HONG KONG LEGISLATIVE COUNCIL -- 13 December 1989 1

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 13 December 1989

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)
SIR DAVID CLIVE WILSON, K.C.M.G.

THE CHIEF SECRETARY
THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY
THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

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

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

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

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

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

DR. THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

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

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

THE HONOURABLE CHENG HON-KWAN, J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, M.B.E., J.P.

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

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

THE HONOURABLE DAVID LI KWOK-PO, J.P.

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

THE HONOURABLE POON CHI-FAI, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS. ROSANNA TAM WONG YICK-MING, J.P.

THE HONOURABLE TAM YIU-CHUNG

DR. THE HONOURABLE DANIEL TSE, O.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

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

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE GEOFFREY THOMAS BARNES, C.B.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS. NELLIE FONG WONG KUT-MAN, J.P.

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

THE HONOURABLE DANIEL LAM WAI-KEUNG, J.P.

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE
THE HONOURABLE LAU WAH-SUM, J.P.

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

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

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS. SO CHAU YIM-PING, J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

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

THE HONOURABLE YEUNG KAI-YIN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE MRS. ANSON CHAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

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

THE HONOURABLE NIGEL CHRISTOPHER LESLIE SHIPMAN, J.P.
SECRETARY FOR HEALTH AND WELFARE

ABSENT

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

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

THE HONOURABLE PETER WONG HONG-YUEN, 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):

Sessional Papers 1989-90

No. 26 -- Report of changes to the approved Estimates of Expenditure approved during the First Quarter of 1989-90
Public Finance Ordinance : Section 8

No. 27 -- Queen Elizabeth Foundation for the Mentally Handicapped
Report and Accounts 1988-89

No. 28 -- Grantham Scholarships Fund
Income and Expenditure Account with Balance Sheet and Certificate of the Director of Audit for the Year ended 31st August 1989

No. 29 -- The Accounts of the Lotteries Fund 1988-89

No. 30 -- The MacLehose Fund Trustee's Report
for the period 1 April 1988 to 31 March 1989

No. 31 -- The Prince Philip Dental Hospital Hong Kong
Report by the Board of Governors for the period 1 April 1988 - 31 March 1989

No. 32 -- Sir Edward Youde Memorial Fund
Report of the Board of Trustees for the period 1st April 1988 to 31st March 1989

No. 33 -- Emergency Relief Fund
Annual Report by the Trustee for the year ending on 31 March 1989

No. 34 -- Chinese Temples Fund
Income and Expenditure Account with Balance Sheet and Certificate of the Director of Audit for the year ended 31st March 1989

No. 35 -- General Chinese Charities Fund
Income and Expenditure Account with Balance Sheet and Certificate of the Director of Audit for the year ended 31st March 1989

Addresses by Members

Report of changes to the approved Estimates of Expenditure approved during the First Quarter of 1989-90
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 first quarter of the financial year 1989-90.

Supplementary provision of $180.2 million was approved. It was fully offset either by savings under the same or other heads of expenditure or by the deletion of funds under the Additional Commitments subheads. This included $79.7 million comprising a start-up grant of $38.5 million and a recurrent grant of $41.2 million for the Government's contribution towards the cost of the Securities and Futures Commission.

Approved non-recurrent commitments were increased by $515.9 million during the period, and new non-recurrent commitments of $74.5 million were also approved.

In the same period, a net increase of 2 685 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.

Queen Elizabeth Foundation for the Mentally Handicapped
Report and Accounts 1988-89

DR. IP: Sir, in accordance with section 13 of the Queen Elizabeth Foundation for the Mentally Handicapped Ordinance, the annual report and accounts of the Council of the Queen Elizabeth Foundation for the Mentally Handicapped for the year ending 31 March 1989 are tabled today.

Following the enactment of the Queen Elizabeth Foundation for the Mentally Handicapped Ordinance in July 1988, the Council of the Foundation was set up in August 1988 to apply the Foundation's income and assets in pursuance of the Foundation's aims of furthering the welfare, education and training of the mentally handicapped in Hong Kong, and promoting their employment prospects. As Chairman of the Council of the Foundation, I am pleased to report that the Council immediately set about its work to demonstrate fully the need for the establishment of the Foundation with resources to improve the well-being of the mentally handicapped. A total of 38 applications were received from various voluntary agencies and government departments in response to the Council's first call for applications for grants in October 1988. These 38 applications involved a total amount of over $6 million. Projects which would fill in the existing service gaps, provide training or promote employment of the mentally handicapped were given priority in the allocation of funds. The total amount of grants approved for 1988-89 was $1,947,917 and the committed sum approved for recurrent grants for 1989-90 was $1.8 million.

Major grants made for projects included community living skills training, provision of a home for the mildly mentally handicapped children, vocational training and supported employment scheme, temporary residential care service, gateway movement to promote the integration of the mentally handicapped persons, a hotline service, training courses on cleansing and servicing and summer activities classes for the mentally handicapped children. Other allocations included grants for the purchase of equipment and organization of courses for the training and education of the mentally handicapped.

In the course of considering the applications for grants from various voluntary organizations to undertake projects, it was noted that quite a number of applications particularly those seeking funds for the purchase of equipment and furniture could have been submitted to the Lotteries Fund. The voluntary agencies concerned explained that they had turned to the Foundation instead of the Lotteries Fund because

the vetting criteria adopted by the Foundation were relatively less stringent and the procedures less time-consuming. The Foundation would however not wish to support projects which should be financed by the Lotteries Fund.

I have voiced in this Council the concern for advancing the employment opportunities of the handicapped adults. It is my intention, as Chairman of the Council of the Foundation, to see to it that as a matter of priority, adequate resources are allocated for the purpose of improving the employment prospects of the mentally handicapped. In this respect, efforts are being made to provide more job opportunities and sustain their employment through the initiation by the Foundation of such projects as the launching of a placement service for the mentally handicapped, a directory on the work opportunities for the mentally handicapped, and a video film as well as an exhibition on the employment opportunities for mentally handicapped persons.

Sir, the Foundation has within a relatively short period of time demonstrated its initiative and determination in sponsoring or enhancing a wide range of much needed services to the mentally handicapped. I am confident that its work will go from strength to strength.

Oral answers to questions

Industrial policy to encourage hi-tech manufacturing

1. PROF. POON asked: In view of keen competition posed by newly developed economies in Southeast Asia to Hong Kong's industries, will Government review its industrial policy in order to maintain and improve Hong Kong's competitive edge, for example, in the direction of further developing and encouraging hi-technology manufacturing?

FINANCIAL SECRETARY: Sir, this is a subject which has been raised in this Council from time to time. Rightly so, because it is a matter of great importance. Essentially, our industrial policy is designed to allow market forces to determine the direction taken by our industry. The Government's role is to facilitate and encourage growth through the provision of necessary infrastructural and developmental support.

This policy has served Hong Kong well. Over the years, we have witnessed many manufacturers adapting and adjusting their production methods in response to changing market conditions. We have also seen greater diversification and improvement of our manufactured products. In response to pressure of demand, some of our more labour intensive manufacturing processes have moved out of the territory to other lower cost production centres. This is a continuing process which has allowed the limited resources of our economy to be put to better and more fruitful use. As a result, Hong Kong has been able to achieve a higher value added and has remained highly competitive.

While we believe that investment decisions are best taken by those directly involved, we do review and expand the range of public services and facilities from time to time in order to meet demand. Relevant examples include the recent establishment of the Hong Kong Plastics Technology Centre and a Clothing Technology Demonstration Centre. Furthermore, Sir, Members will recall that in your address to this Council on 11 October 1989 you referred to our decision to build a new technology centre to facilitate the development of new technology-based businesses.

So far, our industrial policy has worked well. But we are not and must not be complacent with our success. We will continue to review the adequacy of our support services and facilities, and the advice of the Industry Development Board will as usual be sought in this connection.

PROF. POON: Sir, will the Secretary inform this Council of the time needed for the construction of the Technology Centre and the extent of the financial support that will be given to the centre in its infancy to enable it to grow and function effectively?

FINANCIAL SECRETARY: Sir, the Technology Centre is still at a planning stage. We have completed a planning study; the study has provided valuable guidance on the nature and scale of facilities to be provided in the centre. There is also underlying demand for its services and facilities. We hope, Sir, that the centre can be in place by 1993. As far as its financing is concerned, this matter is still under consideration.

MR. NGAI (in Cantonese): Sir, the aim of developing and encouraging high technology

is to improve industrial productivity and quality thus strengthening our competitive edge. Will the Government inform this Council whether the present, long-practised policy of positive non-interference stands in need of review and revision? Moreover, will the flexible deployment of resources be constrained by the policy of positive non-interference, thus affecting the pace of industrial technological reform in Hong Kong?

FINANCIAL SECRETARY: Sir, I am always a little disturbed when I hear about our "non-interference policy". The policy was originally described as a "policy of non-interventionism". The emphasis, I think, should be placed on the word "positive". In other words, we positively decide that not intervening in certain decision-making processes in the private sector is the best way forward for Hong Kong. We are not proposing to abandon the policies that we have adopted in the past, but certainly I agree with Professor POON and Mr. NGAI Shiu-kit that we need to develop our policies and build upon those policies so that we can face the challenges in the years ahead.

MR. McGREGOR: Sir, I am not quite sure whether this question may cut across those two already asked. But may I ask it anyway? Does the Government realize that in industrial technological terms Hong Kong is well behind competitive countries such as South Korea, Taiwan and possibly also Singapore and that we are in fact a contractor industry with very little research and development related production? If so, will the Government consider the use of specific incentives to introduce and attract Hong Kong hi-tech industries?

FINANCIAL SECRETARY: Sir, I do not accept altogether that we are well behind these other centres. Our businessmen in Hong Kong have made certain business decisions which have been the right decisions in so far as the growth of Hong Kong's economy is concerned. And I think the best measure of this is the GDP per capita for Hong Kong which is high.

As far as our being prepared to give specific incentives is concerned, the problem, Sir, is that if we give a specific incentive to one sector of industry it has to be at the cost of another sector. We do believe that providing infrastructure and development facilities for industry as a whole is the right way forward.

MR. MICHAEL CHENG (in Cantonese): Sir, over 90% of the industrial undertakings in Hong Kong are small to medium scale enterprises, and our level of technology ranks the lowest among the Four Little Dragons. Small to medium scale enterprises cannot afford to have their own laboratories for research and quality improvement. Will the Government inform this Council whether, to improve the competitiveness of Hong Kong, it will consider allocating more financial and manpower resources to the Hong Kong Productivity Council and establishing a government technological laboratory which will conduct product researches for small to medium scale enterprises to develop the market of China?

FINANCIAL SECRETARY: Sir, as far as the centre for development of products is concerned, I think a lot of those functions will be handled by the new Technology Centre. As far as financial support for small industries is concerned, small industries have little difficulty in getting the financial support that they need from our banking sector.

PROF. POON: Sir, my question slightly overlaps with that of Mr. McGREGOR; but still could I ask whether the Government will consider providing a better tax incentive to encourage capital investment by our manufacturers?

FINANCIAL SECRETARY: Sir, I suggest that Prof. POON waits until 7 March for the answer.

MR. MARTIN LEE: Sir, in relation to the expression "positive non-intervention", does the Financial Secretary realize that although he would place emphasis on the word "positive", the industries believe, and have good reason to believe, that the emphasis is in fact on the "non"?

FINANCIAL SECRETARY: Sir, I am aware that many have stressed the non-interventionism of this policy but I have always stressed the word "positive". I will stress it again and again until people believe me.

MR. McGREGOR: Sir, in regard to the need to ensure that the management in industry is brought up to the best possible standard, will the Government consider the introduction and development of a small industries and small businesses institute for Hong Kong?

FINANCIAL SECRETARY: Yes, I would certainly consider that suggestion. I would like to look at it in the context of the Industry Development Board.

MR. NGAI (in Cantonese): Sir, does the Government consider that the development of industry is only part of our overall economic diversification process and therefore it will not be necessary to draw up a separate industrial policy or specific long-term industrial strategy even though we are faced with fierce competition from neighbouring Southeast Asian countries?

FINANCIAL SECRETARY: I am not sure whether I fully understand that question. We believe in providing support and facilities, where needed, for the development of Hong Kong's economy as a whole. So, where industry needs some development support, we try to provide it. But equally, if some other areas of the economy need some development support, we again provide that, for example, in the context of our education policy.

Organ transplantation

2. DR. LEONG asked: Sir, in view of the shortage in the supply of human organs for clinical transplantation, will the Administration inform this Council whether Government will consider introducing measures, including the enactment of legislation, to facilitate the use of the organs of deceased persons for transplantation as a treatment modality?

SECRETARY FOR HEALTH AND WELFARE: Sir, there is already provision in the Medical (Therapy, Education and Research) Ordinance for doctors to remove any part of a deceased person's body for therapeutic purposes where the deceased person had expressed such a request in writing at any time or orally in the presence of two or more witnesses during his last illness. Where there is evidence that such consent has been given, and no reason to believe that it has subsequently been revoked, the

consent of the next of kin is not required before transplantation may be performed. The same Ordinance also provides that in the absence of such an expressed wish on behalf of the deceased, the removal of his organs may proceed with the consent of the registered next of kin, subject to there being no reason to believe that the deceased had expressed objection or that the surviving spouse, parent or child of the deceased so objects. This Ordinance, which is similar to the 1961 Human Tissue Act in the United Kingdom, provides adequate legal backing for the transplantation of organs where the necessary consent has been obtained. To facilitate the ready availability of evidence of consent, kidney and eye donation cards are issued by the Hospital Services Department on request.

Various educational and publicity measures are taken to help to overcome the reluctance of many people to donate their organs for therapeutic use after their death, and the reluctance of relatives to give their consent. These include the dissemination of information through pamphlets and the mass media, including announcements of public interest on television, display of posters, and arranging talks and seminars, some of which are directed particularly at the medical profession to seek their co-operation in identifying potential donors and in advising them how to signify their consent. Also, in December 1988, a special unit was established to improve co-ordination in the arrangements leading to organ transplantation.

These measures have contributed to an increase in the number of renal transplants performed in recent years, although the level still falls far short of demand. It has been considered that public opinion would be against any radical change in the law, to allow transplantations to take place without evidence of consent, and the Secretary for Home Affairs has advised me that this is still likely to be the case. However, the situation will be kept under review, and further thought will be given to ways of improving the supply of organs for transplantation within or by amendment to the present law, subject to adequate safeguards being preserved.

DR. LEONG: Sir, with reference to paragraph 1 of the Secretary's reply, could the Administration inform this Council whether the kidney donation card, which was issued by the then Medical and Health Department and of which I am holding a specimen copy of my own free will, is an adequate guarantee legally to allow doctors to remove kidneys upon the death of a potential donor?

SECRETARY FOR HEALTH AND WELFARE: Sir, the legal opinion I have received is that a signed kidney donation card in its present form constitutes a written request by a donor in terms of section 2 of the Medical (Therapy, Education and Research) Ordinance. Consequently, the person in lawful possession of the body, who in the case of persons who die in hospital is the person having the control and management of that hospital, may authorize a doctor to remove the kidneys and that such removal is entirely lawful. In such cases the agreement of relatives would not be necessary. However, in the absence of a signed donor card or other authorization provided in section 2, section 3 of the Ordinance will apply and the consent of relatives will be necessary.

MR. CHUNG: Sir, perhaps my question has been partly answered by the Secretary. Anyway I will ask it to see whether there will be any supplement from the Secretary. Could the Secretary inform this Council what the situation would be in the case where there is evidence that consent has been given by the deceased person but the next of kin object to the transplantation; and whether such a situation has ever occurred?

SECRETARY FOR HEALTH AND WELFARE: Sir, the legal position is that if a deceased person had, before his death, consented to the donation of his kidneys for transplantation, the consent or objection of the next of kin would have no legal bearing on the situation, and the medical superintendents of public hospitals have been informed of that position. This notwithstanding, in reaching a decision on whether or not to harvest a kidney, several factors have to be taken into consideration including the sentiment of the bereaved family members. It is understandable, therefore, that many doctors consider that the consent of the relatives in such matters is preferable. However, from experience, very little resistance has been encountered from the bereaved family members when the deceased had clearly expressed a wish to donate his kidneys.

DR. IP: Sir, is it correct to say that in reality in spite of requests in writing by the deceased to donate his organs, doctors at present are still unable, administratively and technically, to remove such organs from the body unless the consent of the next of kin is obtained, since the body to which the organ is embedded belongs to the next of kin and any procedures to the body, including surgery to remove the organ, requires the consent of the next of kin?

SECRETARY FOR HEALTH AND WELFARE: Sir, my understanding is that that is not the position. For persons who die in hospital, as I have indicated, the person in lawful

possession of the body is the administration of that hospital. However, as I have already explained, despite the legal position, it is understandable that doctors do wish to have regard to the feelings of bereaved relatives. And it is my understanding also that the very same position often takes place in other countries where consent is more specifically excluded.

DR. LEONG: Sir, I have at least two questions to ask and I do hope I shall have a chance to ask them all. I will start with the first one. Is the Government aware of the fact that in spite of kidney donation cards and public education, just over 100 kidneys donated by deceased persons have been transplanted since 1969, that is, some 20 years ago? Yet in 1988 alone, some 350 people died in traffic accidents. That is to say some 700 possible kidneys could have possibly been used to save the lives of others.

SECRETARY FOR HEALTH AND WELFARE: Sir, my figures on the number of renal transplantations performed in public hospitals do not go back as far as Dr. LEONG has indicated. I do have figures since 1984, and these do show a steady rise in the number of cadaveric transplantations. There were four transplantations performed with the kidneys of deceased persons in 1984; the figure rose to 13 in 1985; and up to 5 December this year, 24 such operations have been performed. Over the period from 1984 to 1988, I understand that there were 25 kidney transplantations in private hospitals, though these were all from live donors.

Dr. LEONG raised the position of persons who die in traffic accidents and perhaps I could mention that the possibility of including evidence of the donor's consent on the driving licence was considered in late 1985. It was, however, concluded that inclusion of such evidence would have many legal and practical difficulties. Apart from the problems presented by the restricted size of the driving licence and the doubtful legality of a computer entry in a primarily coded document having to represent the form of words prescribed by law, the driving licence was not considered to be the most suitable document for recording information on volunteer donors for various reasons. Firstly, only a minority among the population hold driving licences and they are obliged to carry them only while they are driving. And moreover, since the introduction of the compulsory seat-belt law, the number of drivers who suffer fatal injuries in traffic accidents has dropped. Today, some 70% of the fatalities in traffic accidents are pedestrians, and of the remainder, many are passengers.

Thus the use of driving licence as a means of indicating consent to organ donation would not necessarily produce a substantial additional supply of kidneys.

I can also perhaps mention that since 1986 when the Medical and Health Department took over responsibility from the Hong Kong Nephrology Society for the distribution of kidney donation cards, some 260 000 such cards have been issued.

DR. IP: Sir, could the Secretary for Health and Welfare reaffirm his earlier statement that "on death the body belongs to the administration of the hospital", as I am concerned that either I have heard it wrong or that it may be an incorrect statement?

SECRETARY FOR HEALTH AND WELFARE: I think, Sir, the answer lies in section 5(2) of the Medical (Therapy, Education and Research) Ordinance, which states that:

"In the case of the body of a deceased person lying in a hospital, nursing home, or other similar institution, any authorization under section 2 or 3, may be given on behalf of the person having the control and management of the hospital, nursing home or institution, by any officer or other person designated for that purpose by the person having such control and management."

And I have the legal opinion that this can be interpreted in the way I described in my earlier answer.

DR. LEONG: Sir, I am grateful to the Secretary for giving me such a detailed answer to my last question and I congratulate him on his very detailed research on the kidney donation card issue. Could I ask whether the Government is aware of, or will consider, the concept of an "opting out" legislation for organ donation after death? That is to say every person, unless they have decided otherwise, is considered to have willingly consented to donate their organs for clinical transplantation to be used after their death. To quote an example, Singapore has put this into effect with proven successful results.

SECRETARY FOR HEALTH AND WELFARE: Sir, the "opting out" legislation would provide

that a person shall be deemed to have agreed to donate his organs after death in the absence of any indication to the contrary. A person who decides not to donate his organs would need to register his wishes in some approved format. Such a scheme, I understand, is currently operating in Singapore. In countries where there is no social objection to such an arrangement, an increase in available organs could be anticipated, although since other considerations apply than strict legal entitlement, the increase in the number of transplant operations that would be performed is likely to be gradual.

It has, however, been considered that in view of the belief among many people in Hong Kong that bodies should be disposed of with their various organs intact, the introduction of such a law would attract significant public objections and may only result in a large number of registrations for exclusion. Moreover, ethical and human rights questions are involved. However, public attitudes may change and the situation will be kept under review.

In particular, Sir, I would like to mention that I do intend to take the opportunity of a forthcoming official visit to Singapore to study the working of this law there.

Criteria for determining subversiveness

3. MR CHOW asked (in Cantonese): As the Political Adviser has stated that the Hong Kong Government has no intention of allowing Hong Kong to be used as a base for subversive activities against the People's Republic of China (PRC), will Government inform this Council what criteria are adopted to determine whether or not there are subversive elements in certain activities, such as the incident which occurred at Causeway Bay on 29 September, the public's application for a site to install a "replica statue of the goddess of democracy" and the 10 October celebrations; and, whilst adopting the stance as stated by the Political Adviser, how Government will ensure at the same time that the rights enjoyed by the people of Hong Kong in accordance with the International Covenant on Civil and Political Rights will not be reduced in the future?

CHIEF SECRETARY: Sir, I would like to assure Members that both now and in the future, the activities permitted, or not permitted, in Hong Kong, are decided entirely in accordance with our law. No individual or group of individuals in Hong Kong enjoys

more tolerance or suffers more restriction than the law allows. Where the law confers any discretion on the authority concerned, the Administration takes the overall public interest into account in exercising that discretion.

Sir, as to the second part of the question, the International Covenant on Civil and Political Rights, as applied to Hong Kong, will remain in force as provided for in the Joint Declaration (JD 156).

Sir, as you announced in your opening address to this Council on the 11 October, the Government intends to enact a justiciable Bill of Rights for Hong Kong which will implement the relevant provisions of the International Covenant on Civil and Political Rights, as applied to Hong Kong. There is thus no question of the rights currently enjoyed by the people of Hong Kong under the Covenant being reduced in any way.

MR. CHOW (in Cantonese): Sir, is the Government of the view that the three examples cited in the letter of the Political Adviser are subversive activities against the People's Republic of China? If not, why are they mentioned in the letter as a sort of guarantee to the Chinese side?

CHIEF SECRETARY: Sir, I should clarify again the context of the letter. The letter was a statement of fact. The facts mentioned in the Political Adviser's letter were included simply to show that no organization in Hong Kong enjoys more tolerance than the law allows. I do not think it would be appropriate for me, Sir, to try to make any judgment as to whether those activities were subversive or not.

MISS LEUNG: Sir, will the Secretary inform this Council whether the Hong Kong Government's interpretation of the expression of "allowing Hong Kong to be used as a base of subversive activities against the People's Republic of China" is identical to that of the Chinese Government? And if not, will the Secretary point out the major differences and similarities?

CHIEF SECRETARY: Sir, I am not quite sure I see the thrust of the question. The statement in the letter was simply a statement of fact. Whether it relates to what the Chinese Government has said or not, I think, is irrelevant.

MR. MARTIN LEE: Sir, will the Administration inform this Council whether in its view Hong Kong has been used in the last eight months as a base of subversive activities against the PRC?

CHIEF SECRETARY: Sir, as regards the events of the last few months, I do not think it is appropriate for me to comment on whether or not they have been or could be regarded as being subversive. As far as we are concerned, Sir, the activities in Hong Kong are governed by the law and we take action or do not take action according to the laws of Hong Kong.

MR. CHOW (in Cantonese): Sir, is the Government of the view that there are a number of Ordinances, such as the Public Order Ordinance, the Societies Ordinance and the Police Force Ordinance, which are too harsh in terms of the protection of human rights, because these Ordinances have conferred considerable discretionary power on the law enforcers to the effect that they have the power to exercise political judgment without contravening the law? In amending the Ordinances concerned, will the Government observe the principle of minimizing the use of discretionary power and substituting it with clear legal provisions?

HIS EXCELLENCY THE PRESIDENT: That will be beyond the original question and should be the subject of a separate question.

MR. TAI: Sir, what time span does the Chief Secretary have in mind when he gives us the assurance about the future?

CHIEF SECRETARY: Sir, I can give assurances certainly during the period of the British administration up until 1997.

MR. McGREGOR: Sir, does the Government consider that the word "subversion" includes peaceful protest within lawful procedures?

CHIEF SECRETARY: Sir, I am not going to be drawn into a discussion of what is or

is not subversion because subversion is not a term which is defined in the Hong Kong law. We understand the term in its normal and natural sense, Sir. If anyone wishes to try to make a decision as to whether any particular activity falls within the natural definition, I suggest they consult a dictionary.

MR. MARTIN LEE: Sir, does the Administration intend to use the word "subversion" or "subversive activities" and have them included into the Laws of Hong Kong before 1997?

CHIEF SECRETARY: No, Sir.

Conditions of stay for foreign domestic helpers

4. MRS. TU asked: Will the Government inform this Council what conditions of stay are normally imposed on visas of foreign domestic helpers?

SECRETARY FOR SECURITY: Sir, under the existing policy, a foreign domestic helper is allowed to work in Hong Kong for a specific employer under an approved contract of employment which is normally valid for two years. Change of employment is not permitted. These conditions are specified in the visas issued to foreign domestic helpers.

On arrival in Hong Kong, a helper's passport is endorsed with a condition of stay allowing her to remain in Hong Kong for six months or for two weeks after the termination of her contract, whichever is the shorter period. The conditions imposed on the visa are also endorsed on the passport.

As regards the limitation of stay, so long as the helper remains in the same employment, her stay will be extended for six months at a time, with the same conditions of stay imposed.

MRS. TU: Sir, I notice in the reply there is no condition concerning where the domestic helper will live or sleep. So may I ask the Secretary for Security whether a foreign domestic helper who lives apart from her employer while still working for

him, either by mutual agreement or otherwise, is in breach of the visa conditions? And is it lawful for Immigration Officers to threaten her with deportation for living apart from her employer?

SECRETARY FOR SECURITY: Sir, if the living apart of the foreign domestic helper from the employer is part of the original agreement by both sides, then there would be no cause for her to be penalized in any way.

MR. MARTIN LEE: Sir, in the case where the domestic helper's contract has been terminated in breach of that contract, does the Administration not consider the period of two weeks given to such a person too short?

SECRETARY FOR SECURITY: It is not clear to me, Sir, whether Mr. LEE means the period is too short for a domestic helper to complain of some abuse, or whether he means it is too short for an appeal for an extension of stay to be made to the Immigration Department. Since that has not been made clear, I can say that in almost every case where a foreign domestic helper would be granted an extension upon an application made according to the regulations, this application has been granted before she would have been required to leave Hong Kong, in other words, before the period of two weeks is up.

MR. TIEN: Sir, there are reportedly as many as 50 000 Filipinas working in Hong Kong as domestic helpers. Following the recent attempted coup in Manila, will the Administration inform this Council what the response of the Government would be to a claim by a significant group of the Filipino domestic helpers for political asylum to stay in Hong Kong?

SECRETARY FOR SECURITY: Sir, that is a rather hypothetical question because, as far as I know, no applications for political asylum have been so submitted. My answer, therefore, is that in the event of an application for political asylum being submitted to the Government, it would be considered, as is usual in such cases, upon its merits.

MRS. TU: Sir, as it has been known for domestic helpers to be detained in custody for 48 hours in order to investigate why they are not at the employer's residence, are Immigration Officers made aware of the difference between an employer's obligation to provide accommodation and the domestic helper's right to freedom of not staying in that accommodation if it is unsuitable or is a threat to her safety?

SECRETARY FOR SECURITY: Sir, the rights and obligations of both employers and employees are contained in a pamphlet which is issued by the Government and which is available to both employers and employees. In the event of any abuse or in the event of any foreign domestic helper feeling that she has been abused, there are a number of avenues of assistance which she can follow. If, for instance, the foreign domestic helper thinks that the terms of her contract have been violated, she can appeal to or resort to the Labour Department. If she feels that physical abuse is involved, she can and should report to the police. The information leaflet which I have mentioned does contain appropriate advice. In addition, appeal can be made to the Philippines Consulate in Hong Kong. I understand there is also a Mission for Filipino Migrant Workers from whom assistance can be obtained, and various churches also offer assistance to helpers, Sir.

MRS. LAM (in Cantonese): Sir, will the Administration inform this Council whether the foreign domestic helpers can operate food business or go in for hawking during their off days? If not, what action will the Government take to stop such things from happening?

SECRETARY FOR SECURITY: Sir, I think Mrs. LAM means: "if so, what will the Government do to stop such things from happening?" This would seem to me, Sir, to be a breach of contract and it would be certainly a matter for the Immigration Department and for the Labour Department to follow up.

MRS. TU: Sir, will the Government give an assurance that the Immigration Department will discontinue any practice it may have adopted of making residency with the employer -- a condition which is not shown on the visa -- an additional condition of stay besides other conditions?

SECRETARY FOR SECURITY: Sir, I can understand from Mrs. TU's questions that she feels that there is an area here which needs further clarification. I will undertake to do this and reply in writing to her. (Annex I)

Fire hazards in guesthouses

5. MR. BARROW asked: In the light of yet another serious fire in a building where a guesthouse is located in Tsim Sha Tsui district on November 16, will Government inform this Council of the progress achieved so far after it decided in September last year to establish a licensing system for guesthouses; and the effectiveness of the interim measures in preventing fires, which could be so damaging to our tourism industry?

SECRETARY FOR HOME AFFAIRS: Sir, in September 1988, we decided and indeed you, Sir, in your annual address, reaffirmed that decision to license the operation of guesthouses, in order to secure acceptable standards of fire safety, structural safety and environmental hygiene. In November 1988 the then Secretary for District Administration set up an inter-departmental planning committee to work out the necessary administrative and legislative framework. The planning committee completed its work in January this year, but, we were unable to launch a licensing scheme until funds became available. I am happy to say that I am now in the position to take the matter forward to the Executive Council hopefully some time next month. Thereafter, public views and comments will be sought. I expect a Bill to enact the enabling legislation for the licensing scheme to be introduced into this Council during the current Session.

I assume Mr. BARROW is referring to the fire in Chung King Mansions which occurred and which involved the front portion of the shopping arcade in the basement. The fire did not involve any guesthouses situated on the upper floors, although at one stage some upper floor occupants, including those in guesthouses in the building, were evacuated as a precaution.

Since 1 August 1988, 884 guesthouses in the territory have been inspected by the Fire Services Department, of which 284 were patronized by tourists. The latter have all been given advice and directions in the interim on a range of fire protection measures including the removal of fire hazards, the installation of exit signs,

provision of fire extinguishers; and for the larger establishments, the installation of automatic smoke detection systems. Each operator has been given two to four months to comply with the requirements.

As at 22 November 1989, 127 tourist guesthouses have fully complied with the requirements and 91 others have been served with Fire Hazard Abatement Notices to require compliance.

I am satisfied that these interim measures have already resulted in some improvements in fire prevention. Guesthouse operators have generally become much more conscious of the need to maintain fire safety measures. Exits are now clearly indicated, extinguishers are provided and where smoke detectors have been installed occupants can now be warned at a very early stage. As an educational programme for tourists who may not be familiar with the Hong Kong environment, a special fire safety pamphlet has been prepared by the Administration and is distributed to all guesthouses accommodating tourists.

MR. BARROW: Sir, could the Secretary advise how often the Fire Services Department would inspect these buildings under the new legislation and whether they would also inspect other facilities in the same buildings, such as shops or restaurants, which are also on the upper floors?

SECRETARY FOR HOME AFFAIRS: Sir, the intention is to employ or to transfer 43 fire officers and Buildings Ordinance officers from their respective departments to the City and New Territories Administration. We have yet to work out the modus operandi. Much will depend on how strict the licensing requirements are going to be legislated. I would envisage that sufficiently frequent visits will be made to these establishments to ensure that fire requirements and other requirements are complied with. I am not in a position to answer questions, I am afraid, on other parts of the building in this particular context because the legislation is not envisaged to include places other than hotels and guesthouses.

MR. ARCULLI: Sir, would the Secretary please inform this Council how the Fire Services Department tell the difference between those guesthouses that are patronized by tourists and the 600 that are not, and what steps have been taken in respect of

those 600 which I assume are patronized by Hong Kong people?

SECRETARY FOR HOME AFFAIRS: Sir, this number was arrived at following a survey of all hotels, guesthouses and motels, which might be described as of the Kowloon Tong type, and youth hostels. It is the decision of the Fire Services Department that it will only be appropriate to require the installation of smoke detection devices to and impose other fire prevention measures on hotels and guesthouses.

MRS. TU: Sir, since it is at least 15 years since I reported the inefficiencies of the fire precautions in Chung King Mansions, could we be assured that it will not be another 15 years before action is taken, resulting in a death like that of Dave Pauly one year ago in Mirador Mansions?

SECRETARY FOR HOME AFFAIRS: Sir, I have had the opportunity of visiting Chung King Mansions as well as Mirador Mansions. Mirador Mansions is a rather good example of what sort of improvements can be put in, and put in quickly, once a proper management system is installed. We are now attempting to install a similar management in Chung King Mansions, and we are also looking at other legislative and administrative means, such as conditions in a deed of mutual covenant. I am advised by the Fire Services Department, whose staff visit the site weekly, that with a proper management system and with the usual fire precautions taken, including the installation of hoses within the buildings, these buildings would pose no greater risk than other buildings. In other words, Chung King Mansions as an example is fixable.

MR. BARROW: Sir, given that the decision on licensing was made in September 1988, could the Secretary clarify why funds, which presumably must be quite modest, could not have been made available in 1989 as this appears to have delayed implementation by a year?

SECRETARY FOR HOME AFFAIRS: Sir, the recurrent cost is not small. It is something like $9.2 million a year. I think we moved as quickly as we could, and we had to, of course, compete for funds among other items that went before the Finance Branch. But I am happy to say that the funds have now been approved.

MR. MARTIN LEE: Sir, following on the answer by the Secretary for Home Affairs to the supplementary asked by the Honourable and learned Ronald ARCULLI, may I suggest to the Secretary that he should visit the other 600 guesthouses to make sure that they can be rendered as safe as those which are patronized by tourists?

SECRETARY FOR HOME AFFAIRS: Sir, the total number of such establishments are: hotels 110, holiday flats 1 000, motels (as I said, of the Kowloon Tong type) 30, youth hostels 8, guesthouses 1 200. I think it will be a rather Herculean task to expect me to visit each and every one of them. But I would like to assure Mr. LEE that Fire Services officers who will be seconded to my department will certainly do so.

MR. CHEONG: Sir, the Secretary has mentioned "motels of the Kowloon Tong type" twice. Could we be enlightened as to the definition? (Laughter)

SECRETARY FOR HOME AFFAIRS: Sir, I have not visited one myself. (Laughter) So I cannot really describe it, but from the outside it would look like a low rise development, of a two-storey type. (Laughter).

Fare structure of China Motor Bus Company

6. MRS. SO asked (in Cantonese): Will Government inform this Council of the findings of the comprehensive review of the fare structure of the China Motor Bus Company recently conducted by the Transport Department, and in particular whether the fare levels of the bus routes serving the Southern District will be brought in line with the urban routes?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, the review has just been completed. There are two principal recommendations. First, a simplification of China Motor Bus' (CMB) fare structure by combining the existing eight route groups into five. Second, a progressive narrowing down of the disparities in fares now existing between Southern and non-Southern routes of the same journey distance.

The review will first be discussed with the Transport Advisory Committee. CMB

and the district boards concerned will also be consulted. If agreed, these recommendations will be implemented in stages through --

(a) a lower increase for Southern routes in future fare revisions; and

(b) rationalization of loss-incurring routes.

The objectives are to reduce cross-subsidization between different route groups and to ensure that the internal routes in Southern District which serve Aberdeen would not be more expensive than north shore routes for a similar journey distance.

MRS. SO (in Cantonese): Sir, how will the financial position of the CMB be affected by the new pension scheme once implemented? Will the Government inform this Council whether it has sufficient power to prevent the company from passing the burden of fare increase caused by its prolonged mismanagement on to the public on the ground that it cannot reach a reasonable profit after the introduction of the scheme?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, as the CMB has just received from the staff their proposals the financial implications of which are being worked out, the fare levels cannot yet be confirmed and its possible impact is still unknown. But the Government is aware that an increase in expenditure of the CMB will exert upward pressure on its fares and therefore the proposals put forth by the company will be scrutinized before a prudent decision is made.

MISS LEUNG (in Cantonese): Could the Secretary explain in concrete terms what "rationalization of loss-incurring routes" mentioned in the main reply really means?

SECRETARY FOR TRANSPORT (in Cantonese): Sir, it is always the case that the profit margin of individual routes varies. Some routes are running at a loss whereas others do yield more profits. Generally, the Government would allow the company to work out an overall profit profile in respect of all the routes. Higher profits yielded by lucrative routes will make up for lower profits yielded by less lucrative routes. But our principle is that all serving routes must be maintained. Therefore the review will not mean a new conclusion. We must figure out which routes in the Southern

District and the northern part of the Island are running at an excessive loss and need to be subsidized by other routes. If excessive subsidy is incurred, this will be against our principle and the matter must be reviewed.

MR. McGREGOR: Sir, will the Secretary consider allowing another bus company to introduce regular routes with air-conditioned coaches between the Southern District and the north side of the Island?

SECRETARY FOR TRANSPORT: Sir, we are now considering the introduction of more residential coaches to Southern District, and the department is now considering tendering procedures to invite bidders to operate these residential services.

MR. SIT (in Cantonese): In paragraph 1 of the Secretary's reply, it is mentioned that the Government will narrow down the disparities in fares in a progressive manner. Will the Secretary inform this Council what the meaning of "progressive" is? Does it mean three months, one year or after 1997?

SECRETARY FOR TRANSPORT (in Cantonese): As I have said, progressive narrowing down of disparities in fares depends on the extent of fare increase which will be decided in the review. It is because we cannot tell in advance when the fare will increase. Therefore, the exact time the disparities will be narrowed down cannot be predicted yet. We can only say that we will carefully consider how to narrow down fare disparities progressively in future when the fare is to increase.

MRS. SO (in Cantonese): Sir, what is the present progress on the study of building a light rail system to link up with the Southern District and when will the Government decide if such a system is to be built?

HIS EXCELLENCY THE PRESIDENT: I think that goes rather beyond the original question, Mrs. SO, and it should be the subject of a separate question.

Allocation of funds for district projects

7. MRS. TAM asked (in Cantonese): Will Government inform this Council of the criteria adopted for allocating funds to district offices for carrying out minor environmental improvement projects and community involvement projects in the districts, and whether a review of such criteria will be undertaken to ensure that those districts which have more urgent needs for such projects are provided with more funds for implementing the necessary works?

SECRETARY FOR HOME AFFAIRS: Sir, the total amount of funds available to district offices for carrying out minor environmental improvement projects and community involvement projects is controlled by the annual estimates exercise. After funds are voted by the Legislative Council under Head 53 Subhead 215, the City and New Territories Administration Headquarters takes into account a number of factors for allocating funds to individual district offices. These are as follows --

(i) population of the districts and the need for more community involvement projects as a result of new population intakes,

(ii) existing provision of community facilities in the districts and the need for more minor environmental improvement projects,

(iii) geographical spread of the districts,

(iv) past expenditure patterns of individual districts, and

(v) additional requirements arising from planned large scale projects such as district festivals.

In essence the preparation of the estimates for Head 53 Subhead 215 is in itself a review for the year yet to commence. The criteria for the allocation are flexibly applied so that they could accommodate the varying needs of different districts. The spending position of the vote is examined in December each year so that minor virement of funds could be arranged between districts.

MRS. TAM (in Cantonese): Sir, in assessing fund allocations to districts, will Government consider the practical needs of a district rather than have regard to the

current practice of automatically applying a factor of increase to a fixed base figure?

SECRETARY FOR HOME AFFAIRS: Sir, as I said in my main reply, the annual exercise is itself an exercise to determine what the requirements in each district are. In that exercise, while regard is also given to past expenditure patterns, we do not necessarily follow past expenditure as the basis for allocations for the following year. So the answer to Mrs. TAM's question is: yes, we would have regard to particular requirements in particular years in particular districts.

MR. ARCULLI: Sir, will the Secretary inform this Council whether representations have been received by the Government to the effect that the districts feel that the criteria presently set out by the Secretary are not working equitably, and if so, what action has been taken?

SECRETARY FOR HOME AFFAIRS: Sir, I myself have not received such an appeal. I have looked at the allocations for the last few years and I feel satisfied that the allocations have been fair and in accordance with local requirements. But if there should be any views as to the fairness or otherwise of these allocations, I shall certainly be happy to consider them.

MRS. LAM (in Cantonese): Sir, the Secretary mentioned "district festival" in paragraph 1(v) of his main reply. Will Government review the present maximum allocation of $300,000 for each activity, which is hardly adequate for the organization of a district festival?

SECRETARY FOR HOME AFFAIRS: Sir, as set out in the published estimates for 1989-90, there is a maximum of $300,000 per item of expenditure, and a festival would be an item in this context. The ceiling for each item has in fact been increased gradually from, say, $150,000 in 1982 to $300,000 in 1985. I do appreciate that with cost escalations the amount of money available probably is not sufficient in itself to support a local district festival, but the local district festivals are expected to be supported by other sources of funds as well as funds from the Government. I will say, however, Sir, that we are undertaking another review of the maximum per function/per item, and I shall be happy to report to the district boards later on

the result of the review.

MR. TAI: Sir, with regard to funds allotted for minor improvement programmes, could the Government also consider the following factors for allocation: firstly, the projected population increase in the coming years in a particular district, and secondly, the amount being utilized by a particular district board for repair, upkeep, and maintenance of existing facilities?

SECRETARY FOR HOME AFFAIRS: Sir, these funds are intended for one-off projects. If a project needs to be maintained, the maintenance should be done by the relevant department concerned, and the district board should approach these departments for funds for maintenance.

MR. CHEONG: Sir, when the review gets under way, would the Secretary give us more details as to the pattern and size of funds being used on each project for the past few years by these district boards? I do not want an answer now.

HIS EXCELLENCY THE PRESIDENT: You have asked a question; you must get an answer. (Laughter)

SECRETARY FOR HOME AFFAIRS: Sir, I think the appropriate forum for detailed examination of the accounts would be the Finance Committee.

MRS. LAM (in Cantonese): Sir, in view of the saying that "it is better to travel 10 000 miles than to read 10 000 books", district board members' overseas inspection tours to study various models of district administration will indeed serve a useful purpose. Could Government inform this Council whether a small portion, say 3% to 5%, could be set aside from funds allocated to a district board to serve to encourage and subsidize members' inspection tours? If no, could Government then consider other sources of allocation to subsidize these visits?

SECRETARY FOR HOME AFFAIRS: Sir, the ambit of the vote, Head 53 Sub-head 215, does not allow the money voted for to be used for the purpose of travelling. Sir, I think

even if we were to change the ambit to allow such expenditure to be incurred, there may well be views in the community that the money voted for to be used by the community is instead diverted to another purpose. However, I do sympathize with the view that "it is better to travel 10 000 miles than to read 10 000 books," as the saying goes in Chinese. I have therefore taken steps to approach the Finance Branch to see whether or not, tight as the situation might be, we could squeeze some more funds out of the Branch. If I am successful, then we would introduce that scheme, probably in the next term of the district boards. But as I have said, I shall have to seek funds from a very tight source.

MR. ANDREW WONG (in Cantonese): From the Secretary's answer just now could I take it that another subhead, apart from Head 53 Subhead 215, will be set up to cover inspection tours by district board members? And could the existing Head 53 Subhead 215 be streamed into two subheads, one for minor environmental improvement projects and the other for community involvement projects?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Funds voted for under Subhead 215 already cover community involvement work. But this does not include overseas inspection tours. If we could obtain funds, we would then set up another subhead for the purpose of inspection tours.

MRS. LAM (in Cantonese): Sir, the City and New Territories Administration Headquarters at present determines the amount of funds to be allocated to district boards. Will Government consider leaving the decision to district officers in consultation with district board members?

SECRETARY FOR HOME AFFAIRS: Sir, while the legal authority is vested in me as the Controlling Officer, in practice consultation with district boards and district offices does take place before final decisions are taken as to the allocations.

Exemption clauses in insurance contract

8. MR. DAVID CHEUNG asked: Will the Government inform this Council whether or not measures will be taken to require that, where an insurance contract contains an

exemption clause to limit or absolve an insurer's liability, such clause should be translated into Chinese to enable the insured party to understand the full implications of the clause before entering into the contract?

FINANCIAL SECRETARY: Sir, in the context of self-regulation the insurance industry in Hong Kong has itself recently adopted statements of practice for general and life insurance business. These statements require insurers to continue to develop clearer and more explicit proposal forms and policy documents.

It is recognized that as a matter of good market practice, insurance contracts should be available with a Chinese version, and the insurance industry is working towards this objective. To this end, Chinese translations have been made of the standard policy forms for motor vehicle and employees' compensation insurance, and of course the translation would include exemption clauses where appropriate.

In the circumstances, we do not at present propose to introduce any measures requiring the translation into Chinese of exemption clauses in insurance contracts. We believe that in this area effective self-regulation is generally a better solution than legislation.

MR. DAVID CHEUNG: Sir, I am glad to hear from the Secretary that the insurance industry is working towards the objective of making Chinese version contracts available. May I ask the Secretary to inform this Council when this objective will materialize, and in the meantime what Government can do to ensure protection of the insured party?

FINANCIAL SECRETARY: Sir, it is an ongoing task to translate all insurance documents into Chinese. I cannot give an answer as to when the insurance industry itself will complete the task. As far as government action is concerned, I consider that as long as the insurance industry is making good progress, then there is no case for government intervention.

MR. MARTIN LEE: Does the Financial Secretary not consider it wrong in principle at this age of consumer protection to allow an insurance company to defeat the claim

of an insured person by relying on an exemption clause which is only printed in the English language when the agent of the insurance company concerned knows perfectly well that the insured person does not read or understand a word of English? Or is the Financial Secretary going to take shelter under the very negative umbrella of "positive non-intervention"?

FINANCIAL SECRETARY: Sir, that expression seems to be haunting me this afternoon. The important point to establish, Sir, is that the insurance industry itself is conscious of these problems and is taking steps to address them. I am pleased to tell Members of this Council that steps are being taken by the Federation of Insurers to establish an Insurance Claim Complaints Bureau to deal with complaints about insurance claims. The constitution of this proposed Insurance Claims Complaints Bureau states that the complaints board shall have regard to the terms of the relevant insurance contract, the statements of practice, the principles of good insurance practice, rules and regulations of the bureau, and any applicable rules of law. So the complaints board should therefore take into account whether or not the required warnings and statements are both in English and Chinese. We envisage that having regard to the principles of good insurance practice the complaints board should also take into account whether or not other provisions of the proposal form or policy form are in English or Chinese, depending on the circumstances of the case. So I repeat that the industry itself is taking steps in this connection and that, I think, is sufficient for the time being.

MISS LEUNG (in Cantonese): The Secretary has answered part of my question but still I would like to raise it. As many people in Hong Kong do not have an adequate knowledge of English or even do not understand the language, could the Secretary inform this Council whether action should be speeded up to ensure that the terms of insurance contracts, including exemption clauses, will be available in legally authentic English and Chinese versions for the benefit of those insured persons mentioned?

FINANCIAL SECRETARY: I think I have already indicated that the insurance industry itself is addressing this problem, but I can assure Members that we in the Administration will continue to monitor progress.

Written answers to questions

Tenants affected by clearances

9. MR. TAI asked: Will Government inform this Council why commercial tenants on Crown land are not offered resettlement upon clearance, whilst those cleared from Housing Authority estates and hawkers cleared from licensed hawker sites are offered assistance in resettlement?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, when the Housing Authority redevelop their own estates, they are dealing with their own lawful tenants whom they allow to bid by restrictive tender for shops in the estates.

But when the Authority carries out a clearance of Crown land it is acting mostly as Government's agent, and although in the early days of the resettlement programme Government offered accommodation in its resettlement estates for businesses cleared from Crown land, whether they were held on Crown land licence or not, this arrangement very soon became impracticable and was abandoned before clearance became the Housing Authority's responsibility in 1970. With the exception of workshops and small factories cleared from Crown land, the Authority has never offered accommodation to commercial clearees from Crown land: ex-gratia payments are made instead. In the case of workshops and factories, the Authority used to offer accommodation in its own flatted factories. This practice was abandoned in favour of a system of ex-gratia payments in 1982, when the Housing Authority, with the agreement of Government, stopped constructing factory accommodation because of the plentiful supply of private accommodation available.

As for hawkers, only licensed hawkers are offered assistance in resiting upon clearance since to do otherwise would merely encourage them to resort to unlicensed and uncontrolled hawking.

Clerical support in schools under the Code of Aid

10. MRS. LAM asked: According to appendix 14 of the Code of Aid for primary schools, a school with six to 35 classes is permitted to employ only one clerical staff member. Due to the increasing workload of clerical staff in schools, teachers and even school principals often have to take up clerical duties in addition to their own work.

Moreover, when the clerical staff member needs to take leave on reasonable grounds, the situation becomes even more chaotic. In view of the above, will Government inform this Council whether consideration will be given to amending the Code of Aid to allow:

(a) a school with five or less classes to employ one Clerical Assistant;

(b) a school with six to 11 classes to employ one Clerical Officer;

(c) a school with 12 to 23 classes to employ one Clerical Officer and one Clerical Assistant;

(d) a school with 24 or more classes to employ two Clerical Officers and one Clerical Assistant; and

(e) the principal of a school with 12 or less classes to employ a temporary staff member when the only clerical staff member takes leave for over one week?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, we are aware of the increasing clerical workload in aided schools, and are taking steps to relieve the situation, as part of a package of measures to improve the working environment in schools.

The question implies that additional clerical posts would be the best solution. However, since manpower is both scarce and expensive we are examining other, possibly more cost-effective ways of tackling the problem, such as redefining the duties of clerical and workman grade staff, simplifying the paperwork required by the Education Department, and providing schools with more office equipment, such as photocopiers.

From April 1990 aided primary and special schools will be able to provide a temporary replacement when their clerk takes approved sick leave or maternity leave of 14 days or more. Clerks in these schools will in addition receive full pay rather than two-thirds pay when on sick leave or maternity leave, an improvement to conditions of service which should help to reduce wastage among clerical staff in aided schools.

Facilities for morning exercise goers

11. MR. POON CHI-FAI asked: Given the considerable lack of facilities such as well-paved steps, railings, levelled grounds and pavilions and so on for morning

exercise goers, will Government inform this Council whether it has a comprehensive plan to improve such facilities at various spots or trails frequented by morning exercise goers; whether a special fund will be set up to co-ordinate the improvement works for such facilities; and as most of the morning exercise goers are elderly people what special arrangements are in hand to ensure their safety?

SECRETARY FOR HOME AFFAIRS: Sir, the provision and improvement of facilities for morning exercise goers is undertaken by the Agriculture and Fisheries Department (AFD) within the country parks and by the respective district offices of the City and New Territories Administration (CNTA) for other places.

The facilities built by AFD under the country parks programme include morning walkers gardens, shelters, platforms and simple equipment for fitness exercises and jogging trails. Those constructed by CNTA are mainly pavilions, paved steps, guard rails, access roads, footpaths and level exercise grounds. In the past two years CNTA completed a total of 103 such projects throughout Hong Kong at a cost of $10.7 million. Financial resources have been provided from the district boards Minor Environmental Improvement Programme (MEI) in both the urban region and the New Territories and from Local Public Works (LPW) funds for the rural areas of the New Territories. In 1990-91, CNTA will be spending some $4 million for 54 such projects. In addition AFD will spend about $0.6 million within the country parks.

These facilities are built in accordance with approved engineering and design standards having full regard to structural safety, and are maintained by CNTA and AFD. In most of the morning walkers gardens and recreation sites inside the country parks, emergency telephone help lines have been installed and the places are patrolled by park wardens. There are also regular police patrols in the more popular trails or gardens. Whilst most of these facilities are located in easily accessible locations, are well-paved and rail-guarded where necessary, it is always advisable for those elderly and frail exercise goers to be accompanied during their morning exercises.

The need for such facilities is monitored closely by both CNTA and AFD, and feedback from district board members and other local residents is taken into account. The present financial and management arrangements provide flexibility to meet public demands for such facilities quickly where justified. We do not see a need to set up a special fund to co-ordinate improvement works for such facilities at present

but will keep the situation under review and will always welcome suggestions for further improvement.

Statement

Repatriation of Vietnamese non-refugees

CHIEF SECRETARY: Sir, the return yesterday of the first group of illegal immigrants from Vietnam to their homeland attracted a great deal of attention both in Hong Kong and internationally. In view of some of the comments made, I would like to make a brief statement.

Since 1975, over 170 000 people from Vietnam have sought asylum in Hong Kong. We have turned none away. We have taken them all in, fed and clothed them, housed them to the best of our ability and provided them with medical attention. There have been times, as earlier this year, when the sheer weight of numbers has threatened to overwhelm our resources. So far we have managed to preserve our commitment to the policy of first asylum.

As long as those coming were clearly fleeing persecution, our community has borne the burden patiently. But it has been clear for some time now that most of those who arrive are northerners and ethnic Vietnamese simply seeking a better life. Much has been made of the dangers they risk in coming here. But these have been greatly exaggerated by people outside Hong Kong. Some are coming for much of the way through China and all who come by sea call in at frequent intervals along the coast for resupply. While no one can begrudge them trying to find a new life in the west, this alone does not qualify them as refugees in the eyes of the international community. As a result most have no prospect of being resettled.

This simple, though to some unpalatable, fact led us to urge the international community to review the problem. Hong Kong has played a full part in that review. Indeed, we were the first to introduce screening over a year and a half ago. Our purpose was to identify those who needed the protection of the international community and give them refugee status. We did this in accordance with internationally accepted and monitored procedures.

Others have followed our example. In June this year, screening as implemented

in Hong Kong became an integral part of the Comprehensive Plan of Action endorsed by the international community. The plan includes four important elements: first asylum, screening, resettlement of refugees and repatriation of non-refugees. We are a party to this Comprehensive Plan of Action and we are implementing it to the full.

All of us, of course, would prefer that those screened out as non-refugees would immediately volunteer to return to Vietnam. Unfortunately, many, indeed so far the vast majority still cling to the forlorn hope that the world will change its mind and they will be resettled. We know the international community knows that this is not the case. This is why we have felt it necessary to move ahead with an orderly return programme for those who simply could not believe that the countries to which they wanted to go did not want them.

So the first group was sent back yesterday. I would like to assure Members that there were no incidents, that the accompanying officers, both male and female, were not armed, and that the children who returned were part of the family groups. Throughout the operation our first concern was the safety and dignity of the people concerned. Let me also assure Members that these people were returned only after assurances were received from the Government of Vietnam that they would be treated humanely, that they would not be punished and that their re-integration into society in Vietnam would be open to monitoring. Building on these arrangements, it is our intention to put into place a continuing programme to return to Vietnam all those who are judged not to be refugees.

Sir, this first return has attracted some criticism overseas. However, I feel bound to say that those who have been loudest in their condemnation have been slowest in bringing forward practical alternatives. I can assure our critics first that we reached our decision only after much soul-searching as to what was the most humane and practical course to follow, and secondly, that we have returned no one who in the eyes of the international community is a bona fide refugee. In this context Mr. Robert van Leuwen confirmed explicitly that UNHCR was satisfied that none of those returned qualified as refugees.

Sir, this is not a role or responsibility which we have sought. It is one which geography and circumstance has thrust upon us. We have responded with humanity and decency to a prolonged crisis. We are confident that our record, if objectively assessed, stands comparison with anywhere else in the world. We do not look for the

world's applause, but we are entitled, I feel, to ask for the world's understanding.
Motions

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the following motion:

"That with effect from 1 January 1990 -

(a) the functions exercisable by the Director of Buildings and Lands by virtue of regulation 2 of the Town Planning Regulations (Cap. 131 sub. leg.) be transferred to the Director of Planning; and

(b) regulation 2 of the Town Planning Regulations (Cap. 131 sub. leg.) be amended by repealing "Director of Buildings and Lands" wherever it appears and substituting "Director of Planning"."

He said: Sir, I rise to move the motion standing in my name on the Order Paper. This motion arises from the formation of the new Planning Department with effect from 1 January 1990.

To enable the Director of Planning to assume his role with effect from that date, certain statutory functions (namely the preparation of any plan or sketch that the Chairman of the Town Planning Board may require) need to be transferred to him. These details are set out in the motion.

The staff resources to establish the new Department were considered and approved by the Finance Committee of this Council on 8 December 1989.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

TELEPHONE ORDINANCE

THE SECRETARY FOR ECONOMIC SERVICES moved the following motion:

"That Part V of the Schedule to the Telephone Ordinance be amended -

(a) by adding after item 22 -

"23.	(a) For an interconnection line between subscriber's message recording equipment and the public switched telephone network (see Note 4.)	$2,880 per annum.	
	(b) Other charges for an interconnection line -		
(i)	connection	$600.	(see Note 4.)
(ii)	removal within the same building	$275. (see Note 4.)	
(iii)	removal to a different building	$600. (see Note 4.)	
	(c) For usage of an interconnection line	$1 per minute (see Note 4.)";	

(b) by adding after Note 3 -

"4. Charges are payable by the subscriber to the Infoline service who has connected message recording equipment to the interconnection line for the provision of an information retrieval service."."

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

The Hong Kong Telephone Company proposes to introduce a new service called Infoline. This service will be used by competitive suppliers of pre-recorded

entertainment or information messages to deliver their services to the public. These messages will range from weather forecasts, airline information, sports results to foreign currencies, stock market, medical services and tourist information.

For technical reasons the telephone lines to be used in the Infoline service to connect the equipment of message providers to the public telephone network need to be of an existing type known as Direct Dialling In. The current approved charge for such lines is $2,880 per annum. Telco proposes that the same charge should be levied for these lines under the Infoline service. For connection and removal of such lines, Telco similarly proposes to levy the same charges as currently provided for in the case of other types of telephone line. That is: $600 for connection and removal to a different building and $275 for removal inside the same building.

Telco also proposes to charge the message providers a $1 per minute charge for usage of each line. This charge is required to defray the costs involved in measuring the duration of calls made to the message providers' services, the preparation of itemized bills and other associated work.

I should emphasize that all of these charges are to be levied by Telco on the message service providers and not on callers to the message services. The rates at which callers are charged will be set by the service providers themselves. As the service providers will be in competition with each other, their charges will be subject to normal market forces.

In order to ensure minimum acceptable standards of technical quality, message content and advertising practice, Telco will require message providers to abide by a code of practice as a condition of provision of the Infoline service.

Under section 26(2) of the Telephone Ordinance, all amendments to the Schedule of charges of the Telephone Ordinance require a resolution of this Council. My motion before this Council seeks to provide for the new charges associated with Infoline by amending Part V of the Schedule. As a result of this amendment, Telco will be able to charge a maximum of $2,880 per annum for a line connecting a message provider's message delivery equipment to the public telephone network, $600 for connection of each line and for removal to a different building, and $275 for removal inside the same building. All these new charges are the same as existing charges for comparable services and as such are considered justified. The Company will also be able to levy a $1 a minute line usage charge. The Administration is satisfied that this is fully justified by the additional costs for the Company in providing the Infoline service.

Sir, I beg to move.

At this point, Mr. David LI declared his interest as deputy chairman of the Hong Kong Telecommunications Ltd.

Question on the motion proposed, put and agreed to.

Second Reading of Bills

URBAN COUNCIL (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 29 November 1989

Question on Second Reading proposed.

At this point, Mrs. Elsie TU declared her interest as member of the Urban Council.

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

Bill read the Second time.

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

REGIONAL COUNCIL (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 29 November 1989

Question on Second Reading proposed.

At this point, the following members declared their interests:

Mr. CHEUNG Yan-lung as chairman of the Regional Council.

Mr. LAU Wong-fat as member of the Regional Council.

Mrs. Miriam LAU as member of the Regional Council.

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

Bill read the Second time.

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

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 11 January 1989

Question on Second Reading proposed.

MR. EDWARD HO: Sir, the Bill before this Council has probably set a record for itself. It straddles over three Legislative Council Sessions from July 1988, all because of the need to resolve the disputes arising out of clause 8(2). The clause seeks to require that where the board of a relevant supplementary medical profession board prepares a Code of Practice and revises it subsequently, the board shall inform the Supplementary Medical Professions Council in writing and serve a copy of the Code or the revisions on the Council.

Broadly speaking, the views of the ad hoc group on this clause have been divided into two main streams. On one hand, some Members consider that the Codes of Practice for the supplementary medical professions are of such importance that it would be in the interest of the public to require by law that their preparation and any subsequent revision should be scrutinized and approved by the Supplementary Medical Professions Council. It is argued that the clause fails to clearly define the relationship between the Supplementary Medical Professions Council and the boards as regards the Codes of Practice for the professions, and the mere service of copies of the Codes of Practice or of their revisions on the Supplementary Medical Professions Council would not assist the Council in discharging its statutory supervisory functions over the boards. These Members are particularly concerned that the relevant professionals should not treat patients without referrals by medical practitioners, and suggest that the need for such referrals should not only be stipulated in the respective Codes of Practice of the professions, but also in the statutory regulations governing the professions.

On the other hand, other Members feel that since the enactment of the Ordinance in 1980, the working relationship between the Supplementary Medical Professions Council and the boards has been that of consultation and co-operation. This relationship has served them well and should be maintained as both parties have expressed satisfaction with it.

Sir, I believe that the relationship envisaged by the Legislature when enacting the Ordinance is to be found in section 4 of the Ordinance, in which the purposes of the Supplementary Medical Professions Council are described as to promote adequate standards of professional practice and of professional conduct in the professions and to co-ordinate and supervise the activities of the boards by making proposals and recommendations to the boards after consulting them. Most importantly, the Supplementary Medical Professions Council is empowered to exercise its powers in such manner as it considers most conducive to the satisfactory performance of the functions of the boards.

It will be apparent to many of us, therefore, that given the satisfactory progress on the development of self-regulation by the supplementary medical professions, it would be conceptually undesirable to seek to create now a new relationship which has not been tested and which may jeopardize rather than enhance the goodwill that has been established. Quite on the contrary, the expertise and the ethics of the professions concerned should be accorded due recognition, and the professions should be helped to achieve full autonomy in time.

I am pleased to say that Members have finally been able to bring themselves closer to one another's views and have resolved to agree to the passage of the Bill with some amendments proposed to clause 8. These amendments, which have been endorsed by the Legislative Council in-house meeting, will stipulate clearly in the Ordinance that the Codes of Practice of the professions shall not be inconsistent with the Ordinance or any regulations made under it, and that any code or any revision to it shall not come into effect until the expiration of a period of six months from the date the Supplementary Medical Professions Council receiving a copy of the Code or any revision of the Code, or such shorter period as may be agreed by the Supplementary Medical Professions Council and the board concerned.

These amendments have been made in order to provide a period of time for consultation between the Supplementary Medical Professions Council and the boards

before any codes or revisions of them are implemented. Moreover, in the unlikely event that any differences of material importance could not be resolved between the Supplementary Medical Professions Council and the boards, the specified period would provide the time necessary for the authorities to examine whether the codes or any changes proposed to them are or are not consistent with the Ordinance.

Sir, our system of control of the professions has always been founded on our trust and understanding that the professionals are capable of regulating themselves in a conscientious manner and with high regard for the interest of the public. We must therefore trust the Supplementary Medical Professions Council and the boards when they all agree, on the thorny issue about the need for doctor's referral, that it is sufficient to stipulate this need only in the Codes of Practice of the professions, with the exception of the optometrists for whose unique practice doctor's referral is considered not necessary.

I would not wish to reopen the debate on this issue. However, if we are to accept that our ultimate goal is to achieve full autonomy for the boards in regulating the supplementary medical professions, we should let both the Supplementary Medical Professions Council and the boards have a free hand in deciding how best to achieve that goal within the framework of the law. In this regard, I earnestly urge that all parties concerned should further examine, with the benefit of the actual experience gained over the years and in the course of studying this Bill, how best to improve the consultation and communication between the Supplementary Medical Professions Council and the boards, and between the boards and the respective professions to ensure that the boards truly represent the interests of the professions, and at the same time safeguard the standards of their services to the public.

The Bill has also stimulated a great deal of discussions on matters which are related to the Ordinance but not directly relevant to the study of the Bill. These concern the composition of the Supplementary Medical Professions Council and the boards; the exemption of practising doctors and dentists from the ambit of the Ordinance; and the delegation by some doctors to unqualified persons the duties of giving supplementary medical services to patients. These issues deserve due attention. Members have therefore endorsed the ad hoc group's recommendation that they should be looked into by the Administration, the Supplementary Medical Professions Council, the boards and the Medical Council. I am sure that the OMELCO standing panel will also continue to take an interest in it.

Sir, I thought I should not leave unmentioned the specific concern which the Hong Kong Chiropractors Association expressed to Members only very recently. The Association has claimed that the requirement of doctor's referral will pose hardship for the chiropractors in that they will be deprived of the right to refer patients to radiographers for X-ray services. While I sympathize with them, I am advised that the chiropractors have yet to get recognition as a health profession in Hong Kong and as such the question of their right being deprived has not really arisen. I have in fact advised them to persist in their efforts to seek an appropriate status in the health field in Hong Kong. In the meantime, it must be emphasized that this Bill concerns the regulation and control of the professions which enjoy a recognized status. It must also be noted that the decision to stipulate the doctor's referral requirement in the Codes of Practice of the professions has been taken jointly by the boards themselves concerned in consultation with the Supplementary Medical Professions Council. I can only suggest that the Administration give the chiropractors a fair hearing in their next round of discussion.

Lastly, Sir, I would like to take this opportunity to pay tribute to Members of the ad hoc group for having spent so much effort in aiming at getting the Bill right. There have been arguments over the provisions in the Bill, but I am convinced that these are nothing but healthy arguments, all seeking to protect the interest of the public. In particular, I wish to thank Mr. Ronald ARCULLI for his wise advice which, in no small way, brought satisfactory conclusion to the study of the Bill.

With these words, Sir, I support the Bill.

MRS. FAN: Sir, this Bill was introduced into this Council on 11 January 1989. In fact, it had first been introduced into this Council on 6 July 1988 and it has taken over a year for Members to agree on the amendments to the Bill. The main concern of Members had already been adequately explained by Mr. Edward HO.

From a simple layman's point of view, the bone of contention had been whether doctor's referrals should form part of the law or whether it can be contained in the code of practice of the relevant professions.

I strongly support the latter. Firstly this is the consensus view of the Supplementary Medical Professions Council and the relevant boards. But secondly, and perhaps a more important and fundamental reason for my support is that in Hong

Kong we have all along had high regard for the capability of the professions to regulate themselves. I am puzzled by the logic of any attempt to treat supplementary medical professions as second-class professionals, when indeed we should be encouraging them to evolve towards full autonomy as professionals, capable of applying their knowledge and observing professional ethics with the interest of the public at heart. Over-regulation in the name of public interest may well stifle the healthy growth of the professions.

I hope the amendments that are to be proposed at the Committee stage will go some way towards resolving the controversies surrounding this Bill. But there can be no end to these arguments if people continue to allow themselves to be dictated by sectoral interests. Taking this opportunity, I urge all parties concerned to really co-operate and play their parts to safeguard the interest of the public.

The plea by the chiropractors at the very last moment does deserve our sympathy. However, while I am sympathetic to their plight, I have to recognize that the question of whether doctor's referral is required for the professions had been discussed and agreed by the Supplementary Professions Council and the boards. But the fact that these bodies have agreed to stipulate this requirement in the codes does not, to my mind, necessarily preclude the possibility of further amendments by them, in the light of circumstances and arguments which have not been taken into consideration earlier, provided of course that any amendment would not be inconsistent with the Ordinance.

Sir, the chiropractors should not be ignored, nor should we believe that the passage of the Bill means the deprivation of their livelihood. Let it be noted that nowhere in the Bill or any of its proposed amendments is doctor referral referred to.

Sir, finally, may I also pay my personal tribute to the Secretary for Health and Welfare and his staff for their patience and tolerance in processing this Bill. It is no enviable task to be caught in between the pointed arguments seemingly caused by conflict of interests over the Bill and striving to find an arrangement agreeable to all. I hope it will be of some comfort to him that at long last we are on the right track to enable the registration of the professionals to move forward.

With these words, Sir, I support the Bill.

MR. PAUL CHENG: Sir, the presentation of this Bill has brought to our attention the issue of recognized medical professions practising in Hong Kong.

This is timely given the endeavours of OMELCO and Government to preserve a sound, prosperous community in which people who choose to remain can continue to pursue their respective livelihoods.

The focus of the Supplementary Medical Professions (Amendment) Bill enables Government to be responsive to meeting those needs that will assure quality health care for the well-being of all. It also enables Government to address systematically the qualifications of health care professionals who practise apart from the registered medical doctors trained in western techniques.

However, representations made by a number of alternative health care professional groups, notably the chiropractors and the physiotherapists, brought to our attention the possibility that we may not have fully considered their views.

The intent of the Supplementary Medical Professions (Amendment) Bill is commendable. It embraces our responsibility to foster legislation that works to safeguard all aspects of the quality of life in Hong Kong. Surely, we all want to endorse a Bill that seeks to ensure high quality health care as a right for each one of the people of Hong Kong. But, if passed as it is, it will infringe on the rights of certain groups of people. It is this dilemma we as responsible Councillors must address. We must be certain that a fundamental democratic principle is not lost in our pursuit of a broader good aimed at establishing guidelines for monitoring top quality health care for all. The welfare of minority groups who are professionally qualified must be taken into account and receive equal time.

We should also examine this Bill from another aspect. We are amidst times when all of us are doing everything in our power to influence professionals to remain and continue to contribute to Hong Kong. We should not lose sight of this when addressing particular Bills as we must give equal opportunity to all qualified individuals who choose to live and work in Hong Kong.

Instead of voting against this very well-intentioned Bill, I understand that one of my honourable colleagues, who will be speaking shortly after me, will be presenting a motion to delay consideration of this Bill. If that is the case, I will support his motion.

Sir, with these remarks, I would press for further deliberation on the Bill.

MR. CHOW: Sir, I support the Supplementary Medical Professions (Amendment) Bill 1989 for the purpose of registering the supplementary medical professionals, but not the "doctor referral" to be included in the code of practice of the supplementary medical professions, thus providing service only on the basis of referrals from doctors resulting in giving no rights and no choice to the public. It is a step to strengthen the monopoly of the medical profession in Hong Kong. Compared with elsewhere in the world, Hong Kong is taking a giant step backwards if the Bill is passed in its present form.

The purpose of the Supplementary Medical Professions Ordinance and Regulations, like other professions' Ordinances and regulations, is to control and promote the professional standards, to protect and safeguard the general public. Since 1980, with the establishment of these supplementary medical professions boards, all these boards have been functioning with the above objectives, attempting to draft regulations which are just and fair to the profession yet protect and safeguard the public.

I do not agree with some of the medical doctors' remarks that the doctor is the best person to make a diagnosis. Similarly, pharmacists, clinical psychologists, nurses, optometrists, physiotherapists, who are primary health care providers, render diagnosis daily in their respective practices. Would a family physician be able to diagnose compound hyperopic astigmatism with the rule and concomitant heterotropia as well as optometrists do for obvious reasons, or be able to diagnose mechanical problems in such details which are crucial to physical treatment as well as physiotherapists do?

Sir, the medical lobby is simply too strong in Hong Kong. The public and the Government have been indoctrinated successfully by the medical lobby that physicians are the only ones who may diagnose and render primary health care, and that is why four of the five supplementary medical professions boards are chaired by medical doctors; and also that the medical doctors have been offered special treatment and exemption from the Pharmacy and Poisons Ordinance; and that all the major advisory bodies and working parties on health matters are largely dominated by doctors keeping other primary health care providers out of the door; and that with the medical practitioners and dentists who have no training in physiotherapy exempted from the

physiotherapy regulations, they can thereafter exercise their rights under the respective Ordinance, regulations and code of practice and delegate responsibilities to totally untrained and unqualified personnel; and that the doctors are regarded as "Gods" who are experts in every field of health. I wonder how the public interest can really be safeguarded under this medical domination in Hong Kong. This also partly explains why members of the public must not receive services provided by the supplementary medical professionals in the future unless they get the doctors' referral. The legal adviser of the official side also pointed out that the rights of delegation to unqualified personnel by the doctors would have legal implications on the registration regulation of the Supplementary Medical Professions Ordinance, and such delegation should be seriously re-considered.

Sir, again now the "delegation" issue is going to be reviewed by the Hong Kong Medical Council which is supposed to be a sectoral interest free body even though the Medical Council is totally medical dominated.

Sir, although I am representing the health care constituency and it seems that the boards of the supplementary medical professions accept the doctor referral requirement, yet in the interest of the public, in the spirit of the self-regulatory framework for the professions, I would offer my reserved support. I urge the Government to reconsider the issue, if the Government is prepared to reconsider, I will give my full support, Sir.

DR. LEONG: Sir, may I start off by paying my tribute to the Health and Welfare Branch and the members of ad hoc group for the pains they have taken to solve some conflicting ideas of this Supplementary Medical Professions (Amendment) Bill 1989. At a first glance, Sir, the Supplementary Medical Professions (Amendment) Bill 1989 seems to be most innocuous for it only seeks to move some minor amendments to the principal Ordinance. Yet it is perhaps one of the most controversial Bills in recent years -- controversial in that, as stated by the convener of the ad hoc group, it has taken three consecutive Sessions of this Council, a total of some 17 months since its introduction, to come to this Second Reading debate and hopefully Committee stage; controversial in that it has produced a storm in the tea cup and controversial in that it has produced a lot of feudalism and misunderstanding amongst members of the health care team. It is, perhaps, regrettable too that along the way facts are unnecessarily distorted due to self-interest and the interest of the public at large is conveniently forgotten.

It would perhaps be opportune for me to state the concern of the medical and dental professions for this Ordinance and the amendment Bill and hopefully to clarify certain points of misunderstanding and unnecessary allegations.

The medical and dental professions have never been against this Bill. What we are against is that whilst the amendment Bill is being introduced, it has not sought to give its best protection to the public by seeking to remedy a grey area of the principal Ordinance which is the Supplementary Medical Professions Ordinance. There is a lack of clarity of the relationship between the Supplementary Medical Professions Council and the Supplementary Medical Professions Boards and there is a lack of clarity of the controlling role of the council over the boards.

It has to be remembered, Sir, that the boards are formed in majority by members of the same profession and thus, with all the good intention in the world, it would still be seen by the public to be protecting a vested interest. The council, Sir, on the other hand, consists of members appointed by you, in their personal capacity obviously because of their leadership and independent thoughts, not because they can easily be lobbied by the medical profession. As most of them are neither members of the supplementary medical professions nor the medical profession, they would have the interest of the public at heart.

Justice, Sir, must not only be done, but also has to be seen to be done and it only stands to reason that any deliberation by the boards which is approved by the council would gain better acceptance by and credibility with the public, actually to the benefit of the supplementary medical professions concerned.

Regrettably this particular point on the relationship between the council and the boards has never been properly addressed. It still remains dubious as to what would happen if the boards and the council come to a stalemate. Out of respect for the professionism of the boards and the fact that the Legislative Council ad hoc group has been informed by the Administration that there have been a complete understanding and consensus between the council and boards, the medical and dental professions feel that there is no justification to delay this Bill further. Yet in passing the Bill, Sir, the Administration should seriously consider solving this defect and others by further amendments to the principal Ordinance as it deems fit in the not too distant future.

It may be argued that it is the intention of the Administration to provide the

maximum degree of professional autonomy. This, Sir, I would be the first one to support. However whilst the Administration has through its wisdom created a council over the boards, it only stands to reason that at this formative stage of the boards, the council should be seen to take a more surveillant role over the boards for the sake of the public. Complete autonomy can only come with maturity and maturity comes with time. I would hail the day when the boards can be mature enough that the council could even be dispensed with. But before that time, this Council and the Supplementary Medical Professions Council must play its controlling role.

Sir, during the discussion of this Bill, many allegations have been made towards the medical and dental professions, most of which are, by virtue of common sense, untrue. Two issues, however, need clarification.

Firstly, there is an allegation that the medical and dental professions are all out to push the Bill. This is not true and it is obvious that we think that many flaws do exist within the principal Ordinance and would like to see further amendments to it to turn it into perfection.

Secondly, there is an allegation that the medical profession is attempting to control our allied professional brothers or to consider them as second class professionals. Nothing is farther from the truth. The medical profession has, and will always maintain the role as co-ordinator and leader of the health care team and together provide the best care to the public we serve.

Sir, may I conclude by calling upon the health care team to forgo sectoral interests. For it is through a selfless devotion that we can claim to be a profession that truly cares. The public must stand convinced that we owe this to them and this is what the health care profession strives for.

With these remarks and reservation, I support the Bill.

MR. McGREGOR: Sir, I wish to move a motion to suspend further progress of this Bill into law until various detailed representations made recently to Members of this Council by the supplementary medical professions have been fully considered and the organizations and groups concerned given the opportunity to explain their objections to the Council in full.

In moving this motion I must apologize to the Honourable Allen LEE and to honourable colleagues that I did not raise this matter at the last Legislative Council In-house Meeting. I was not aware at that time of the strength of feeling about the effects of the Bill on the work and status of the supplementary medical professions concerned such as the physiotherapists, chiropractors and others. These views have now been made known to me and I am sufficiently concerned to ask that the Bill be deferred for the reasons stated. Sir, I do not know the exact numbers of practitioners involved but I do know that many thousands of people in Hong Kong have been treated by skilled chiropractors, for example, without having first to approach a general practitioner either for examination or X-ray services. A great many people have faith in such specialist services.

As far as I can gather, the supplementary medial professions involved claim that there is no record of misuse, for example, of X-ray services that would justify their having to require referral to general practitioners when X-rays are required. Clearly this matter alone needs the most careful study. There are other similar claims by the affected professions.

Sir, I realize that I am speaking on a subject on which I have very little knowledge and I do not mean to imply that the ad hoc group to consider this Bill, under the able chairmanship of my honourable colleague, Mr. Edward HO, did not do its work thoroughly. I am sure it did. However, the late receipt of the written protests and the nature of these protests persuade me that there is justification in seeking a delay in the passage of the Bill whilst the supplementary medical professions concerned explain their objections in greater detail and directly to this Council.

Sir, I have not tried to lobby my honourable colleagues in this Council. But I do appeal to them now to provide more time for this important issue to be considered. I would ask them not to act in haste and to suggest that a little more time on this matter will not keep the community in any way. Legislation must be right and it must be fair. I am told incidentally that chiropractors are apparently recognized as competent professionals in other countries through legislation. They say that they have been trying for many years to secure recognition here without much success. Their plea deserves more than sympathy. I suggest it deserves further wider consideration.

I move that the debate on the Second Reading of the Supplementary Medical Professions (Amendment) Bill 1989 be now adjourned.

Question on adjournment proposed.

4.36 pm

HIS EXCELLENCY THE PRESIDENT: Standing Orders allow for a Member to propose without notice the adjournment of the debate and so I will now put the question to you which is that the debate on the Second Reading of the Supplementary Medical Professions (Amendment) Bill 1989 be adjourned. Does any Member wish to speak to that motion, that is, that the debate should be adjourned? I should be grateful if Members could keep their hands up. Indeed, I think we might have a short recess for tea, not for an adjournment. If Members would give their names to the Clerk, we will then resume the discussion of this proposal for an adjournment after a short recess.

5.03 pm

HIS EXCELLENCY THE PRESIDENT: The Council will now resume. Let me just remind Members of where we have got to in procedural terms. A Member has proposed that the debate on the Second Reading of the Supplementary Medical Professions (Amendment) Bill 1989 should be adjourned. I have put that proposition to the Council. I have the names of a number of Members -- I will read those out in a moment -- who wish to speak on the motion for the adjournment. The names that I have are: Mr. Edward HO, Mr. Martin LEE, Mr. Ronald ARCULLI, Mr. Paul CHENG and Mrs. Elsie TU. And now also Miss LEUNG Wai-tung, and the Secretary for Health and Welfare.

Do any other Members wish to speak on that motion for the adjournment?

I will then call those Members in order, and after that I will again put the proposition for the adjournment.

MR. EDWARD HO: Sir, this Bill, as I have said before the break, has been outstanding since July 1988, and all Members of the ad hoc group have made genuine efforts to get it right. To correct any misunderstanding, I feel that it is important to put the primary purpose of the Bill in perspective.

The Bill aims at introducing amendments to the Supplementary Medical Professions Ordinance so that the provisions in the Ordinance for regulating the five supplementary professions covered by the Ordinance can be implemented. The main concern of the ad hoc group has therefore been to see that the Bill would take care

of the interests of the public, and is also acceptable to the Supplementary Medical Professions Council and the boards, whose roles after all are to reflect the views of the professional groups.

Members devoted a vast amount of time at various meetings, some with the Administration, in deliberating on the implications of the Codes of Practice. In the final analysis, Members considered that ultimately the decision as regards the Codes of Practice is one for the making by the Supplementary Medical Professions Council and the boards. And it is in this spirit that the ad hoc group has finally decided to recommend passage of the Bill.

Sir, the ad hoc group decided at its meeting on 30 November 1989 to commend the passage of the Bill to the Legislative Council In-house Meeting. A written report by the group was distributed to Members on the same day. The report was subsequently endorsed at the Legislative Council In-house Meeting held on the 1 December 1989. It was at that meeting that Members' attention was drawn to the plight of the chiropractors, arising from the agreement between the Supplementary Medical Professions Council and the relevant boards to include in the Codes of Practice of four professions the requirement that the professions should treat patients through referral by doctors. Incidentally, there are, I understand, 20-odd chiropractors in Hong Kong.

After discussion, the Legislative Council In-house Meeting agreed that the practices of chiropractors were outside the purview of the Ordinance and that their case should be pursued separately through the Administration.

We have dutifully followed the decision of the meeting. The OMELCO Standing Panel on Health Services raised the matter with the Administration at its meeting on 5 December 1989, and will continue to follow the matter up. I am still of the opinion that the proper course for us all should be to do our best to help the chiropractors get due recognition in the health field. I have also said earlier that issues that are related to the Ordinance, but not relevant to the Bill, need not delay the passage of the Bill. There are appropriate forums to sort these things out. And as I said, all parties can play their part in it.

Sir, too much time has gone by, to the detriment of our good intention to achieve self-regulation by the professions. I cannot, in all conscience, agree to defer the Bill any further.

MR. MARTIN LEE: Sir, I must acknowledge that I am not a member of this ad hoc group and that it was only today that my attention was drawn to the fact that many professional bodies are unhappy about this Bill. So I speak as a layman, and hence the importance because I am a consumer.

Nobody yet has said anything as to the urgency that this Bill must be passed today. I accept from the Honourable Edward HO, of course, that the Bill has been before this Council since July 1988, but there is still no urgency as to why we must pass it today and not, for example, two months later.

Sir, indeed, members of the ad hoc group who have spoken so far seem to have some reservations about this Bill, including Dr. the Honourable C.H. LEONG. And when one talks about vested interest, it cannot be denied that it cuts both ways. Just as those in the supplementary medical professions have an interest, likewise the medical doctors. And so we have to be careful in weighing up the conflicting interests.

Sir, this is the first time that I have heard of a referral system whereby somebody qualified, like a general practitioner, is to refer the matter to somebody like a chiropractor who is not eligible to be registered. This type of referral system is unknown to me, although the referral system is well known to me because I cannot go to court unless a client is referred to me by a solicitor plus a junior barrister, but I am qualified to practise law. Now here you have a chiropractor who is not qualified to be registered as a medical doctor, and yet it requires a registered person to refer the matter to him. As I said, I speak as a layman. If I am wrong, no doubt Members will point out why I am wrong.

Sir, this is a matter which involves the interests of the public and we must look at the problem completely divorced from the conflicting interests of the relevant professional groups. And since there is no urgency made out, Sir, I would suggest that it is wrong in principle for Members of this Council to pass this Bill into law today, and then amend, because that would not be the proper way for legislators to deal with a problem which is not pressing.

For these reasons, I support the motion to adjourn.

MR. ARCULLI : Sir, whilst I believe that my honourable colleague, Mr. McGREGOR, is entitled to move an adjournment in respect of the Supplementary Medical Professions

(Amendment) Bill 1989, I would like to point out that my colleague should not lightly disregard all the steps that have been taken in the vetting of this Bill.

The ad hoc group, Sir, comprises 11 Members of this Council. I joined this group very recently and had the advantage of listening to the reasons advanced during meetings there. Members of this Council would also be aware that there were a number of difficulties that the ad hoc group faced during its deliberations, not only from the members of the supplementary medical professions involved vis-a-vis the medical profession, but also from those that are not directly related to the Bill. I believe that due consideration has been given to the Bill and whilst the position of some paramedical professions requires attention, I do not believe that deliberation of this Bill by this Council today should be deferred.

I assure Members that my view on the motion to adjourn is unaffected by the compliment that the convenor, the Honourable Edward HO, paid to me personally.

In conclusion, however, Sir, I would like to say this, and that is to compliment Mr. McGREGOR and those of my colleagues who support his motion to adjourn for their courage, particularly when it could have been said that they had sufficient opportunity to make their views known, either to the ad hoc group or to the Legislative Council In-house Meeting. However, from their obvious enthusiasm on this Bill, I assume that should their motion be successful, we would at least have the benefit of their advice in the ad hoc group.

Sir, with these words, I shall vote against the motion to adjourn.

MR. PAUL CHENG: Sir, due recognition must obviously be given to those colleagues who have worked so hard on the ad hoc group on this Bill, but with the strength of the recent protests of various groups, including authoritative individuals such as Dr. A.R. KING who is head of the Department of Rehabilitation Sciences at the Hong Kong Polytechnic, I feel it is appropriate that we support a motion which will give us additional time to examine the issues that are being raised, some as recently as yesterday.

It appears that there are a number of salient points that need to be examined more fully. They include, among others, the concern of various alternative health care professionals that they are not represented on the proposed regulatory bodies

which will be determining the parameters of their work, the concerns of the physiotherapists as regards the possibility that medical practitioners who do not have adequate training in physiotherapy will be practising physiotherapy, the concerns of the radiographers that the regulations will constrain their ability to offer the best services, and the standards of the chiropractor as an established profession.

In view of the issues being raised, it is apparent that further deliberation of this Bill is necessary.

Sir, with these remarks, I support the motion to adjourn. Mr. Martin BARROW agrees with my remarks and has asked me to also advise the Council that he, too, will support the motion.

MRS. TU: Sir, I rise to support the proposed adjournment. I am not a member of the ad hoc group that studied the Bill. But I have only recently learnt that when this Bill is implemented and when the boards introduce their codes of practice, other supplementary medical practitioners will be seriously affected or even put out of business. None of them, I am told, have been consulted.

Those most affected will be the chiropractors, many of whom have been in operation for more than 20 years. Most, if not all, of them have qualifications that would entitle them to practise as registered doctors in the United States, Canada, Switzerland, Australia, New Zealand and other countries. In spite of their efforts, there is no sign of such a registration for this discipline in Hong Kong.

I understand that the training period of a chiropractor is as long as that of a general medical practitioner, and that in addition the chiropractor undergoes 600 hours of training in X-ray techniques and diagnosis. A general medical practitioner, on the other hand, does not have X-ray training and usually has to depend on X-ray clinics for diagnoses. Yet if this Bill and the codes of practice are implemented as they now stand, the chiropractor will have no access to X-ray clinics except by referral first through a medical practitioner. This creates an impossible obstacle because the doctor will not recognize chiropractic as an alternative medical treatment.

Chiropractors will not be the only practitioners affected by the codes of practice,

as there are many other alternative medical practices favoured by many members of the public. The implementation of the Bill will also adversely affect physiotherapists because of the supervision period now proposed. It is totally unreasonable that a fully trained physiotherapist is said to require supervision, while a general medical practitioner can practise physiotherapy without any training whatever in that discipline, moreover doctors can employ any unqualified assistant to carry out physiotherapy under his own instructions.

I cannot see how the proposal inherent in this Bill can protect the interests of the public, either healthwise or financially, but I can see that it will introduce more double standards and a lot of ill-feeling. I am not trying to belittle doctors but no one can be jack-of-all-trades regardless of the limitations of his training.

To introduce codes of practice that compel the public to see a general practitioner before they can have an X-ray or blood test for some alternative medical treatment or to deny the patient the kind of treatment he may wish to undergo seems to be interference in the rights of the public to choose, and at the same time forcing the public to pay twice or three times as much for the treatment.

I find it strange that the Government is splitting up its own departments into their special disciplines in order to achieve greater professionalism and efficiency, yet in enacting this Bill the Government seems to drag a wide variety of medical disciplines under the control of general practitioners who may not have the training, knowledge or experience necessary for the fields they control.

It should be understood that I am not pleading the cause of quacks or phoneys of the medicine. I would in fact be glad to see all alternative disciplines brought into line by introducing registration of those who have the required training in their field. But to take steps that can only eventually eliminate alternative forms of treatment seems to be to deny people their right to choose. The effect this will have on members of the public who do not like western medical treatment has yet to be seen, because most people are still unaware of the implications of the Bill.

I believe that further thought needs to be given to the Bill. I believe that all alternative medical groups should be independently consulted by the Government and the OMELCO ad hoc group. No one is blaming the sub-group of the ad hoc group because its members were not briefed on its problems when it set up the Bill.

And Sir, until these issues are cleared up, I support the motion for the adjournment.

MISS LEUNG: Sir, I must also declare that I am not a member of the ad hoc group. However, since the Legislative Council In-house Meeting held on 1 December 1989, which agreed to support the passage of the Bill under consideration, further objections have been received. It seems to me that there is a substantial basis of objection from organizations representing the supplementary medical professions, all of which have an honourable role in our medical and health services.

They ask for more time to have their objections considered. I believe they should be given more time. The law must be applied fairly.

With these remarks, Sir, I support the motion proposed by my honourable colleague, Mr. Jimmy McGREGOR.

HIS EXCELLENCY THE PRESIDENT : Dr. C.H. LEONG, I believe you also wish to speak on this.

DR. LEONG : I just want to correct a certain misconception brought about by my honourable colleague, Mr. Martin LEE.

HIS EXCELLENCY THE PRESIDENT : Dr. LEONG, you must speak either to the adjournment motion or simply to correct something which was said by a Member on that adjournment.

DR. LEONG : Yes, that is exactly what I intend to do. I am bringing out a misconception on what my honourable colleague, Mr. Martin LEE, has mentioned. He has mentioned that it requires a medical doctor to consult a chiropractor. This is not heard of, Sir, and is in fact against the Code of Practice of the Medical Practitioner as specified in our warning notice.

SECRETARY FOR HEALTH AND WELFARE: Sir, the principles for the registration and control over persons practising in the supplementary medical professions were accepted by

this Council when the Supplementary Medical Professions Ordinance was enacted in 1980. These include, among other provisions, the power of the statutory boards for the professions to prepare and revise Codes of Practice prescribing standards of conduct and practice for persons in that profession. The issue now in question, as I understand it, is posed primarily by a group of chiropractors, whose practice is not formally recognized or regulated in Hong Kong, and who claim that their practice would be limited by a proposed provision in the Code of Practice for Radiographers. It is suggested that the practice of chiropractic would be severely limited if referrals from a registered medical or dental practitioner were required before a radiographer may take a X-ray of a patient.

Sir, chiropractic is neither a formally recognized nor regulated profession in the health care service of Hong Kong. The Government does not employ chiropractors or provide such a service and there are no training facilities locally for that profession. There is nothing in the present Bill that would directly affect the practice of chiropractic, except that if the Bill were not to pass, the present Ordinance would remain flawed and hence statutory registration and the making of a legally enforceable Code of Practice could not proceed.

The power of each board to prepare and revise the Code of Practice for members of its own profession is already provided by section 26 of the Ordinance. That explains why we have not sought to consult the chiropractic profession before introducing this Bill. However, staff of the Health and Welfare Branch have met with representatives of the Hong Kong Chiropractors' Association on previous occasions at the association's request to discuss the wider issue of the practice of chiropractic in Hong Kong and the chiropractors' access to X-ray tests. As the latter subject relates to the Code of Practice to be prepared by the Radiographers Board, the association's views were referred to the board. I understand that the association has recently reiterated its objection to the provision on doctor's referral in the present draft of the Radiographer's Code of Practice and the board would be meeting shortly to consider these views. I have also mentioned that the OMELCO Standing Panel on Health Services have indicated that its members would wish to discuss the status of chiropractic in Hong Kong with the Administration and I look forward to this opportunity. I am also open to further dialogue with the Hong Kong Chiropractors' Association.

In reply to Mrs. TU, I would point out that the term "supplementary medical professions" at present refers to physiotherapists, occupational therapists,

radiographers, medical laboratory technologists and optometrists. Mr. McGREGOR has not elaborated on the objections by some people in the supplementary medical professions which he feels provide grounds for adjourning the debate on this Bill. But the fact is that the present Bill has been the subject of extensive consultation with the Supplementary Medical Professions Council and all the five boards in the last few months and has stimulated considerable discussion among the professions concerned. As a result, the passage of the Bill is generally supported by the council and the boards, so long as the requirement of doctor's referral would not be prescribed in the regulations governing the professions. A majority of members of the boards are drawn from the professions concerned. In the course of these discussions, a number of issues which are related to the Supplementary Medical Professions Ordinance but are not directly relevant to the Bill have been raised. I agree with the ad hoc group that some of these issues deserve due attention and should be looked at by the Administration with the parties concerned. However, it would be unreasonable to let them hinder the passage of the Bill.

To delay registration of the various professions for these considerations would be a severe blow to the work done by the Supplementary Medical Professions Council and the boards over the years and would cause great disappointment and frustration among most members of the professions concerned. For these reasons, I do not consider it to be in the public interest. I shall, Sir, respond to other points by Members when winding up the debate on this Bill, if it is allowed to proceed.

Sir, I do not support the motion.

Question on the adjournment put and negatived. The Council resumed the debate on the motion that the Supplementary Medical Professions (Amendment) Bill 1989 be read the Second time.

MR. SIT (in Cantonese): Sir, the Supplementary Medical Professions (Amendment) Bill 1989, about which there had been quite a bit of ado for the year past, eventually comes before this Council today for Second Reading after repeated scrutiny of the Bill and hearing of submissions from various professional bodies by the ad hoc group headed by the Honourable Edward HO.

The Bill, upon its passage through this Council, will help put in place a better registration system for the supplementary medical professions. Not only will this

help promote the social status of the supplementary medical professions but it will also accord a definite measure of protection to members of the public who seek the services of these professions.

While supporting this Bill, I have to express reservations with regard to the doctor's referral system being introduced. With the passage of the Bill members of the public will not be able to have direct access to the supplementary medical professions. They will need to be referred to the professions by a medical doctor. This arrangement will deprive members of the public of their right to free choice of services. It will also mean extra medical cost in the form of doctor's referral fee, unless referral will be for free, which will be rather unlikely.

A curious and rather irrational point to note is that the boards of the five supplementary medical professions are chaired by medical doctors and not by members of the professions concerned. This tends to give the impression of "an outsider leading the insiders". It is hoped that the Administration will pay attention to this and take reasonable steps as soon as possible to rectify it.

I have heard arguments from my honourable colleagues in this debate. I believe every legislator, in enacting legislation, is ever keen to strive for perfection. But I believe that no law, except the Ten Commandments, can be perfect and wholly satisfactory. However, in a free society such as ours, we have the Law Reform Commission to recommend amendments to existing laws to bring them closer to perfection. I hope that the shortcomings identified by some of my colleagues today in this debate will be put right in course of implementation and the Ordinance be brought to perfection in course of time. It will then enjoy the support of the professions and the public.

Sir, with these remarks, I support the Bill.

DR. IP: Sir, I welcome this Bill, as much as I welcome all medical advances which will improve the health of our community. When medical treatment first began, it was the doctor who did everything from giving an initial diagnosis to the testing of blood, to the culturing of sputum, taking of X-rays, giving injections, and offering treatment including physical treatment. However it is now recognized that with the progress of medicine, sophisticated diagnostic and specialized treatment methods have evolved, making it no longer possible for doctors on their own to offer

the full range of medical service to their patients. A new breed of paramedical professionals such as optometrists, medical laboratory technologists, physiotherapists and others have developed to supplement the work of the doctor in the diagnosis and treatment of patients. Their individual expertise has made them full fledged professionals in their own right within their scope of work. The purpose of this Bill is to give them such recognition.

It is recognized, for example, that radiographers are technically the best persons to take an X-ray so that a clear picture is taken, but it still requires a doctor to decide, based on the signs and symptoms of the patient, which part of the body requires an X-ray and subsequently to interpret it. For example, X-ray sometimes needs to be taken of a part of the body which produces no symptoms of pain and swelling and which appears to be perfectly normal. On the contrary, many pains and swellings do not require X-ray. Taking X-ray of the wrong place, at the wrong time, or unnecessary X-ray can do more harm than good.

Furthermore, doctors are the only persons who can interpret X-rays. In actual fact, the interpretation of X-rays has become so sophisticated that qualified doctors have to undergo another five years of specialized training before they can call themselves a radiologist. The clinical doctor directly involved in looking after the patient still needs to interpret the findings of the radiologist, in the context of that patient with those signs and symptoms. A simple example is that a fat female over the age of 40 stands a 40% chance of having gall stones on a plain abdominal X-ray, but the majority does not need surgery! To complicate the matter further, the abdominal pain in somebody with gall stones may originate somewhere else!

It is also recognized for example that the medical laboratory technologists are the best persons to do a culture and discover the bacteria which underlie an infection, but it still requires a doctor to decide on what specimen requires a culture and subsequently to prescribe the correct drug in the correct dosage to treat the patient. At times, doctors are required to obtain the specimens themselves when such specimens are inside the body, such as with culture of the cerebrospinal fluid, suprapubic tap of urine, and lung biopsy.

Likewise physiotherapists are technically the best persons to give treatment using physical methods such as ultrasound, heat waves, traction and others, but it still requires a doctor to decide when, among other types of surgical and medical treatment, physical treatment should best be given without any harm. For example,

physiotherapy should only be given after a dislocation is corrected and firmly in its proper place. Physiotherapy may have to be given after medical treatment is started or concurrently with medication. And again the medical profession is the only profession to prescribe western drugs and offer surgical treatment. It is easy to misinterpret a pain in the neck of a middle aged person to be from arthritis of the neck, when the real culprit is an early tumour at the base of the brain. It is also dangerous to misinterpret a pain radiating down the arm to be cervical spondylosis when it is really lung cancer invading the brachial nerve plexus. The point I am making, Sir, is that although physiotherapists are the best person to offer physical treatment and physical treatment alone, it remains the doctors' role to diagnose the illness of the patient in the first instance, and for him to refer the patient for the many types of correct treatment necessary, only one of which may be that of physiotheraphy. Premature and unnecessary physical treatment may do more harm than good and certainly would delay correct diagnosis to be made.

Inspite of the many sub-specializations that have developed to supplement the work of a doctor, the role of doctors has remained and will always remain unchanged. Namely, he is designated by law and properly insured to diagnose, using different methods, the illness of his patients and prescribe and at times co-ordinate the many modes of treatment to the benefit of his patients. That is to say, he remains the head of a multi-disciplinary team bearing the task to cure patients of their ills. In other words, irrespective of such sub-specializations, the paramedical professions need to work with a doctor just as much as doctors require their assistance in the total care of patients.

I am therefore reassured to learn that all the four boards, namely the physiotherapists, radiographers, medical laboratory technologists and occupational therapists, have all felt that their professions should only see patients referred by doctors as it has always been by legislation. I was even more reassured because the majority of Legislative Council Members felt the same. The issue regarding chiropractors is for the time being a matter outside this Bill. However, I would reassure those Members who have spoken today for the delay of the passage of this Bill that it is still possible even after enactment of this Bill for chiropractors to obtain X-rays for their patients by referring their patients to an X-ray laboratory supervised by a radiologist until the wider issue of their registration is solved. Alternatively, the Radiographers Board can urgently revise their Code of Practice to give exemption to those chiropractors who can prove registration as a chiropractor in their country of qualification to solve this problem in the short term.

I have been overwhelmed by my legislative colleagues' confidence in the five paramedical professions. I agree with them that each of the professions should be given the chance to regulate their own profession and in particular to ensure that their members should practise within their scope. The board should be given the power to discipline their members who treat patients without referrals by doctors. Although the code of practice can be revised by the boards, amendments to this Bill ensure that the overseeing Council approves of any such change, failing which there is a six-month period for necessary actions to be taken before the revised code can be put to practice. This will give time for the Administration to inform the Legislative Council and the Governor in Council of such a deviation of opinion between the boards and the Council. Legislators can then, if they feel necessary, introduce legislative amendments to make it a requisite for doctor's referral. The other safeguard is that the Governor in Council has also the power and he can, if necessary, make prohibitions to restrict the practice of the relevant professions to be through doctor's referral only.

Sir, I have dwelt in depth on the need for doctor's referral and I do not apologize for it. Hong kong lacks public medical education and I am using this as yet another opportunity to educate the public on health matters. The point I would like to put forth faithfully, Sir, is that there is no short cut to health. It is important to develop a trusting relationship with a doctor of your choice and obtain through him the best possible treatment. Money spent early on a qualified medical practitioner's opinions means saving more in money, time and suffering. Self diagnosis, self treatment and more recently self referral for specialized treatment are all too common and can be dangerous.

With these amendments to safeguard that the practice of these five paramedical professions proceed to the benefit of health of patients, I support the Bill before Council.

SECRETARY FOR HEALTH AND WELFARE: Sir, I would like to thank Mr. Edward HO and other members of the ad hoc group for their support for this Bill which has proven to be far more complex and controversial than was intended.

First of all, let me point out that the purpose of the present Bill, which was first introduced into this Council in July 1988 and subsequently re-introduced in

January this year, is to amend the principal Ordinance so as to facilitate the drafting of regulations for the various supplementary medical professions. The need for these amendments was clearly evident in the final stage of drafting the regulations for the registration and disciplinary procedures of the relevant professions. Unless the Ordinance is amended to provide the necessary enabling provisions, the regulations cannot be made and registration of members of the concerned professions cannot proceed.

The basic principles relating to the registration and discipline of the supplementary medical professions and the role of the Supplementary Medical Professions Council and the professional boards were accepted by the Legislative Council in 1980 when the present Ordinance was passed. However, in the course of discussions with the ad hoc group studying the Bill, a number of fundamental issues have been raised including, in particular, the proposal that there should be included in the Ordinance specific power for regulations to be made prescribing the circumstances in which members of the supplementary medical professions would accept patients in the course of their practice. In response, we undertook to consult the Supplementary Medical Professions Council and the five boards on the matter. Accordingly, resumption of debate on the Bill was deferred until today to allow sufficient time for consultation.

Sir, I would like to place on record my appreciation of the advice given by the Supplementary Medical Professions Council and the boards and the understanding demonstrated by the ad hoc group in their support for the Bill. As a result, we have agreed with the ad hoc group an amendment to the Bill which will improve the working arrangements between the council and the boards without compromising on the principle that the boards should have authority over their own codes of practice. Mr. HO has described these amendments which he will move in the Committee stage. I shall also be moving a number of amendments in Committee.

I would now like to comment briefly on a few general points which have emerged in the course of the debate on the Bill.

Composition of the council and the board

It has been suggested that the present extent of representation of the supplementary medical professions on the Supplementary Medical Professions Council is inadequate. Under section 3(1) of the Supplementary Medical Professions

Ordinance, the council comprises one person from each supplementary medical profession in addition to persons nominated by the higher education institutes, together with public officers and four other persons. It is our view that as the council has overall responsibility for ensuring standards of professional practice and for co-ordinating and supervising the activities of the boards, it is in the public interest that it should have a wider representation than the supplementary medical professions themselves. As regards the boards, only two members of each board are appointed following nomination by a medical association and a majority of members are drawn from the relevant supplementary medical profession. The chairman of each board is drawn from members of the council. All members of the council and the boards are appointed by the Governor. I therefore believe that the composition of the council and the boards is well balanced, so that the interests of the professions and of the public can be taken into account.

Relationship between the council and the boards

Some Members have expressed concern that the relationship between the Supplementary Medical Professions Council and the boards has not provided a clear line of authority and this has impeded the development of a working arrangement which is necessary to safeguard the public interest. Perhaps I might restate the intention of the Supplementary Medical Professions Ordinance when it was introduced in 1980.

It was the intention that the board should not be subject to the direction of the council but the latter could make recommendations to the board concerning their activities. The board was also specifically empowered to draw up codes of practice for their own professions. Any attempt to alter these basic principles would be strongly resisted by the boards and the professions concerned.

In practice, the council and the boards have conducted their business in a spirit of consultation and co-operation. On code of practice, the Bill requires the boards to notify the council when such a code is prepared or revised. In addition, as an administrative arrangement, all the boards have agreed that they will forward their draft code to the council before the document has been finalized for promulgation so as to enable the council properly to discharge its function of making recommendations to the boards. One of the amendments to clause 8 to be moved by Mr. HO seeks to formalize this working arrangement by providing that a code prepared or revised by a board shall not come into operation until after the expiry of a specified period. This helps to provide a definite timeframe for all concerned parties to

discharge their functions and responsibilities. In the most unlikely event that the council and a particular board could not reach a consensus on the content of the code, or that the code were to contain specific elements or exclude some essential features and this be against public interest, then this specified period of time would enable the Administration to consider whether remedial measures were justified.

Doctor's referral

On the point of doctor's referral which has been the most controversial issue raised in the context of the Bill, it is generally understood that members of different professions in the health care team should work together in providing the most effective treatment for the sick as Dr. Henrietta IP has so eloquently expressed. Management of a sick person begins by making a proper diagnosis. The patient is then referred to seek the appropriate form of treatment from the best qualified professionals. The supplementary medical professions play an important role in assisting the diagnosis of ailment by the doctor and in providing the curative and rehabilitative treatment following a medical diagnosis. Doctor's referral in the practice of supplementary medical professions is therefore under normal circumstances considered an appropriate requirement in the interests of the patient. The council and boards have generally accepted this, though it is recognized that special circumstances may apply in the practice of optometry. Accordingly, the code of practice for occupational therapists, physiotherapists, medical laboratory technologists and radiographers will contain the requirement of referral from a registered medical practitioner and, in some cases, a registered dental practitioner. However, the council and all the boards were opposed to the proposal of putting doctor's referral in the legislation.

Regarding the rationale for accepting doctor's referral in practice but refusing to have it enshrined in law, the council and the boards have advised that referral among members of the health care team is essentially a professional matter and should best be provided for in the code of practice drawn up by each professional board for regulating the professional ethics and conduct of members of that profession. This arrangement also offers the flexibility to tailor the requirement on referral to the circumstances of each particular profession. I believe that the boards should be entrusted with the responsibility to regulate members of their profession and to do so with the best interests of the public in mind.

Exemption of doctors

The question of exemption of doctors from section 21(1) of the Supplementary Medical Professions Ordinance has also aroused some controversy. Let me first clarify that the issue of exemption is not strictly relevant to this Bill. Under the extant Ordinance, the Governor in Council is already empowered to make regulations to exempt any class of persons from all or any of the provisions of the Ordinance. The regulations for the various supplementary medical professions as presently drafted will exempt doctors while practising medicine, dentists while practising dentistry and certain other categories of professions from the requirement to register.

These exemptions are necessary given the inevitable overlap in the practice of the various professions. For example, a doctor may in the course of practising medicine perform treatment that falls within the scope of physiotherapy. Furthermore, the exemptions make for consistency with other laws. For example, a reciprocal arrangement for members of the supplementary medical professions is provided in the Medical Registration Ordinance.

Delegation by doctors to unqualified persons

Concern has also been expressed about the practice of some doctors of employing unqualified persons to perform specialized functions supplementary to medicine. I have received the legal opinion from the Attorney General's Chambers that this practice would not be permissible when section 21 of the Ordinance comes into effect. Following advice from the Supplementary Medical Professions Council, it is the intention of the Administration to pursue the matter with the Medical Council.

Regulations

Finally, I would like to say a few words on the progress of the various sets of draft regulations. The regulations for occupational therapists and medical laboratory technologists were completed last year but cannot actually be made until the necessary enabling provisions are provided in the principal Ordinance by this Bill. Drafting of the regulations for physiotherapists has been completed and these will shortly be put to the Executive Council. Drafting of regulations in regard to optometrists and radiographers is nearing completion and they will thereafter be circulated to all concerned organizations for comment. These regulations have taken a long time to finalize because of the complexity of the subjects and the need to

carry out thorough consultation. Nevertheless, I should like to assure Members that it remains our priority to bring this Ordinance into operation as soon as possible and, allowing time for the registration machinery to be established, we expect that registration of the various professions will commence in stages in the latter part of next year.

Sir, I beg to move.

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

Bill read the Second time.

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

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1989

Resumption of debate on Second Reading which was moved on 25 January 1989

Question on Second Reading proposed.

MR. ANDREW WONG : Sir, it has taken 10 months for the ad hoc group formed to examine this Bill to commend the passage of the Bill to this Council. This is not without reason. Perhaps, Sir, we have been shorter than the other one.

The Bill seeks to impose duties upon both proprietors and employees to exercise a general duty of care to ensure industrial health and safety, and more importantly, it introduces custodial penalties for offences committed by either proprietors or employees. As such, it deserves serious and meticulous consideration.

In examining the Bill, the ad hoc group held 11 meetings, including those with the Administration and with deputations from employees associations and trade unions. The group also received nine written representations from the parties concerned. There is no dispute that both employers and employees do have the responsibility to improve industrial safety and to prevent industrial accidents. And I also believe that most members of our community do hold the view that custodial sentences for offenders, who show blatant disregard for industrial safety, will enhance the deterrent effect of the law, hence reap the beneficial effects of safer work places.

The number of industrial accidents in 1988 was 59 508 which represents a 10% increase over the figure of 54 138 in 1986. The construction industry alone contributed nearly half of the total industrial accidents in the same years. And over the past three years, an average of 58 construction workers were fatally injured each year. Now, these figures cannot be taken lightly for they indicated that despite all our education and publicity efforts, somewhere, somehow, the value of human lives may have been cast aside all too casually.

Sir, it came as no surprise to me that proprietors should be concerned and worried about the introduction of custodial sentences into the Ordinance, but I was a little puzzled at first, when employees, too, raised objections to this provision which aims ultimately at providing more safeguards for their safety. It has been put to the ad hoc group that employees who suffer serious injuries are already in a piteous state and it is unfair to put them in prison. However, such an argument tends to ignore the fact that very often the mischief of an employee not only exposes the employee himself but also other persons working with him to risk of fatal injuries. Therefore, I cannot, in all fairness, agree that the provision under the new section 6(b)(3) should be removed. It should not be removed, in other words.

A rejection of the above claim by employees should not, however, be taken as a detraction from our conviction that it is the primary duty of the proprietor to ensure that the workplace is safe. It is the proprietor who has the obligation and the means to provide a safe environment for work. For this, there can be no compromise. At the same time, the co-operation of the employee is essential for maintaining safety standards. I therefore urge that serious thoughts should now be given to requiring the mandatory establishment of industrial safety committees in all factories or industrial undertakings, so that proprietors and employees alike play their respective roles in promoting safety at work by participation.

When the Secretary for Education and Manpower introduced the Bill in this Council on the 25 January 1989, he made it clear that custodial penalties are targeted at offences which are liable to cause fatal or serious accidents or risks to health, and are committed wilfully, and are within the offender's ability to prevent. The ad hoc group's prime task has therefore been to examine whether the Bill actually reflects the spirit and achieves its intended purpose of getting at the real culprit.

Several issues have been of concern to members of the group. First, the law as

it stands so defines a proprietor as to include those persons who merely receive the profits of a business but who have no control whatsoever over the management of the business. It would be unfair to make them responsible for an accident.

Second, as custodial penalties are aimed at offences which are committed wilfully, this has to be clearly stipulated in the Bill.

Third, it is unreasonable to place the onus upon the accused to prove that it is not reasonably practicable for him to avoid or prevent any breach of the duty of care.

And finally, the group considers that as far as the strict liability offences covered by the relevant subsidiary legislation are concerned, where custodial sentences are imposed, a defence of reasonable excuse should be provided unless the offences are committed by a positive act or with foreknowledge.

Following detailed discussions, and fully taking into account the representations made to the members, the ad hoc group recommended that amendments be made to the Bill and I am pleased to say that the Administration has concurred with members' views. Mrs. Miriam LAU and Mr. James TIEN will move these amendments at the Committee stage, and I am quite sure they will be elaborating on them during the debate.

Sir, in commending the passage of the Bill to this Council, the ad hoc group shares the view of the Secretary for Education and Manpower that no regulations can cover every aspect of industrial safety, irrespective of how frequently they are amended. However, I am sure that the Administration will agree that the operation of the legislation must continue to be closely monitored to ensure that the law is kept up to date and thus achieve its purpose, in particular, that of enhanced deterrence against wilful neglect of industrial safety.

I wish to add that in any further review, the Administration must consult the industries thoroughly. The provisions in the Bill will not be operative until after 12 months after its enactment in order to give time for the proprietors and employees alike to get prepared for complying with the new provisions. I urge that wider publicity be given to these provisions for public education. After all, whether our efforts in enhancing industrial safety will pay off hinges primarily on the public's awareness of the importance of keeping our working place and our working environment as safe as we possibly can.

Sir, with these remarks I support the Bill.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: It is now six o'clock and under Standing Order 8(2) Council should now adjourn.

CHIEF SECRETARY: Sir, with your consent I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

MRS. LAU: Sir, the Factories and Industrial Undertakings (Amendment) Bill 1989 is a short Bill but the time spent by the ad hoc group on studying the Bill and the concerns expressed by members of the industry over the ramifications of the Bill have not been inconsiderable.

Under our existing legislation, breaches of industrial safety attract fines up to $50,000. The normal fine meted out by the Courts range from a few thousand dollars to around $10,000. Against such lenient penal provisions, the number of our industrial accidents continue to mount. The Honourable Andrew WONG has already mentioned that industrial accidents which occurred in 1988 represent a 10% increase over that of 1986. What is more alarming is that over the same period, industrial accidents within the construction industry alone have actually increased by 30% and that on average one in every three construction workers got injured during the course of work. These figures clearly indicate that our existing law is not effective and that more stringent industrial safety legislation must therefore be considered.

The Bill seeks to introduce three important changes to existing industrial safety provisions. Firstly, a general duty is imposed on proprietors to ensure the health and safety of their employees attracting, in case of breach, a fine as well as a custodial sentence. Secondly, employees themselves are charged with the duty of taking reasonable care for the health and safety of themselves and others that may be affected by their acts or omissions, attracting in case of breach a fine, and in case of wilful breach without reasonable excuse, a fine as well as a custodial sentence. Thirdly, amendments are made to subsidiary legislation to introduce custodial penalties to offences which hitherto only attracted a fine.

The rationale behind the proposed legislation is unimpeachable for it is only with the greatest of co-operation and care taken by both proprietors and employees that we can expect to improve the health and safety standards within the industry. If we cannot get such co-operation and care through education, publicity and quiet persuasion, we can only hope that the same will be forthcoming under the threat of more severe penalties. The Bill is modelled on equivalent provisions of the United Kingdom Health and Safety at Work Act 1974, the difference however being that under the United Kingdom Act, breaches by the employer or the employee of the general duties imposed on them attract only a fine and liability for custodial penalties will only arise when specific things are done or omitted, such as contravention of the terms of a licence or contravention of a prohibition under a prohibition notice. Although it can be appreciated that in the United Kingdom, the rate of industrial accidents is less serious than that in Hong Kong and not every piece of Hong Kong legislation must necessarily follow that of United Kingdom's there is food for thought as to whether or not we need to make our laws so tough as to be inequitable.

The Bill aroused strong reactions from members of the industry, both proprietors and employees, more so the former. The main complaint of proprietors is that, apart from the catch-all definition of the term "proprietor", it is unfair and unconscionable to impose custodial penalties on them. This is so because under the law, many provisions carry strict liability and in many instances, particularly in construction sites, proprietors are rendered vicariously liable for the acts of their so called "employees". For example, under the Construction Sites (Safety) Regulations, the definition of a contractor responsible for the site means the principal contractor. For the vast majority of provisions, the contractor responsible for the site is liable whoever actually commits the offence. Those who have experience with the construction industry will know that there is a complex system of sub-contracting within the trade so that in a single construction site there may be umpteen sub-contractors and sub-sub-contractors, for all of whose acts the principal contractor will have to assume responsibility. This has not created difficulty in the past as the principal contractor simply computes the amount of possible fines for a particular construction and adds it to operational cost before tendering for the project. The position however is very different if the principal contractor has to go to jail for the act of a sub-sub-contractor, whom he has probably never met and over whom he has no control. Worse still, many of the provisions under the existing law carry with them strict liability. In the leading case of the Attorney General versus Shun Shing Construction and Engineering Company Limited, it

was held that where that word "ensure" is used in the legislation, mens rea is not a necessary element of the offence. Once the prohibited act occurred, the liability is strict and it shall not be a defence for the defendant to show that he had actually taken all reasonable steps to prevent the accident occurring. A large number of offences in the subsidiary legislation in which it is now proposed to add custodial penalties carry with them strict liability so that it is understandable why the proposed Bill has given rise to such grave concern amongst the proprietors.

The proprietors also complain of the disparity in treatment between them and the employees, that is, employees are liable to a custodial sentence only if their acts or omissions are proven to be wilful, whereas proprietors are liable to such penalties even if such wilful element is absent. This complaint is valid. Bearing in mind the considerations which I have just convassed, it is clearly inequitable to subject a proprietor to custodial penalties when the breach is not committed wilfully or when the proprietor has actually got a reasonable excuses therefor.

There is no doubt that the spirit of the law is to promote industrial safety but equally important is it to ensure that our laws are just and equitable. To ground liability for custodial penalties against someone who may not be the true culprit or who may have done all that could reasonably be done to prevent industrial accidents is grossly unfair and could not be true intention of the law. I am pleased that the Administration is now prepared to narrow down the width of the definition of "proprietor" and to accept that a "reasonable excuse" element be built into those provisions which carry with them strict liability. The Administration is also prepared to accept inclusion of a "wilful and without reasonable excuse" element in the provision relating to the general duties of the proprietor insofar as the same attracts a custodial penalty. Such changes to the proposed Bill will not detract from the high standards of industrial safety which the law aims for, nor does it make the law less of a deterrent. The burden is still on the proprietor to prove that he has an excuse for the act or omission which may be accepted by the Courts to be reasonable. To discharge this burden, the proprietor would have to show that he had acted responsibly and that he had done all that could reasonably be done to prevent the accident occurring.

The proprietors have also urged that there should be in place comprehensive codes of practice setting out specific guidelines for health and safety standards. According to them, this would enable them to know exactly what to do or what not to do in order to comply with the statutory provisions. To believe that codes of

practice could be a bible for proprietors and employees so that compliance therewith would be equivalent to discharge of their respective duties under the law is a misconception. The 1974 Act contains provisions relating to codes of practice but such codes provide mere guidelines and are clearly advisory in nature. They are not intended to absolve anyone from liability in the event of breaches of the law, but rather their existence is to enable the prosecution to establish a contravention where there has been failure to observe the provisions of the code. It must be appreciated that with rapid changes in modern technology, no code of practice can be exhaustive and it would not be right to allow reliance on codes for the purpose of discharging duties of care required by the law. In Hong Kong, the Labour Department has already published a large number of pamphlets and booklets on industrial safety for use by different sectors of the industry. Although not strictly codes of practice, they serve as useful guidelines for those in the trade. Furthermore, I understand that in large industrial undertakings, in-plant safety committees have been established so that proprietors and employees can put their heads together to formulate safety rules pertaining to their own particular industry. This appears to be a more practical approach to be adopted and I feel that the Administration should undertake to encourage and assist in the formation of many more of such safety committees in factories and industrial undertakings. I also feel that the Administration should render as much guidance, advice and assistance as possible to members of the industry, both before and after implementation of the new statutory provisions, so as to ensure that no undue hardship will be caused.

As regards the employees, they have criticized the Bill for being too harsh on them since the proposed section 6B renders those employees who act wilfully liable to custodial penalties. It is clear that a large number of industrial accidents can be avoided if the employees themselves took reasonable care and gave due regard to the safety of others. Whilst I agree that the primary duty of providing a safe system of work rests on the proprietors, the employees themselves should not be exonerated from all responsibility. The deterrent effect of this section should encourage employees to take more care in the course of their work and to adopt a more positive attitude in regard to industrial safety. Even if the penalty may sound a bit draconian, the provision really aims to catch only those who act wilfully, and for those who act wilfully in disregard for the safety of others, there can be no sympathy.

Sir, the promotion of industrial safety requires the concerted efforts of all. The deterrent effect of the custodial penalties proposed under the Bill aims to drive home the message that industrial safety is actually the responsibility of everybody,

and if anyone should blatantly disregard the same, the price they have to pay is not only money but also their own liberty. If everyone could take industrial safety to heart, I am sure that a great many of our industrial accidents can be avoided.

Sir, with these remarks, I support the Bill.

MR. HO SAI-CHU (in Cantonese): Sir, the introduction of the Factories and Industrial Undertakings (Amendment) Bill, in the positive sense, is to conserve human resources in Hong Kong. The prosperity and progress of Hong Kong is dependent on the effort of a diligent workforce being employed to work in a safe environment. However, at present safety measures to protect workers from danger are inadequate.

According to records in recent years, more than 50 000 people sustained injury in the course of work annually. In 1984, there were 53 123 cases of industrial accidents in which 70 people died; and in 1988, there were 59 508 cases with 84 deaths. The condition is even more serious in the construction industry as in 1988 the number of workers injured in the course of work accounts for 46% of the total number of injuries in industrial accidents. It is agonizing to see there are signs that this figure has been on the increase in recent years. Although it may be somewhat gratifying that the industrial accident rate for the third quarter of this year decreases by 2.6% as compared to the corresponding period last year and the upward trend seems to have been checked slightly, there is no room for complacency nor should our alertness be slackened. On the contrary, we should make every effort to turn the tide by being more cautious, soliciting more opinions and working together, so that the casualties caused by industrial accidents would go down year by year and our valuable human resources could be conserved.

Setting their minds on speeding up production to make short-term profits, or shortsighted profits so to speak, some employers have overlooked the safety and health of their workers. This has resulted in a sharp rise of industrial accidents. Legislation should be introduced to raise the penalty to strengthen the deterrent effect. Some of these employers think that as they have already fulfilled their obligations as employers by securing insurance cover for their employees, it will not be necessary for them to pay particular attention to industrial safety for the insurance company will be responsible for the compensation should any accident happen and the employees themselves will get their compensation. Some employers are of view that to speed up production in order to gain quick and large profits is most important

of all. To them, the pecuniary penalty for any offence against industrial safety is only part of their operating costs. To rectify these erroneous thinking and management style of a minority of employers, the most effective means, apart from publicity and education efforts, is to introduce legislation to control and penalize those unscrupulous employers.

Whenever there is an industrial accident, the victim will always be the worker. The worker has suffered the instant punishment of injury as the result of his negligence or contravention of operating instructions. Thus, normally he will not be given any further punishment. Nevertheless, it will serve such a worker right by imposing appropriate punishment including custodial sentences upon him if he has intentionally ignored safety procedures or failed to use specified safety equipment which has been provided simply for convenience and expediency and caused mishaps and casualties to himself and others.

Accidents are sometimes the result of a series of negligence and contributing factors. It is often difficult to put all the blame on a single person. Apart from custodial penalties for serious cases and cases where the employer is definitely accountable, the authorities concerned should consider other alternatives such as suspending the operation, closing down the machines, nullifying or temporarily nullifying their eligibility for tender as a form of penalty to punish those unscrupulous employers. As a matter of fact, such measures have been adopted by countries like the United Kingdom, Japan, Singapore and so on, and have produced remarkable results.

It is imperative that efforts should be made right now to prevent the recurrence of industrial accidents. Legislation is one possible alternative to bring about deterrent effects.

Sir, with these remarks, I support the motion.

MR. NGAI (in Cantonese): Sir, the purpose of the Factories and Industrial Undertakings (Amendment) Bill 1989 is to promote industrial safety in Hong Kong and to bring about more effective deterrents against industrial accidents. This amendment Bill imposes on proprietors and employees the primary duty of ensuring safety at work, and provides that any person who is convicted of serious negligence of his duty or wilful contravention of the Ordinance without reasonable excuse is liable to custodial

sentences so as to strengthen the deterrent effect of the principal Ordinance.

As the Bill introduces custodial penalties to certain offences in addition to pecuniary penalties stipulated in the principal Ordinance, the ad hoc group to study the Bill has been extremely careful in examining the circumstances relating to offences that give rise to such custodial penalties. The proposed introduction has been studied repeatedly in great detail to avoid any injustice. This has made the scrutiny of this amendment Bill all the more difficult.

As a matter of fact, no one would like to see the occurrence of any industrial accidents. To strengthen the deterrent effect of the Ordinance by introducing custodial penalties will, in principle, make the proprietors and employees more alert of their primary duty of ensuring safety at work, and indirectly reduce the chance of industrial accidents. In the newly added section 6A, it is provided that the proprietor shall have the general duty to ensure, as far as is reasonably practicable, the health and safety of all employees at work. Section 6B stipulates that every employee shall also have the responsibility to take reasonable care of the safety and health of himself and of other persons, and to co-operate with the proprietor in securing a safe working environment. The definition of "at work" is also provided in section 6C. The newly added sections mentioned above have clearly provided that both proprietors and employees shall have the primary duty of ensuring safety at work, reflecting the legislative spirit of the amendment Bill.

The amended Bill seeks to increase the deterrent effect by introducing custodial sentences into the penalty clauses to make an offender liable to a fine as well as imprisonment. It is therefore deemed necessary to provide defendants involved in any alleged breach of the relevant subsidiary legislations with a defence of "reasonable excuse" so as to avoid any custodial sentence being passed unfairly on innocent persons, and bring the Bill in line with the common law principle that it may be preferable to err on the side of lenity.

The interpretation section of the Bill has given a more specific delineation to the definition of "proprietor", excluding those who merely receive the profits but who do not play a part in the control and management of the industrial undertaking. Under the new clause 14, further specification has been provided on the circumstances under which the responsible persons of the company would have to be responsible for the offences committed by the company.

Sir, the Factories and Industrial Undertakings (Amendment) Bill 1989 as a whole is introduced with good intent. However, to put an effective curb on industrial accidents, statutory provisions for heavy penalties should go hand in hand with full co-operation between employers and employees. Moreover, there should be wider publicity to educate the public in this respect. Measures such as banning operation or revocation of licence can also attain the expected deterrent effect. Imprisonment in this case may not be necessary.

Sir, in the event of an industrial accident, both employers and employees are victims. It is unfair for both of them to be subject to imprisonment simply because we want to deter industrial accidents. I have reservation on the imposition of custodial penalties in addition to the existing pecuniary penalties and the denial of other practicable preventive or deterrent methods to prevent industrial accidents. I therefore shall abstain from voting. I hope that the Government will review the effectiveness of this amendment Bill in view of the practical circumstances in future and to further revise it as appropriate.

Sir, with these remarks, I abstain from voting on this Bill.

MR. TAM (in Cantonese): Sir, in view of the increasing number of industrial accidents which has almost reached an alarming scale, I fully concur with the spirit of this amendment Bill to impose more comprehensive and stricter control over production operations in a bid to prevent industrial accidents.

The Bill, however, is modelled after similar legislation in Britain, requiring both the employer and the employee to bear similar statutory duties in respect of industrial safety. I am concerned that this requirement has not taken into account the fact that the situation in Hong Kong differs greatly from that in Britain. Local employees should not be required to bear the same statutory duties as their employers. The main reason is that workers in local workshops and factories only have a passive role to play. They have to act upon their employers' instructions and have practically no say in the safety management or safety measures in their place of work. Yet they are always the unlucky ones who bear the brunt and sustain injuries in industrial accidents.

Therefore, it is unreasonable for the Bill to require that the employee should have similar statutory duties as those of the employer. This is the main objection

of all trade unions.

In view of the foregoing, I abstain from voting on this Bill.

MR. TIEN: Sir, if we look carefully at this Bill, we will find that it contains measures which affect hundreds of thousands of people in Hong Kong. In the old area of master-servant relations such as these, we see human relations at their most sensitive.

In industry, as in life generally, accidents and other mishaps will occur. When they do happen, everyone, from a strictly human point of view, is the loser, employer and employees alike. Now, for a considerable period of time, the situation was that the employer proven guilty of failing to provide for the reasonably expected safety of the employee is only subject to a fine but not imprisonment. This is now going to change.

The so-called proprietor in the main Ordinance is widely interpreted so that it was not only the person in direct control of the business but also those who merely receive the profits, such as shareholders. I believe the "proprietor" should be someone in direct control of the operation. He controls a novel and heavy burden. He can truly say "the buck stops here for me".

However, Sir, we should not forget that there is an important distinction between the work of the managing director and the work of the factory manager and his divisional supervisor. The managing director of a company does not necessarily operate on the factory floor, as it were. He largely inhabits the managerial world. He directs the operation from "above", so it is unreasonable to expect him to be active at the sharp end of the undertaking. In short, if the worker fails to use safety measures, is it right then that the finger should be pointed at the managing director rather than at the worker and the supervisor? I concede that the employer can, of course, as in the proposed amendment, plead "reasonable excuse". And, I submit, this is the last resort.

I agree the managing director is in direct control of the business, but he is only in indirect control of the workers. Nevertheless, under the original Bill, he will also face the possibility of imprisonment. Now, I am aware that the custodial sentence will be imposed only after he is judged to have committed the offence wilfully

and without reasonable excuse. But, the shadow of imprisonment will hang over the hard-working executive.

Let us of course note that the Bill calls clearly upon the employee to protect himself. Let us also note that the director, manager, secretary or other company officer must show clear evidence of neglect of the workforce.

But I still detect a fundamental flaw, namely in the idea of custodial sentences. For who will benefit if an employer goes to jail? Certainly not the employee who sees his source of income evaporate when his employer goes behind bars. To sum up, I argue that the suggested penalty is draconian.

I argue that a higher compensation to the injured worker will be more appropriate. Compensation, from the injured worker's point of view, has a more significant material value. He knows that such benefits as more money, extended leave, time for convalescence and recuperation are of more direct benefit to him. It is of no benefit to him in merely transferring money in the shape of fines from the employer to the Government, and in addition putting him and the employer in prison.

Sir, there are broader considerations too. Given the current labour shortage, we have an economic situation in which the law may be unreasonably tilted in favour of the careless employee. The effect of this Bill will give the upper hand further to the employee. The ordinary employer cannot dismiss, nor even be unduly harsh with his employees even when they fail to use safety equipment properly. For example, in the summer heat what construction worker would want to wear a hard hat so sweaty and awkward? By its very nature, safety equipment is frequently inconvenient and cumbersome to use.

Furthermore, the current brain drain and labour shortage problem have caused many important supervisory posts which require qualified personnel to be either left vacant or filled by inexperienced people. This will discourage investors from investing in more sophisticated equipment unsure of their safety aspect.

Another consideration asks whether potential investors are prepared to devote their resources to industries which make excessive demands upon safety equipment which could be both extensive and expensive. What rational investors can relish the thought of threats to entrepreneur in an industry in which he might invest? And, what is more, his investment could be in jeopardy when the entrepreneur he supports

falls foul of the law including possible imprisonment!

Today, we also live in the age of the so-called "brain drain". No one wishes to tangle with the law, or the police in any sense. In particular, convictions of offences created under the Bill may become recorded convictions, hence becoming an obstacle to emigration for employers and employees alike. This side-effect should not be overlooked.

Sir, I do not accept that it is sensible or reasonable to hold this dreadful threat over the hardworking industrial community. Work, not prison should be our goal.

I have pointed out the problems as I see them and I hope they will be addressed. I hope that employers will always be given the benefit of the doubt, with due attention to the notion of "wilfulness" and "reasonable excuse". The Hong Kong business and industrial community fail to see the need for entrepreneurs to be threatened with imprisonment.

Sir, as intended by all the amendments to be moved in the Committee stage, I hope that only the most unscrupulous of employers and the most negligent of employees would end up in jail. Having had my reservations on this score noted, I am prepared to support the Bill for a trial period. I strongly urge that it should be reviewed within a period of, say, two years after commencement.

Sir, with these remarks, I offer my qualified support to the Bill.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the rapid growth of industrial accidents in recent years, particularly in the construction industry, has left the Government in no doubt of the need for effective deterrent legislation. The time taken by the ad hoc group and its sub-group to complete their work reflects the complexity of the issues which they have had to address in producing a Bill that adequately meets the community's mounting concern, on the one hand, but recognizes the difficulties faced by businesses, on the other. I am therefore grateful to Members not only for their support for the Bill, but also for the time, care and painstaking efforts they have expended in getting it right.

This Bill is an important landmark in our fight against industrial accidents. It introduces a set of general duties that will place upon both employers and employees the responsibility to ensure that practices at work and working environments are safe.

The sanction of custodial penalties will greatly enhance the deterrent effect of the law, particularly for those businesses which have come to regard the payment of fines as part of their overheads. These measures, draconian though they may appear to be at first sight, are necessary when considered against the appalling record of industrial accidents in certain industries. In the construction industry, for example, the annual accident rate has almost doubled, from one out of every five workers in 1979 to nearly two out of every five last year. To give a further example of the seriousness of the problem, no fewer than 459 workers were injured during the last year of the construction of the Hong Kong Convention and Exhibition Centre. Of this number, two died and 90 were seriously injured, of whom 36 were permanently disabled. It is against a record such as this that one wonders at what cost in terms of human suffering we are achieving progress.

We are, of course, aware of the concern expressed by Members and others outside this Council that the law must be fair and that no one, who bears no blame or responsibility, should be sent to jail. I can assure Members that, as with other offences, no prosecution under the Ordinance will be taken lightly. The amendments to be moved at the Committee stage will, moreover, ensure that only those proprietors who have the management or control of the work place, and those who commit an offence without a reasonable excuse, would be liable to prosecution leading to a custodial sentence.

Sir, I am afraid I cannot agree with the argument that the burden of providing and maintaining a safe working environment rests only with the employer. It must be in the interests of employees to co-operate with their employer in making sure that adequate safety measures are taken. And clearly each employee has an obligation to avoid putting himself and others working with him at risk.

We propose to give employers and employees sufficient time to acquaint themselves with the new industrial safety duties and the penalties provided for in the Bill. Accordingly, we will only bring the law into effect 12 months after the Bill has been enacted. During this time the Labour Department will mount a publicity campaign to explain the Bill. The Department will also assist employers and employees in preparing themselves, for example by providing suitable training in industrial safety practices and advice on the introduction of safety systems. This includes encouraging the establishment of in-plant safety committees.

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

URBAN COUNCIL (AMENDMENT) BILL 1989

Clauses 1 and 2 were agreed to.

REGIONAL COUNICL (AMENDMENT) BILL 1989

Clauses 1 and 2 were agreed to.

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) BILL 1989

Clauses 1 to 5, 7 and 10 to 12 were agreed to.

Clauses 6 and 9

SECRETARY FOR HEALTH AND WELFARE: Sir, I move that clauses 6 and 9 be amended as set out in the paper circulated to Members.

The amendment to clause 6 replaces the new section 15A by an expanded version so as to give the boards the discretion in holding examinations for the purpose of the Ordinance by either conducting such examinations themselves or appointing examiners to conduct examinations on their behalf. As different types of examinations may be conducted for the purpose of full registration and provisional registration under the relevant provisions of the Ordinance, the amendment to clause 6 further provides the boards with the flexibility to determine the eligibility criteria for candidates sitting for different types of examinations.

The amendment to clause 9 is in response to the concern expressed by the ad hoc

group studying the Bill that registered persons in any profession might, in the course of practising their profession, practise or engage in certain activities outside the scope of their professional training and experience. In this respect, there are already existing safeguards in clause 9 of the Bill which enable regulations to be made to prohibit or restrict members of the professions who do not have the required qualifications from practising any specified function of that profession. The present amendment seeks to enhance these safeguards by enabling the Governor in Council to make regulations to prohibit or restrict persons registered in respect of any of the professions from performing, in the course of practising that profession, any function or activity as may be specified in the regulations. To provide the necessary flexibility, the amendment to clause 9 further enables such restrictions, if they are to be made, to apply to all registered persons of the profession or to such persons by reference to their category or qualification. The other changes effected by the amendment are drafting improvements which have not altered the substance of the provisions. Sir, I beg to move.

Proposed amendments

Clause 6

That clause 6 be amended, by deleting new section 15A and substituting --

"Examinations by the board

15A. Each board may --

(a) hold examinations for the purposes of sections 12(1)(a) and 15(2) and (2A) as and when it considers expedient or necessary;

(b) conduct such examinations itself or appoint examiners to conduct them on its behalf; and

(c) specify conditions as regards the eligibility of persons to sit for --

(i) any examination held under paragraph (a);

(ii) any examination so held which is of a particular class; or

(iii) any particular examination so held.".

Clause 9

That clause 9 be amended --

(a) in subclause (1) by deleting new paragraphs (bb), (bc) and (bd);

(b) in subclause (2)(b) by deleting new subsection (3) and substituting -

"(3) The Governor in Council may by regulations -

(a) prohibit, restrict or otherwise regulate, the practice otherwise than under supervision, by registered persons of their profession where those persons have not the qualifications, training or experience prescribed under subsection (1)(ba) in relation to the profession;

(b) prohibit or restrict the performance, or engagement in, in the course of practising their professions by registered persons, of any function or activity specified in the regulations;

(c) prescribe particulars of any supervision required by regulations under this section.

(4) Regulations under subsection (3) may --

(a) apply to registered persons generally;

(b) apply by reference to any qualification, training or experience specified in the regulations; or

(c) apply to registered persons who are of a class, category or other description specified in the regulations.

(5) In this section --

"supervision" in relation to a profession means supervision prescribed under subsection (3)(c) and applicable to that profession.".

Question on the amendments proposed, put and agreed to.

Question on clauses 6 and 9, as amended, proposed, put and agreed to.

Clause 8

MR. EDWARD HO: Sir, I move that clause 8 be amended as set out in the paper circulated to Members. These amendments have been proposed on the basis of two principles generally agreed by all parties concerned: first, that any code of practice for a profession must be in alignment with the provisions of the Ordinance or any regulations made under it; and second, that the Supplementary Medical Professions Council should have the opportunity of offering any proposals or recommendations it may have to the boards concerning their codes of practice. The stipulated period allows for consultation and also provides the necessary flexibility for the Supplementary Medical Professions Council and the boards to resolve matters expeditiously where both parties agree.

Sir, I beg to move.

Proposed amendment

Clause 8

That clause 8 be amended --

(a) by adding before subclause (1)(a) --

"(aa) by adding after "Codes of Practice" where it first occurs -

"which shall not be inconsistent with this Ordinance or any regulations made thereunder";";

(b) in subclause (2) by adding after new subsection (1A) --

"(1B) Any Code of Practice prepared under subsection (1) or any revision of such a code shall not come into operation until the expiration of -

(a) the period of 6 months from the date the Council receives a copy of the Code of Practice or, as may be appropriate, any revision of such a code, served pursuant to subsection (1A); or

(b) such shorter period as may be agreed by the Council and the board concerned.".

Question on the amendment proposed, put and agreed to.

Question on clause 8, as amended, proposed, put and agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1989

Clauses 2, 3 and 5 to 10 were agreed to.

Clause 4

MRS. LAU: Sir, I move that clause 4 be amended as set out in the paper circulated to Members.

During the Second Reading debate, I have mentioned the concerns expressed by proprietors over the fact that they may be liable to custodial penalties even though their breach of the new section 6A may not be wilful and even if they may have a reasonable excuse therefor. The inequity is even greater when compared with the new section 6B which renders employees liable to such penalties only if their acts or omissions are wilful. The proposed amendment to section 6A seeks to remove this inequity by providing that the custodial penalty will only bite if the contravention is "wilful and without reasonable excuse". By building in such a provision, a proprietor who is proved to have committed a prohibited act is given the opportunity to demonstrate that his intent or state of mind was innocent, for example, that he had done all that could reasonably have been done to prevent the accident, but through no fault on his part, the accident occurred. The standard of proof required is one of balance of probability and the onus of proving the reasonable excuse lies on the accused. However a responsible proprietor who has exercised care and prudence should not have too much difficulty in proving reasonable excuse. Decided cases have shown a reasonable man test will be adopted and a cause which is consistent with a reasonable standard of conduct may be accepted as a reasonable excuse. In industrial safety

offences the term "reasonable excuse" may fairly be construed as "reasonable precautions that can be taken with due diligence by the defendant". This means to say that a proprietor who has with due diligence taken reasonable precautions to prevent industrial accidents will have no fear of losing his liberty. The duty to take such precautions however still rests on the proprietor.

Sir, I beg to move.

Proposed amendment
Clause 4

That clause 4 be amended, in new section 6A, by deleting subsection (3) and substituting --

"(3) Subject to subsection (4), a proprietor of an industrial undertaking who contravenes this section commits an offence and is liable to a fine of $30,000.

(4) A proprietor of an industrial undertaking who contravenes this section wilfully and without reasonable excuse commits an offence and is liable to a fine of $30,000 and to imprisonment for 6 months.".

Question on the amendment proposed, put and agreed to.

Question on clause 4, as amended, proposed, put and agreed to.

New clause 1A Interpretation

Clause read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MR. TIEN: Sir, I move that new clause 1A as set out in the paper circulated to Members be read the Second time.

In my speech delivered earlier today I said that the definition of proprietor covers too wide a scope to the extent that even a sleeping partner or director of a company is liable to prosecution for an offence of which he has completely no

knowledge. The Legislative Council ad hoc group takes the view that exclusion from the definition of those persons who merely receive the profits of a business would clarify the position that only those persons who are in control of a business will be liable under the Ordinance.

Sir, I beg to move.

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

Clause read the Second time.

MR. TIEN: Sir, I move that new clause 1A be added to the Bill.

Proposed addition

New clause 1A

That the Bill be amended, by adding after clause 1 --

"Interpretation

1A. Section 2(1) of the Factories and Industrial Undertakings Ordinance (Cap. 59) is amended, in the definition of "proprietor", by repealing "or receiving the profits".".

Question on the addition of the new clause proposed, put and agreed to.

New clause 7A Liability of Proprietor

New clause 7B Section substituted

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

MRS. LAU: Sir, I move that new clauses 7A and 7B as set out in the paper circulated to Members be read the Second time.

One area of concern raised by proprietors is that section 13 of the Factories and Industrial Undertakings Ordinance provides that "the proprietor of every industrial undertaking in or in respect of which any offence against this Ordinance has been committed shall be guilty of a like offence and shall be liable to the penalty prescribed for such offence". Reading this section together with the new section 6B, the result is that a perfectly innocent proprietor may go to prison for the wilful conduct of an irresponsible employee. This cannot be right. To eliminate this anomaly, it is proposed to add a new clause 7A to the Bill so that a further sub-section can be added to section 13 to remove section 6B from the application of that section.

Under the existing section 14 of the Ordinance, where the offender is a company, every director or officer concerned in the management of the company shall be guilty unless he proves that the offence was committed without his knowledge or consent. The onus is on the director to prove absence of knowledge or consent but the statutory presumption may be difficult to overturn. The equivalent provision under the United Kingdom Health and Safety at Work Act 1974 requires that if liability is to be grounded against a director or other officer of a company, the prosecution has to prove that the offence was committed with the consent or connivance of the director or officer concerned. In other words, the United Kingdom Act adopts the common law principle of putting the onus of proof on the prosecution. It is proposed to follow the common law principle and to keep in line with the current trend in the United Kingdom. Clause 7B is therefore added to the Bill to repeal the existing section 14 and to substitute in place thereof provisions similar to the United Kingdom Act.

Sir, I beg to move.

Question on the Second reading of the clauses proposed, put and agreed to.

Clauses read the Second time.

MRS. LAU: Sir, I move that new clauses 7A and 7B be added to the Bill.

Proposed additions

New clauses 7A and 7B

That the Bill be amended, by adding after clause 7 --

"Liability of proprietor

7A. Section 13 is amended by adding after subsection (2) -

"(3) nothing in this section shall apply to an offence under section 6B.".

Section substituted

7B. Section 14 is repealed and the following substituted-

"Liability of directors, partners, etc.

14. (1) Where the person convicted of an offence against this Ordinance is a company and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the company, the director, manager, secretary or other similar officer shall be guilty of the like offence.

(2) Where the person convicted of an offence against this Ordinance is a firm and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any partner in the firm or any person concerned in the management of the firm, the partner or the person concerned in the management of the firm shall be guilty of the like offence.".".

Question on the additions of the new clauses proposed, put and agreed to.
Clause 1

MR. TIEN: Sir, I move that clause 1 be amended as set out in the paper circulated to Members.

Clause 1(2) refers to the appointment by the Governor of a date on which certain sections of the Ordinance shall come into operation. In line with this commencement date provision, new section 7A and 7B should also be included in this clause.

Sir, I understand that it is the intention of the Government to implement the provisions of the Bill 12 months after its enactment so as to give ample time for

proprietors of industrial undertakings and other affected parties to comply with these provisions.

Sir, I beg to move.

Proposed amendment

Clause 1

That clause 1(2) be amended, by inserting "7A, 7B," after "7,".

Question on the amendment proposed, put and agreed to.

Question on clause 1, as amended, proposed, put and agreed to.

Schedule

MRS. LAU: Sir, I move that the schedule be amended as set out in the paper circulated to Members.

It is with the same line of reasoning as that for amending the new section 6A under clause 4 that the amendments to the subsidiary legislation set out in the schedule are proposed. The ad hoc group is anxious to ensure that, whilst not wishing to render ineffectual the deterrent custodial penalties, no one shall have to go to prison for the fault which may be another's, without being given the chance to put forth any plausible defence. By incorporating the defence of "reasonable excuse" to those provisions which carry strict liability, the minds of proprietors should be put at ease. However the defence is only available to them if and only if they have diligently observed industrial safety and have taken due precautions to prevent accidents occurring.

Sir, I beg to move.

Schedule

That the schedule be amended --

(a) in item 1, by deleting paragraph (d) and substituting -

"(d) in regulation 45(2) (a), repeal "be liable to a fine of $50,000;" and substitute "be liable to a fine of $50,000 and to imprisonment for 12 months where the offence was committed without reasonable excuse, and to a fine of $50,000 in any other case;".";

(b) in item 4 -

(i) by deleting paragraph (d) and substituting -

"(d) in regulation 38D(2), repeal "so far as is practicable" and substitute " so far as is reasonably practicable";"; and

(ii) by deleting paragraph (g) (ii) and substituting -

"(ii) add after subparagraph (e) -

"(f) in respect of a contravention of regulation 15(2), 38D(2), 38Q(1) or 40(1), be liable to a fine of $50,000 and to imprisonment for 12 months;

(g) in respect of a contravention of regulation 15(1), 36, 37(2), 38B, 38D(1), 38H, 38I, 38L, 38M, 38N(1) or 38P(1), be liable, where the offence was committed without reasonable excuse, to a fine of $50,000 and to imprisonment for 12 months and in any other case to a fine of $50,000;

(h) in respect of a contravention of that part of regulation 38A(a) which requires an access and egress to be properly maintained, be liable, where the offence was committed without reasonable excuse, to a fine of $50,000 and to imprisonment for 12 months and in every other case to a fine of $50,000;

(i) in respect of a contravention of any other part of regulation 38A, be liable to a fine of $50,000 and to imprisonment for 12 months."; and";

(c) in item 7, by deleting paragraphs (c) and (d) and substituting -

"(c) in paragraph (8A), repeal "on conviction to a fine of $30,000." and substitute "where the offence was committed without reasonable excuse, to a fine of $30,000 and to imprisonment for 6 months and in any other case to a fine of $30,000.";

(d) add after paragraph (8D) -

"(8E) Any contractor who without reasonable excuse fails to comply with regulation 5(1) commits an offence and is liable to a fine of $30,000 and to imprisonment for 6 months.

(8F) If regulation 12(4) is contravened without reasonable excuse, the contractor commits an offence and is liable to a fine of $30,000 and to imprisonment for 6 months.";

(d) in item 13, by deleting paragraph (b) and substituting -

"(b) in regulation 14 -

(i) in paragraph (1), repeal "5(1), 6(3), 7(3), 8(1), 9(1), or 13(3)" and substitute "6(3), 7(3) or 9(1)";

(ii) in paragraph (2), repeal "4,";

(iii) add after paragraph (3) -

"(4) The proprietor of any notifiable workplace who contravenes regulation 8(1) commits an offence and is liable to a fine of $30,000 and to imprisonment for 6 months.

(5) The proprietor of any notifiable workplace who contravenes regulation 4, 5(1) or 13(3) without reasonable excuse commits an offence and is liable to a fine of $30,000 and to imprisonment for 6 months."; and

(e) in item 14, by deleting paragraph (d) and substituting -

"(d) add after regulation 31(3) -

"(4) The proprietor of an industrial undertaking who without reasonable excuse contravenes paragraph (1) in relation to regulation 26 commits an offence and is liable to a fine of $30,000 and to imprisonment for 6 months.".

Question on the amendment proposed, put and agreed to.

Question on schedule, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

URBAN COUNCIL (AMENDMENT) BILL 1989 and

REGIONAL COUNCIL (AMENDMENT) BILL 1989

had passed through Committee without amendment and the

SUPPLEMENTARY MEDICAL PROFESSIONS (AMENDMENT) BILL 1989 and

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1989

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

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Private Bill

Second Reading of Bill

FIRST PACIFIC BANK LIMITED BILL 1989

Resumption of debate on Second Reading which was moved on 29 November 1989

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

Bill read the Second time.

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

Committee stage of Bill

FIRST PACIFIC BANK LIMITED BILL 1989

Council went into Committee.

Clauses 1, 3, 9 and 14 were agreed to.

Clauses 2, 5 to 8, 10 to 13, 15 and 16

MRS. LAU (in Cantonese): Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The First Pacific Bank Limited Bill 1989 is a private Bill promoted by non-government Members of this Council and the drafting of the Bill has not come under the duties of the Law Drafting Division of the Legal Department. The context of the Bill deals with the operation of the banking business and most of the terms adopted in the Bill are specific to the trade and technical in nature with very complicated legal implications or even abstract meanings. As this is the first bilingual enactment of its kind, there is no precedent to follow in drafting this Bill. As a result, tremendous difficulties have been encountered in preparing the Chinese text of the Bill. As a matter of fact, most of the Chinese terms in the Bill are introduced for the first time. Extra care has to be exercised in examining the Chinese text with a view to extending the application of the terminology in this Bill to the Chinese texts of similar bilingual enactment in future.

We are concerned with two fundamental principles in the scrutiny of the Chinese text of the Bill, namely (1) to ensure that the legal meaning of the English text is accurately reflected in the Chinese text and (2) to ensure that the terminology in the Chinese text of this Bill is consistent with that in the Chinese texts of other pieces of legislation.

As far as this Bill is concerned, amendments have to be made to a number of Chinese

terms which cannot accurately convey the legal meanings of the original English text. For instance, in clause 2(1), "hypothecation" has been rendered as "抵押財產索賠權 ". "Hypothecation" is a commonly used term in banking. It is a kind of security arrangement in which the debtor may obtain the loan without surrendering the security to the creditor. The creditor has the right to dispose of the security in case the debtor is in default. The expression in the Chinese text only indicates the right of the creditor without reflecting the real legal meaning of this security arrangement known as "hypothecation". It is therefore proposed that "hypothecation" be translated as "押貨預支" which in fact is a commonly accepted term in the trade.

In the same clause, "assignment by way of security" has been rendered as "抵押轉讓". This Chinese term cannot express clearly the inter-relation between "抵押" (security) and "轉讓" (assignment) in this legal arrangement and it may be mistaken for the term "transfer of mortgage". Thus it is proposed to have the Chinese text amended as "作爲抵押的轉讓" which seems to be more comprehensible and clear in meaning.

Moreover, under the same clause, "contingent" has been translated as "或有的". The liabilities implied in this clause do not only confine to those which may possibly arise, they also cover the extent of the liabilities which cannot be accurately forecast. Therefore it is proposed to amend it to read "不確定的" which is more appropriate.

Furthermore, the term "codicil" has been rendered as "遺囑附錄". In fact, the term "附錄" means appendix which is something appended to the main text with a view to supplementing or expounding the main text. Thus the translation "遺囑附錄" cannot bring out the legal meaning of "codicil" which is actually an instrument to alter the content of a will. Hence it is proposed to amend the term to read "遺囑更改附件" which is more appropriate.

The expression "fiduciary capacity" mentioned in clauses 2(2) and 6(1) has been translated as "受託人的身分". In fact, the term "受託人" has already been accepted as an equivalent to the term "trustee" in the Chinese texts of other Ordinances. In order to distinguish the legal functions and obligations between these two categories of people, it is proposed that "fiduciary" be translated as "受信人". The Chinese character "信" means "to count on" and "受信人" means somebody to count on. The proposed translation conveys adequately the legal implications of the term "fiduciary".

In clause 5(1), the phrase "act or deed" has been rendered as "作爲或契據". In the context of this clause, "契據" is an incorrect translation for "deed" because "act or deed" both refer to action or behaviour. As a matter of fact, "作爲" have already brought out the full meaning of "act or deed". Hence "或契據" should be deleted.

The context of clause 7 begins with "在不損害本條例其他條文的概括適用性的情況下⑴下列條文須予實施⑧但如本條例其他條文有相反之規定⑴則下列條文不得實施 -". Although "prejudice" can be translated as "損害" (to do harm), semantically this section is to provide a safeguard for other clauses so that they will not be affected. Under such circumstances, it will be more appropriate to translate it as "影響" (to affect). Furthermore, the original translation "概括適用性的情況下" for "generality" appears to be clumsy in style and make comprehension difficult. It would be more simple and clear if it is altered to read "一般性原則". It is also incorrect to have "effect" translated as "實施" (to implement) in the same clause because no measures have been mentioned in the provisions under that clause. Only a detailed description of certain circumstances has been given. Therefore it is proposed to amend the introduction of clause 7 of the Chinese text to read "在不影響本條例其他條文的一般性原則下⑴及如本條例並無其他條文有相反規定⑴本條的效力如下". The term "licence" in clause 7(a) has been rendered as "牌照". In land law, the expression "licence" always refers to the kind of legal relation in which the owner of the land permits person(s) to use his land. Since the term means special permission for certain undertakings or activities to take place, "特許証" appears to be a more appropriate rendition. In fact, the term "特許証" is commonly used in the government land leases at present.

The phrase "account is kept" in clause (c) has been rendered as "帳戶的開立" of which the term "開立" appears to refer to the point of time the account is opened and thus cannot accurately convey the idea of maintaining the account. It is therefore proposed to have the term "開立" amended to read "持有".

The terms "mandate" "power of attorney" and "authority" in clause 7(d) have been rendered as "委任", "授權" and "委託" respectively. In fact the term "mandate" has been translated as "委託書" in clause 7(a) and there is no reason to change it to

"委任" in clause 7(d). "Power of attorney" normally means authorizing papers and "授權書" is therefore a more appropriate rendition for this term. The meaning of "authority" is not confined to authorization in writing. It is therefore proposed to have "mandate", "power of attorney" and "authority" rendered as "委託書", "授權書" and "授權" respectively. References have been made to the terms commonly used in the banking sector for the proposed amendments.

The term "bailee" in clause 7(f) has been rendered as "受託人" in the Chinese text. As I have mentioned earlier that the term "受託人" has already been accepted as an equivalent to "trustee", it is therefore not advisable to apply the term to "bailee" as well. Legally speaking, "bailment" means the act of consigning something to another person. Hence "受寄人" is a better translation for "bailee" to convey the legal relation in the act of "bailment" more explicitly.

It seems that the phrase "反對法律訴訟" used in clause 7(h) as the Chinese equivalent for "resist legal proceedings" fails to convey clearly the idea that the process is part of the legal proceedings and it also fails to spell out the purpose of such proceeding. It is therefore proposed to have the rendition amended to read "抗辯法律訴訟". In fact, the term "抗辯" is commonly used in the legal profession.

"Rules of law" in clause 8(1)(c) has been rendered as "規則". As "規則" is an established term used in subsidiary legislation, the translation for "rules of law" should therefore be amended to read "法律原則".

In order to be consistent with the terminology adopted in the Chinese texts of other Ordinances, a number of terms and phrases used in the Bill have to be amended. For instance, the term "剛到" has been used in the Chinese text of clauses 2(1), 6(1), 7(g)(i) and (iv), 7(h), 8(1), 12(2)(b) and (d) of the Bill as the Chinese equivalent for the term "immediately before" while the term "緊接" is commonly used to denote such meaning in other pieces of legislation. The latter appears to be more appropriate. It is therefore proposed to have the Chinese characters "剛到" amended to read "緊接".

The term "指稱" has been used in the Chinese text of clauses 2(2), 7(a)(ii) and (iii), 7(g)(iv) and 8(2) in the Bill as an equivalent for the term "reference" in relation to something or somebody. It is noted that the term "指稱" has already been used as the Chinese equivalent for "allegation" in other pieces of legislation. The term "reference" in this connection has been translated as "提述" in the Chinese texts

of other bilingual
legislation. In order to be consistent in the usage of terms, it is proposed to have "指稱" amended to read "提述".

"Express or implied" in clause 7(a)(ii)(iii) has been translated as "明示還是默示". Since "明訂或隱含" has already been adopted in the Control of Exemption Clauses Ordinance 1989 as the Chinese equivalent for "express or implied", it is proposed to use the same wording for this Bill.

The word "prejudice" used in clause 15 bears a meaning slightly different from that in clause 7. In this clause, the word "prejudice" means to obstruct and cause damage. In the Drug Trafficking (Recovery of Proceeds) Ordinance 1989, "prejudice" with similar meaning has been rendered as "妨害" which means to prevent any obstruction which may in turn cause damage. It appears to be an appropriate rendition in this section of the Bill.

The term "可接納的" used as a Chinese equivalent for "admissible" in clause 10(1) should be amended to read "可接受的" which has been adopted in other pieces of legislation. "據顯示乃" used as the Chinese equivalent for the word "purports" in clause 11(2) should be amended as "看來是". To be consistent with the terminology adopted in other pieces of legislation, the term "决定性證據" used as the Chinese equivalent for "conclusive evidence" in clauses 4(3)(b) and 12(1) should be amended as "確證".

There are totally over 70 proposed amendments to the Bill. Apart from the major amendments mentioned above, most of the other proposed amendments are moved due to translation errors or misprint.

Sir, with these remarks, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended --

(a) in the definition of "抵押" (security) --

(i) by deleting "抵押財產索賠權" and substituting "押貨預支";

(ii) by deleting "抵押轉讓" and substituting "作爲抵押的轉讓";

(iii) by deleting "或有的" and substituting "不確定的"; and

(iv) by deleting "⑩存在者" and substituting "或存在者";

(b) in the definition of "債務" (liabilities) by deleting "或有的" and substituting "不確定的";

(c) in the definition of "財產" (property) by deleting "或有的" and substituting "不確定的?;

(d) in the definition of "現有" (existing), by deleting "剛到" and substituting "緊接"; and

(e) in the definition of "遺囑" (will), by deleting "遺囑附錄" and substituting
" 遺囑更改附件".

That clause 2(2) be amended --

(a) by deleting "本條例中凡有指稱遠東銀行財產或負債的語句" and substituting
"本條例中凡提述遠東銀行的財產或債務"; and

(b) by deleting "受託人" and substituting "受信人".

That clause 2(3) be amended, by deleting "社會組織" and substituting "政治體".

Clause 5

That clause 5(1) be amended, by deleting "或契據".

Clause 6

That clause 6(1) be amended --

(a) by deleting "剛到" and substituting "緊接"; and

(b) by deleting "其他受託人身分" and substituting "其他受信人身分".

That clause 6(2) be amended, in the Chinese version, by deleting subclause (2) and substituting --

"(2)⑵自指定日期起⑴在文意許可的情況下⑴凡於指定將財產轉歸予具有第か款所述受信人身分的遠東銀行的任何現有文書或法院命令④包括遺囑驗訖之證明③⑴以及批准遠東銀行因以該受信人身分提供服務而獲得支付或獲准留存酬金的上述文書條文⑩命令條文⑩或現有合約⑩安排中任何提述遠東銀行之處⑴在解釋及執行時均須以第一太平銀行取代之⑨".

Clause 7

That clause 7 be amended, by deleting "在不損害本條例其他條文的概括適用性的情況下⑴下列條文須予實施⑧但如本條例其他條文有相反之規定⑴則下列條文不得實施" and substituting "在不影響本條例其他條文的一般性原則下⑴及如本條例並無其他條文有相反規定⑴本條的效力如下".

That clause 7(a) be amended --

(a) by deleting "委託人" and substituting "該行本身";

(b) by deleting "牌照" and substituting "特許證";

(c) in subparagraph (ii) --

(i) by deleting "指稱" and substituting "提述";

(ii) by deleting "明示" and substituting "明訂"; and

(iii) by deleting "默示" and substituting "隱含"; and

(d) in subparagraph (iii) --

(i) by deleting "指稱" where it twice appears and substituting "提述";

(ii) by deleting "明示" and substituting "明訂"; and

(iii) by deleting "默示" and substituting "隱含".

That clause 7(b) be amended --

(a) by adding "除第　　條另有規定外," before "任何法定條文"; and

(b) by deleting "⑴惟第　　條之規定須首先遵守".

That clause 7(c) be amended --

(a) by deleting "各該帳戶" and substituting "該等帳戶";

(b) by adding "分別" after "任何情況下均須"; and

(c) by deleting "開立" and substituting "持有".

That clause 7(d) be amended, by deleting "委任⑩授權⑩委託" and substituting "委託書⑩授權書⑩授權".

That clause 7(f) be amended --

(a) by deleting "受託人" and substituting "受寄人"; and

(b) by deleting "債務" where it twice appears and substituting "義務".

That clause 7(g) be amended --

(a) in subparagraph (i) --

(i) by deleting "剛到" and substituting "緊接"; and

(ii) by deleting "給予第一太平銀行④無論是爲滿足該行本身⑴還是爲滿足其他人士③⑴作爲" and substituting "提供給第一太平銀行④無論是爲該行本身的利益⑴抑或是爲其他人士的利益③用作爲";

(b) in subparagraph (iii) --

(i) by adding "在不影響第ヅ節的一般性原則下⑴" before "遠東銀行與第一太平銀行"; and

(ii) by deleting "此規定並不損害以上第ヅ節的概括適用性⑧"; and

(c) in subparagraph (iv) --

(i) by deleting "指稱" and substituting "提述";

(ii) by deleting "債項" and substituting "債務";

(iii) by deleting "給予第一太平銀行④無論是爲滿足該行本身⑴還是爲滿足其他人士③⑴作爲" and substituting "提供給第一太平銀行④無論是爲該行本身的利益⑴抑或是爲其他人士的利益③用作爲";

(iv) by deleting "義務" and substituting "債務";

(v) by deleting "剛到" and substituting "緊接"; and

(vi) by deleting "以收取該抵押品" and substituting "藉該抵押品".

That clause 7(h) be amended --

(a) by deleting "補救辦法" and substituting "補救機會";

(b) by deleting "反對法律訴訟" and substituting "抗辯法律訴訟"; and

(c) by deleting "剛到" and substituting "緊接".

That clause 7(i) be amended, by deleting "全面執行" and substituting "被完全遵行".

That clause 7(j) be amended --

(a) by adding "本條例中任何條文均不可終止或影響" before "在指定日期前"; and

(b) by deleting "⑴本條例任何條文均不得終止或損害".

Clause 8

That clause 8(1) be amended --

(a) in paragraph (c) --

(i) by deleting "剛到" where it twice appears and substituting "緊接"; and

(ii) by deleting "規則" and substituting "法律原則"; and

(b) in paragraph (d), by deleting "產業" where it twice appears and substituting "財產".

That clause 8(2) be amended --

(a) by deleting "指稱" where it first and secondly appears and substituting "提述"; and

(b) by deleting "凡指稱該等現有儲備金時⑴均包括指稱任何損益表內貸方④或借方③所記任何數額⑧而本條文不得損害前述規定的概括適用性⑨" and substituting "在不影響前述條文的一般性原則下⑴凡提述該等現有儲備金時⑴均包括提述任何損益表內貸方④或借方③所記任何數額⑨".

That clause 8(3) be amended --

(a) by adding "在不影響第か款的一般性原則下(1)" before "遠東銀行"; and

(b) by deleting "⑧而本條文不得損害第か款的概括適用性".

Clause 10

That clause 10(1) be amended , by deleting "可接納" and substituting "可接受".

Clause 11

That clause 11(2) be amended, by deleting "據顯示乃" and substituting "看來是".

Clause 12

That clause 12(1) be amended, by deleting "決定性證據" and substituting "確證".

That clause 12(2) be amended --

(a) by deleting "在不損害第か款的概括適用性的情況下 " and substituting " 在不影響 第か款的一般性原則下";

(b) in paragraph (a), by deleting "簽署" and substituting "簽立";

(c) in paragraph (b) --

(i) by deleting "如第一太平銀行或遠東銀行在指定日期當日或以後訂立或簽立 任何契據或其他文件(1)據以" and substituting "任何在指定日期當日或以後訂立或簽立 的契據或其他文件(1)而第一太平銀行或遠東銀行運用該文件";

(ii) by deleting "或據以" and substituting "或運用該文件"; and

(iii) by deleting "剛到" and substituting "緊接";

(d) in paragraph (c) --

(i) by deleting "剛到" and substituting "緊接"; and

(ii) by deleting "負債" where it twice appears and substituting "債務"; and

(e) in paragraph (d) --

(i) by deleting "負債" wherever it appears and substituting "債務";

(ii) by deleting "剛到" and substituting "緊接"; and

(iii) by deleting "決定性證據" and substituting "確證".

Clause 13

That clause 13 be amended, by deleting "行爲" and substituting "作爲".

Clause 15

That clause 15 be amended --

(a) by deleting "損害" where it twice appears and substituting "妨害"; and

(b) by deleting "負債" where it twice appears and substituting "債務".

Clause 16

That clause 16 be amended, by deleting "社會組織" and substituting "政治體".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 5 to 8, 10 to 13, 15 and 16 as amended, proposed, put and agreed to.

Clause 4

MRS. LAU (in Cantonese): Sir, I move that clause 4 be amended as set out under my

name in the paper circulated to Members.

Proposed amendment

Clause 4

That clause 4(1)(b) be amended --

(a) by deleting "設定" and substituting "設立"; and

(b) by deleting "移轉予遠東銀行" and substituting "移轉予第一太平銀行".

That clause 4(2) be amended, by deleting "顯視" and substituting "顯示".

That clause 4(3)(b) be amended, by deleting "決定性證據" and substituting "確證".

Question on the amendment proposed, put and agreed to.

MR. LI: Sir, in this Council two weeks ago I introduced this Bill which today faces amendment to both its English and Chinese versions and hopefully, its Third Reading.

The amendment to the Bill which I propose today is to the English version and is simply that in section 4(2) the reference to seven days shall be deleted and that there be substituted instead a reference to three days.

Sir, my colleague, Mrs. Miriam LAU, to whom I am extremely grateful, has kindly moved the amendments to the Chinese version of the Bill and I request that thereafter the Bill undergo its Third Reading. I would like to place on record my grateful thanks to Mrs. LAU who has spent a very considerable amount of time and effort in examining the amendments to be made to the Bill before us.

Proposed amendment

Clause 4

That clause 4(2) be further amended, by deleting "7 days" and substituting "3 days".?
Question on the amendment proposed, put and agreed to.

Question on clause 4 as amended, proposed, put and agreed to.

Preamble was agreed to.

Council then resumed.

Third Reading of Bill

MR. LI reported that the

FIRST PACIFIC BANK LIMITED BILL 1989

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

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

Bill read the Third time and passed.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: This is the last meeting of the Council before the Christmas and New Year holidays. Indeed, it is the last meeting of the Council during this decade -- a decade in which a great deal has happened to and in Hong Kong. I should like to wish all the Members of the Council and all those who work so hard behind the scenes to help the work of the Council a very peaceful and cheerful Christmas and a happy, prosperous and successful start to the 1990s. And now in accordance with Standing Orders I now adjourn the Council until 2.30 pm Wednesday, 10 January 1990.

Adjourned accordingly at three minutes past Seven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the First Pacific Bank Limited Bill 1989, have been translated into Chinese for

information and guidance only; they do not have authoritative effect in Chinese.