we must again expect the owners of the schools in the private sector to appoint architects or authorised persons to look into any problems that they may suspect.

MR. SOHMEN: *Sir, in response to my earlier question, the Secretary said that the regulations applied to private schools which were not purpose-built. But he also said that these regulations did not apply to private schools which were purpose-built. Could I ask the Secretary whether it would not be meaningful to have the same regulations also apply to the second category of schools?*

SECRETARY FOR LANDS AND WORKS: Well, I would have to take advice on this, Sir, I take Mr. SOHMEN's point that this possibly could be extended to cover all schools. I think the purpose of the regulation as it stands at the moment really was to take account of the fact that buildings which are not specifically designed for school use may pose particular dangers. And I mentioned, for example, the use of timber in flooring. Obviously, with old buildings, that could pose a danger and it is something that needs to be inspected. One would expect that a purpose-built building should not normally give rise to any problems with regard to structural defects. It is a purpose-designed building and therefore the structure should be fit for the purpose and the design would normally be checked by the Buildings Ordinance Office prior to construction.

Support for candidates in Legislative Council elections

8. MR. MARTIN LEE asked: *Will the Administration inform this Council:*

(1) whether it intends to give support to any candidate or candidates directly or indirectly in the forthcoming Legislative Council elections in September 1988, particularly in relation to electoral college elections;

(2) if not, whether it approves of any Member or Members of the Executive Council giving active support to any candidate or candidates in such elections; and

(3) if not, what measures it proposes to take to prevent such support from being given by such Member or Members of the Executive Council, so as to ensure that the electors will not be under any misconception that a particular candidate has the support of the Government or that the other candidate is not favoured by the Government, and to guarantee that there will be a fair election?

CHIEF SECRETARY: Sir, in the lead up to elections including Legislative Council elections, the Administration provides assistance to all candidates in three different ways:

first, under regulation 6 of the Post Office Regulations, each candidate may send one letter to each registered elector in his constituency free of postage;

secondly, the Administration distributes to the electorate, on behalf of the candidates, free of charge, leaflets containing the platforms of each candidate; and

thirdly, district officers arrange seminars and discussion forums in their districts to present electoral college candidates and their respective platforms.

These measures are taken to promote representative government generally and to help acquaint the electorate with the candidates. The assistance is given to all candidates on an equal footing. The Administration does not, and does not intend to, do anything which amounts to supporting any one candidate as against another.

Sir, it is not for the Administration either to approve or disapprove of Members of the Executive Council, other than Official Members, giving support to candidates in the forthcoming Legislative Council elections. They are free to act in their individual capacities in such matters, as indeed are Members of this Council free to support candidates in elections at all levels. Of course, I would not expect them to claim—and I am sure they will not claim—that in giving any such support they represent the views of the Executive Council as a whole or of the Hong Kong Government, whose position is one of complete neutrality as between competing candidates. And, in the final analysis, it is entirely up to the individual elector to decide whether or not to take such support into account.

MR. MARTIN LEE: *Sir, I have got a long supplementary of which notice has been given.*

Does the Administration appreciate that there is a clear distinction between a Member of the Executive Council and a Member of this Council in that the former is part of the executive authorities of Hong Kong and is seen to be in a position to influence the Government in appointing one third of the members of district boards, whereas the latter is not? And does the Administration appreciate that when an appointed district board member is lobbied by a Member of the Executive Council to support a particular candidate for election to this Council from his district board, he is likely to think, rightly or wrongly, that such candidate has the backing of the Government, even though the Executive Council Member concerned has not expressly claimed to represent the Executive Council or the Government? And the district board member may therefore feel that if he does not vote as suggested, he might not be reappointed for another term in the district board?

CHIEF SECRETARY: Sir, Mr. LEE has made a number of assertions about how non-official Members of the Executive Council are perceived, and how Members of this Council are perceived. They are at least, Sir, questionable.

The fact is, Sir, as I have explained, that in pursuing their political activities, Members of the Executive Council, other than Official Members, are acting totally in an official capacity and not in any way as Members of the Government. In any case, Sir, members of district boards, when casting their votes, do so on an individual basis. They also vote in secret ballot. Whether they are appointed members or not seems to me to be totally irrelevant. I hope, Sir, that members of district boards when voting will vote in the interests of the people of

Hong Kong. Mr. LEE has made an assertion that they vote in self-interest, rather than in the interests of the people of Hong Kong. I think that would be deeply resented by many of them, Sir.

MR. NGAI (in Cantonese): *Sir, could this Council be informed whether any existing Legislative Councillors, were supported by Executive Councillors when they stood for election in 1985? If there were some who were supported by the Executive Councillors, how many were there, and who were they? Up to this point, have we received complaints about unfair treatment at that point?*

CHIEF SECRETARY: Sir, I do not think it is a matter for the Administration to comment on how Members of this Council were supported or not supported by other Members of this Council or the Executive Council. That is a matter purely for their own concern and not a matter for the Administration.

MR. CHUNG (in Cantonese): *Sir, in 1983, the Governor appointed the Member who had the highest number of votes in the Urban Council to this Council, and in 1986 Elected Members were also appointed to the Executive Council. This is definitely a step towards liberalisation. When the Governor appoints such people who are really representive to the Executive Council, does that actually separate them from the other Members of the original Council?*

CHIEF SECRETARY: Sir, with respect, I think the question is totally unrelated to the original question.

MR. MARTIN LEE: *Sir, does the Administration see that there is a distinction between Members seeking election to this Council via the functional constituency route in which case most of them are elected by a one-person one-vote basis, and Members seeking election via the electoral college route where they are seeking election from 30 or 40 Members, one third of which are appointed?*

CHIEF SECRETARY: Sir, as I have said, in each case the Members are elected on the basis of the individual votes of the Members concerned. I do not see a distinction between the two system.

Written answers to questions

Review of the Widows and Children's Pensions Scheme for the Civil Service

9. MR. TAM asked: *Will Government inform this Council whether consideration will be given to revising the Widows and Children's Pensions Scheme with a view to bringing about the following improvements:*

(a) reducing the contribution rate;

(b) including immediate family members as beneficiaries in the case of single civil servants; and

(c) giving civil servants an option as to whether or not to join the scheme?

CHIEF SECRETARY: Sir, the Widow's and Children's Pensions Scheme for the Civil Service is being reviewed at present with a view to updating its provisions and removing existing anomalies. The provisions of the scheme, including its compulsory membership, rate of contribution and the definition of beneficiary will be carefully examined in the light of staff views and actuarial advice. It is premature to say at this stage what improvements specifically will be brought about as a result of the review.

Use of friction cause to reduce traffic noise

10. MR. POON CHI-FAI asked: *In relation to the overlay of 'friction course' on certain sections of the Island Eastern Corridor to reduce noise generated from vehicles using this roadway, will Government inform this Council:*

(a) whether there is any significant reduction in the noise level after the overlay of friction course; and

(b) whether there is any plan to overlay the material on other roads and, if so, what criteria will be used to determine which roads are to be overlaid?

SECRETARY FOR TRANSPORT: Sir, results of several noise surveys conducted by the Environmental Protection Department show that the friction course laid on a 300 m section of the Island Eastern Corridor has reduced the noise generated by road vehicles by an average of five decibels. This is considered significant because to achieve this reduction the traffic flow on the Island Eastern Corridor would have to be reduced to about 30 per cent of its current flow.

The use of this bituminous friction course was developed by Highways Department mainly to improve skid resistance and was used originally on the New Territories Circular Road where traffic was expected to travel at higher speeds.

However, the major problem in applying this friction course to elevated concrete roads is to accommodate the expansion joints of these structures. On the Island Eastern Corridor the joints have been covered using a buried joint system not previously used in Hong Kong. The durability of this system and the adhesion of the friction course to the old concrete surface will need to be monitored for a longer period before any extension of the trial can be considered.

On many of our roads the application of friction course is being used as an overlay to improve skid resistance. The future use of friction course to reduce

traffic noise in addition to improving skid resistance will be more actively pursued once the present trial section on the Island Eastern Corridor has proved to be successful over a sufficient period of time.

Light-weight transparent enclosures for flyovers

11. MR. CHEONG-LEEN asked: *The Environmental Protection Department has proposed to experiment with light-weight transparent material to cover flyovers carrying high volume traffic which are close to residential buildings in order to reduce the noise effect on residents. Will Government inform this Council whether the experiment has been completed, and if so what conclusions have been drawn; if not, when will the experiment be completed?*

SECRETARY FOR HEALTH AND WELFARE: Sir, the Environmental Protection Department has proposed that light-weight transparent covers should be considered for flyovers carrying a high volume of traffic close to residential buildings. Such a measure would be effective in reducing the noise problem and is likely to be more attractive than concrete covers. The practicability and feasibility of such designs are being reviewed by the Administration, but an actual experiment has not yet been conducted.

However, it has been agreed that two elevated sections of the Tate's Cairn Tunnel approach roads near Choi Hung Estate and Richland Gardens in Kowloon should be constructed with noise reducing enclosures, and plans are in hand to evaluate whether these enclosures could be made of light-weight transparent materials. The Environmental Protection Department is considering this matter together with Highways Department.

Control of disposal of livestock waste at unloading points

12. MR. CHAN YING-LUN asked: *In line with the banning of livestock keeping in the urban areas, does Government intend also to control the disposal of animal waste brought into the urban areas by imported livestock at train and ship unloading stations, abattoirs and wholesale markets?*

SECRETARY FOR HEALTH AND WELFARE: Sir, abattoirs, markets and lairages are exempt from the provisions of the Waste Disposal (Amendment) Ordinance which controls the disposal of livestock waste. However, adequate anti-pollution measures are taken by the relevant government departments at these facilities. Livestock waste is collected on a daily basis and disposed of at landfills and incinerators.

As regards livestock imported from China on the Kowloon-Canton Railway, the wagons are not cleansed in Hong Kong but are sent back the same day for

cleansing in China. It is the intention that the unloading of live pigs now taking place at Ho Man Tin will be transferred to the new Sheung Shui abattoir by 1990, thus removing the need for the pigs to be brought into the urban area.

British National (Overseas) passport

13. DR. LAM asked: *In view of the fact that despite the introduction of the British National (Overseas) BN(O) passport, the number of applications for the British Dependent Territories Citizens passport has far exceeded that for the BN(O) passport, will Government inform this Council whether measures will be taken to encourage the people of Hong Kong to apply for the BN(O) passport and if not, why not?*

SECRETARY FOR SECURITY: the United Kingdom Memorandum associated with the Sino-British Joint Declaration on the future of Hong Kong provides that Hong Kong British Dependent Territories Citizens (BDTCs) will cease to be such citizens with effect from 1 July 1997, but will be eligible to retain an appropriate status which will entitle them to use British passports. The schedule to the Hong Kong Act 1985 provides the legal basis to give effect to the provision of the United Kingdom Memorandum. Under the Act, the Hong Kong (British Nationality) Order was made whereby the British National (Overseas), or BN(O), status has been created.

A Hong Kong BDTC is entitled under the Hong Kong (British Nationality) Order 1986, to register as a BN(O) and to hold a BN(O) passport. The application for a BN(O) passport embodies the application for registration as such a national.

The status of a Hong Kong British Dependent Territories citizen will cease on 1 July 1997. Until that date there is a choice for Hong Kong British Dependent Territories citizens to elect to acquire the BN(O) status and the passport that goes with it. It is established government policy neither to encourage nor discourage individuals to acquire a nationality or citizenship through registration or naturalisation. The choice must be left to the individuals themselves, and it is considered inappropriate for the Government to exert any influence in this respect.

Nevertheless, it is the Government's responsibility to provide the public with sufficient information on the BN(O) status and adequate guidance on how to apply for a BN(O) passport. As early as October 1985 when the White Paper on the draft Hong Kong (British Nationality) Order 1986 was published, the Government initiated efforts to explain the BN(O) status and to invite the public to make known their views. Prior to the introduction of the BN(O) passport, efforts were also made to provide the public with more information and guidance through the mass media, discussions at district board meetings, displays of posters, distribution of explanatory leaflets and operation of a

recorded telephone message system. Since 17 November 1987, a hotline has been operating in the Immigration Department to serve members of the public who wish to enquire about the BN(O) passport.

We believe that the number of BN(O) passport applications will gradually increase. The BN(O) passport has a 10-year validity and it can be replaced both before and after 1 July 1997, whereas the BDTC passport has a progressively shorter validity as 1997 approaches, and is not replaceable after 1 July 1997.

Government Business

Motion

HONG KONG ROYAL INSTRUCTIONS 1917 to 1988

THE CHIEF SECRETARY moved the following motion: That the Standing Orders of this Council be amended—

(1) in Standing Order No.3 by repealing paragraph (2) and substituting—

'(2) The President shall preside at sittings of the Council and shall be the Chairman of committees of the whole Council. In the absence of the President from a sitting of the Council the Member appointed by the Governor shall so preside, and in the absence of such Member the senior Official Member present shall preside.';

(2) in Standing Order No. 5(2) by adding after '*Gazette*'—

',or on a dissolution of the Council, whichever is earlier';

(3) in Standing Order No.6 by adding after paragraph (6)—

'(7) If there is urgent business for the consideration of the Council at the first sitting of a session the Council shall proceed with that business, and the provisions of this order relating to the Governor's address shall apply to the next sitting at which there is no urgent business for the consideration of the Council.';

(4) in Standing Order No.7A by deleting 'Notwithstanding that a session may have ended and the next following session has not yet begun,' and substituting—

'During any period when the Council is in recess between the end of one session and the beginning of the next session'.

(5) by adding after Standing Order No.7A—

'Sittings for urgent business after a dissolution

7B. These Standing Orders shall apply to a sitting of the Council held for the consideration of urgent business following a dissolution of the Council as they apply to a sitting held during a session.';

(6) in Standing Order No.38(5), with effect from the commencement of the session of the Council commencing in 1988, by repealing 'note in the margin of' and substituting 'section heading above';

(7) in Standing Order No.46—

(*a*) in paragraph (1) by repealing 'put' wherever it occurs and substituting 'proposed';

(*b*) in paragraph (6), with effect from the commencement of the session of the Council commencing in 1988, by repealing 'marginal note' and substituting 'section heading';

(8) in Standing Order No.55—

(*a*) in paragraph (3) by repealing 'put' and substituting 'proposed';

(*b*) in paragraph (5) by repealing 'put' wherever it occurs and substituting 'proposed';

(9) in Standing Order No.60—

(*a*) by adding after paragraph (2A)—

'(2B) The committee may appoint subcommittees for the purpose of assisting the committee in the performance of such functions of the committee as the committee may determine.';

(*b*) in paragraph (3) by adding after 'the times'—

'(including any time during the period when the Council is in recess between the end of one session and the beginning of the next session)';

(*c*) by adding after paragraph (4A)—

'(4B) Paragraph (4A) shall apply during any period when the Council is in recess between the end of one session and the beginning of the next session as it applies during a session.'.

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

The main purpose of the amendments to Standing Orders set out in the Order Paper is to provide for the forthcoming dissolution of this Council and subsequent dissolutions. Thus clause 2 provides that a session of the Council will end on a dissolution, clause 3 enables the Council to convene for the consideration of urgent business in the period between election day and the date set for the Governor to give his annual address. Clause 4 is a technical amendment which makes it clear that the period between sessions excludes the period of dissolution, and clause 5 provides that Standing Orders shall apply to any sitting held for the consideration of urgent business following a dissolution.

The opportunity of this amendment is taken to make other desirable amendments to Standing Orders. For example, clause 1 is intended to make it clear that the President does not have to be absent from Hong Kong, but merely from the Legislative Council, before the arrangements for presiding in his absence may apply. This follows a similar clarification which was made when the Royal Instructions were amended earlier this year.

Clauses 6 and 7(*b*) provide for the replacement of marginal notes in Bills by left margin section headings. This amendment also follows from recent changes to the Royal Instructions.

Clauses 7(*a*) and 8 are technical amendments concerned with the procedures for debating amendments to Bills in Committee. Lastly, clause 9 gives authority to Finance Committee to appoint sub-committees and permits the committee to deal with matters by circulation during a recess and, if necessary, to hold a meeting in a recess to decide matters which cannot be determined on circulation.

Sir, I beg to move.

Question proposed.

MR. ANDREW WONG: Sir, I rise in support of the resolution to amend the Standing Orders of this Council moved by my hon. Friend, the Chief Secretary. Although the amendments contained in the resolution appear to be more of a technical nature that to have major constitutional significance, I wish to simply say that rivers and oceans do originate from tiny rain drops, and that the stability of our political and other systems, and hence the stability also prosperity of Hong Kong, owe much to this piecemeal or rather inching approach.

Sir, I wish to underscore four points.

First, dissolution of this Council. The forthcoming dissolution of this Council will be the first ever in our 140 odd years of history. It was first provided for in 1985 when representative government at the level of this Council first came of age. The provision was amended earlier this year to allow for an increased flexibility of a shorter dissolution without wrecking havoc to our tradition of recess during the months of August and September. The present amendment in clause 3 seeks to amend Standing Order No.6 to allow for a further increase in the flexibility of a shorter dissolution by making it possible for the sitting held for urgent business between election day and the day of sitting schedule for, Sir, your Governor's address, to be the first sitting and, hence, the commencement of the new Legislative Council.

Sir, if I gather the sentiments of my hon. Colleagues correctly, we believe it is important that the dissolution period ought to be as short as possible so as not to be put in a situation of a vacuum for too long. I do urge the Administration to further study the possibility of further reducing the dissolution period to, say,

three weeks before election day and, say, up to two weeks before commencement, as is the case in the United Kingdom. In connection with the dissolution, I only wish to add that I welcome the tidying up of provision governing dissolution through amendments to Standing Orders Nos. 5(2) and 7A and the addition of Standing Order No.7B which are proposed in clauses 2,4 and 5.

Sir, my second point relates to your presidency over this Council. Previously, I had said in this Council that you, Sir, with respect, need not be the President of this Council, and that before our constitutional arrangements evolve to that stage, you ought to consistently appoint a non-government Member of this Council to preside in your place, which is within your powers to do so. I was then referring to Standing Order No.3 and Royal Instructions clause XXI(2). Because of the wording of the said Standing Order and Royal Instruction, doubts could be cast as to whether or not you do have necessary powers. The said Royal Instruction was now amended earlier this year to remove the doubts. Now, clause 1 of the resolution proposes a similar redrafting by principally adding the words: 'from a sitting of the Council' to qualify the absence of the Governor, thus removing the possibility that absence could be construed to mean absence from Hong Kong. I welcome this amendment and urge you, Sir, to exercise your unequivocal powers.

Sir, my third point is on clauses 6 which proposes to replace marginal notes by section headings in our laws. These amendments also follow from a recent amendment to the Royal Instructions. Here, I simply wish to seek the Administration's open confirmation that section headings like marginal notes as of present have no legal effect.

Sir, my fourth and last point relates to the Finance Committee. I welcome the regularisation of the two long-standing standing sub-committees of the Finance Committee, that is the Establishment Sub-Committee and the Public Works Sub-Committee, by specifically empowering the Finance Committee to appoint sub-committees as proposed in clause 9(*a*). I also welcome the clarification proposed in clause 9(*b*) and (*c*) that the Finance Committee can sit during a recess. I only wish to seek confirmation that this does not include the dissolution period except when this Council is recalled.

With these remarks, Sir, I beg to support the motion.

CHIEF SECRETARY: Sir, I am grateful to Mr. WONG for his support of this motion.

Mr. WONG's first point is that the dissolution should be as short as possible. The dissolution this year will be as short as possible consistent with the existing law and the constraints of the timetable for elections. However, Sir, the Administration will look at these arrangements to see whether further reductions could be made in future years.

Mr. WONG's second point is that the President should exercise his powers to appoint another Member to preside in his absence as often as possible. Mr. WONG has also suggested that this Member should not be an Official. Sir, paragraph 60 of the White Paper on the Development of Representative Government: the Way Forward states 'When the Governor cannot attend the Council, a Member appointed by him, or the Senior Official Member present, will preside in his place.' The Governor has already used the power on a number of occasions, will no doubt continue to do so. The power does, of course, enable the Governor to appoint a Member other than an Official Member.

Thirdly, Mr. WONG seeks confirmation that section headings like marginal notes have no legal effect. I can confirm that this is the position. This is provided for in section 18(3) of the Interpretation and General Clauses Ordinance.

Finally, I can confirm that the Finance Committee cannot normally be convened following a dissolution. However, under the Royal Instructions, the Governor has power to convene a sitting of the Council for consideration of urgent business after a dissolution. In such an emergency situation, Sir, it is possible to envisage circumstances when the Finance Committee might indeed be recalled.

Question put and agreed to.

First Reading of Bills

SUPPLEMENTARY APPROPRIATION (1987-88) BILL 1988

SOCIETIES (AMENDMENT) (NO.3) BILL 1988

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) BILL 1988

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

Second Reading of Bills

SUPPLEMENTARY APPROPRIATION (1987-1988) BILL 1988

THE FINANCIAL SECRETARY moved the Second Reading of: 'A Bill to approve a supplementary appropriation to the service of the financial year which ended on 31 March 1988'.

He said: Sir, I move that the Supplementary Appropriation (1987-88) Bill 1988 be read the Second time.

Section 9 of the Public Finance Ordinance states that 'If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates'.

Sir, the accounts for the financial year 1987-88 have been finalised by the Director of Accounting Services. Actual revenue amounted to $55.6 billion and total expenditure amounted to $44 billion. The total surplus is thus $11.6 billion as compared with an estimated surplus of $10.5 billion mentioned in my concluding speech in the Budget debate last May.

The expenditure charged to 52 heads is in excess of the sum appropriated for those heads by the Appropriation Ordinance 1987. This is because sufficient offsetting savings could not be found within the heads concerned. In accordance with section 9 of the Public Finance Ordinance, this excess has been included in the Supplementary Appropriation (1987-88) Bill 1988 now before Members. The Bill seeks to give final legislative authority for the amount of supplementary provision approved in respect of particular heads of expenditure by the Finance Committee or under powers delegated by it.

The total net supplementary appropriation required in respect of the 52 heads of expenditure is $1,526.3 million. This excess is largely accounted for by the 1987 Pay Adjustment and Pay Improvement Package for Model Scale 1 staff for the Civil Service ($808.2 million) and government subvented organisations ($388.4 million). Other major contributing factors include the early repayment in full of the four outstanding Asian Development Bank loans ($318.2 million) and the purchase of water from China ($132 million).

Savings made in other subheads are due to continued tight control over public expenditure, and I would like to thank the controlling officers and others who have contributed to restraint.

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

Question on adjournment proposed, put and agreed to.

SOCIETIES (AMENDMENT) (NO.3) BILL 1988

THE ATTORNEY GENERAL moved the Second Reading of: 'A Bill to amend the Societies Ordinance'.

He said: Sir, I move that the Societies (Amendment) (No.3) Bill 1988 be read the Second time.

As Members are no doubt aware the Societies Ordinance is intended to prohibit triad societies and other groups which threaten the peace, welfare or good order of Hong Kong. To this end, all clubs, companies, partnerships and other associations are required to apply for registration or for exemption from registration under the Ordinance unless they are specifically exempted from that requirement under the schedule to the Ordinance.

At present, by item (6) of the schedule, partnerships consisting of not more than 20 persons formed for the sole purpose of carrying on any lawful business and registered under any other Ordinance are exempted from registration. This exclusion was provided and limited to partnerships of not more than 20 members because, prior to 1978, the Companies Ordinance prohibited partnerships of more than 20 members.

In 1978 the Companies Ordinance was amended to permit partnerships of more than 20 solicitors, accountants or stockbrokers. But, by an apparent oversight, no corresponding amendment was made to item (6). Subsequently, many professional firms expanded beyond the 20 partner limit. By failing to register they have become 'unlawful societies' rendering their partners, employees, landlords and others having dealings with them liable to criminal prosecution. Equally, as the courts will not enforce illegal contracts, such persons may be unable to sue for their fees, wages, rent, and other debts.

Sir, clearly the Societies Ordinance was never intended to apply to legitimate business enterprises and it is unjust that through its operation persons engaged in business associations may have been rendered liable to criminal prosecution and unable to use the law to enforce their civil claims.

Clause 2 of the Bill amends the schedule so that any partnership, irrespective of the number of members, will be excluded from the requirement to register as a society provided that it is solely engaged in a lawful business and is registered under any other Ordinance (such as the Business Registration Ordinance). By clause 1(2) the amendment will be retrospective to the date when the new section 345(2) of the Companies Ordinance came into effect in 1978. By clause 1(3) current legal proceedings will be excluded from the retrospective operation of the amendment.

It is considered that clause 2 must be given retrospective effect in order to ensure that those who have already entered into otherwise legitimate transactions with large legal, accounting and stockbroking firms are not precluded from enforcing their rights or are permitted to evade their obligations arising from such transactions. There is also a significant risk that where the large firms have acted as agents in legal proceedings or in commercial, financial or share transactions the parties for whom they acted and persons with whom they dealt may be unable to enforce their interests unless the clause operates retrospectively.

Sir, I commend this Bill to the Council as a sensible tidying-up measure designed to remedy an oversight. I move that the debate on this motion be now adjourned.

Question on adjournment proposed, put and agreed to.

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) BILL 1988

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: 'A Bill to amend the Supplementary Medical Professions Ordinance'.

He said: Sir, I move that the Supplementary Medical Professions (Amendment) Bill 1988 be read the Second time.

Following the enactment of the Supplementary Medical Professions Ordinance in 1980, work began on the drafting of the subsidiary legislation and the formation of the five para-medical professions boards, which would be responsible for setting standards of professional practice and conduct among members of their relevant profession. These boards have now been formed. The drafting process was however delayed initially because of the need to amend the principal Ordinance to enable certain provisions and proposals recommended by the boards to be included in the regulations. Subsequently, the Supplementary Medical Professions, Midwives Registration and Nurses Registration (Amendment) Ordinance was passed in 1985 to give effect to these changes, and drafting of the various regulations then resumed.

The regulations for occupational therapists and medical laboratory technologists have now been completed. Those for the remaining three professions are in their final stage of drafting. In the course of drafting these regulations, it has become evident that further amendments to the Ordinance were necessary in order to implement the proposals for the discipline and control of the professions. The Bill before Members seeks to make those amendments.

The major amendments proposed in the Bill are mainly enabling provisions.

Clause 6 introduces a new section 15A to provide the professional boards with the power to hold examinations to assess the professional competency of persons applying for certificates or registrations under the relevant provisions of the principal Ordinance. The new section 15B provides that a person may appeal to the Council against any decision of a board other than a decision in relation to registration, discipline, provisional registration and examination.

Clause 8 deals with codes of practice for the professions. It empowers the boards to provide for guidelines regulating the activities of persons supervising registered persons and activities of those who are being supervised, in the codes

of practice prepared by the boards. It also requires the professional boards to notify the Supplementary Medical Professions Council on the codes of practice drawn up or any subsequent revision made to them.

Clause 9 enables regulations to be made, creating categories of registered persons according to their qualifications, training and experience, prescribing the qualifications and experience necessary for practising a profession without supervision, specifying who would be entitled to practise without supervision, and restricting those without the prescribed qualifications from doing so. The Ordinance as it stands enables persons with qualifications and experience additional to those required to qualify for registration to 'practise on their own account'. Since that phrase implies control of the mode of business, rather than the need and adequacy of professional supervision, it is proposed to replace 'practise on their own account' with 'practise without supervision' to reflect the real intention of the law. This clause also contains amendments for regulations to be made enabling the board to determine the quality of the experience acceptable to the board and to accept experience other than the prescribed experience.

Clause 10 requires para-medical professionals working in approved teaching institutions, subvented organisations or the Civil Service to be registered rather than exempted as at present, so that they too will be subject to the disciplinary control of the professional boards. However, they will continue to be exempted from the payment of registration fees, the requirement to display a practising certificate and the requirement to practise in licensed premises.

The remaining amendments in the Bill are of a minor and technical nature.

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

Question on adjournment proposed, put and agreed to.

BANKRUPTCY (AMENDMENT) BILL 1988

Resumption of debate on Second Reading (22 June 1988)

Question proposed, put and agreed to.

Bill read the Second time.

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

COMPANIES (AMENDMENT) (NO.2) BILL 1988

Resumption of debate on Second Reading (22 June 1988)

Question proposed, put and agreed to.

Bill read the Second time.

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

DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) (AMENDMENT) BILL 1988

Resumption of debate on Second Reading (18 May 1988)

Question proposed, put and agreed to.

Bill read the Second time.

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

COMPLEX COMMERCIAL CRIMES BILL 1988

Resumption of debate on Second Reading (1 June 1988)

Question proposed.

MR. PETER C. WONG: Sir, the purpose of this Bill is to provide a new procedure for the trial of complex commercial crimes. Serious complex commercial crime cases may be transferred from the magistracy to the High Court without the need for committal proceedings. Where a case is transferred under this procedure and a judge determines that a preparatory hearing should take place, the trial begins with a preparatory hearing without a jury. The purpose of the preparatory hearing is to settle points of law and clarify issues for the jury. At the conclusion of the preparatory hearing, a jury will be empanelled and the trial will proceed in the usual way.

As Members are aware, the Bill seeks to implement, as far as practicable, the report of the select committee on the problems involved in the prosecution and trial of complex commercial crimes.

Sir, on 1 June 1988, the Attorney General gave a concise account of the sequence of events leading to the introduction of this Bill and a brief description of its main provisions, I shall not cover the same ground again.

Sir, the ad hoc group set up to examine the provisions of the Complex Commercial Crimes Bill 1988 has now completed its task, after intensive consultation with the Bar Association, the Law Society and the Administration.

The group, which was also responsible for studying the White Bill, is generally satisfied that its comments and recommendations on the Complex Commercial Crimes White Bill 1987, have broadly been reflected in the present Bill. The major recommendations that have been incorporated include:

(1) The scope of the Bill and the schedule of specified offences:

The Administration has accepted that definition of 'Complex Commercial Crime' should not be formulated by reference to a schedule of offences but rather it should be defined in relation to whether a case of fraud or dishonesty in the commercial context is involved.

(2) Judicial discretion in ordering special procedures:

In the White Bill, only the Attorney General was given the power to decide whether a case falls within the ambit of the new legislation. That was thought to be undersirable. The judge is now given that discretion to decide whether, having regard to the nature of a case, there will be a need to hold a preparatory hearing before the jury is empanelled.

(3) The extent of the obligation of the defence to disclose its case:

The original proposal contained in the White Bill was for the defence to supply a written outline of the defence case in response to each of the principal facts in the prosecution case specifying the principal facts upon which the defence case is based. This document is called the defence case outline. The group's view was that the scope of such a provision was too wide and should be narrowed down. This was accepted by the Administration and the defence case outline is now replaced by a 'defence response' which is merely a written statement indicating, with reference to the prosecution case statement, the facts on which the defence takes issue with the prosecution. In simple terms, the defence would not now be obliged to reveal its defence at the preparatory hearing.

Sir, during the discussion by the group on the present Bill, further points have been raised and as a result of deliberation and consultation, agreement in the following areas have been reached:

(1) Definition of complex commercial crime (clause 3(1)(*b*)(ii))

The group considers that the scope of the revised definition is still too wide as it could be extended to cover cases of serious and complex

fraud irrespective of whether they are in a commercial context. The Administration concedes that the point made is valid and the clause will be amended so that it is confined only to cases of fraud and/or dishonesty in the commercial context.

(2) Charges related to complex commercial crimes (clause 9(1))

To be consistent with clause 8, and to obviate any doubt, it has been agreed that the word 'indictment' in clause 9 should be classified by the words 'count or counts'.

(3) Amendment of the prosecution case statement, with leave of court, at any time before the jury is empanelled (clause 13(2))

The group considers that the prosecution should be able to amend its case statement at any time before the jury is empanelled provided the amendment is relevant. But is also considers that there should be sufficient safeguards to prevent possible abuse by the prosecution. After lengthy discussion, it has now been agreed that the clause should be amended to the effect that no change to the prosecution case statement should be allowed except where the judge is satisfied that the change has been brought about by unforeseen circumstances beyond the control of the prosecution, and that the amendment is made in the interests of justice. As a further safeguard, the order may be made subject to such consequential conditions as the court may impose, including any amendment to the defence response and withdrawal of admissions.

(4) Limitations on objections to admissibility of evidence after the jury has been empanelled (clause 15(5) and (6))

Concern was expressed by the Bar Association and the Law Society that the clause could be interpreted to mean that even normally inadmissible evidence could not be objected to if the points have not been taken before the jury is empanelled. In their view, the admissibility of evidence has always been determined upon the established rules of evidence and not upon the timing of the objection; and it is considered wrong in principle to seek to exclude evidence by way of procedure. In response to the concern expressed, the Administration has agreed that where there has been no objection at the preparatory hearing, the defence will not be prevented from raising late objections even after the jury has been empanelled but the judge will have the discretion to order the defence to pay any additional costs properly incurred by the prosecution.

(5) Introduction of evidence after jury has been empanelled (clause 16(3))

This provision prevents the defence from introducing evidence, after the jury has been empanelled, which is inconsistent with the defence response, except with leave of the judge. The Bar Association and the

Law Society argue strongly that this clause is unfair and makes it less likely for the defence to take a positive and co-operative approach when it has to indicate all the facts which it takes issue with the prosecution and when it is so severely proscribed by the consequences of not taking such issue. The Administration however argues that the purpose of the Bill is to save time and money by allowing the parties to concentrate their energies on the real areas of dispute. If, having identified these areas, the parties were at liberty, without leave, to open up new areas the position would be that an 'ambush' situation might develop, and the legislation would then serve no useful purpose.

Sir, the arguments were finally balanced. In view of the fact that the defence is now no longer required to produce a defence case statement but merely a defence response, the group feels that perhaps there is some merits in the joint representations of the Bar Association and the Law Society.

Sir, clause 16(3) was a major hurdle. The breakthrough came at the eleventh hour when the Administration conceded that it could live without the benefit conferred by this clause. This is certainly a relief to all concerned and in the spirit of give and take, the Administration now agrees to the deletion of clause 16(3).

(6) Defence case statement (clause 23)

This clause serves little useful purpose and will be deleted from the Bill.

(7) Furnishing of documents to the jury (clause 25)

This clause will be amended to reflect the group's view that the jury will not be furnished with the defence response except with the consent of the defence.

(8) Costs (clause 26)

The Administration has accepted the suggestion of the Bar Association and the Law Society that costs should be awarded on an indemnity basis rather than on solicitor and own client basis.

Sir, that concludes my summary of the group's deliberations. The agreed amendments will be moved in Committee by my colleagues, Mr. John SWAINE and Mr. Martin LEE.

Sir, due to time constraint, the group had to work under great pressure. I would like to record my appreciation of the time and effort put in by members of the group and the co-operation and contribution by the legal profession. In particular, I would like to mention the positive and reasonable attitude adopted by the Administration, which has made it possible for the resumption of the debate on this Bill to take place this afternoon. The support given to the group by the OMELCO secretariat and the legal adviser is also greatly appreciated.

Sir, I agree with the Attorney General that this Bill is an excellent example of the success of the Hong Kong consultative process. Three years may be a long time but as this is an exceptionally important piece of legislation, it is essential that we get it right and that it has the support of the community. I am confident, Sir, that with the support of the legal profession and the community, the new procedure will go a long way towards reducing the length and cost of complex commercial crime trials without impinging upon the rights of the accused.

Sir, in supporting the motion I wish to stress that the law is never static and that, however imperceptible, its frontiers are constantly shifting.

MR. SWAINE: Sir, the Complex Commercial Crimes Bill 1988 has had a long and chequered history, and introduces some much needed reform in the trial of such crimes. The difficulty has been to ensure that these reforms are not introduced at the expense of fundamental principle relating to the burden on the prosecution to prove the guilt of the accused and to the right of the accused to silence.

It has been necessary to ensure that only such crimes as might properly be described as complex commercial crimes are subject to the new procedures, and this is achieved by the definition clause 3(*b*)(ii) which by the deletion of the comma after the word fraud, makes clear that the fraud or dishonesty is in a commercial context, and that it must be both serious and complex.

Much of the improved procedures will lie in the preparatory hearing which will take place before the jury is empanelled. Under clause 9, it is for the judge to decide whether such a preparatory hearing should take place, and he may act on the application either of the prosecutor or of the person indicted or of his own motion.

Among his powers under clause 13, the judge may order the prosecutor to serve on the accused and deliver to the court a statement containing (under amendments to be introduced in Committee) a concise account of the facts and the inferences sought to be drawn from those facts on which the prosecution case is based, and also a statement of any proposition of law specifically applicable to the prosecution case on which the prosecutor proposes to rely.

It will be seen that the prosecution may be ordered at this early stage to disclose its case, as part of the reform to ensure that the true issues in the case are identified before the jury is empanalled.

The complementary reform relating to the defence case is contained in clause 16 by which the judge may order the accused to serve on the prosecutor and deliver to the court a written statement (known as the defence response) indicating, (under amendments to be made in Committee), with reference to the prosecution case statement, the facts and inferences on which he takes issue with the prosecution, as well as a written statement of all propositions of law in reply to any propositions of law stated by the prosecutor.

It will be seen that the defence response is to be purely defensive and responsive, namely what does the defence have to say about the prosecution's facts and law. The accused is not obliged under this proposed reform to reveal his positive case, and in that very real way, his right to silence is preserved. This toned-down version of the defence case represents workable compromise of what, if anything, the defence should be obliged to disclose at the preparatory hearing. It does not go as far as the select committee recommended at paragraph 4.32(*d*) at pages 30 and 31 of its report which reads:

> ' "It is insufficiently clear what the defence outline should contain." None of our witnesses envisaged it as more than an indication of the main lines of defence, with less detail than the prosecution's case statement. However, if it is to be useful, it must go further than simple admissions of facts and documents. If the proposal for a case outline is accepted, we consider that legislation should reflect the following practical requirements. First, considerable discretion should be left to the trial judge. Second, the outline should nevertheless be sufficiently clear and detailed to allow the prosecution to confine its notices to admit to facts and documents which are relevant to the case. Third, provision should be made for parallel or inconsistent lines of defence.'

The select committee's recommendation for defence disclosure was thus heavily qualified, and I think reflects the very real dilemma facing it of proposing reforms to the law without undue sacrifice of principle. That dilemma has now I think been resolved by the concept of the defence response. By this means the prosecution is able to tell which part of its case is in issue and which part is not. It is thus enabled to concentrate on the real issues which it must prove according to the normal standards in criminal cases. But as those parts of its case which are not really in issue, the prosecution is able by means of the new procedures to call on the defence to make formal admissions as to facts and documents. The judge is to have power under clause 17 to require the defence to make these admissions or to state the reasons for its refusal. Under subclause (3) it is sufficient, if the document, fact or matter to which his refusal relates is central to a fact on which the accused takes issue with the prosecution as indicated in the defence response, to give this as a reason.

It will therefore be seen that the defence response is the key to the improved procedures. The defence is not obliged to be co-operative with the prosecution in narrowing the issues by serving a meaningful response to the prosecution case statement. It may have genuine reasons for adopting a cautious line in its response. The accused does however take the risk of being penalised in costs under clause 26 if the judge considers that such costs have been incurred as a result of an unnecessary or improper act or omission by or on his behalf. Such costs (under amendments to be proposed in Committee) may be awarded on an indemnity basis, although not as a precondition of taking other steps in the

proceedings. With the consent of the accused, the judge by clause 25 (under amendments to be moved in Committee) may order that a copy of the defence response be furnished to the jury.

One further reform introduced by the Bill relates to the disposition at the preparatory stage of objections to evidence. Thus under clause 13(1), the judge may order the prosecutor to serve on the accused and deliver to the court copies of the statement of the witnesses whom the prosecutor intends to call at the trial after the jury has been empanelled. Under clause 15(1) the judge may order the accused to state any objection he has to such evidence, and under subclause (3) the ground of his objection. The judge shall thereafter determine the admissibility of such evidence under subclause (4) having regard to any representations made by the prosecutor and the accused. The object of this reform is to minimise delays occasioned during the trial after the jury has been empanelled by the late taking of objections to evidence. Under subclause (5) as now worded, where the defence does not object in advance to such evidence, its admissibility at the trial shall not be objected to unless the judge is satisfied that the objection could not reasonably have been made during the preparatory hearing.

However, as a result of representations made by the professions, it is now considered it would be too drastic to thus shut out a late objection to evidence, which might otherwise be meritorious. Thus under an amendment to be made in Committee, subclause (5) is to be replaced by a provision which would instead authorise the judge specifically to order the accused to pay to the prosecutor the additional costs thus incurred.

Sir, the present Bill with the proposed Committee stage amendments represents the final distillation of over three years work. I think it achieves the object of reform in this very difficult area without sacrifice of principle. I am happy to support the motion.

4.25 pm

HIS EXCELLENCY THE PRESIDENT: Three Members of the Council are still down to speak on the Second Reading of this Bill. Members might welcome a short break.

4.44 pm

HIS EXCELLENCY THE PRESIDENT: Council will resume.

MR. MARTIN LEE: Sir, I thank the Attorney General for giving us a very precise and helpful historical background of this Bill in his speech made on 1 June 1988 when he moved the Second Reading of this Bill.

In its final form, and in the light of amendments which will be moved in Committee, this Bill is in my view beneficial to the community of Hong Kong. Indeed, it has the full support of the Hong Kong Bar Association and the Law Society of Hong Kong. And I have been asked by the representatives of these professional bodies to express in this Council their appreciation of the efforts put into this Bill by both members of the ad hoc group and the Administration.

Sir, it is necessary to remind ourselves that on two separate occasions two very basic principles of our system of criminal justice had been threatened. First, the Trial of Commercial Crimes Bill 1985, which is the predecessor of the present Bill, proposed the abolition of the jury for the trial of complex commercial crimes and substituted it with two commercial adjudicators sitting with a judge, so the jury system which is the cornerstone of our criminal justice in Hong Kong was rocked to its very foundation.

Not so long ago, the draft Complex Commercial Crimes Bill 1987 (the White Bill) required an accused indicted for a complex commercial crime to 'serve on the prosecutor and to deliver to the court...a written outline of the defence case in response to each of the principal facts in the prosecution case statement, specifying the principal facts upon which the defence case is based'. Such a requirement would have forced the accused to tell the prosecutor what his case was even before the trial commenced, and it therefore threatened another cardinal principle of criminal justice, namely, that a person is presumed innocent until the contrary is proved, with a corollary that an accused has the right to remain silent throughout.

Not unnaturally, therefore, both the Bar Committee and the Council of the Law Society of Hong Kong took strong objections on both occasions. And it is to the credit of my colleagues of this Council as well as to the successive Attorney Generals that both threats are now removed. First, the former Attorney General Mr. Michael THOMAS, Q.C. backed down from his proposal that complex commercial crimes be tried by a judge and two commercial adjudicators instead of by a judge and a jury. And recently the present Attorney General acceded to the submission of the Bar Association and Law Society that the accused should not be required to serve and deliver a written outline of the defence case.

Sir, I mention these matters because it is necessary to remind ourselves ever so often that if the people of Hong Kong wish to preserve the rule of law and the independence of the Judiciary after 1997, then it is incumbent on all of us to realise that these cardinal principles of criminal justice must not be whittled down in any circumstances whatsoever.

Sir, no legal system is perfect in this world. But we believe that our legal system affords the greatest protection to the individual. And in the context of 1997, nothing can be more important than the preservation of these cardinal principles.

The present clause 16(1)(*a*) no longer requires an accused person to serve and deliver 'a written outline of the defence case' but merely requires him to serve on the prosecutor and deliver to the court 'a written statement indicating, with reference to the prosecution case statement, the facts on which he takes issues with the prosecution'.

Sir, I shall move a number of amendments in Committee which I understand will be supported by the Administration. But I do not propose to deal with them at this stage.

In conclusion, may I thank the convenor of the ad hoc group, the hon. Peter C. WONG, who has devoted much time and energy throughout the various stages of this Bill and his predecessor and who has been extremely patient, open-minded and fair to all sides. I would also like to thank the hon. John SWAINE for chairing some of the meetings during the absence of the hon. Peter C. WONG because of ill health. I would also like to express my gratitude to the representatives of both the Hong Kong Bar Association and the Law Society of Hong Kong for having drawn our attention to numerous points at every stage of the relevant Bill by making forceful and balanced submissions to us. And finally, I would like to thank the Administration, in particular the Attorney General and the Director of Public Prosecutions for their time spent over these matters and the understanding on the numerous issues involved and the care and attention which they have all put into this Bill. Sir, this Bill is a shining example of what can be achieved with goodwill, dedication and understanding on all sides.

Sir, I am confident that with the full co-operation of the legal profession, the scheme which is set out in this Bill will work satisfactorily and I therefore take great pleasure in supporting it.

MR. NGAI: Sir, with the rising status of Hong Kong as an international commercial and financial centre and increasing sophistication in business transactions, the time has come for the existing legal system to adjust itself to deal with commercial crime cases of an unusually complex nature. I believe that even without the recent experience gained from the Carrian trial, we should not fail to appreciate the numerous problems and high costs that may accompany the prosecution and trial of complex commercial crimes, which have already begun to emerge in the '70s.

Public concern in the issue has given rise to a series of developments, including, inter alia, the publication of the Trial of Commercial Crimes Bill 1985 in mid-1985, the appointment of the select committee on the problems involved in the prosecution and trial of complex commercial crimes in end-1985, the publication of the select committee's report in July 1986, the publication of the draft Complex Commercial Crimes Bill 1987, and the present Bill. All these developments, I submit, reflect the Administration's determination to tidy up and streamline the procedures involved in the prosecution and trial of complex commercial crimes cases.

Regarding the present Bill, I do feel strongly, as both a taxpayer and a legislator, that it should serve to shorten the duration and reduce the cost of the trial while preserving the common law spirit of our judicial system. To strike a balance between cost-effectiveness and justice is no easy job. In this connection, I think we ought to give special credit to the Bar Association and the Law Society and all other organisations for taking great pains to study the White Bill and the present Bill and contributing to the discussion of the Legislative Council ad hoc group.

As a member of the Legislative Council ad hoc group on the 1987 White Bill and subsequently on the 1988 Bill, I am glad that the ad hoc group's major recommendations regarding the 1987 Bill have all been incorporated in the present Bill. Firstly, I think it is of overriding significance that the definition of 'Complex Commercial Crimes' should be made in relation to whether fraud or dishonesty in the commercial context is involved rather than by reference to a schedule of offences as orginally appeared in the 1987 Bill. I also consider it of major importance that complex commercial crimes be confined to cases of both fraud and dishonesty in the commercial context and not otherwise. After all, this Bill deals with commercial crimes and I see no reason why it should not confine itself to cases only in the commercial context.

The second important improvement of the present Bill on the 1987 White Bill is to give the judge the discretion to decide whether it is necessary to have a preparatory hearing before the jury is empanelled. This point, I understand, is strongly backed by the legal profession. This provision is important because it allows all reasonably foreseeable points of legal argument to be dealt with before the jury is empanelled, and it is recognised that judicial discretion should be exercised in the ordering of special procedures for the trial of complex commercial crime cases.

The third important improvement concerns the extent of the defence's obligation to disclose his case. The original proposal in the 1987 White Bill was met with strong opposition on the ground that it was inconsistent with common law principles in that it would seek to deprive defendants of their right to silence, hence, putting them in a very disadvantagesous position. I am glad that the scope of the disclosure has been narrowed down in the present Bill under clause 16(1)(*a*) to only a written statement giving the facts on which the defence takes issue with the prosecution. However, clause (16)(1)(*b*) of the Bill requires that 'a written statement of all reasonably foreseeable propositions of law on which the defence may wish to rely' be delivered to the court which, I think, is a heavy and unfair burden on the defence. I would consider it more acceptable to require only a written statement in response to the prosecution's propositions of law and I therefore support Mr. Martin LEE's amendment on this clause.

Sir, I am glad that after more than three years of intensive deliberation and public consultation, we have finally come up with the present version of the

Complex Commercial Crimes Bill 1988 which is generally acceptable to all parties concerned, including the legal profession and the business community.

Sir, with these remarks, I support the motion.

ATTORNEY GENERAL: Sir, I am most grateful to Mr. Peter C. WONG, Mr. SWAINE, Mr. Martin LEE, Mr. NGAI Shiu-kit for their expression of support for this Bill. As they have indicated, the consultative process and detailed scrutiny of the Bill by Members has continued with great intensity since it was introduced into this Council on 1 June.

I am pleased to support the modifications and improvements to the Bill which will be moved later on by Mr. John SWAINE and Mr. LEE. The acceptance by the Administration of these amendments confirms that this Bill indeed represents a community of interest and objective of all those involved in its consideration.

The Bill is a tribute to those Members of this Council, the Bar Association and the Law Society who have devoted so much time, care and energy in devising a procedure to improve the trial of complex commercial crimes.

Once it is on the statute book, it will be for those of us involved in the trial of such crimes to ensure that their efforts have not been in vain. Whether the procedure embodied in the Bill will be successful will, to a large degree, depend on the diligence of the prosecutor and the willingness of the legal profession to adopt the spirit of the legislation and to operate within it. The Judiciary too will have a key role to play by ensuring compliance with orders made at the preparatory hearing stage of the trial.

Sir, in commending the Complex Commercial Crimes Bill 1988 to this Council, I am confident that it will prove a useful tool in the battle against commercial crimes.

Sir, I beg to move.

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).

SOCIETIES (AMENDMENT) (NO.2) BILL 1988

Resumption of debate on Second Reading (22 June 1988)

Question proposed.

DR. HO: Sir, the Administration is serious and firm in its fight against organised crimes and triad activities. Alongside its standard strategies to crack down triads, the Administration aims at disintegrating the triad societies by reducing the number of their members. This Bill is designed precisely to achieve this end, so that the reformed triad members can turn over a new leaf and to live as law-abiding and socially productive citizens.

However, whether the Bill will be successful in encouraging the triad members to come forward to sever their connection with triad societies is contingent upon certain conditions. The members of the public, especially those who wish to renounce their triad membership must be made aware of the renunciation scheme and convinced of the Administration's genuine intention to help the renounced triad members rather than to prosecute them. Hence, it is imperative for the Administration to mount a series of territory-wide publicity campaigns through various forms of media to inform the public. Announcements of public interest, short documentaries and public affairs series ought to be given prime slots by the electronic media and broadcast regularly. Posters should be put up in places where young people are inclined to frequent and information leaflets should be distributed to them. In order to promote the scheme, social workers, teachers, disciplinary masters, school counsellors, police community relations officers, junior police call members, and so forth must be thoroughly briefed on the purposes of the renunciation scheme.

The confidence of the would-be renouncers must be gained. First and foremost are the confidentiality of the scheme, its absolute independence of the police, and strict adherence of the staff members to the secretary provisions involved in handling renunciation applications and the proceedings. Though sections 26K and 26L provide for the necessary legislative assurances, their meaning and intention must be put in plain language readily comprehensible by people with low level of educational attainment in the publicity materials. The secretariat, which will be established to handle renunciation applications, must be within easy access, and more importantly, privacy must be provided to applicants and renunciation applications must be processed in confidence so that they would feel that their personal safety and the security of their employment and career are properly protected.

The decision that the scheme is open to all members of the community, including government staff, will add credibility and effectiveness to the scheme, because fair and equal treatment is seen to be given to the renouncers regardless of their social status.

The review of the triad renunciation scheme after six months, intended to rectify administrative and procedural oversights, mistakes and omissions, is necessary in order to ensure its smooth and efficient operation. This commitment must be followed up in six months' time.

With these remarks, Sir, I am pleased to support the motion.

MRS. TAM (in Cantonese): Sir, this Bill is to provide triad members with an opportunity to renounce their triad membership through the setting up of a triad renunciation tribunal as proposed in the report on triad problems published two years ago. The introduction of such arrangement has a crucial bearing on triad members and is a significant move in tackling the triad problems. It represents a major breakthrough in removing the traditional concept of 'once a triad, always a triad' which attaches lifelong stigma to triad members.

Under the existing legislation, it is a criminal offence for anyone to become a triad member. Hence, once admitted as a member of a triad society, a person is destined to live in the fear of being prosecuted throughout his life. Even though he intends to turn over a new leaf, he can do nothing to change his status. The proposals contained in this Bill are to cater for the need of those triad members who wish to get rid of their traid affiliations: providing them with a legitimate means to renounce their triad membership and enabling them to be free from bondage before the law and to lead a normal life again. Sir, I therefore pledge my full support to this Bill.

However, as Dr. HO just said, the effectiveness of the scheme, as proposed in the Bill, depends on the readiness of the potential triad renouncers to come forward and make applications to the Triad Renunciation Tribunal. I, therefore, would like to call upon those who wish to leave the triad societies to pluck up their courage and take this opportunity to renounce their triad status. I am particularly concerned that a large number of young people have got themselves involved in triad societies without knowing fully the implications involved. For those who now realise the evils of these societies and feel regretted, do pay attention to the establishment of this triad renunciation tribunal and get hold of this chance of rehabilitation.

Finally, I would also like to appeal to teachers, school social workers, outreaching social workers, guidance teachers in schools and parents who are always in touch with youngsters to support and encourage those in need of help to make use of this channel to reform themselves.

With these remarks, I support the motion.

SECRETARY FOR SECURITY: Sir, I should like to thank Dr. HO Kam-fai and Mrs. Rosanna TAM for speaking in support of the Societies (Amendment) (No.2) Bill 1988 and for calling upon triad members, particularly young triad members, to take the opportunity to turn over a new leaf.

Once the Bill is passed we shall arrange for an extensive publicity campaign providing information about application and renunciation procedures and encouraging people, particularly young people, to turn their backs on triad societies and renounce triad membership. The campaign will be co-ordinated and monitored by the Publicity Sub-Committee of the Fight Crime Committee. Dr. HO's suggestions as to the contents of the campaign are welcome, and will be brought to the attention of the Publicity Sub-Committee.

The triad renunciation scheme, Sir, will be open to all people wishing to sever their triad links. Strict confidentiality will be maintained by both the staff and the members of the tribunal. Names of individual applicants and renouncers will be known only to the tribunal and to its small secretariat. The secrecy provisions in sections 26K and 26L will be strictly enforced. The tribunal will be independent of the police although it will be essential for one police officer with experience in triad matters to be available as part of the secretariat to provide advice, where necessary, to the tribunal.

And finally, the operation of triad renunciation scheme will be monitored by the Fight Crime Committee and will be reviewed after its first six months operation.

Sir, I commend this Bill to Members as an imaginative and potentially effective initiative, developed by the Fight Crime Committee as one more measure in the fight against triads and triad influence.

Sir, I beg to move.

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).

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1988

Resumption of debate on Second Reading (15 June 1988)

Question proposed, put and agreed to.

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

BANKRUPTCY (AMENDMENT) BILL 1988

Clauses 1 and 2 were agreed to.

COMPANIES (AMENDMENT) (NO.2) BILL 1988

Clauses 1 and 2 were agreed to.

DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) (AMENDMENT) BILL 1988

Clauses 1 and 2 were agreed to.

COMPLEX COMMERCIAL CRIMES BILL 1988

Clauses 1,5 to 7,10 to 12,14,17 to 20,22,24 and 27 to 34 were agreed to.

Clauses 2,15,21,23,25 and 26

MR. SWAINE: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members. The amendments to clauses 15,25 and 26 have been touched on in my main speech. These were made respectively to the late taking of objections to evidence, to the supply of a copy of the defence response to the jury with the consent of the defence and to refining the provision for the award of costs. As to the rest, the amendments to clauses 2 and 23 delete the reference to the defence case statement, which is purely voluntary document and not to be confused with the defence response while the amendment of clause 21 simply corrects a slip-in wording.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting the definition of 'defence case statement'.

Clause 15

That clause 15 be amended, by deleting subclauses (5) and (6) and substituting the following—

> '(5) Where the admissibility of evidence contained in the documents served and delivered under section 13(1) or in respect of which a judge has made an order under subsection (2) which could have been objected to under subsection (1) or (2), is objected to after the jury is empanelled, the judge may (without prejudice to the general power to make an order as to the payment of costs under section 26) order the accused to pay to the prosecutor the additional costs properly incurred by the prosecutor as a consequence of the determination of the admissibility of that evidence after the jury is empanelled.'.

Clause 21

That clause 21 be amended, by deleting 'preliminary' and substituting the following—

'preparatory'.

Clause 23

That the Bill be amended by deleting clause 23.

Clause 25

That clause 25 be amended—

(*a*) in subclause (1)(*a*) by adding after 'statement' the following—

'and, with the consent of the accused, the defence response'; and

(*b*) in subclause (1)(i) by deleting 'except the defence response and the defence case statement (if any)'.

Clause 26

That clause 26 be amended—

(*a*) in subclause (2)(*b*) by deleting 'or requiring them to be paid before other steps are taken in the proceedings'; and

(*b*) in subclause (2)(*c*) by deleting 'a solicitor and own client basis' and substituting the following—

'an indemnity basis'.

Question on the amendments proposed, put and agreed to.

Question on clauses 2,15,21,25 and 26, as amended, and the deletion of clause 23 proposed, put and agreed to.

Clauses 3 and 4,8,9,13 and 16

MR. MARTIN LEE: Sir, I move that the clauses 3,4,8,9,13 and 16 be amended as set out in the paper circulated under my name to Members. Clause 3, in its unamended form clause 3(1)(*b*), reads 'Where...the Attorney General is of the opinion that the evidence of the offence— ...reveals a case of fraud, or dishonesty in the commercial context, of such seriousness and complexity that it is appropriate that it be transferred to the court pursuant to this Ordinance, the Attorney General may apply to the magistracy for an order transferring the proceedings to the court.' The presence of a comma after the word 'fraud' would cause a break to this phrase with the result that although a case of dishonesty would not fall within this section unless the dishonesty is in the commercial context, a case of fraud need not be related in any way to a commercial context. But once a comma is removed, then whether the case in

question involved fraud or dishonesty, this section will not apply to it, unless the fraud or dishonesty is related to a commercial context. So although we are talking about a comma, it does make a lot of difference. Sir, this can be said to be the most misguided and misplaced comma I have ever come across. So I propose to have it removed.

The next amendment concerns the last few words of the clause I have just read, namely, 'for an order transferring the proceedings to the court.' My amendment seeks to substitute the word 'of transfer' for the words 'transferring the proceedings to the court'. This is a linguistic improvement.

Clause 4—this amendment seeks to add the following words 'an order of transfer' after the word 'order'. This amendment is for the sake of convenience so that in the subsequent clauses of this Bill whenever the expression 'an order of transfer' appears it shall mean an order of transfer made by the magistrate under section 4 on the application of the Attorney General under section 3.

Clause 8—this amendment seeks to add the words 'and serve on the accused' after the word 'sign' in subclause (1) and the words 'serve on the accused and' after the words 'shall be' in subclause 2. This amendment makes it clear that when the Attorney General has signed an indictment against the accused, he must serve him with a copy.

Clause 9—this amendment seeks to add the words 'in respect of the count or counts to which section 3(1) relates' after the word 'reveal'. And it is necessary because it often happens that an indictment contains more than one count, that is, there may be several offences committed by the accused and is charged with all of them in the same indictment but under different counts.

One or more of these counts may reveal a count of fraud or dishonesty in the commercial context within the meaning of section 3(1) of this Bill, whereas the other counts may fall outside it.

The amendment also makes it plain when a judge orders a preparatory hearing under this clause, then, in the above circumstances, his order will be only related to the count or counts which reveals or reveal a case of fraud or dishonesty in the commercial context under clause 3(1), but not the other counts in the same indictment.

Clause 13—the first amendment I seek is in relation to subclause (*a*), which in its amended form, requires a prosecutor to serve on the accused and delivered to the court a statement containing a concise account of the facts on which the prosecution case is based, a prosecution case statement. But it often happens that the primary facts contained in such a statement do not inform adequately the accused what the prosecution case really is, because at the trial the prosecutor might invite the jury to draw certain inferences from these primary facts. And unless the accused is told beforehand what inferences the jury will be invited to draw, he will not be in the position to understand fully what case he has to meet, and he is thus unable to serve on the prosecutor the defence response under clause 16(1)(*a*).

My next amendment relates to subclause (*d*). In the unamended form, the prosecutor is required to serve on the defence and delivered to the court 'a statement of any proposition of law, specifically applicable to the prosecution case in relation to which a prosecutor anticipate that is likely to be a dispute'. In this form, a prosecutor would have to form a judgment as to what proposition of law would be disputed by the defence. This is unsatisfactory because no prosecutor can tell in advance with any degree of accuracy what proposition of law his opponent will or will not challenge. And if the prosecutor believes, as he normally does, that all his points of law are good and are unlikely to be challenged, then he needs not serve such a statement at all. With the amendment, the prosecutor would have to deliver to the defence and the court in advance, a statement of all the propositions of law which he proposes to rely on at the trial, so that the accused may, in turn, serve on the prosecutor and deliver to the court, a written statement of all propositions of law that he will rely on in answer to the prosecutor's propositions of law. I shall be seeking to make an amendment to clause 16(1)(*b*) in due course.

My next amendment relates to subclause (2) which in its unamended form reads 'The prosecutor may, without the leave of the court, amend the prosecution case statement at any time before the judge has ordered the accused to serve and deliver a defence response under section 16 and, where he does so, he must serve on the accused and deliver to the court a copy of the amended prosecution case statement. The Bar Committee had no objection to this subclause (2) in its original form. But then the Attorney General Chambers wanted to extend the time to enable the prosecutor to amend this case up to any time before the jury is empanelled, but with leave of the court. The Bar Committee took objection on the ground that it would be unfair and wrong for the prosecutor to be allowed to change the case after the accused has served and delivered the defence response under clause 16, particularly when the accused has also made admission of facts and documents pursuant to requests made by the prosecutor under clause 17. After discussions, it is now agreed that this Bill should make it clear as to when and how the prosecutor may amend this case statement as follows: He may amend this case statement up to the time before the jury is empanelled but not thereafter. But the amendment is to be made after the judge has ordered the accused to serve and deliver defence response under clause 16, then the prosecutor must first obtain the leave of the court. But if the amendment is to be made before that, no such leave is required.

The amendment in my proposed subclause 2(A) limits the right of a prosecutor to amend his case in that the judge must be satisfied that it was necessitated by matters over which the prosecutor has no control and which he could not foresee, for example, a person who has refused to be a crown witness later agreed to do so, thereby providing more evidence to the prosecutor not covered by the original case statement. The other condition is that the judge shall only grant leave when he is satisfied that it is in the interest of justice to do so.

My proposed clause 2(B) requires a prosecutor who has amended this case statement to serve a copy of the same on the accused and deliver a copy to the court.

My proposed subclause 2(C) enables the accused with leave of the judge and at the preparatory hearing to withdraw any admission of fact or document that he might have made before he has been served with the amended prosecution case statement. This is to ensure that the accused will not be prejudiced by the change in the prosecution's case.

Clause 16—my first amendment here relates to subclause (*a*) and seeks to add the words 'and inferences' after the words 'the facts'. This is consequential on the amendment proposed to be made to clause 13(1)(*a*) above.

My second amendment relates to subclause (*b*) which in its unamended form requires the accused to serve on the prosecutor and deliver to the court a written submission of all reasonably foreseeable propositions of law, on which the defence may wish to rely.

I have earlier moved the amendment to clause 13(1)(*d*), which if passed, would require the prosecutor to serve on the accused and deliver to the court 'a statement of any proposition of laws specifically applicable to the prosecution case on which the prosecutor proposes to rely.' It is therefore appropriate that the accused who has thus been informed of the law on which the prosecutor will rely should likewise be required to inform the prosecutor and the court in advance of what propositions of law which the accused will be relying on to counter the propositions of law stated by the prosecutor under clause 13(1)(*d*).

My third amendment relates to the original subclauses (3) and (4), the former of which would have prevented the accused from introducing evidence after the jury has been empanelled which was inconsistent with a defence response except with leave of the judge.

And if such leave was given then the originally subclause (4) would enable the prosecutor to quote evidence in the battle thereof.

These two subsections have been debated at length and I certainly do not wish to bore Members by repeating them in this Committee. Suffice to say that at the end the Administration has shown immensely good sense in deciding to delete both subclauses altogether.

My proposed amended subclause (3) has nothing to do at all with the original subclauses (3) and (4). This new clause enables the accused to amend its defence response after he has been served by the prosecutor with an amended prosecution statement under clause 13(2)(B). This is necessary because a prosecution has changed its case; and so the accused must be given an opportunity to change his defence if he so wishes. Sir, after three years of deliberation and argument I am sure this is quite enough.

With these remarks, Sir, I beg to move.

Proposed amendments

Clause 3

That clause 3 be amended—

(*a*) by deleting the comma after 'fraud' in subclause (1)(*b*)(ii); and

(*b*) in subclause (1) by deleting 'transferring the proceedings to the court' and substituting the following—

'of transfer'.

Clause 4

That clause 4(1) be amended, by inserting after 'order' the following—

'(an "order of transfer")'.

Clause 8

That clause 8 be amended—

(*a*) in subclause (1), by inserting after 'sign' the following—

'and serve on the accused'; and

(*b*) in subclause (2), by inserting after 'shall be' the following—

'served on the accused and'.

Clause 9

That clause 9(1) be amended—

(*a*) by deleting the comma after 'section 8';

(*b*) by inserting after 'reveal' the following—

',in respect of the count or counts to which section 3(1) relates,';

(*c*) by deleting the comma after 'fraud'; and

(*d*) by inserting after 'shall be held' the following—

'in respect of the count or counts to which section 3(1) relates'.

Clause 13

That clause 13 be amended by—

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

'(*a*) a statement containing—
(i) a concise account of the facts; and
(ii) the inferences sought to be drawn from those facts, on which the prosecution case is based (a "prosecution case statement");';

(*b*) in subclause (1)(*d*) by deleting 'in relation to which the prosecutor anticipates there is likely to be a dispute' and substituting the following—

'on which the prosecutor proposes to rely'; and

(*c*) by deleting subclause (2) and substituting the following—

'(2) The prosecutor may amend the prosecution case statement before the jury is empanelled—

(*a*) without the leave of the judge, before the accused has served and delivered a defence response under section 16;

(*b*) only with the leave of the judge, after the accused has served and delivered a defence response under section 16.

(2A) The judge shall not grant leave under subsection (2) unless he is satisfied—

(*a*) that the need for the amendment to the prosecution case statement arises from circumstances beyond the control of the prosecutor which could not have been foreseen at the time the original prosecution case statement was served and delivered; and

(*b*) that it is in the interests of justice that such leave should be granted.

(2B) Where an amendment is made under subsection (2) the prosecutor shall serve on the accused and deliver to the court a copy of the amended prosecution case statement.

(2C) Where an amended prosecution case statement has been served and delivered under subsection (2B) the accused may, with the leave of the judge, at the preparatory hearing withdraw any admission made by him under this Part before the service on him of the amended prosecution case statement.'.

Clause 16

That clause 16 be amended—

(*a*) In subclause (1)(*a*), by inserting after 'the facts' the following—

'and inferences';

(*b*) by deleting subclause (1)(*b*) and substituting the following—

'(*b*) a written statement of all propositions of law in reply to any propositions of law stated by the prosecutor under section 13(1)(*d*); and'; and

(*c*) by deleting subclauses (3) and (4) and substituting the following—

'(3) Where the prosecution case statement has been amended under section 13(2) after the judge has made an order under subsection (1), the accused may amend any defence response served and delivered

pursuant to that order so that it indicates with reference to the amended prosecution case statement the facts and inferences on which he takes issue with the prosecutor and, where he does so, he must serve on the prosecutor and deliver to the court a copy of the amended defence response.'.

Question on the amendments proposed, put and agreed to.

Question on clauses 3 and 4,8,9,13 and 16, as amended, proposed, put and agreed to.

SOCIETIES (AMENDMENT) (NO.2) BILL 1988

Clauses 1 to 3 were agreed to.

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1988

Clauses 1 and 3 to 15 were agreed to.

Clause 2

MR. PANG (in Cantonese): Sir, I move that clause 2 be amended as set out in the paper circulated under my name to Members. This amendment gives effect to the ad hoc group's recommendation that employers should be required to provide a written request to employees when soliciting information about concurrent employments held by the employees. The purpose is to avoid unnecessary arguments in future on whether the employers have actually requested the information. Under the present wording of the clause, employers would be able to convey the requests orally and it is feared that this may lead to misunderstanding and arguments. The Administration has accepted the ad hoc group's recommendation. To make it fair, employees will also be required to provide the required information in writing under the law.

Sir, with these remarks, I beg to move.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the amendments moved by Mr. PANG serve to clarify the procedure and put matters beyond doubt for both parties. I support these amendments.

Proposed amendment

Clause 2

That clause 2 be amended, in new subsection (7A)—

(*a*) by inserting before 'request' the following—

'written'; and

(*b*) by inserting before 'information' the following—

'written'.

Question on the amendments proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

BANKRUPTCY (AMENDMENT) BILL 1988

COMPANIES (AMENDMENT) (NO.2) BILL 1988

DANGEROUS GOODS (CONSIGNMENT BY AIR) (SAFETY) (AMENDMENT) BILL 1988 and the

SOCIETIES (AMENDMENT) (NO.2) BILL 1988

had passed through Committee without amendment, and the

COMPLEX COMMERCIAL CRIMES BILL 1988 and the

EMPLOYEES' COMPENSATION (AMENDMENT) BILL 1988

had passed through Committee with amendments. He move the Third Reading of the Bills

Question on the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Private Bill

Second Reading of Bill

RAINIER INTERNATIONAL BANK (TRANSFER OF HONG KONG UNDERTAKING) BILL 1988

Resumption of debate on Second Reading (22 June 1988)

Question proposed, put and agreed to.

Bill read the Second time.

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

Committee stage of Bill

Council went into Committee.

RAINIER INTERNATIONAL BANK (TRANSFER OF HONG KONG UNDERTAKING) BILL 1988

Clauses 1 and 3 to 14 were agreed to.

Clause 2

MR. LI: Sir, I move that clause 2 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 2

That clause 2(1) be amended, in the definition of 'Hong Kong Undertaking', by inserting after 'therefrom,' the following—

> 'being business, property and liabilities which are governed by Hong Kong law, the transfer of which is governed by Hong Kong law or which are derived from the Hong Kong business of the said 9 Hong Kong branches,'.

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Preamble was agreed to.

Council then resumed.

Third Reading of Bill

MR. LI reported that the

RAINIER INTERNATIONAL BANK (TRANSFER OF HONG KONG UNDERTAKING) BILL 1988

had passed through Committee with an amendment. He moved the Third Reading of the Bill.

Question on the Bill proposed, put and agreed to.

Bill read the Third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 13 July 1988.

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

(*Note:* The short titles of the motion Bills listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.)

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WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Transport to Mr. Andrew WONG's supplementary to Question 1

I have checked with the KCRC and they advised that the time is about 5 per cent.

Annex II

Written answer by the Secretary for Administrative Services and Information to Mr. Desmond LEE's supplementary question to Question 4

Since the implementation of the Control of Obscene and Indecent Articles Ordinance on 1 September 1987, the Television and Entertainment Licensing Authority has received four complaints against pornographic comic books referred by the district boards of the Sha Tin, Kowloon City, Hong Kong Eastern, and Hong Kong Central and Western districts respectively.

Of these complaints, one led to a successful prosecution, in which police seized over 500 copies of pornographic comic books from two bookshops in Sha Tin District. The two bookshop vendors concerned were convicted and each was fined $12,000.

In the case of Kowloon City, a warning letter was sent by the police to the bookshop vendor concerned. Regarding the remaining two cases in the Eastern and Central districts, the police could not find any obscene/ indecent comic books in the sales outlets concerned and hence could not prove that such outlets had contravened the Control of Obscene and Indecent Articles Ordinance. As a result, no further action could be taken.

Annex III

Written answer by the Financial Secretary to Mr. POON Chi-fai's supplementary question to Question 6

The Housing Authority is very conscious of the need for reliable electrical installations in all public housing estates under its management. To bring electrical installations in older estates up to modern design standards, a 'rewiring progamme' was initiated in 1978 to upgrade installations in all

WRITTEN ANSWERS—*Continued*

pre-1973 estates which were not scheduled for immediate redevelopment. The improvements carried out under this programme offer adequate capacities to allow tenants unrestricted use of appliances such as air-conditioners. So far a total of 157 536 flats have been upgraded and works on another 15 045 flats are in progress.

The electrical loading in all housing blocks, both old and new, is monitored periodically so that measures can be initiated to prevent overloading. In addition, the electrical installations are subject to a regular maintenance and servicing programme. Estate management staff and contractors are on duty 24 hours a day to deal with any power failures. This is backed up by an extensive team of technical staff who are on duty between 8.30 am and midnight, and are on call at other times.

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