

1 HONG KONG LEGISLATIVE COUNCIL -- 30 May 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 30 May 1990

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

THE HONOURABLE CHUNG PUI-LAM, 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 PANG CHUN-HOI, M.B.E.

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, O.B.E., J.P.

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.

SECRETARY FOR TRANSPORT

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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 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 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 PETER WONG HONG-YUEN, J.P.

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

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

THE HONOURABLE MRS. ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE CLIVE WILLIAM BAKER OXLEY, E.D., J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

ABSENT

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

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

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

THE HONOURABLE POON CHI-FAI, J.P.

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

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

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

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

THE HONOURABLE LEUNG WAI-TUNG, J.P.

IN ATTENDANCE

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

Papers

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

Subject

Subsidiary Legislation

L.N. No.

British Nationality (Miscellaneous Provisions) Ordinance British Nationality (Miscellaneous Provisions) Ordinance (Amendment of Schedule) Order 1990.....	163/90
Hong Kong Airport (Control of Obstructions) Ordinance Hong Kong Airport (Control of Obstructions) (Consolidation) (Amendment) (No. 2) Order 1990.....	164/90
Registration of Persons Ordinance Registration of Persons (Application for New Identity Cards) (No. 9) Order 1990.....	165/90
Employees' Compensation Insurance Levies Ordinance 1990 Employees' Compensation Insurance Levies Ordinance 1990 (Commencement) Notice 1990.....	166/90
Interpretation and General Clauses Ordinance	

Specification of Public Officers (No. 2)
Order 1990.....
167/90

The Chinese University of Hong Kong Ordinance
Statutes of the Chinese University of Hong
Kong (Amendment) (No. 2) Statutes 1990..... 168/90

Sessional Papers 1989-90

No. 76 -- Report of the Police Complaints Committee 1989

Address by Member

Report of the Police Complaints Committee 1989

DR. TSE: Sir, on behalf of the Police Complaints Committee, may I table the Committee's Annual Report for 1989.

The Committee is an independent group appointed by you, Sir, to monitor and review the investigation of complaints by the public against the police. This is the fourth report compiled by the Committee since its establishment in 1986 to take over the work previously carried out by the former UMELCO Police Group.

During the year under report, the Committee has reviewed and endorsed a total of 2 675 complaint cases, embracing 4 026 allegations. With the support of an independent secretariat, the Committee has been able to vet in detail each and every complaint case. Arising from these complaints, various forms of legal, disciplinary and internal action has been taken and advices given against 602 police officers. In the process of vetting the complaint cases, the Committee has also proposed a number of reviews of, and changes to, police practices, procedures and instructions. It is hoped that the Commissioner of Police has found the Committee's proposals helpful in identifying and rectifying areas which lead or might lead to complaints.

I reported last year in this Council that the number of complaints had continued to drop. However, this declining trend, which began in April 1987, appeared to have stabilized. In 1989, a total of 3 234 complaints were received by the Complaints Against the Police Office (CAPO) of the Royal Hong Kong Police Force, a marginal

increase of 15 cases over the number registered in 1988. As a whole, the 1989 figure still represents a 16.4% decrease over the figure for 1987.

The number of complaints should be seen in the context of at least over 3 million potential police-public confrontation situations in 1989. These included 1.56 million persons stopped and checked through the Police Operational Nominal Index Computer System (PONICS) and 1.51 million traffic summonses and tickets issued by the police. The difficult nature of the front-line duties of police work to protect the community should also be borne in mind.

Sir, of particular concern to the Committee was the unwelcome increase in the number of allegations of assault against the police in 1989. During the year, a total of 1 322 reports were made, representing a 19% increase over the previous year. The Committee has studied the trend relating to allegations of assault over the past two years with the assistance of the CAPO. The study showed some correlation between the number of such allegations and the number of reported crime together with consequential crime arrests. The matter has been brought to the attention of Formation Commanders of Police Districts by the CAPO for appropriate action. The Committee will monitor the situation very closely.

The informal resolution scheme to process certain minor complaints was introduced in 1989 on a trial basis for six months. The scheme is designed to resolve quickly, through personal discussion, complaints arising as a result of a fault in procedure or policy, a genuine misunderstanding or circumstances outside the control of the police officers concerned. The scheme, if successful, will enable more resources to be devoted to more serious complaints. Following an evaluation of the trial run, the Committee has endorsed the extension of the scheme with some minor modifications for a further period of six months. The result of the extended trial scheme will be carefully evaluated by the Committee.

Finally, the Committee would like to pledge its continued determination to safeguard the integrity of investigation into complaints against the police, and to exert its utmost to be worthy of the trust that you, Sir, have placed in the Committee.

With your permission, Sir, I would like to take this opportunity to thank the government departments concerned, in particular the Commissioner of Police and all officers in his Complaints and Internal Investigations Branch for the co-operation and assistance rendered to the Committee and its secretariat. I would also like to record my appreciation of the contribution and support by Members of this Council.

Thank you.

Oral answers to questions

The case of Lorrain OSMAN

1. MR. MCGREGOR asked: Will the Government inform this Council of the progress regarding the extradition of Mr. Lorrain OSMAN?

ATTORNEY GENERAL: Sir, I am sure that the Members of this Council will appreciate the fact that I am anxious to say nothing which could prejudice the extradition proceedings against Mr. OSMAN, the case which would follow his extradition, or indeed any related proceedings.

What I can tell Members of this Council is as follows:

1. Mr. OSMAN was arrested in the United Kingdom on 6 December 1985 under a provisional warrant of arrest issued on 2 December 1985.
2. The hearing of extradition proceedings at Bow Street Magistrates Court in London commenced on 27 May 1986. Those proceedings were completed a year later. On 1 June 1987 he was committed to prison to await his return to Hong Kong on 42 charges including charges of conspiracy to defraud, conspiracy to steal, accepting advantages, theft and false accounting. The charges involve a sum in excess of US\$800 million.
3. Since then Mr. OSMAN has pursued numerous applications and appeals before the courts in the United Kingdom, Hong Kong and Malaysia and before the European Commission of Human Rights.
4. Because of the number and detail of these proceedings a chronology has been provided for Members' benefit.
5. In essence Mr. OSMAN has made four applications for writs of habeas corpus. The fourth is pending. The first three such applications have been unsuccessful, as have the various appeals which Mr. OSMAN has pursued from the determination of these applications for habeas corpus.

6. Mr. OSMAN's fourth application for a writ of habeas corpus has been set down for hearing in the Divisional Court in London on 19 June 1990 but that hearing will be preceded by a hearing of an application by Mr. OSMAN seeking disclosure of certain documents.

7. Mr. OSMAN has also appealed against a decision of the High Court of Malaysia striking out his application for judicial review. That appeal is expected to be heard in the Malaysian Supreme Court in September of this year.

8. Mr. OSMAN has also lodged with the European Commission of Human Rights a further complaint which has yet to be determined.

Chronology of Proceedings

6 December 1985

Mr. OSMAN arrested on provisional extradition warrant.

7 December 1985

Mr. OSMAN remanded in custody.

14-16 January 1986

Mr. OSMAN was unsuccessful in an appeal to the Supreme Court of Malaysia concerning an order of the High Court of Malaysia relating to the examination of witnesses.

24 January 1986

Home Office issued authority to Bow Street Magistrates to proceed with extradition case under Fugitive Offenders Act 1967, in respect of an arrest warrant issued in Hong Kong on 20 January 1986.

18 April 1986

Mr. OSMAN was unsuccessful in a further application to the Supreme Court of Malaysia concerning the examination of witnesses.

25 April 1986

Further warrant of arrest issued in Hong Kong in respect of 43 offences.

13 May 1986

Second authority to proceed issued superseding the authority to proceed of 24 January 1986.

27 May 1986

Extradition proceedings began at Bow Street.

1 June 1987

Bow Street Magistrate committed Mr. OSMAN to await the Home Secretary's order for surrender to Hong Kong.

10 June 1987

Application by Mr. OSMAN for writ of habeas corpus to have the Magistrate's decision set aside on grounds of the sufficiency of evidence.

30 June 1987

Complaint to European Commission of Human Rights.

6 July 1987

Mr. OSMAN applied to the High Court of Hong Kong for leave to apply for judicial review. The application is refused.

July 1987

Foreign and Commonwealth Office received a claim on behalf of Mr. OSMAN regarding diplomatic immunity.

20 November 1987

Mr. OSMAN's appeal against the decision of 6 July 1987 was conditionally withdrawn from the Court of Appeal of Hong Kong.

12 January 1988

Mr. OSMAN's application to the High Court of Hong Kong for judicial review of the Governor's Request for his extradition was refused.

30 March 1988

After four weeks hearing Divisional Court dismissed the first application for writ of habeas corpus.

26 April 1988

Court of Appeal of Hong Kong refused Mr. OSMAN's appeal in respect of the decision of 12 January 1988.

29 April 1988

Divisional Court refused leave to appeal to House of Lords in respect of the dismissal of his application on 30 March 1988.

13 May 1988

Mr. OSMAN petitioned House of Lords direct for leave to appeal and made second application for writ of habeas corpus on grounds of diplomatic immunity.

14 July 1988

Petition to House of Lords rejected.

6 September 1988

The High Court of Malaysia granted a stay of a witness examination order pending

an appeal by Mr. OSMAN to the Supreme Court of Malaysia.

20 October 1988

Privy Council refused Mr. OSMAN's application for special leave to appeal against the decision of the Hong Kong Court of Appeal of 26 April 1988.

17 and 21 October 1988

Divisional Court hearing of second application for writ of habeas corpus.

9 November 1988

The High Court of Hong Kong granted Mr. OSMAN leave to apply for judicial review in respect of the issue of warrants.

28 November 1988

Application by Mr. OSMAN to the Divisional Court to further adjourn the second application for writ of habeas corpus is refused.

21 December 1988

Divisional Court dismissed second application for writ of habeas corpus sought on the basis of diplomatic immunity and abuse of process.

19 January 1989

Divisional Court refused leave to appeal to the House of Lords.

27 January 1989

The High Court of Hong Kong refused Mr. OSMAN's application for judicial review and for a declaration.

24 February 1989

Mr. OSMAN petitioned House of Lords direct for leave to appeal in respect of the

dismissal of his application on 21 December 1988.

13 March 1989

European Commission declared inadmissible Mr. OSMAN's complaint under the European Convention on Human Rights.

17 March 1989

Mr. OSMAN granted an order by the Supreme Court of Hong Kong relating to letters of request to Malaysia.

22 March 1989

Order of High Court of Malaysia relating to the examination of witnesses by Mr. OSMAN.

4 May 1989

Court of Appeal, Hong Kong quashed the arrest warrant issued in Hong Kong on 30 November 1985, on the ground that it had been vitiated by bias.

9 May 1989

Mr. OSMAN's solicitors sought adjournment of their petition of 24 February 1989 for leave to appeal to the House of Lords and gave notice of their intention to make a third application for habeas corpus because of the quashing in Hong Kong of the warrant of 30 November 1985, and the issue of a diplomatic note by the Liberian Ambassador relating to Mr. OSMAN's claim of diplomatic immunity.

5 June 1989

Mr. OSMAN applied to the High Court of Malaysia for a declaration relating to the proceedings and to the letters of request.

6 June 1989

Mr. OSMAN applied to the Divisional Court for a writ of habeas corpus for a third time.

26 July 1989

The Divisional Court refused Mr. OSMAN's application for bail.

26 September 1989

Application for judicial review by Mr. OSMAN deferred to start of habeas corpus proceedings which were due in the Divisional Court on 3 October.

4 October 1989

Judicial review proceedings began, to be followed by habeas corpus proceedings on the question of what constituted "relevant offences" for the purposes of Mr. OSMAN's extradition.

5 October 1989

Application for independent enquiry refused. Application for bail refused. Case adjourned to 19 October.

26 October 1989

The Divisional Court adjourned for judgment on both judicial review and habeas corpus proceedings.

1 November 1989

High Court of Malaysia adjourned part heard the Crown's application to strike out an application by Mr. OSMAN for judicial review.

17 November 1989

The Divisional Court dismissed Mr. OSMAN's applications for judicial review and habeas corpus. The court decided that Mr. OSMAN had been lawfully arrested and there had been no dishonesty or abuse of process.

5 December 1989

The Divisional Court refused leave to appeal to the House of Lords in respect of the dismissal of 17 November 1989.

12 December 1989

High Court of Malaysia, having resumed the part heard hearing of 1 November 1989 reserved judgment until 6 January 1990.

15 December 1989

Mr. OSMAN lodged a further petition for leave to appeal to the House of Lords direct, against the Divisional Court's judgment (on the third habeas corpus application) of 17 November 1989.

6 January 1990

High Court of Malaysia struck out Mr. OSMAN's application for a declaration.

1 February 1990

Mr. OSMAN's outstanding petitions for leave to appeal to the House of Lords were refused by the House of Lords Appeal Committee.

5 February 1990

Mr. OSMAN lodged his fourth habeas corpus application.

23 March 1990

Mr. OSMAN appealed to the Supreme Court of Malaysia in respect of the decision of 6 January 1990.

30 March 1990

Mr. OSMAN's application to a magistrate in Hong Kong for the issue of a subpoena under section 104A of the Magistrates Ordinance is adjourned.

10 April 1990

Mr. OSMAN applied for summons for discovery in respect of his fourth application for habeas corpus.

15 May 1990

Mr. OSMAN's application under section 104A of the Magistrates Ordinance was struck out.

25 May 1990

Mr. OSMAN applied to a magistrate in Hong Kong for a further subpoena under section 104A. His application was refused.

MR. MCGREGOR: Sir, is the Government aware that because Mr. OSMAN has been detained in Pentonville Prison in London for four and a half years which is the equivalent to a custodial sentence of 10 years, there seems to be a wave of sympathy and even revulsion across a wide spectrum of public opinion in Britain, including eminent legal experts, against indefinite confinement, and that it is possible, if this situation continues much longer, that the British Home Secretary will be under great pressure to release Mr. OSMAN who is, of course, presumed innocent in British law? Can this Council be assured that the action being taken to have Mr. OSMAN extradited will be pressed with full vigour and without any delay at the Hong Kong end?

ATTORNEY GENERAL: Sir, the Chronology of Proceedings that I have presented to Members will show that it is Mr. OSMAN's own use of the appeal channel which has resulted in these proceedings being prolonged. The case is both complex and very substantial indeed. I can assure this Council that we have handled and will continue to handle all issues involved in this case with diligence and despatch.

MR. PETER WONG: Sir, would the Attorney General please inform this Council how much it has thus far cost the Hong Kong Government to bring Mr. OSMAN to face trial in

Hong Kong?

ATTORNEY GENERAL: Sir, the cost thus far of the extradition proceedings is \$11.2 million. I should add that the Government has been awarded costs in a considerable number of appeals brought by Mr. OSMAN and I think it is likely that we shall recover a very substantial part of that.

MR. MCGREGOR: Sir, can the Government indicate whether or not Mr. OSMAN's presence in Hong Kong is essential to the prosecution of the co-defendant George TAN?

ATTORNEY GENERAL: Sir, I think I would not wish to be drawn into the detail of the prosecution of Mr. TAN and Mr. OSMAN. Suffice it to say at this stage that they are jointly charged.

MR. MARTIN LEE: Sir, bearing in mind that Mr. OSMAN has been kept in custody pending the hearing of the extradition proceedings for so long, will the Attorney General inform this Council whether the Hong Kong Government's legal representatives in various courts have ever opposed bail being given to Mr. OSMAN?

ATTORNEY GENERAL: Mr. OSMAN has made three applications in England for bail. They have been opposed and all were unsuccessful.

MR. MCGREGOR: Sir, can the Attorney General say whether the Independent Commission Against Corruption has sought to interview Mr. OSMAN in Pentonville Prison in London?

ATTORNEY GENERAL: No, Sir. I do not have that information.

Acceptability of fax documents

2. MR. PETER WONG asked: With the increasingly common use of facsimile machines in Hong Kong, will the Administration inform this Council to what extent are fax copies of documents acceptable by government departments in matters concerning complaints,

enquiries, and filing of returns; and whether legislative changes will be effected to permit facsimile machines to be used to serve legal documents such as notices and writs?

CHIEF SECRETARY: Sir, facsimile copies of documents received from members of the public are generally acceptable to government departments in matters concerning complaints, enquiries and the filing of returns.

The Supreme Court and District Court rules govern the service of writs, notices and other process issued out of those Courts. Under the Rules of Court transmission of a copy of those documents by facsimile machine is not effective as personal service of such papers because it is not possible for the sender to prove that such a document was delivered to the party to whom it was addressed. At most, the sender can prove that such a document was sent to a facsimile machine on a particular telephone number. There are also problems concerned with proof that any document received by facsimile machine is genuine. Sir, the Rules may be altered by the Rules Committees of the two Courts, but there has not been any pressure from the legal profession to change the Rules of Court to facilitate service by facsimile machine.

MR. PETER WONG: Sir, will the Chief Secretary please provide this Council with a list of the fax returns which are acceptable by the various departments, such as tax returns to the Inland Revenue Department?

CHIEF SECRETARY: Sir, I will certainly look into that. It may be easier to provide the Honourable Member with a list of those returns which are not acceptable by fax.

PROF. POON: Sir, with reference to the second paragraph of the primary answer on the problems which do not appear to exist for the transmission of messages by electronic mail or in the future by the so-called Electronic Data Interchange (EDI), will the Secretary inform this Council whether messages transmitted by electronic means are acceptable to government departments?

CHIEF SECRETARY: Yes, Sir, my understanding is that they would be. Indeed, the Government is looking into the whole question of whether EDI should be introduced into trade-related transactions, and as part of that project consideration is being

given to facilitating traders without computers. Research is also being conducted to see whether other forms of electronic transmission of data could be integrated with the EDI -- facsimile is one of the methods under consideration. I think the position will be made absolutely clear when we come to a decision on the whole use of EDI, which is likely to be towards the end of this year.

MR. MARTIN LEE: Sir, does the Administration realize that the facsimile machines are often abused by certain advertizers who send long advertisement messages which are unwanted but which cost the recipient paper? Is the Administration going to do anything about that?

CHIEF SECRETARY: No, Sir.

Indefinite leave to enter or stay in the United Kingdom

3. MRS. SO asked (in Cantonese): Will the Government inform this Council --

(a) whether it has statistics on the number of British Dependent Territories Citizens passport or British National (Overseas) passport holders presently residing in Hong Kong who have acquired indefinite leave to enter or remain in the United Kingdom and if so, what the statistics are; and

(b) whether the Hong Kong Government was consulted by Her Majesty's Government on the amendments to the United Kingdom Immigration Rules before they were made?

SECRETARY FOR SECURITY: Sir, we have no precise figures, nor even any reliable estimate. I am informed by the United Kingdom Immigration Authorities that some 3 500 Hong Kong British Dependent Territories Citizens were admitted to the United Kingdom as returning residents during 1989. However, this figure may well include an element of double counting, since some may well have departed and entered the United Kingdom on more than one occasion.

The Hong Kong Government was not consulted about the recent amendment to Immigration Rule 58, but was informed of the amendment before it came into force.

We have been advised that the amendment is technical in nature, and does not represent any change in policy or practice.

MRS. SO (in Cantonese): Sir, is the Government aware that the new immigration rule of the United Kingdom will prompt Hong Kong people who have obtained the right of permanent residence in the United Kingdom to leave Hong Kong and go back to the United Kingdom as soon as possible, thus aggravating our brain drain problem? This is against the purpose of the British nationality package which is to retain talents in Hong Kong. What remedial measures will the Government take?

SECRETARY FOR SECURITY: Sir, I think there were two points there. With regard to the first point, I do not think there is any connection between Immigration Rule 58 and the British Nationality (Hong Kong) Bill. Those who acquire citizenship under the British Nationality (Hong Kong) Bill will, of course, have their right of abode in the United Kingdom conferred by citizenship and not by the immigration rule. As regards the other point, I think I would just like to repeat that we have been advised that the amendment does not make any change to the policy or the practice applied by Immigration Officers at the control points and that therefore there should be no reason for any people, who have the right of residence in the United Kingdom, to act any differently from what they have done in the past.

MR. ARCULLI: Sir, will the Secretary for Security inform this Council whether the Administration here has actually looked at the old Rule 58 and the new Rule 58, and whether it accepts that the advice tendered by Her Majesty's Government is fair and proper advice?

SECRETARY FOR SECURITY: Sir, yes, we certainly have looked at the old rule and the new rule, and I have no reason to question the advice given that the amendments are technical. As I understand it, the amended wording has been the interpretation which the immigration authorities in the United Kingdom have always put on the rule. It was called into question, I believe, by a decision of the United Kingdom Immigration Appeals Tribunal and the purpose of the amendment is simply to clarify and restate what the immigration authorities have always believed to be the original intention.

MRS. LAU: Sir, can the Secretary inform this Council what advice and assistance the Hong Kong Government will give to Hong Kong residents who fear that they may be caught by the change in Rule 58? Specifically, can they be expected to just sit tight and do nothing, or is there any other concrete advice which the Government can give to them?

SECRETARY FOR SECURITY: Sir, I think I can probably do no better than to repeat the reassurance which the Home Secretary gave when he spoke to the amendment in the House of Commons on 15 May. He said then: "We propose to reinforce the message that there is going to be no change in practice by issuing a specific instruction to Immigration Officers emphasizing that in these cases it will not normally be necessary to make any further enquiries about the person's plans." I think that our best advice would be that people should act as they have always acted.

MRS. TAM: Sir, if the amendment to Immigration Rule 58 is technical in nature and does not represent any change in policy or practice, can the Administration inform this Council of the meaning of admission for the purpose of settlement newly added to Rule 58? In practice, what evidence is required in order to justify that the person is seeking admission for the purpose of settlement?

SECRETARY FOR SECURITY: Sir, as I said before, it has always been the understanding of the United Kingdom immigration authorities that the purpose of Immigration Rule 58 was to allow to return for settlement people who have previously settled there and who are now returning after a relatively short stay overseas with a view to resuming their residence. It has never been their understanding or their interpretation of the rule that persons, who are to all intents and purposes permanently resident overseas, can claim settled status in the United Kingdom, and the purpose of the rule is simply to clarify what has always been their understanding. As I have said, I do not think that those who have this status and who return to the United Kingdom will find that they are treated any differently by the Immigration Officers at the point of entry in future from the way they have been treated in the past.

MR. ARCULLI: Sir, will the Secretary inform us whether, in fact, the amendment to Rule 58 has retrospective effect if a tribunal had previously given a different

interpretation of the old Rule 58?

SECRETARY FOR SECURITY: No, Sir, I am afraid I cannot answer that question.

Air services agreements

4. MR. MARTIN LEE asked: What is the progress of negotiations for and establishment of Air Service Agreements between Hong Kong and other countries and what measures have been taken by the Government to expedite this process to ensure that Hong Kong's international air transportation will not be jeopardized after 1997?

SECRETARY FOR ECONOMIC SERVICES: Sir, good progress has been made. Since the signing of the Joint Declaration in 1984, Hong Kong has concluded four Air Services Agreements (ASAs) with the Netherlands, Switzerland, Canada and Brunei respectively. Another ASA is expected to be signed within the next month or so. In addition the texts of five more draft ASAs have been negotiated and will be signed once the usual procedures have been completed. Negotiations with seven other countries have begun and are at various stages of progress. It is expected that negotiations for ASAs with Hong Kong's remaining air services partners will take place as and when opportunities present themselves.

All Hong Kong ASAs negotiated to date have been designed with the relevant provisions of the Joint Declaration in mind and are capable of remaining in force after 1997. The conclusion of these ASAs will therefore lay the foundation for a smooth transition.

MR. MARTIN LEE: Sir, will the Administration inform this Council of (1) the usual procedures which have to be gone through before the five draft air service agreements can be signed, and (2) the difficulties, if any, which have prevented these five draft agreements from being signed?

SECRETARY FOR ECONOMIC SERVICES: Sir, first of all I will repeat what I have said in my principal reply, which is that the fifth ASA will soon be signed and I am talking

of the possibility of having it signed in a matter of weeks. As regards procedures, after the negotiated text has been agreed by the two sides -- these texts are usually ad referendum to the respective governments -- it will be for the respective governments to decide whether it is to be accepted. That is one step. Another step is that, as agreed by the Joint Liaison Group in 1986, the Chinese Government is to be furnished with copies of the agreed text to make sure that there will be no problem from the Chinese Government's point of view because these ASAs are supposed to continue and survive well beyond 1997. Then there are constitutional questions arising which may vary with negotiating partners and in some instances specific constitutional approval or Cabinet approval will have to be given before these ASAs can be formally signed.

MR. PETER WONG: Sir, the answer given by the Secretary tells of agreements concluded with the Netherlands, Switzerland, Canada and Brunei. These are relatively minor in terms of traffic. Can the Secretary inform us when the major agreements such as those with the United Kingdom, the United States of America and Australia will be concluded? Can he also confirm whether agreements for the avoidance of double taxation to back up these air services agreements have been concluded?

SECRETARY FOR ECONOMIC SERVICES: Sir, as I have indicated in my principal reply, apart from the countries named -- countries with whom we have already signed ASAs -- there are five with whom texts of draft agreements have already been negotiated and another seven with whom negotiations are in progress. These countries include our principal civil aviation partners in this region and further afield.

Sir, as regards the second part of the question, the short answer is no. It has not been considered necessary, either for the purpose of concluding the separate air services agreements or in the wider interest of Hong Kong, that double taxation agreements be concluded as a prerequisite for our separation programme.

MR. LI: Sir, can the Administration give this Council an indication as to when it will be likely that negotiation will begin for the air services agreements with the United States of America and the United Kingdom?

SECRETARY FOR ECONOMIC SERVICES: Sir, the negotiations for separated air services agreements are conducted on a confidential basis and it will not be appropriate for

me to go into detail about individual countries with whom we may be in the process of negotiation. The intention, of course, is to complete the separation programme as a whole well before 1997. As regards the United Kingdom Government, perhaps I should add that it is not appropriate for Hong Kong as a dependent territory to have a separated air services agreement with the United Kingdom Government before 1997.

MR. MARTIN LEE: Sir, bearing in mind the Secretary's answer that negotiations for ASAs with Hong Kong's remaining air services partners will take place as and when opportunities present themselves, will the Secretary inform this Council whether the Hong Kong Government intends or does not intend to take any active steps to negotiate with these remaining partners unless opportunities should happen to present themselves?

SECRETARY FOR ECONOMIC SERVICES: Sir, by "opportunities presenting themselves" I mean primarily the matching of negotiating programmes and negotiating commitments on the part of those who are involved. We do have a very busy negotiating schedule covering the whole of the year and I hope Mr. LEE will appreciate that in negotiations of this nature it is usual for a number of rounds to be undertaken before the final text can be agreed on. We are so keen, in fact, on speeding up this programme that even in cases where only normal routine air services matters are to be discussed we will try, if appropriate, also to introduce the subject of ASA separation.

Written answers to questions

Recruitment of therapeutic radiographers

5. MR. CHOW asked: According to a questionnaire survey conducted by the Association of Therapeutic Radiographers, over 50% of the qualified therapeutic radiographers working in government hospitals are making arrangements to emigrate abroad. In view of this and the fact that overseas hospitals are drawing away radiographers while the enrolment rates for courses in diagnostic radiology in recent years have been unsatisfactory, will Government inform this Council what measures it will take to tackle the problem of recruiting and retaining radiographers?

SECRETARY FOR HEALTH AND WELFARE: The supply of Diagnostic Radiographers has been steady in recent years and no shortage problem is envisaged. However, the supply of Therapeutic Radiographers is less satisfactory.

In order to improve the recruitment of Therapeutic Radiographers and to reduce wastage, the following measures have been taken:

(a) The pay scale for Student Radiographers (Therapeutic) has been revised from the old TPS Points 5-7 to Points 12-14 (the new TPS Points 9-11). This revision took effect on 19 July 1989;

(b) Based on the recommendations of the Standing Commission on Civil Service Salaries and Conditions of Service, the pay scales for Radiographers I and II have also been improved with effect from 1 October 1989. The minimum and maximum salary points for both Radiographers I and II have been raised by one point, and a new omitted point has been inserted in the pay scale of Radiographer I;

(c) Special arrangements have been made with the United Kingdom College of Radiographers (UKCR) to register holders of a Professional Diploma in Diagnostic Radiology (PDDR) for training in radiotherapeutic techniques with a view to qualifying in 18 months. Holders of a PDDR and final year students attending the PDDR course at the Hong Kong Polytechnic have been invited to join the therapeutic stream;

(d) Agreement has been obtained from the UKCR to modify the entry requirements for Student Radiographers (Therapeutic) in order to widen the net for qualified applicants. For instance, UKCR now accepts grades A to E in Use of English in the Hong Kong Advanced Level Examination as an equivalent to GCE O Level;

(e) The Hospital Services Department has recommended the present hospital-based programme for training Therapeutic Radiographers be taken over by a tertiary institution and a proposal has been put to the University and Polytechnic Grants Committee;

(f) Recruitment publicity for Radiographers has been stepped up. Information leaflets on the training and career prospects of Radiographers have been distributed to all secondary schools and career talks have been organized for secondary school leavers; the Hospital Services Department will participate in career exhibitions

organized by the Labour Department and more recruitment advertisements will appear in the press; and

(g) Authority has been obtained for recruiting Radiographer II (Therapeutic) from overseas. Arrangements are being made to advertize the vacancies in the United Kingdom through local newspapers and professional journals.

Hong Kong fishing boat straying into Vietnamese waters

6. MR. LAU WONG-FAT asked: Will Government inform this Council what actions will be taken to avoid the recurrence of similar incidents to the recent one in which a Hong Kong fishing vessel was alleged to have trespassed into the territorial waters of Vietnam, detained and a fisherman on board shot dead?

SECRETARY FOR ECONOMIC SERVICES: Sir, measures are already in place to warn Hong Kong fishermen not to enter areas of territorial dispute or where their safety may be endangered, including 200 nautical miles off the shore of Vietnam which it claims to be its "Exclusive Economic Zone". The Agriculture and Fisheries Department has an on-going programme targetted at the fishermen to achieve this objective which includes:

(a) notices displayed at all Fish Marketing Organization Wholesale Fish Markets, liaison offices, fisheries offices and fishermen's organizations premises;

(b) broadcast on "The Fishermen's Half Hour" weekly programme at Channel 5, RTHK; and

(c) meetings, seminars and visits, particularly for those fishermen who contemplate fishing in waters which may be dangerous.

We also encourage fishermen to adopt modern navigational aids such as satellite navigators, so that it will be less likely for them to enter by mistake into areas of dispute or danger. Moreover, we regularly conduct training courses on navigation and the use of navigational aids, and make available low-interest loans to needy fishermen for the installation of such aids.

MFN status of China

7. MR. POON CHI-FAI asked: In view of the impact of the possible withdrawal of the Most Favoured Nation (MFN) status to China by the United States on Hong Kong, will Government inform this Council:

(a) whether the Administration has ascertained what long-term effects this issue will have on Hong Kong's economy, the livelihood of our people, social stability and economic prosperity and how far our society will be affected;

(b) what concrete measures will be taken to avoid or to abate repercussions on Hong Kong so as to protect the overall interests of the territory;

(c) what remedial and improvement measures will be taken by the Government in its forward planning to allay or circumvent the threats that may be brought about by the above issue to our economy; and

(d) whether this crisis situation will induce the Government to reconsider its usual practice of non-intervention in our economy and positively render assistance to the development of all sectors of our industry and trade in order to cope with the many difficulties arising from the ever changing political and economic scenes?

FINANCIAL SECRETARY: Sir, as Members are aware, the President of the United States of America, Mr. George BUSH, announced on 24 May 1990 his decision to extend MFN status to China for another year. Some Senators and Congressmen have criticized this decision and may seek to overturn it. Present indications are that there is insufficient support in Congress for such a move to succeed. Nevertheless, there remains a risk, small though it may be, of the US withdrawing MFN treatment for China. The Administration is monitoring developments closely and will continue to undertake such lobbying activities as are necessary.

The Administration estimates that, in the now unlikely event of China's MFN status being withdrawn, Hong Kong might lose HK\$55 billion to HK\$78 billion in trade, HK\$5 billion to HK\$7 billion in income and over 20 000 jobs as a direct result. The long-term effects are much more difficult to quantify and cannot, in any case, be assessed on a one-off basis. Much would depend on how successfully Hong Kong's business community adjusts to the situation.

Withdrawal by the US of MFN treatment for China would be a major change to Hong Kong's existing business environment. The process of adjusting to such a major change would inevitably be painful. The Administration is actively considering, on a contingency basis, ways of facilitating that adjustment. These might include further strengthening of our already considerable efforts in helping Hong Kong businessmen to open up new or alternative markets, and removing any constraints that might exist within the system on our manufacturers' ability to undertake more of their production processes in Hong Kong. Obviously, the Government could not provide a shield against the realities of changes in the political and economic environment, which are part of the risks facing business enterprises everywhere; nor do we wish to interfere in commercial decisions reached in the private sector. But, as I stated in this Council on 23 May 1990 in reply to a question from Mr. David LI, the Government will intervene in an appropriate manner when it is clearly in the public interest to do so.

First Reading of Bills

COMPANIES (AMENDMENT) (NO. 4) BILL 1990

COMPANIES (AMENDMENT) (NO. 5) BILL 1990

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

Second Reading of Bills

COMPANIES (AMENDMENT) (NO. 4) BILL 1990

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Companies Ordinance."

He said: Sir, I move that the Companies (Amendment) (No. 4) Bill 1990 be read the Second time.

The purpose of this Bill is to remedy weaknesses in the procedure for conversion from a compulsory winding-up of a company to a creditors' voluntary winding-up.

The Official Receiver is appointed liquidator in most compulsory winding-up proceedings ordered by a court. The Official Receiver cannot, however, be appointed liquidator in a voluntary winding-up. When he is appointed as liquidator, the Official Receiver charges fees proportionate to the amount of assets realized in order to recover the cost of the work done.

Section 209A, introduced in 1984, provides that the court may, upon application by the liquidator or any creditor, allow a compulsory winding-up to be converted and conducted as if it were a creditors' voluntary winding-up. We consider this provision to be unsatisfactory.

Time limit

First, section 209A does not specify a time limit for making any application for conversion. Creditors are able to apply for conversion at any time during the course of a compulsory liquidation. This freedom strikes at the basis of the bargain made with the Official Receiver. In effect it enables creditors to seek conversion shortly before the realization of assets in order to avoid fees being paid to the Official Receiver.

We propose therefore that an application for conversion should be made within three months of the date of a resolution passed at the first meeting of the creditors or any adjournment of that meeting or within such further period as the court may permit. We believe this will give sufficient time for creditors to reach a decision on the best way forward and to prepare the necessary documents for presentation to the court.

Public interest

Secondly, section 209A does not sufficiently safeguard the public interest. The effect of a conversion to a creditors' voluntary winding-up is to remove the liquidation from the court's supervision. There may be good reasons in the public interest that an application should be opposed or denied. At present, however, the Official Receiver has no right of audience before the court. In deciding an application, the court is only required to take into account the wishes of creditors and contributories.

We propose therefore that a report on the application should be submitted to the court by the liquidator, and that the Official Receiver should have the right to be heard. We also propose that the court should have regard to various matters relating to the public interest in deciding whether an application should be accepted. These are, essentially, whether or not there has been an investigation, prosecution or conviction of officers of the company for fraud, dishonesty, misfeasance or other breach of duty in relation to the affairs of the company.

Technical consequences and transitional period

There are a number of technical consequences involved in a conversion from a compulsory to a voluntary winding-up, and we propose that they be dealt with by giving the court a general power of direction. Furthermore, a transitional period will be required to give creditors of companies in liquidation an opportunity to exercise this right before it lapses, and this is provided for in the proposed new section 209C.

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

Question on the adjournment proposed, put and agreed to.

COMPANIES (AMENDMENT) (NO. 5) BILL 1990

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Companies Ordinance."

He said: Sir, I move that the Companies (Amendment) (No. 5) Bill 1990 be read the Second time.

The purpose of this Bill is to introduce a new system for approval of company names. The proposed new system is based on the United Kingdom approach and is intended to shorten the time required to register new companies.

Existing system

Under the existing system, the Registrar of Companies is required to decide, before registering a company, whether or not the proposed name of a new company bears such resemblance to the name of an existing company that opportunities exist for

deception. The present system also allows applicants to reserve a name for a proposed company. In 1989, the Companies Registry received more than 20 000 applications each month for reservation of company names.

Owing to the large number of applications and the limited resources available, the time taken to reserve a company name now varies between four to six weeks. Together with the other procedures, including the preparation of incorporation papers by the applicant and the issue of a certificate of incorporation by the Companies Registry, the whole process of registering a company can take up to three months.

This process is unsatisfactorily long. We therefore propose to adopt a new, simpler and quicker system based on the United Kingdom approach.

Proposed system

Under the proposed new system, a company name will be registrable if it is not the same as a name already appearing in the index of company names. However, where a name is registered which is, in the opinion of the Registrar, too similar to a name previously entered in the index, the Registrar may, within 12 months of registration, direct the company to change its name within such period as he may specify.

The introduction of the new system will result in the name reservation system being abolished. Existing staff resources can be redeployed and we aim to incorporate new companies within a period of five to 10 days, instead of up to three months as at present.

Public search

Under the new system, the Registrar will no longer be responsible for deciding whether a proposed name is too similar to an existing company name. In future, this responsibility will fall on the party registering the new company. To this end, facilities for name searches will be made available to the public free of charge at the Public Search Area of the Companies Registry.

Transitional period

Sir, many professional firms have built up "name banks" of reserved names in the Companies Registry. To avoid a rush to run down these name banks, it is proposed

that there should be a transitional period of three months before the new system comes into force. From the start of this period, no new application for name reservation or for renewal of reservation will be accepted, and unprocessed applications will be dropped. It will still be possible to incorporate a company during the transitional period, even if the name of the company has not been reserved. However, at the end of the transitional period, all reserved names still unused will lapse.

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

Question on the adjournment proposed, put and agreed to.

Private Bill

Second Reading of Bill

DAO HENG BANK LIMITED BILL 1990

Resumption of debate on Second Reading which was moved on 16 May 1990

Question on 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

Council went into Committee.

DAO HENG BANK LIMITED BILL 1990

Clauses 1 to 17 were agreed to.

Preamble was agreed to.

Council then resumed.

Third Reading of Bill

MR. DAVID LI reported that the

DAO HENG BANK LIMITED BILL 1990

had passed through Committee without amendment and 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: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 6 June 1990.

Adjourned accordingly at ten minutes past Three o'clock.

Note: The short titles of the Bills listed in the Hansard, with the exception of Dao Heng Bank Limited Bill 1990, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.