

1 HONG KONG LEGISLATIVE COUNCIL -- 25 July 1990

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 25 July 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 DAVID ALAN CHALLONER NENDICK, C.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.

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 HO SAI-CHU, O.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 PANG CHUN-HOI, M.B.E.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE TAM YIU-CHUNG

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

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

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

THE HONOURABLE MRS. MIRIAM LAU KIN-YEE

DR. THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, 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 MRS. ANSON CHAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

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

ABSENT

THE HONOURABLE POON CHI-FAI, J.P.

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

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

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

THE HONOURABLE LAU WAH-SUM, J.P.

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

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

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.

Commissioner for Administrative Complaints Ordinance  
Commissioner for Administrative Complaints  
Ordinance (Amendment of Schedule 1)  
Order

1990.....  
236/90

Hong Kong Royal Instructions 1917 to 1988  
the Legislative Council of Hong Kong  
Ending of 1989/90

Standing Orders of

Session..... 238/90

Marine Fish Culture Ordinance  
(Amendment) Order

Fish Culture Zone (Designation)

1990..... 239/90

Public Health and Municipal Services Ordinance  
Public Health and Municipal Services  
(Amendment of Thirteenth Schedule)  
Order

(Civic Centres)

1990.....  
240/90

Registration of Persons Ordinance  
(Application for New Identity Cards)

Registration of Persons  
(No. 12) Order

1990..... 241/90

Public Health and Municipal Services Ordinance	
Abattoirs (Urban Council)	(Amendment) By-Laws
1990.....	242/90
Public Health and Municipal Services Ordinance	
Hawker (Urban Council)	(Amendment) By-Laws 1990.....
	243/90
Public Health and Municipal Services Ordinance	
Pleasure Grounds (Urban Council)	(Amendment) (No. 2)
Bylaws 1990.....	244/90
Road Traffic (Public Service Vehicles) (Amendment) (No. 4)	
Regulations 1989	
Road Traffic (Public Service Vehicles)	(Amendment) (No. 4)
Regulations 1989	(Commencement) Notice
1990.....	245/90
Pleasure Grounds (Regional Council) (Amendment) By-Laws 1990	
Corrigendum.....	
....	246/90

Sessional Papers 1989/90

- No. 89 -- Kadoorie Agricultural Aid Loan Fund Report for the period 1st April 1989 to 31st March 1990
- No. 90 -- J.E. Joseph Trust Fund Report for the period 1st April 1989 to 31st March 1990
- No. 91 -- Report on the Administration of the Immigration Service Welfare Fund prepared by the Director of Immigration from 1 April 1989 to 31 March 1990
- No. 92 -- Traffic Accident Victims Assistance Fund Annual Report for the year from 1st April 1988 to 31st March 1989
- No. 93 -- The Second Annual Report of the Commissioner for Administrative Complaints

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No. 94 -- Report of the Antiquities Advisory Board 1988 and 1989

No. 95 -- Securities and Futures Commission  
Annual Report 1989

Addresses by Members

Report of the Antiquities Advisory Board 1988 and 1989

MR. EDWARD HO: Sir, on behalf of the Antiquities Advisory Board, I table the Board's Biennial Report for 1988 and 1989.

The Antiquities Advisory Board was appointed by you, Sir, under the Antiquities and Monuments Ordinance, to advise on any matters referred to it relating to antiquities, proposed monuments or monuments. This is the eighth report of the Board since the Ordinance was enacted in 1976, and it deals with the years 1988 and 1989.

Many people are surprised when they learn how much remains to remind us of the story of human settlement in and around Hong Kong. Historical relics range from the sites of prehistoric settlement over 6 000 years old, to buildings erected less than 60 years ago, displaying architectural features which have all but disappeared from our concrete jungle.

Since 1976, the Antiquities Advisory Board has played its part in conserving this heritage by advising on which sites and structures merit declaration as protected monuments. Although our report sets out in detail what has been achieved in 1988 and 1989, I would like to highlight a few of the major points, such as the declaration of seven monuments in those two years, including the Kun Lung Gate House in Fanling, the Yeung Hau Kung in Yuen Long and the Flagstaff House and the former French Mission Building in Central. The Board has also expanded its work to grade various types of historic buildings, to increase education and publicity work, and to systematize reporting on archaeological excavations.

These achievements would not have been possible without the hard work and dedication of members of both the Board and its committees, and the support of the Secretary for Recreation and Culture, all officers of the Antiquities and Monuments

Office and Architectural Services Department. I should also like to express the gratitude of the Board to the Royal Hong Kong Jockey Club, whose generous support made possible restoration work at Tai Fu Tai in San Tin, and the Kun Ting Study Hall in Yuen Long.

Sir, despite the inevitable disappointments when parts of Hong Kong's heritage are swept away by development, the Board remains committed to playing its part in preserving for the community these tangible reminders of our history and traditions.

#### Securities and Futures Commission Annual Report 1989

FINANCIAL SECRETARY: Sir, in accordance with Sections 12 and 16(2) of the Securities and Futures Commission Ordinance, I now table for Members' information the annual report, auditors' report and statement of accounts of the Securities and Futures Commission for the period from its establishment on 1 May 1989 to 31 March 1990. The Report describes the objectives, functions and structure of the Commission. It also covers many of the operational matters which arose during the year and the principal policy issues addressed by the Commission.

Members will recall the circumstances which led to the establishment of the Securities Review Committee in 1987, the publication of its report in 1988 and presentation of the Securities and Futures Commission Bill in early 1989, which generated considerable debate and was passed by this Council in April 1989.

Much has been achieved in a relatively short period of time and the value of the reforms we have introduced was amply demonstrated last year when our markets withstood the shock of the events in Beijing well. This was in marked contrast to what had happened in October 1987.

I recognize that there may still be those who fear that we are moving in the direction of over-regulation but let me once again reiterate that this is not the case. Our philosophy is, and will continue to be, that we only intervene in the workings of the market place where this is necessary either in the interests of the integrity of the system as a whole or of important parts of it or to protect non-professional participants. We are as concerned as any that our markets are not stifled by a plethora of rules and regulations, but we must equally ensure that



ordinary investors, both local and international, receive an adequate degree of protection from exploitation. I believe that we have currently got the balance about right.

It often fails to be recognized that the voice of the ordinary investor is seldom heard in Hong Kong unless things go seriously wrong. This is mainly because only a small proportion of shares here are held by locally based institutional investors such as insurance companies and pension funds. Elsewhere, such institutions often have substantial voting power and, in protecting their own interests, they can in effect act as watchdogs for the whole community. As this is not the case in Hong Kong, it is largely left to the Government to protect the interests of ordinary shareholders. Nevertheless, we shall continue to exercise this role with sensitivity and good common sense and to encourage the development of self regulation wherever this is possible and practicable.

Sir, the Securities and Futures Commission has had a fairly rough ride in its first year or so of operation but I firmly believe that the tasks it is undertaking are essential for the long-term welfare of Hong Kong's financial markets and that it therefore deserves our full support.

Oral answers to questions

Medical and health services on Lantau Island

1. MR. LAM asked (in Cantonese): In view of the impending closure of the South Lantau Hospital, will Government inform this Council what medical facilities are being planned to meet the needs of Lantau residents and holiday makers, and workers who sustain injuries during the construction of the Chek Lap Kok Airport?

SECRETARY FOR HEALTH AND WELFARE: Sir, South Lantau Hospital in Cheung Sha at present has 15 in-patient beds and provides an Accident and Emergency (A&E), a General Out-patient (GOP), dental, and a travelling dispensary service. Arrangements are in hand to ensure an adequate level of medical and health services on Lantau Island upon the impending closure of the Hospital. Services in Mui Wo will be enhanced to include A&E and GOP services at the reprovisioned Mui Wo Dispensary due for completion by the end of this year. In-patient maternity cases will be catered for at Tai O

Jockey Club Clinic. Additionally, the clinic provides an A&E as well as a GOP service. The two clinics at Tai O and Mui Wo will be able to absorb the A&E and the GOP workload previously undertaken by the South Lantau Hospital. Furthermore, a visiting clinic providing GOP service three days a week is operated at Tung Chung Clinic.

For complicated cases which require more specialized treatment and possible hospital admission, the patients would be transported for further management via launches or helicopters as appropriate to Queen Mary Hospital, Tuen Mun Hospital or Princess Margaret Hospital.

The dental service at South Lantau Hospital currently provides treatment to civil servants and their dependants, and emergency dental treatment for the general public. This can be absorbed by the dental service at Tai O Clinic and St John Hospital on Cheung Chau.

The travelling dispensary will be retained to provide service to the more remote parts of the island.

The services described above should be adequate to cater for the needs of Lantau residents and holiday makers, and workers who sustain injuries during the construction of the future Chek Lap Kok Airport.

MR. LAM (in Cantonese): The past attendance level at the South Lantau Hospital is considered to be low. In fact, this is due to inadequacies of facilities of the hospital. Will the Government consider increasing the facilities of the hospital and continuing its service for a period of time before undertaking a review on its closure?

SECRETARY FOR HEALTH AND WELFARE: Sir, medical technologies have progressed very significantly since 1960 when the South Lantau Hospital first came into service. It is no longer possible to equip a simple 15-bed facility -- which is hardly used -- with all the necessary medical equipment and support services. It is not cost-effective and the demand for such services clearly, as illustrated in the past and present, does not justify the drastic improvement measures which are not possible at that site.

MR. LAU WONG-FAT (in Cantonese): Sir, will the Administration inform this Council of the circumstances under which the authorities concerned will consider establishing a hospital on Lantau Island again?

SECRETARY FOR HEALTH AND WELFARE: Sir, I think first of all I should explain that the decision to close South Lantau Hospital was made after much soul searching. Indeed, we are very sensitive to the views expressed by honourable friends here in this Council and also local leaders who have asked similar legitimate questions and whose views have been most sympathetically considered. However, the fact is that, because of the demographic spread of the population on Lantau Island, the hospital has been over the years under-utilized and sub-standard and the staff need to be redeployed elsewhere. Like all other places in Hong Kong, there are always developments. I need to assure Members of this Council, in response to the question by my honourable friend, Mr. LAU, that the need for expansion of existing services or provision of new services in Lantau, in the light of the new airport and other developments, will be reviewed and fresh requirements will be borne in mind in our service planning.

DR. LEONG: Sir, can the Secretary inform this Council of the financial savings attained by closing the South Lantau Hospital?

SECRETARY FOR HEALTH AND WELFARE: In fact the object of the exercise is not really to achieve savings as such; therefore I must emphasize that cutting down on running costs is not our only or major reason for closing South Lantau Hospital. The greater consideration is to achieve better cost-effectiveness in the delivery of medical and health services for the whole of Lantau and to enable scarce professional manpower to be redeployed to areas where they are most needed.

MR. CHOW: Sir, the South Lantau Hospital, Mui Wo Dispensary and Tai O Jockey Club Clinic should have different roles to play as differentiated by their names. Could the Secretary enlighten me on this point and inform the Council whether the Mui Wo Dispensary and Tai O Jockey Club Clinic can really be substitutes for the South Lantau Hospital?

SECRETARY FOR HEALTH AND WELFARE: This is a very interesting question. In fact it is a very important question to answer because in a way "South Lantau Hospital" is a misnomer. It was built in the 1960s when conditions were much more rudimentary than now. It has only 15 in-patient beds and I do not think it even has an X-ray machine. So it is hardly a hospital and cannot be compared with other hospitals. But the Mui Wo Dispensary in fact will be reprovisioned to the standard of a clinic.

HIS EXCELLENCY THE PRESIDENT: I have the names of two more Members who wish to ask supplementary questions. I will draw the line at that point. I might point out to Members that this afternoon looks like being a long sitting. There are many Members who wish to speak on a number of Bills and I will try to limit Question Time to approximately an hour, in the interests of Members themselves.

MR. CHEUNG YAN-LUNG (in Cantonese): Will the Secretary inform this Council how the Government will assist those pregnant women in Tung Chung who have to go to Tai O for delivery when night transport is hard to get?

SECRETARY FOR HEALTH AND WELFARE: I think we are talking about a different locality. The intention is on the closure of the South Lantau Hospital, -- in fact, before it is closed, -- we need to revamp and enhance the facility at Mui Wo, which, it is intended, will have an A&E facility to cater for most cases of minor injuries. But for maternity cases, where advance notice can be given, suitable arrangements will be made as appropriate.

DR. LEONG: Sir, could the Administration inform this Council whether there are any plans or whether there is any need for a full-scale hospital in south Lantau in the light of the possible emergencies that may arise from the airport and the high-speed approach roads, considering that the airport may well be opened by 1997?

SECRETARY FOR HEALTH AND WELFARE: I think the current population of the entire island is about 20 000 people, with 3 000 living in South Lantau -- of course that does not include the holiday weekend visitors. With only 15 in-patient beds, the South Lantau

Hospital is currently too small to have any significant development potential, as I explained earlier. In line with modern advancement in medical technology, a standard acute general hospital would need to have about 500 beds with various specialist services so as to be functionally and economically viable. Upgrading the South Lantau Hospital or establishing another hospital would involve consideration of factors like cost-effectiveness and justification for any establishment of hospital in our planning process.

#### New Territories taxis

2. MR. DAVID CHEUNG asked: In view of the rapid urbanization of the New Territories in the past decade, will Government inform this Council whether it will consider removing the distinction between urban and rural taxis so that Hong Kong has one type of taxi to serve the entire territory?

SECRETARY FOR TRANSPORT: Sir, the Government has no intention to remove the distinction between urban and New Territories (NT) taxis in the foreseeable future, but their operating boundaries will be kept under review.

New Territories taxis were first introduced in 1976 to serve residents living in remote or rural areas of the New Territories not adequately served by other forms of public transport, as well as to combat illegal "pak pai" or hired-car activities prevalent at that time. NT taxi operating boundaries were specifically drawn up to prevent their penetration into the urban areas.

To remove the distinction between urban and NT taxis will encourage the latter to operate in the more lucrative urban areas and population centres, thereby depriving New Territories residents in the remote or rural areas of a much needed service, and defeating the very objective of NT taxis. It would aggravate the traffic congestion problem in the new town centres and urban areas, and could also result in the revival of illegal "pak pai" activities.

A recent survey conducted by the Transport Department indicated a strong demand for NT taxi services in the rural areas where public transport services are inadequate. There is, therefore, a continuing need to maintain an acceptable level of NT taxi services, and it is the Government's policy to maintain the two categories of taxis

and keep them separate within well-defined geographical boundaries.

This does not mean, however, that the situation is static or that we are not responsive to changing needs. In recent years, the operating boundaries of NT taxis have been reviewed and, where appropriate, adjusted to take account of changing circumstances such as the opening of new roads, major changes in land use, the adequacy of public transport services and other factors affecting travel demand. This practice will continue.

MR. DAVID CHEUNG: Sir, will the Secretary inform the Council whether the rapid urbanization of the New Territories has greatly minimized the need for NT taxis serving the so-called remote and rural areas? Will the maxicabs serve that particular function?

SECRETARY FOR TRANSPORT: Sir, the rural population at present is over 1 million. This is a very sizeable population to serve, particularly in the remote parts of Yuen Long, Tai Po and North District. As regards maxicabs, the Department did try very hard to promote such service along some of the routes in the remote areas but operators of green minibuses are not very interested in it and there has not been much success in inviting people to operate those routes. So eventually we have to come to a view that NT taxis have still to maintain their role to serve the rural and remote areas of the New Territories.

MR. TAI: Sir, in view of the increasing need for NT taxis and bearing in mind the responsiveness of the Transport Department, may I ask why it takes so long for the Department to come to a decision regarding intra-NT transportation such as transportation services through the new Shing Mun Tunnels between Sha Tin and Tsuen Wan?

SECRETARY FOR TRANSPORT: I assume Mr. TAI refers to the Route 5 connections. A review has been completed by the Department and we are about to consult district boards and the trades concerned, including the urban and the New Territories taxi groups, both of which have very strong views on particular arrangements. We intend to consult very carefully before we put the matter to the Transport Advisory Committee. We will

then come up with a recommendation as soon as possible.

MR. DAVID CHEUNG: Sir, in his reply the Secretary has mentioned that the operating boundaries of NT taxis have been reviewed. Will the Secretary inform this Council whether there has been any review of the operating boundaries of the urban taxis?

SECRETARY FOR TRANSPORT: No, Sir. The urban taxis serve the entire territory and this has always been our policy. As regards the NT taxis, there have of course been some minor changes in the last four to five years, mainly to adjust to the needs of interchanges such as MTR stations and so on. This practice will continue, as I said earlier on.

#### Remuneration of directors of listed companies

3. MR. CHUNG asked (in Cantonese): The directors of certain listed companies are paid fees disproportionate to the profits of the company to the disadvantage of the shareholders. Will the Government inform this Council whether criteria for the payment of directors' fees in a listed company can be laid down to protect the interests of small shareholders and to maintain the image of Hong Kong as an international financial centre?

FINANCIAL SECRETARY: Sir, there is no statutory control over the payment of directors' fees for either listed or unlisted companies. The payment of directors' fees is regulated by a company's Memorandum and Articles of Association. The Articles usually provide for the company to determine the remuneration of directors in general meeting. Members of a company are considered in the best position to determine and approve the quantum of directors' fees as their interests are directly involved.

Any remuneration payable to the directors must be made public by disclosure in the company's annual accounts under section 161 of the Companies Ordinance. Failure to take reasonable steps to comply carries criminal penalties including a fine of \$10,000 and six months imprisonment. There would be significant practical difficulties were one to seek to lay down specific criteria for the payment of such fees as many of the factors which should be taken into account in determining what

is reasonable remuneration are highly subjective and difficult to measure, for instance, the calibre and performance of particular directors. Even the performance of the company itself, which is another important factor, must be judged within the economic environment faced by the company. It is, however, open to any member of a company who considers that the affairs of a company are being conducted in a manner unfairly prejudicial to the interests of some part of the members (including himself) to petition to the court for an order under section 168A of the Companies Ordinance. The court may make an order restraining the payment or such other order as it thinks fit.

MR. CHUNG (in Cantonese): Sir, the Secretary has mentioned in paragraph 2 of his main reply that any remuneration payable to the directors must be made public by disclosure in the company's annual accounts. But this, in my view, is only an after-the-event disclosure. Will the Secretary consider requiring, mandatorily or otherwise, a listed company to set out in the annual accounts its prescribed criteria for the payment of directors' fees for the following year, or to assign a fixed percentage share of the company's profits as remuneration for directors so that shareholders or investors can, after making allowance for the directors' remuneration, make a fair and reasonable assessment as to the net profit, dividend yield and investment value of the company?

FINANCIAL SECRETARY: Sir, I have already pointed to the difficulties of arriving at any objective criteria for determining what are or are not reasonable means of remunerating directors. I will certainly look at this particular suggestion but I do not hold out much hope of actually coming up with something which we could adopt.

MR. PETER WONG: Sir, should a major shareholder who is a director be precluded from voting on his own remuneration at the annual general meeting?

FINANCIAL SECRETARY: Yes, Sir, if it is in fact his own remuneration then he would be precluded from voting on it.

Government expenditure on consultancy studies



4. MRS. CHOW asked: Will Government inform this Council what is the total amount of fees which has been spent to date on consultants engaged by the Government on the new airport and its approach road and rail systems, what aspects have been covered by these consultancies, what other consultancies are expected to be commissioned, and the total estimate of fees Government intends to spend on the entire project?

FINANCIAL SECRETARY: Since the decision was taken in October 1989 to proceed with the project, the total amount incurred in respect of consultancies for the new airport and its approach road and rail system is \$634 million. Of this \$70 million has so far been disbursed.

As might be expected, the consultancies commissioned so far focus mainly on planning and feasibility aspects of the various component projects under the airport development strategy. A major consultancy for the preparation of the detailed master plan, the civil engineering design and the environmental impact assessment of the new airport was commissioned in July. Other studies are in progress on the Lantau Fixed Crossing, the Western Harbour Crossing, the Airport Railway and a part of Route 3. Two further consultancies were recently awarded for the detailed design and construction of the West Kowloon Expressway and the related West Kowloon Reclamation. Meanwhile the first phase of an overall Project Management Consultancy to deal primarily with the programming and project control aspects for this complex project got underway in May this year.

As the project advances, it will be necessary to commission further consultancies. These consultancies will include the appointment of an overall financial adviser, a study of the commercial enterprises that are to be relocated with the new airport, detailed design for the Lantau Fixed Crossing and detailed design and construction for the new airport, the North Lantau Expressway and a part of Route 3 to connect with the West Kowloon Expressway. It is also envisaged that the overall Project Management Consultancy, commissioned in May this year, could be extended in the light of requirements when its term expires in December 1991.

A very rough order of cost for these further consultancies is \$1,400 million.

MRS. CHOW: Sir, will the Secretary please clarify whether the total cost for

consultancies would amount to over \$2 billion, in other words, cost of \$634 million actually incurred up to date plus \$1,400 million for further consultancies? And if this is right, does this cost match the original estimate?

FINANCIAL SECRETARY: Sir, that is correct. It is the sum of the figures I gave -- \$634 million plus the \$1,400 million, that is to say, just over \$2 billion. As far as the original figures for the port and the airport projects were concerned, the \$127 billion did include an item for consultancy fees on a broad-brush approach. These are now being defined more accurately in the light of the scope of the works to be covered by the various components.

MRS. CHOW: Sir, what is the Government doing to prevent cost overrun in this respect?

FINANCIAL SECRETARY: Sir, in the first place, before any consultants are appointed there is a competitive arrangement and therefore we do seek to get the best possible value for money in the employment of consultants. And once they are actually appointed their work is vetted by government staff. Normally, consultants are appointed on the basis of a fixed sum for the initial work, and then, as is customary, I think, in all industries, if it is in fact a question of supervising the completion of works, it will be a percentage of the total costs.

Direct elections to Legislative Council

5. MR. CHOW asked: As Hong Kong will hold its first direct elections to the Legislative Council in 1991, will Government inform this Council whether it will consider granting financial and other assistance to encourage more prospective candidates to participate in the election?

CHIEF SECRETARY: Sir, we have considered carefully the question of granting financial and other forms of assistance to candidates in elections to the Legislative Council. We have concluded that such assistance should be given both to encourage participation and to help voters in making their choices.

In the 1991 direct elections to the Legislative Council, we shall provide two rounds of free mailing for each candidate. The cost of this works out to be about \$240,000 for a candidate in an average constituency with 200 000 registered electors.

The Government also distributes information leaflets to registered electors on all candidates in their constituency and provides general publicity on elections to encourage public participation.

However, we consider, Sir, that if a candidate wishes to spend more on a campaign by way of additional staff or printing of publicity materials, these costs should be met by the candidates themselves and those supporting them rather than from public funds.

MR. CHOW: Sir, the limit of election expenses of \$200,000 is a huge amount of money for the majority of middle class people. If there is no partial reimbursement or financial assistance from the Government, could it be construed then that the majority of the public enjoys equality of political rights only in theory but in practice such is enjoyed only by the rich?

CHIEF SECRETARY: Sir, I think the limit of election expenses of \$200,000 is just that, it is a limit. And it is not incumbent of course on any candidate to spend up to that limit. It is a choice for him to make as to whether he wishes to extend his coverage other than that provided by the public service.

MR. PETER WONG: Sir, the information leaflet distributed by the Government restricts description of the candidate to 200 words. Will this restriction be continued?

CHIEF SECRETARY: Sir, I am unsighted on that question. I will certainly look at the possibility suggested by Mr. WONG.

MR. MARTIN LEE: Sir, will the Government reconsider the question of reimbursement after the 1991 elections?

CHIEF SECRETARY: Yes, Sir.

MR. CHOW: Sir, we have to encourage more prospective candidates to participate in the election, but we have also to forestall the possibility of bribery. If a candidate is financially supported by a political party there will be no problem because the party is controlled by its system and its political platform is open to the public. But does the Government consider that granting financial assistance to the candidates can forestall the possibility of bribery?

CHIEF SECRETARY: Sir, we are urgently looking at that clause in the Prevention of Bribery Ordinance which does prevent people from soliciting funds for electioneering expenses and I hope to report back to the Council shortly.

MR. TIEN: Sir, as regards the \$200,000 limit to be spent by a candidate standing for direct election, could the Government inform this Council that this sum will not have to come out of his own pocket; in other words, he could raise it from his friends and supporters?

CHIEF SECRETARY: Yes, Sir, the candidate may raise the money from friends or supporters.

Smoke emissions from restaurants

6. MISS LEUNG asked (in Cantonese): As many residents and organizations, including the Yau Tsim District Board, have lodged repeated complaints against emission of exhausts from restaurants and food premises which caused serious nuisances to the neighbourhood, will Government inform this Council whether consideration will be given to taking appropriate measures to resolve the nuisance problem under complaint?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Yau Tsim District is probably the most important tourist area in Hong Kong and clearly its restaurants are an essential feature of its attractiveness to tourists and also of the prosperity of

the district as a whole. Altogether there are 859 licensed restaurants, and 312 other licensed food premises within the district. During the last 12 months, 33 complaints were received about smoke emissions from these premises: three were received by the District Office, seven by the Environmental Protection Department, and 23 by the Urban Services Department and Urban Councillors. As far as I am aware, the matter has not been raised in the district board or in its sub-committees, but it was raised in January of this year in the Tsim Sha Tsui Area Committee. However, the number of complaints received in relation to the number of restaurants does not suggest that there is a serious problem in this district.

Moreover, according to the Environmental Protection Department and the Urban Services Department, none of the complaints against restaurants has been serious. In nearly all cases they have been settled by advice, including advice to improve the restaurants' exhaust scrubbing system, or to redirect its emission outlet to another location. If official advice is not followed, and the nuisance persists, action may be taken by way of a nuisance abatement notice under section 127 of the Public Health and Municipal Services Ordinance, or sections 9 and 30 of the Air Pollution Control Ordinance. During the last 12 months only two such notices have been issued, one each for a restaurant and food premise.

MISS LEUNG (in Cantonese): Sir, when the Yau Tsim District Board had a meeting with OMELCO Members in June, the issue of exhaust emission from restaurants was raised in the hope that Members would help resolve the problem. Besides, many have written to newspapers lodging the same complaints. My question is: After complaints of nuisance in relation to exhaust emission are received, do the staff concerned usually make checks on those restaurants and food premises under complaint during office hours, that is to say when restaurants and food premises in general are less busy?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I understand that the majority of work is done during office hours but also the officers in both departments do make checks out of office hours as well.

MR. PETER WONG: Sir, will the Secretary please inform us how many of the 33 complaints were in respect of the same restaurant or the same group of restaurants?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I will have to provide those figures in writing. (Annex I)

MISS LEUNG (in Cantonese): Sir, will the Secretary inform this Council, other than those from the Yau Tsim District, how many complaints of exhaust emission from restaurants and food premises the Government has altogether received in the past year and how many nuisance abatement notices have been issued?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I will have to provide that in writing, Sir. (Annex II)

#### Cost of Chemical Waste Treatment Centre on Tsing Yi Island

7. MR. PETER WONG asked: Will the Administration inform this Council of the current estimate of the cost of the Chemical Waste Treatment Centre on Tsing Yi Island and how it plans to recover the cost?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Chemical Waste Treatment Centre was first tendered in February 1989, but has had to be retendered in June this year because none of the first tender submissions was completely acceptable. The original estimate for the Centre was about \$300 million, but was probably low in the first place and has certainly been superseded since then. But as the retenders in the retendering exercise are about to be received, that is on 17 August, the Government would not wish to announce an updated figure at this moment just in case it should influence the tenders.

The Administration is committed to cost recovery and is presently exploring the feasibility of indirect charging schemes aimed at full recovery of the cost of construction and operation of the Chemical Waste Treatment Centre. To this end, a consultants' study was commissioned in November 1989 to look at possible charging schemes. The study has just been completed and the Administration is considering its recommendations. Further discussion on the issue will be necessary both within the Administration and then with industry, before we can come to a firm view and make

a recommendation to the Governor in Council.

MR. PETER WONG: Sir, there is considerable concern among industry and chemical suppliers that if the capital and 15-year recurrent costs of \$6.15 billion as quoted in the South China Morning Post is to be believed, it would make this project non-viable. When will the Administration come to a firm or near-firm conclusion?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, we had come to the firm conclusion that cost recovery is feasible before we became committed to cost recovery and to going the privatized route, which involves paying annual sums to the private sector. As to precisely when we will decide on recommendations, we will need to do so in the course of this year at least.

Smuggling of firearms

8. MRS. FAN asked: Will the Government inform this Council what actions have been or will be taken to combat the illegal importation of genuine firearms into Hong Kong?

SECRETARY FOR SECURITY: Sir, the following measures are taken to combat gun smuggling --

(a) police criminal intelligence units seek to identify the suppliers of illegal firearms, and their distribution networks;

(b) police and Customs and Excise staff at border control points give the highest priority to uncovering the illegal import of firearms;

(c) individuals and syndicates known to be involved in the illegal importation and use of firearms are specifically targetted by the police and the Customs and Excise service;

(d) in-depth investigations are conducted by the police in each and every case where firearms are used illegally; and

(e) close liaison is maintained and intelligence exchanged via border liaison and

Interpol channels with the Chinese authorities. High level meetings between the Hong Kong and Chinese police are held on a regular basis to monitor the problem of illegal firearms.

MRS. FAN: Sir, the community is concerned with the increasing number of robberies and violent crimes involving genuine firearms, particularly with those shooting incidents in areas where there are large numbers of innocent bystanders. Is the Secretary for Security satisfied that the measures he has described are adequate for handling the situation? And if he is not totally satisfied with their effectiveness, what method does he have in mind to strengthen the protection?

SECRETARY FOR SECURITY: Sir, I believe that the police give the highest priority to both the prevention and detection of crimes involving firearms.

MISS LEUNG (in Cantonese): Will the Government consider increasing the penalties significantly for illegal ownership, possession or use of firearms in order to have a deterrent effect on the smuggling of firearms into Hong Kong?

SECRETARY FOR SECURITY: Sir, for crimes involving firearms, many of them carry a maximum penalty of life imprisonment. Clearly, the sentencing in any particular case is a matter for the Judiciary but the maximum penalty is sufficient to cater for any circumstances.

MR. MARTIN LEE: Sir, how does the Government propose to stop the smuggling into the territory of genuine firearms by speedboats which are much faster than those that we have got?

SECRETARY FOR SECURITY: Sir, smuggling by speedboat is certainly a problem, and I do not doubt that in certain cases firearms have been brought in this way. We have recently taken action against all forms of smuggling by speedboats and it will continue to be a high priority to try and stop this form of smuggling.



MR. TAI: Sir, what is the conviction rate regarding offenders bringing in firearms across the border, who were apprehended as a result of intelligence exchanged between the border liaison and Interpol channels?

SECRETARY FOR SECURITY: Sir, the figures I do have with me relate to seizures of firearms and arrests of people bringing them in through the border.

In 1987           -- 37 illegal firearms were seized

In 1988           -- 58 illegal firearms were seized

In 1989           -- 113 illegal firearms were seized

And so far this year   -- 42 illegal firearms have been seized.

MR. EDWARD HO: Sir, I do not believe the Secretary for Security has answered Mrs. Rita FAN's question which is: Is the Secretary satisfied that the measures he described in the main reply are adequate to combat the rising rate of crimes involving firearms, especially illegally imported firearms?

SECRETARY FOR SECURITY: Sir, as I said, I believe that the police give the highest priority to tackling this problem. Certainly the use of firearms in crimes is a matter of great concern and is something that they will do their best to prevent and to detect if it occurs.

MR. MARTIN LEE: Sir, I do not believe the Secretary has answered my question either, but I shall ask another one. Has the Government stopped a single speedboat attempting to import illegally into Hong Kong firearms, or for that matter any other commodities, in the last three years?

SECRETARY FOR SECURITY: Sir, I do not have any precise figures but I certainly believe that in a number of cases firearms have been found on speedboats which have been intercepted by the police.

MR. ANDREW WONG: Sir, will the Secretary for Security inform this Council whether or not the question of firearms is on the agenda of Mr. Francis MAUDE? Or are money matters his sole concern now?

SECRETARY FOR SECURITY: Sir, I do not think that this particular problem is on the agenda of Mr. Francis MAUDE in his discussions in China.

Written answers to questions

Noise pollution

9. MISS LEUNG asked: Will Government inform this Council whether consideration will be given to taking appropriate measures to prevent serious noise pollution to the neighbourhood caused by the operation of shipyards, waterfront cargo handling areas and lighters, particularly between late hours in the night and daybreak?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the only way to prevent noise pollution from the operation of shipyards, cargo handling areas and lighters, is to move them away from the immediate vicinity of residential areas. Our aim must be to ensure that as far as possible these facilities are relocated to areas which are sufficiently separated from residential areas. This is by no means easy, as areas which are physically and commercially suitable to shipyards are few. Nevertheless a number of proposals to remove shipyards are in train.

There are, however, other more immediate measures which can be taken to mitigate noise pollution from these areas. For example, because of the complaints about noise from the Sham Shui Po Public Cargo Working Area (PCWA), the Director of Marine has restricted its working hours from 8 am to 7 pm compared with the normal working hours of PCWAs of 7 am to 9 pm. Special permits for working at night, which are occasionally issued for PCWAs, will not be issued for Sham Shui Po PCWA. The Director of Marine has also advised the operators of private shipyards in the vicinity of residential buildings to curtail noise by staggering the early morning "start-up times" of heavy machinery and by reducing the "warm-up" period for their engines.

The noise from these facilities is also controlled under provisions in the Noise Control Ordinance (Cap. 400). Noise from shipyards and designated private cargo handling areas is subject to Noise Abatement Notices issued under section 13 of the Ordinance. Noise from public cargo handling areas is controlled under sections 4 and 5 of the Ordinance and is enforced by the police. Since January 1990, the Environmental Protection Department have received seven complaints of noise from shipyards and 16 complaints of noise from waterfront cargo handling areas. A breakdown of these complaints and a summary of action taken are shown at Annex A.

The Administration is well aware of the noise pollution problems caused by these facilities, but is hopeful that the measures outlined above will reduce this nuisance substantially and thereby help improve the environment of nearby residential buildings.

#### Annex

#### Statistics on Complaints against Noise from Shipyards and Waterfront Cargo Handling Areas (1.1.90 -- 19.7.90)

Location	Number of Complaint Cases	Action taken/Remarks
Shipyards at Yi	7	Environmental Protection Department served north Tsing Yi Noise Abatement Notices under section 13 of the Noise Control Ordinance to those shipyard operators close to the housing estates to prohibit the noisy metal derusting process at these shipyards in the early morning and evening hours. This measure will minimize the degree of noise disturbance before the ultimate solution of relocation of the shipyards in 1992-93.
Loading activities from barges at sea-front, Kennedy Town	2	Noise in public places falls within the ambit of sections 4 and 5 of Noise Control Ordinance which are enforced by the police.

Location	Cases	Action taken/Remarks
Sham Shui Po Public Cargo Working Area	7	Environmental Protection Department provided advice through Marine Department to the operators on a number of noise mitigating measures including overhaul of mobile cranes, installation of silencers to engine exhausts of the
	Number of Complaint	

cranes and rescheduling the operation in the area in daytime. The present operating noise complies with the noise limits of the Noise Control Ordinance.

Cargo handling area near Whampoa Garden	4	Cargo handling activities will be ceased with effect from August 1990.
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Cargo handling activities at Wong Tai Street	1	Environmental Protection Department advised operator to restrict the cargo handling activities to daytime only. Further assessment will be made in due course.
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Cargo handling area near Long Yuet Street	1	Noise in public places falls within the ambit of sections 4 and 5 of Noise Control Ordinance which are enforced by the police.
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Cargo handling area at Butterfly Beach	1	Noise in public places falls within the ambit of sections 4 and 5 of Noise Control Ordinance which are enforced by the police.
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Civil service recruitment of Chinese secondary school graduates

10. MR. DAVID CHEUNG asked: Will Government inform this Council of the ratio of Chinese secondary school graduates to Anglo-Chinese secondary school graduates who were appointed to the Civil Service in the past five years?

CHIEF SECRETARY: Sir, appointments to School Certificate grades in the Civil Service

are made by individual heads of department or grade. The information which has been requested by the Honourable David CHEUNG Chi-kong is not kept by departments, as it is not a factor in recruitment.

I can assure the honourable Member that the civil service recruitment policy provides for all candidates who meet the prescribed entry requirements to be considered for appointment on equal terms.

Traffic flow at Shing Mun Tunnels, Lion Rock Tunnel and Tai Po Road

11. MR. ANDREW WONG asked: With the opening of the Shing Mun Tunnels and the introduction of differential toll levels for Lion Rock Tunnel and Shing Mun Tunnels since 20 April 1990, will the Government inform this Council of:

(i) the current daily traffic volumes of the Shing Mun Tunnels, Lion Rock Tunnel and Tai Po Road; and

(ii) the effect of the imposition of the differential toll levels on the traffic flows of the two aforesaid tunnels and Tai Po Road as compared to previous statistics?

SECRETARY FOR TRANSPORT: Sir, before the opening of the Shing Mun Tunnels and the introduction of differential tolls, there were on average 104 000 vehicles using the Lion Rock Tunnel and 47 000 vehicles using Tai Po Road every day.

Since the opening of the Shing Mun Tunnels and the introduction of differential tolls on 20 April 1990, the corresponding figures are now 92 000 and 41 000. An average of 29 000 vehicles use the Shing Mun Tunnels daily.

These figures indicate that --

(i) there has been a decrease of 12 000 vehicles, or 12%, using Lion Rock Tunnel every day;

(ii) there has been a decrease of 6 000 vehicles, or 13%, using Tai Po Road every day;

(iii) 29 000 vehicles, or 18% of the total number of vehicles using the three main

corridors in this area, have been attracted to use the new route through Shing Mun Tunnels.

As regards the effect of the differential tolls on the traffic flows of the two tunnels and Tai Po Road, the following conditions have been observed during a recent survey --

At Lion Rock Tunnel

(i) South-bound traffic during morning peak period (7 am - 9 am) has dropped by about 6%.

(ii) As a result, the journey time from Prince of Wales Hospital to the north portal of Lion Rock Tunnel is now nine minutes shorter; the average queue length has reduced by one kilometre.

(iii) North-bound traffic during the morning peak has also reduced by 7%, with improvements in journey time and reduced queue length.

(iv) During the evening peak period (5 pm - 6 pm), south-bound traffic has dropped from 2 800 to 2 500 vehicles: an 11% reduction, with reduced journey time, and shorter queue length.

(v) North-bound traffic during the evening peak period (6 pm - 7 pm) remains at about 3 000 vehicles, but the journey time from Wong Tai Sin, via the western Lung Cheung Road approach to the south portal of Lion Rock Tunnel, has been reduced by nine minutes.

At Tai Po Road

(vi) The south-bound traffic along Tai Po Road during the morning peak period has dropped from 2 200 to 1 600 vehicles, a 27% reduction.

(vii) The north-bound traffic during the morning peak period has dropped from 1 100 to 1 000 vehicles, a 9% reduction.

(viii) The south-bound traffic during the evening peak period has dropped from 1 400 to 1 200 vehicles, a 14% reduction.

(ix) The north-bound traffic during the evening peak period has increased from 1 200 to 1 400 vehicles, a 17% increase.

(x) No persistent traffic queues have been observed on Tai Po Road in either direction during either the morning or evening peak hours.

#### At Shing Mun Tunnels

(xi) Traffic flows smoothly in both directions, and no traffic queues have been observed at either end of the Tunnels.

The above traffic conditions suggest that the introduction of differential tolls of \$6 at Lion Rock Tunnel and \$3 at the Shing Mun Tunnels, coupled with a widened Tai Po Road, has successfully achieved the transport management objective of improving traffic flow at both Tunnels and along Tai Po Road. We can expect even more improvements when Tate's Cairn Tunnel opens to the public in the summer of 1991.

#### Banyan tree

12. MR. PETER WONG asked: Can the Government inform this Council of the reasons behind the decision to remove the 100-year-old banyan tree outside the West Wing of the Central Government Offices, and whether other alternatives have been considered in order to preserve this historical symbol which also manifests the Administration's commitment to environmental protection?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, no decision has been taken to remove this banyan tree. On the contrary the Government has required the architects for the footbridge project to come up with a proposal that avoids any substantial interference with the tree. They are working on this now.

#### First Reading of Bills

HONG KONG BILL OF RIGHTS BILL 1990

ELECTORAL PROVISIONS (AMENDMENT) BILL 1990

LEGISLATIVE COUNCIL (ELECTORAL PROVISIONS) (AMENDMENT) BILL 1990

URBAN COUNCIL (AMENDMENT) (NO. 2) BILL 1990

REGIONAL COUNCIL (AMENDMENT) (NO. 2) BILL 1990

DISTRICT BOARDS (AMENDMENT) BILL 1990

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1990

BRITISH NATIONALITY (MISCELLANEOUS PROVISIONS) (AMENDMENT) 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

HONG KONG BILL OF RIGHTS BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to implement the International Covenant on Civil and Political Rights as applied to Hong Kong; and for ancillary and connected matters."

He said: Sir, I move that the Hong Kong Bill of Rights Bill 1990 be read a Second time.

In October last year, Sir, you stated that the Government intended to enact a Bill of Rights to give effect in domestic law to the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) as applied to Hong Kong. A White Bill was published for public discussion on 6 March 1990. During the consultation on the White Bill which ended at the beginning of June, we received 800 written submissions from groups and individuals. We also discussed the White Bill with 13 district boards and the Heung Yee Kuk. The overwhelming majority of these submissions are in support of the enactment of a Bill of Rights as a further measure to protect human rights in Hong Kong.



Also, in November last year, this Council set up an ad hoc group on the Bill of Rights, under the convenorship of the Honourable Mrs. Selina CHOW. The ad hoc group, apart from meeting with representatives from the Administration, also met with members of the public and received their representations. The group forwarded its report on the White Bill to the Administration in June this year. This Council also held a motion debate on the Bill of Rights on 27 June this year.

The Administration has studied very carefully the comments made by members of the public and by the ad hoc group, and has given serious consideration to what changes should be made to improve the White Bill. The Bill now before Members reflects the outcome of this consideration and incorporates a number of changes to the White Bill. The changes mainly concern Part I of the Bill which deals with the application of the Bill.

Members are aware that the Administration takes the view that it is essential that the Bill of Rights is consistent with the Basic Law so that it can continue to be in force after 1997. This can best be achieved by making the substance of the Bill fully consistent with the ICCPR as applied to Hong Kong -- which by virtue of the Joint Declaration and Article 39 of the Basic Law will remain in force and be implemented in the laws of the Special Administrative Region; and to take care that procedural clauses within the Bill run no risk of conflicting with the Basic Law. This shall remain the basic consideration throughout our deliberations. There have been questions as to why the relevant provisions of the ICCPR should now be implemented in a single piece of comprehensive legislation, when the Basic Law envisages the continuation of their implementation through the laws of the future Hong Kong Special Administrative Region. Some fear that the entrenchment of a Bill of Rights that is supreme over other laws will drastically change Hong Kong's legal system, contrary to the provisions of the Basic Law, and also could seriously affect law and order. Some people are worried that the Bill of Rights will be repealed after 1997 because of inconsistency with the Joint Declaration and the Basic Law.

Sir, in answer to these concerns, I should like to say that we need a Bill of Rights to make all infringements of the ICCPR provisions, as reproduced in the Bill, justiciable in our courts; and to provide, through the Bill of Rights, effective remedies for all such infringements. It is the ICCPR, not the Bill, that will be entrenched in Hong Kong's constitutional document. Indeed, the Administration is quite clear that the Bill before Members today is fully consistent with the Joint

Declaration and the Basic Law. We have been aware that the Chinese authorities have some concern about the Bill and we have had many contacts with the Chinese side through a number of channels, including discussions in the Joint Liaison Group and on informal occasions. Both the White Bill and the Bill now before Members have been given to the Chinese side and explained to them. So I cannot emphasize enough that one of our overriding principles in enacting this piece of legislation has been and will be to ensure that the final product fulfils our obligations under the Joint Declaration so that it can last beyond 1997. We can see no better way than to enact a comprehensive Bill of Rights.

The proposed freeze period is an area of major interest to the public. The majority of written submissions and district board members who expressed a view on this issue are opposed to a two-year freeze period. Some have suggested that there should be no freeze period at all. The Legislative Council ad hoc group has recommended that there should be a selective freeze for one year achieved by listing in a schedule the Ordinances likely to be affected by the Bill of Rights, and that the freeze can be extended, upon the approval of this Council for another year.

The freeze is necessary to avoid the destabilizing effects of legislative and operational vacuums which may occur if statutory laws are found to be invalid and, if for practical reasons, there are substantial delays before they can be replaced. Nevertheless, we consider that the concerns of the Legislative Council ad hoc group and the public should be accommodated as far as possible. However it is impracticable to work out a detailed schedule for a selective freeze at the outset. Indeed, the purpose of the proposed freeze was to enable us to identify Ordinances likely to be affected by the Bill and to take remedial action. We propose that there should be a blanket freeze on existing legislation for only one year instead of two after the enactment of the Bill. We further propose that during this period, the Council should, following consultation with the Administration, decide which provisions of our Ordinances should be frozen for another year or such longer period as this Council may, by resolution, determine. To avoid any doubt, we also recommend that the Bill should make it clear that the freeze will also cover acts done under existing statutory powers including the exercise of discretionary powers. The Administration, Sir, remains committed to full application of the Bill of Rights at the earliest possible date.

Clauses 1(2) and 14 of the Bill give effect to these proposals.

A number of provisions in the Bill before the Council follow the ICCPR in allowing rights and freedoms to be restricted on the grounds of "national security" or to protect "the life of the nation". The White Bill defined these terms as including the security and life of Hong Kong. There have been suggestions to substitute them with "security of Hong Kong" and "life of Hong Kong" respectively.

These formulations would, however, permit the restriction of rights in circumstances which affect only Hong Kong, thereby widening the scope for restriction allowed by the ICCPR. It would therefore be inconsistent with the ICCPR. We have therefore concluded that the language of the ICCPR should be adopted in the Bill.

Some members of the public have commented that the phrase "the rules of interpretation applicable to other Ordinances may be disregarded" in clause 2(3) of the White Bill may be seen as advocating a departure from established legal practice and could be contrary to the Joint Declaration and the Basic Law.

We have now deleted these references from the clause. Furthermore, given the provisions in the clause that the purpose of the Bill is to implement the relevant provisions of the ICCPR in Hong Kong, we believe courts will make appropriate reference to decisions in other jurisdictions relating to the ICCPR to help interpret and apply the Bill of Rights. We have therefore decided it is unnecessary to retain clause 2(3)(b) of the White Bill.

During the public consultation, a number of representations asked whether it was necessary to include a public emergency clause. We have retained the clause as it is desirable that there should be provisions on the circumstances under which derogation from the Bill will be permissible, as provided for under the ICCPR.

There has been criticism on clause 6(1) of the White Bill which characterized a breach of the Bill of Rights as a tort. Some people argued that a tort action, which if successful normally leads to a remedy in damages, would be inappropriate in some cases for a breach of the Bill of Rights. We believe that there is some force in the argument and have now deleted this provision. In our view, clause 6 as now drafted is sufficient to enable courts and tribunals to grant an effective remedy in respect of breaches of the Bill of Rights and will enable damages to be awarded when it is appropriate and just to do so.

The obligations of individuals to each other proposed in clause 7 of the White

Bill have caused concern in the business sector. They have reservations as to whether the private sector should be bound by the rights to privacy in Article 14, freedom of information in Article 16 and the prohibition of discrimination in Article 22. Since there is at present no specific legislation governing these areas, they believe that these rights, couched in the general terms of the ICCPR provisions, could lead to confusion in the business sector over the legality of existing and contemporary contractual obligations and well-established practices. They fear that this uncertainty could have a seriously detrimental effect on Hong Kong as a business and financial centre.

We accept that the concerns about Article 14 on the rights to privacy are valid because, in the absence of any specific legislation, it could be commercially disruptive. Since the Law Reform Commission is studying the subject of privacy with a view to making recommendations for detailed legislation, we have concluded that the application of this Article to the private sector should be deferred until such legislation is enacted. Clause 7(3) and (4) reflect this.

We do not, however, accept that the right to freedom of expression (including the freedom to seek, receive and impart information) in Article 16 and the anti-discrimination provisions in Article 22 of the Bill would also be disruptive. There would not seem to be much scope for claims against the private sector under these Articles. Indeed claims based solely on these two Articles are likely to be devoid of merit, and I doubt very much whether they can be successful. An individual's freedom to receive information, for example, does not mean that data held by a commercial concern must be disclosed to him, or indeed that anybody is obliged to give him the information he seeks. Article 16 is clearly about promoting and protecting the free exchanges of ideas between individuals. The kind of issues which could arise under this Article could include freedom of the press, literary and artistic self-expression and restrictions on or manipulation of radio and television broadcasting. Its potential for disruption in the business community is hard to see. The application of Article 22 which covers discrimination will be limited to the making of laws; it is intended to bind the legislature, not individuals, as is clear from its text which states, *inter alia*, that the law shall prohibit discrimination on grounds such as race, colour, sex, language and so on. The United Nations Human Rights Committee has made it clear, in two cases, that these provisions do not say what laws must be made. They do however provide that if and when legislation is enacted it must comply with the rule against discrimination. Therefore, in the view of the Administration, these two Articles do not create a duty in the private sector

to disclose information or guarantee protection against discrimination. While I cannot rule out absolutely that they could be misinterpreted by some and result in speculative litigation, litigation which is based on a misunderstanding of these Articles is unlikely to succeed and would be very costly for the claimant. The mere possibility of such unwarranted litigation does not of course call for a specific exemption of the private sector from these Articles. There have also been suggestions that if there is no exemption, then the application of these two Articles to the private sector should at least be deferred. We have concluded that there would be no point in such a deferment since unlike Article 14, we have no intention to introduce further legislation in respect of Articles 16 and 22 and there is no obligation under the ICCPR for us to legislate further on these matters.

Part II of the Bill incorporates the relevant Articles of the ICCPR as applied to Hong Kong and adhere closely to the wording of the ICCPR. We have made only two changes of substance to the corresponding part in the White Bill.

Article 17 of the White Bill states that propaganda for war or advocacy of national, racial or religious hatred "shall be prohibited by law". This Article corresponds to a provision of the ICCPR, but under a reservation entered by Her Majesty's Government, we are under no obligation to introduce further legislation in respect of this Article. However, Article 17 itself creates an obligation to legislate in respect of these matters while clause 13 which repeats the reservation says there is no such obligation. The inclusion of these contradictory provisions would be meaningless and we have concluded that both Article 17 and clause 13 of the White Bill should be deleted.

Article 22 of the White Bill referred to citizens' rights to participate in public life. However, the use of the term "citizen" is inappropriate for Hong Kong because the concept of a Hong Kong citizen is unknown to our law. What we need is a generic term which has a sufficiently wide meaning to embrace the whole range of persons in Hong Kong who now have the right to vote and to stand for election. We have concluded that "permanent resident" is such a term and it also mirrors the relevant provisions in the Basic Law. We have therefore made this substitution in the new Article 21 of Bill. May I take this opportunity to assure honourable Members that all persons who under our existing legislation have the right to vote and stand for election will continue to enjoy these rights.

We have also changed the Chinese title of the Bill of Rights from "RENQUAN XUANYAN"

to "RENQUAN FA'AN" to accord with the generally accepted translation of the term.

Sir, I would like to take this opportunity to deal with two other major issues which arose during the consultation period. Firstly, it is the question of whether the customs of the indigenous population in the New Territories would be affected by the Bill of Rights.

Since the Bill is to implement the provisions of the ICCPR, its impact on present law and policy including that in relation to customary law in the New Territories depends upon interpretation of the relevant Articles of the ICCPR.

Existing customary law on inheritance of communal land known as Tso and Tong land in the New Territories reflects an important element of the social fabric of New Territories villages. We have studied carefully the implications of the ICCPR on such customary law and have come to the conclusion that it is compatible with the ICCPR and this Bill. The fact that customary law in the New Territories treats women in a way different to men does not mean that the law is necessarily discriminatory under the Bill of Rights. The United Nations Human Rights Committee have observed that it is not every differentiation of treatment that constitutes discrimination. If the reasons for the differentiation in treatment are reasonable and objective and the purpose is one which does not contravene the ICCPR then such treatment will not be discriminatory. In this context we have noted the arguments that customary law helps preserve a traditional way of life and is essential in order to maintain the cultural life and moral values of the New Territories villages. That said, there can be no question of excluding indigenous villagers in the NT from the application of the Bill as this would clearly fail to be a full implementation of the ICCPR.

Secondly, we do not recommend any exemption to the Independent Commission Against Corruption (ICAC) and law enforcement agencies. This issue has attracted considerable discussion during the consultation period. I note that the Legislative Council ad hoc group in its report makes it abundantly clear that it does not support any exemption to any group or agency from the Bill of Rights. We all recognize that there is a need to strike a balance between protection of individual rights and the effective maintenance of law and order. I believe, Sir, this is one of the issues we have to examine with the utmost care during the freeze period. I am however confident that ways can be found to ensure, on the one hand, that the ICAC, and police and other enforcement agencies will continue to operate at a high standard of effectiveness, and on the other, that the Ordinances in question will be consistent

with the Bill of Rights. Indeed there are a number of countries where law enforcement agencies have to operate within constitutional guarantees for basic human rights and freedoms. These countries appear to me to be decent, civilized communities where law and order is maintained at enviable standards. I cannot see why, therefore, the presence of a Bill of Rights in our law will lead to greater chances for criminals to escape the proper administration of justice.

Sir, a number of representations have suggested that a Human Rights Commission should be set up following the enactment of the Bill of Rights. The Legislative Council ad hoc group also recommends the establishment of such a commission, because of the role it could play in the education of the public about the rights guaranteed under the Bill of Rights and in fostering and monitoring the development of human rights in Hong Kong. We will certainly give further consideration to these proposals.

There have also been different views on whether and how the Bill of Rights should be entrenched in Hong Kong's constitutional document. To give the Bill of Rights a supreme status over all local laws and to directly entrench it either constitutionally or by special procedural devices will clearly go against the provisions in the Basic Law. Instead we will propose to recommend to Her Majesty's Privy Council that the Letters Patent be amended to provide that no law shall be made that restricts the rights and freedoms of persons in Hong Kong in a manner which is inconsistent with ICCPR as applied to Hong Kong. Such an amendment will entrench in our domestic law the principle that no laws made by the legislature shall contravene the ICCPR and will reflect the similar provision in Article 39 of the Basic Law. Our present plan is to submit the recommendations to the Privy Council later this year, to coincide with the enactment of the Bill here. Members of this Council will have the opportunity to study the text of the proposed amendment before the Bill of Rights is passed.

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

Question on the adjournment proposed, put and agreed to.

ELECTORAL PROVISIONS (AMENDMENT) BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Electoral

Provisions Ordinance."

He said: Sir, I move that the Electoral Provisions (Amendment) Bill 1990 be read the Second time.

1991 will witness for the first time in Hong Kong's history the direct election of members to this Council by geographical constituencies. A legislative framework already exists in the Electoral Provisions Ordinance to provide for direct elections to the municipal councils and the district boards. As this legislative framework is already familiar to electors and candidates, it is logical to use it for the direct elections to this Council. The primary objective of the Bill is therefore to expand the scope of the Electoral Provisions Ordinance for this purpose.

Clauses 2, 3, 4, 10 and 12 seek to extend the existing provisions of the Electoral Provisions Ordinance to provide for the general arrangements for direct elections to this Council. Clause 11 provides that a candidate cannot be nominated for both direct election and indirect election through a functional constituency at the same time. Clauses 14, 15 and 16 make provisions in the principal Ordinance for direct elections to accord with those in the Legislative Council (Electoral Provisions) Ordinance dealing with indirect elections to this Council.

Clause 5 adds a new part to the Electoral Provisions Ordinance so as to provide for matters incidental to the direct elections to this Council, such as tenure of office, resignation, and by-election. It is modelled on Part II of the Legislative Council (Electoral Provision) Ordinance, which contains similar provisions in respect of indirect elections.

We have also taken the opportunity to introduce a number of improvements.

At present, section 19(1)(a) of the principal Ordinance provides for a disqualification for being nominated as a candidate, or being elected, or holding office as a member in the district boards and municipal councils, on grounds of holding "any public office (other than as a member of an auxiliary force) or any office of emolument in the gift or disposal of the Urban Council, or of the Regional Council, or any committee thereof having held such office has been dismissed therefrom."

This disqualification based on the holding of a public office is intended to reflect the Government's policy that members of the judicial service and the Civil



Service should not seek political office through election. This policy is aimed at avoiding conflicts of interest and ensuring the separation of the legislature, the judiciary and the executive.

Any wider judicial interpretation of the term "public office" would have the effect of disqualifying those who are not intended to be disqualified, especially members of the public serving on government boards and committees.

Clause 10 of the Bill seeks to clarify the list of disqualifying offices in section 19(1)(a) of the Electoral Provisions Ordinance.

First, the term "public office" in the existing disqualification will be replaced by references to offices in the Civil Service and the judicial service, in the armed forces, and in a schedule of specific offices which should be disqualified on account of the public functions they perform despite their independent nature. These specific offices include the Commissioner Against Corruption, the Chairman of the Public Service Commission and the Commissioner for Administrative Complaints. Clause 17 provides for the amendment of the schedule by the Governor in Council.

Secondly, a person holding an office of emolument in the gift or disposal of the Legislative Council will also be disqualified. At present only those employed by the two municipal councils are disqualified.

Thirdly, the existing indefinite disqualification on grounds of dismissal from the Government or the municipal councils will be removed. This disqualification is considered too harsh as other disqualifications which are based on more serious offences such as a sentence of imprisonment and conviction of corrupt and illegal practices apply for finite periods.

Fourthly, the position of the Chairmen and Vice-chairmen of the two municipal councils will be clarified beyond doubt that they are not holding an office of emolument in the gift or disposal of the respective council.

I shall move later this afternoon similar amendments to the equivalent provisions in the Legislative Council (Electoral Provisions) Ordinance, the Urban Council Ordinance, the District Boards Ordinance, and the Regional Council Ordinance. The intention is to apply the disqualifications uniformly to different categories of membership on the three tiers of representative government.

The Bill also seeks to rationalize the existing arrangements for the registration of electors.

At present, the statutory period for registration of electors in a geographical constituency is between 15 August and 30 September each year. A final register is published in January the following year. Thus the final register will not be up-to-date for the purpose of the direct elections to the Legislative Council which will be held in September 1991 and September 1995.

Registration of electors in the Legislative Council functional constituencies takes place in April and May each year and an eligible person must have been registered first as an elector in a geographical constituency under the Electoral Provisions Ordinance. Because of these requirements and procedures, an eligible person will have to go through registration under the two different registers in two successive years before he is able to vote in a functional constituency. In the Legislative Council elections in 1985 and 1988, special arrangements were made to waive the requirement of prior registration in a geographical constituency.

We propose therefore that the two registration exercises in respect of geographical constituencies and functional constituencies, respectively, should take place together in April and May each year starting from 1991, and that simultaneous registration to the two types of constituency should be permitted. The respective final registers will then be published in August of the same year, that is, about one month before the elections to the Legislative Council in 1991.

Clauses 7 and 9 seek to change the dates for the compilation of the provisional register and the final register for geographical constituencies to June and August respectively so as to bring them in line with those for the register for functional constituencies.

The Legislative Council (Electoral Provisions) Ordinance will also need to be amended to provide for simultaneous registration. Sir, I shall move the necessary amendments later this afternoon.

Registering false residential addresses can be a problem in elections based on geographical constituencies. This can take the form of a group of electors falsely registering under a common address in order to vote en bloc in a particular constituency for a particular candidate. This compromises the honesty of the

elections.

Clause 6 therefore provides that a residential address must be supplied for registration so as to enable the Registration Officer to deal with suspect registrations, subject to the existing external checks under section 15 of the principal Ordinance by a revising officer, who will be a member of the Judiciary.

Clauses 8 and 10(1)(b) provide for the disenfranchisement and disqualification from candidature and office of anyone who makes false statements in the registration process under the Electoral Provisions (Registration of Electors) Regulations and the Legislative Council (Electoral Provisions) (Registration of Electors and Appointment of Authorized Representatives) Regulations respectively. We consider that any deliberate attempt by an applicant to falsely register as an elector, which is equivalent to an illegal practice under the Corrupt and Illegal Practices Ordinance, should be a disqualification for both registration as a voter and standing for election.

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

Question on the adjournment proposed, put and agreed to.

LEGISLATIVE COUNCIL (ELECTORAL PROVISIONS) (AMENDMENT) BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Legislative Council (Electoral Provisions) Ordinance."

He said: Sir, I move that the Legislative Council (Electoral Provisions) (Amendment) Bill 1990 be read the Second time.

The 1988 White Paper on political development announced that in 1991 the electoral college constituencies, with the exception of the two special constituencies of the municipal councils, should be replaced by direct elections from geographical constituencies. Following a review of the decisions contained in the 1988 White Paper in the earlier part of this year, the Government decided that the number of functional constituencies should be increased to 21. This decision was announced in this Council on 21 March 1990. The primary objective of the Bill is therefore to give effect to these decisions.

Clauses 3(1)(a) and (c) and a number of other clauses in the Bill seek to remove the provisions relating to electoral college constituencies which will be abolished.

The new functional constituencies are provided for in clause 19 which amends the Second Schedule to the principal Ordinance.

In considering the amendments to the Second Schedule, we have reviewed the grouping of functional constituencies in the light of the changes to be introduced in 1991.

At present the finance functional constituency consists of two electoral divisions, one comprising licensed banks, and the other professional accountants. In 1991 the financial services sector will return a representative to this Council. We propose to group this sector with the banking sector to form two electoral divisions in a reconstituted finance functional constituency. The existing accountancy division will then become the accountancy functional constituency.

At present the teaching functional constituency consists partly of full-time teachers in tertiary, post-secondary and vocational training institutions. We propose to add to the list the Hong Kong Academy for Performing Arts, the Open Learning Institute of Hong Kong and the Hong Kong University of Science and Technology.

The small electorate size of the two municipal councils requires special measures to ensure that their elections of representatives to the Legislative Council have adequate elector participation. We therefore propose in the amended Schedule that a person who is eligible to register as an elector in a municipal council constituency as well as in functional constituencies will only be allowed to register in the former. However, since the Chairman and the two Vice-Chairmen of the Heung Yee Kuk are required by law to serve on the Regional Council as ex-officio members, they will be given the choice to register as electors in either the Regional Council or the rural functional constituency.

Clause 15 provides that a person cannot stand at the same time for both a direct election and an indirect election, that is, through a functional constituency, to the Legislative Council. Clause 11 provides that a person may be registered as an elector in one functional constituency only, even if he is otherwise entitled to be registered in more than one functional constituency.

The Electoral Provisions (Amendment) Bill 1990, which I moved earlier, proposes a number of improvements. It is proposed to amend the equivalent provisions in the Legislative Council (Electoral Provisions) Ordinance in a similar manner. These include the disqualification of civil servants, judicial officers, those in the armed forces and in other specified offices from taking part in elections, in place of the existing disqualification which is based on the concept of "public office". Other improvements are in respect of the disqualification of persons holding any office of emolument in the gift or disposal of the Legislative Council and the two municipal councils; the removal of the disqualification based on dismissal from the above offices; the clarification that the Chairmen and Vice-chairmen of the two municipal councils are not holding an office of emolument in the gift or disposal of the councils. A new disqualification is proposed in respect of false registration as an elector. Clauses 12 and 14 give effect to these proposals.

The Electoral Provisions (Amendment) Bill which I moved earlier seeks to bring the registration period in respect of geographical constituencies to coincide with that in respect of functional constituencies. To complete this arrangement, clause 10 of the present Bill proposes to allow simultaneous application to the two registers.

Clause 5 of the Bill provides for a four-year term for a member of the Legislative Council returned from a functional constituency, similar to that proposed for members returned from geographical constituencies. Clause 7 provides that a member returned from a functional constituency shall vacate his seat if he is returned in a direct election from a geographical constituency. Clause 8 seeks to define the circumstances under which a by-election should not be held to fill a casual vacancy in a functional constituency. An identical provision is included in the Electoral Provisions (Amendment) Bill 1990 in respect of a geographical constituency. Clause 13 stipulates that to qualify for nomination as a candidate, a person should be registered as an elector under the Electoral Provisions Ordinance.

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

Question on the adjournment proposed, put and agreed to.

URBAN COUNCIL (AMENDMENT) (NO. 2) BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Urban Council Ordinance."

He said: Sir, I move that the Urban Council (Amendment) (No. 2) Bill 1990 be read the Second time.

When I moved the Electoral Provisions (Amendment) Bill 1990 earlier this afternoon to clarify the list of disqualifying offices in the Electoral Provisions Ordinance for being nominated, elected or holding an elected office, I indicated that the intention is to apply the revised disqualification uniformly to all three tiers of representative government. Clause 4 of the Bill seeks to achieve this in respect of the appointed member of the Urban Council.

Clause 2(1) of the Bill seeks to change the tenure of office of elected members from three to four years in accordance with constitutional arrangements after 1991.

Clauses 2(2) and 3 update the principal Ordinance by repealing those provisions which no longer apply after the elections in 1991.

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

Question on the adjournment proposed, put and agreed to.

#### REGIONAL COUNCIL (AMENDMENT) (NO. 2) BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Regional Council Ordinance."

He said: Sir, I move that the Regional Council (Amendment) (No. 2) Bill 1990 be read the Second time.

The proposed amendments to the Regional Council Ordinance are similar to those which I have proposed to the Urban Council Ordinance under the Urban Council (Amendment) (No. 2) Bill 1990, which I have just moved.

There are, however, two additional amendments. Clause 6 seeks to extend to an

ex-officio member the full range of disqualifications applicable to an appointed member under section 11 of the principal Ordinance. Clause 5 provides that an ex-officio member, upon disqualification, will not be allowed to attend, take part in, or vote at any meeting of the Regional Council.

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

Question on the adjournment proposed, put and agreed to.

#### DISTRICT BOARDS (AMENDMENT) BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the District Boards Ordinance."

He said: Sir, I move that the District Boards (Amendment) Bill 1990 be read the Second time.

The proposed amendments are similar to those which I have proposed under the Urban Council (Amendment) (No. 2) Bill 1990 and Regional Council (Amendment) (No. 2) Bill 1990 which I have just moved. The disqualification provisions in respect of appointed and ex-officio members on the district boards are brought into line with those for an elected member. A four-year term is introduced in accordance with the constitutional arrangements after 1991.

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

Question on the adjournment proposed, put and agreed to.

#### CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1990

THE CHIEF SECRETARY moved the Second Reading of: "A Bill to amend the Corrupt and Illegal Practices Ordinance."

He said: Sir, I move that the Corrupt and Illegal Practices (Amendment) Bill 1990 be read the Second time.

The purpose of the Corrupt and Illegal Practices Ordinance is to protect the honesty and integrity of elections. In general, corrupt practices, such as bribery, intimidation, undue influence, are considered to be of a more serious nature and therefore attract a higher penalty than illegal practices, such as misuse of election expenses and false statements.

A review of the current level of penalties has concluded that they are inadequate to achieve the desired deterrent effect. As corrupt practices under the Ordinance are mostly dishonest acts calculated to influence the results of an election it is considered that they should at least attract the same level of penalty as that for making a false statement in applying for registration as an elector, which attracts a maximum fine of \$5,000 and imprisonment for six months upon conviction.

Clause 2 seeks to increase the penalty for corrupt practices by increasing the maximum fine from \$1,000 to \$5,000 and the maximum sentence of imprisonment from three months to six months on summary conviction and increasing the maximum fine from \$5,000 to \$10,000 on conviction on indictment.

Clause 3 of the Bill seeks to increase the penalty for illegal practices by increasing the maximum fine from \$500 to \$2,500 on summary conviction and from \$2,000 to \$5,000 on conviction on indictment. It further proposes to provide a custodial sentence for any contravention of section 17 of the principal Ordinance which regulates false claims of support in a candidate's publicity. Any false claim of support will mislead electors in voting. Recent experience has shown a significant increase in the number of complaints of this nature.

Clause 6 of the Bill seeks to increase the penalty for failure to comply with statutory requirements for declaring election expenses after an election.

The principal Ordinance provides that a person convicted of a corrupt or illegal practice in an election is disenfranchised for seven years and debarred for 10 years from appointment or election to the district boards, municipal councils and Legislative Council.

However, there is an anomaly in section 24 of the Ordinance which refers to disqualification from nomination and election for three years. This should be 10 years and clause 5 seeks to rectify the anomaly.



Electors have been known to use false residential addresses for the purpose of registration in order to vote for a candidate in a particular geographical constituency. The Electoral Provisions (Amendment) Bill 1990 which I moved earlier proposes to require the use of a local residential address for registration and to provide for disqualification for electoral franchise and election for any one convicted of an offence relating to the submission of false registration particulars.

In order to deal with the problem comprehensively, it is proposed that an offence should be created under section 14 of the Corrupt and Illegal Practices Ordinance for fraudulent voting on the basis of false registration. Clause 4 adds to the offences specified in this section the encouragement of fraudulent voting. A new sub-section is proposed to deal with fraudulent voting on the basis of a false registration as an elector.

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

Question on the adjournment proposed, put and agreed to.

#### BRITISH NATIONALITY (MISCELLANEOUS PROVISIONS) (AMENDMENT) BILL 1990

THE SECRETARY FOR SECURITY moved the Second Reading of: "A Bill to amend the British Nationality (Miscellaneous Provisions) Ordinance."

He said: Sir, I move that the British Nationality (Miscellaneous Provisions) (Amendment) Bill 1990 be read the Second time. The Bill will introduce two new provisions which are needed for the implementation of the British citizenship scheme.

First, clause 4 will make it an offence for a person to make a false statement when applying for British citizenship under the scheme. The offence will carry a maximum penalty of a fine of \$15,000 and imprisonment for three months. This is in line with our existing law whereby it is an offence to make a false statement in any application under the British Nationality Act 1981.

Secondly, clause 5 will make it an offence for anyone involved in the processing of applications under the scheme to disclose the identity of, or any information relating to, persons who have applied for British citizenship except in the performance of duty. The offence will carry a maximum penalty of a fine of \$50,000

and imprisonment for six months. This provision is necessary because a large amount of detailed personal information will have to be provided to the Government in support of applications under the scheme. Similar provisions already exist to protect the privacy of information given to the Government under the Census and Statistics Ordinance and the Inland Revenue Ordinance.

We need to have this legislation in place before we invite applications under the British citizenship scheme. The British Nationality (Hong Kong) Act 1990 has now completed its passage through Parliament, and is, I understand, likely to receive the Royal Assent at the end of this month. Our present plan is to start receiving applications on 1 December 1990.

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

Question on the adjournment proposed, put and agreed to.

#### MUNICIPAL SERVICES APPEALS BOARDS BILL 1990

Resumption of debate on Second Reading which was moved on 9 May 1990

Question on Second Reading proposed.

MRS. FAN: Sir, the purpose of this Bill is to provide that in future appeals against the decisions of the Urban Council and Regional Council and certain officers, under specified legislation, shall be to an Urban Services Appeals Board or Regional Services Appeals Board, as the case may be, and not to the Governor in Council. The specified legislation includes the Public Health and Municipal Services Ordinance, the Dutiable Commodities (Liquor) Regulations and the Places of Public Entertainment Ordinance.

The Bill provides that both Appeals Boards will have a common Chairman or one or more Vice-chairmen who are appointed by the Governor and must be legally qualified persons eligible for appointment as a District Court Judge. Each of the Appeals Boards will consist of at least five persons, namely the Chairman or a Vice-chairman who shall preside, two or more members of the relevant Council and an equal number of persons from a panel appointed by the Governor and nominated by the Secretary of the Board. Furthermore, an appeals board must not include any person, or any member of

a committee or other body who was involved in making the decision appealed against.

A Legislative Council ad hoc group has been formed to study the Bill, and the main concern of the group is the proposed composition of the Municipal Services Appeals Boards.

The group is concerned whether natural justice will be seen to be achieved from the appellant's point of view, given the presence of two members from the relevant municipal councils out of a total of five members on the Appeals Boards. The group is keen to ensure that the independence of the Appeals Boards should be able to win the confidence of the public.

The group has considered a proposal of excluding municipal councillors from the Boards. This however is not acceptable to the municipal councils who feel strongly that there should be a member of the relevant council on the Board who can inform the non-council members, if the circumstances of a particular case require, of the considerations which influenced the council when formulating the policy and how policies actually work. They consider that the presence of two municipal councillors as presently proposed in the Bill will ensure that due regard will be given to the policies of the municipal councils when appeals are heard. Otherwise, the Appeals Boards might take decisions which would effectively undermine established policies of the councils.

After giving due weight to both the sentiment of the municipal councils and the confidence of the appellants, the majority of members of the group favoured the option to have only one municipal councillor and two non-council members on the Board. The presence of one municipal councillor will be sufficient to ensure that due regard is given to council policies in deciding appeals, and the composition can give the public greater confidence in the independence of the Appeals Boards in that the non-council members are in a significant majority. Therefore, in future there should be a fixed membership of four including the Chairman on each Board. The group has also examined the composition of other appeals boards and tribunals and finds that this is in line with the composition of most of them. Moreover, in order to ensure that a decision can be made if a board is evenly divided over an appeal, the Administration has proposed, and the group has accepted, that the Chairman should be given an original as well as a casting vote.

The proposed amendments have been agreed by both the Urban Council and the

Regional Council. I shall move the amendments in the Committee stage.

The Administration has also proposed a number of technical amendments to the Bill, which aim at streamlining the procedures of the Appeals Boards. The ad hoc group has agreed to these amendments.

In the course of studying the Bill, the ad hoc group notes that there appears to be no standard practice in regard to the constitutions of the various statutory appeals bodies in Hong Kong. The group is of the view that the situation should be streamlined and the Government should be asked to consider adjusting the memberships of existing statutory appeals bodies so that the number of persons who may have been directly or indirectly involved in making a decision which is subject to appeal should be reduced to the absolute minimum. The principle should also apply in any future appeals bodies to be set up.

Sir, with these remarks, I support the motion.

MR. CHEUNG YAN-LUNG (in Cantonese): Sir, it is understood that the Administration has fully sought the views of the Regional Council and the Urban Council on the membership of the Municipal Services Appeals Boards, and the issue of upholding the principle of natural justice has also been thoroughly discussed in the process of consultation.

In endorsing the original proposal of the Bill, that is, having two or more members of the relevant municipal council to sit on an appeal board, the Regional Council has considered in great detail the advice of the Legal Department that the proposed composition of the appeals boards would not contravene the principle of justice. To my knowledge, the legal advice has been given on the following basis:

(1) municipal councillors will only form a minority on each appeal board;

(2) municipal councillors who have been involved in any capacity in making the original decision under appeal will not sit on the appeal board;

(3) the appellant will have the chance to attend and be represented at the hearings of the appeal board.

As a matter of fact, the inclusion of municipal councillors on the appeals boards

will ensure that due regard will be given to the municipal council policies on matters under appeal. Members of the Regional Council consider that any decision to exclude municipal council members from the appeals boards will deny the appeals boards of the valuable opinion that they badly need. Such a decision will also signify a great distrust of the integrity of the municipal councillors.

The ad hoc group's proposal to reduce the number of members of the relevant municipal council on the appeal boards from two to one to enable non-council members to form a significant majority is a measure to give the public greater confidence in the independence and autonomy of the appeals boards. The proposal of keeping one municipal councillor on the appeals boards can ensure that due regard will be given to municipal council policies when appeals are determined. After deliberation at its full council meeting, the Regional Council has endorsed the proposed amendment which will be conducive to maintaining the co-ordinated operation of the three-tier structure of our representative government.

The Regional Council has also agreed that in future the secretary to the appeals boards can nominate any members of the Regional Council to sit on the appeal boards provided that the one nominated has not been involved in making the original decision under appeal.

Sir, with these remarks, I support the motion.

MRS. TU: Sir, I speak as the representative of the Urban Council constituency.

When this Bill was first tabled, the Government and the Urban Council had already reached agreement on its original terms, that two Urban Councillors should be appointed to the Appeals Boards. The purpose was to ensure that expertise was available on both licensed premises and on market and street traders policies.

When the ad hoc group and the In-House Meeting of the Legislative Council decided to reduce representation on the Appeals Boards to one municipal council member, the Urban Council requested that arrangements be made to hold separate hearings for the two types of appeal, so that an Urban Councillor with the relevant expertise might be present at each type of hearing.

The Urban Council's request was granted, and those arrangements have now been

made within the administrative procedures of the Municipal Services Appeals Boards, subject to formal approval by the Chairman of the Boards. Under these arrangements, the Urban Council will submit two separate lists of Councillors, one with knowledge of licensed premises and the other of markets and street traders policies.

At its meeting on 17 July, the Urban Council agreed to the new arrangements, and I am now authorized to support the Bill.

CHIEF SECRETARY: Sir, I would like to thank the ad hoc group and also the two municipal councils for coming together and finding a good compromise way of proceeding forward on this Bill. I will not go further into the details. Mrs. FAN has outlined the proposal which she is putting on membership which now has the support of the two councils and which is supported by the Administration. Mrs. TU has pointed out the point of the experienced members standing on the relevant select committees and we have also accepted the procedures which Mrs. TU has outlined, Sir.

The problem does not arise, I should say, in terms of the Regional Services Appeals Board because the Regional Council has a different committee structure from the Urban Council.

There remains only one point for me to pick up -- that made by Mrs. Rita FAN -- to the effect that there appeared to be no standard practice in regard to the constitutions of the various statutory appeals bodies in Hong Kong. We find, Sir, that it is difficult to adopt a standard practice because of the varied natures of the boards. Some of them are concerned with judicial appeals and others with administrative appeals and each has to be looked at in the light of the circumstances surrounding the appeals boards. However, we will certainly bear in mind the ad hoc group's views when considering the establishment of any future appeals bodies.

I shall move an amendment at the Committee stage to remove a loophole which has been detected in clause 5. I shall also move some amendments to improve the practical working of the appeals boards.

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).

COMPANIES (AMENDMENT) (NO. 4) BILL 1990

Resumption of debate on Second Reading which was moved on 30 May 1990

Question on Second Reading proposed.

MR. BARROW: Sir, I will concentrate today on only two main points of principle relating to this Bill.

This, however, does not mean that the ad hoc group has taken the Bill lightly. There have been three meetings, including two with the Administration, to consider submissions including one from the Society of Accountants. Reference has also been made to the Sixth Report of the Standing Committee on Company Law Reform for the main objections of various professional bodies against the introduction of the new procedures for the conversion of a compulsory winding-up to a creditor's voluntary winding-up.

The first concern relates to the issue of time limit for making an application for conversion.

Under the new section 209A, an application should be made within three months of the date of a resolution passed at the first meeting of the creditors and contributories or any adjournment to that meeting or within such further period as the court may permit.

It has been suggested that if the Official Receiver's Office could function on a time-costing basis, fees for the work done in respect of a compulsory winding-up prior to its conversion to a creditors' winding-up could be recovered, making it unnecessary to impose a time limit on application for conversion.

The Administration has, however, explained that the commercial basis on which the Official Receiver operates in a compulsory liquidation is a scheme of payments by results and he charges fees on a percentage of the assets recovered and distribution made. Such basis of charging is necessary since the Official Receiver would have to recover costs on a global basis so that high asset value cases subsidize low asset value cases to ensure the financial viability of his Office. This charging policy

is also set down in law under the Companies (Fees and Percentages) Order.

The change to a system of time-costing would involve substantial administrative problems and the Official Receiver would have to introduce a costing system for every liquidation on the assumption that it might be converted to a voluntary liquidation at some future time. This would be an undue administrative burden for the Receiver as in the great majority of cases, he cannot charge time-cost or the question of conversion is unlikely to arise because the assets available are insufficient to meet the cost of the time spent on the case. The Administration also advises that the Official Receiver's Office is at present running at a loss.

Having considered the views of the Administration, we feel that there are difficulties for the Official Receiver's Office to maintain a time-costing system and that regard must be given to the Administration's existing policy on the financing of that Office. We also consider it unfair if he is not paid a fee after he has carried out most of the preliminary work in a compulsory liquidation simply because of the conversion to a creditor's voluntary winding-up. It is also felt that people who use the service provided by the Receiver's Office should pay for it: there is no justification for any subsidy from the taxpayer's money.

In essence, we agree that the provision should be left as it is.

The second issue of concern relates to the Receiver's right of audience before the court on the hearing of an application for conversion.

While one submission feels that it is fair for a party being removed from an appointment in liquidation to have an opportunity to explain to the court any reasons he has for not being removed, the Society of Accountants feels that the Official Receiver should maintain a neutral stance.

The Administration points out that the Official Receiver is not obliged to appear at a hearing of the application under the new subsection 209A(7). After having submitted a report to the court regarding the application under the new subsection 209A(6), he will probably maintain a neutral position -- unless he wishes to oppose the application.

We consider that since the effect of a conversion to creditors' winding-up is to remove a liquidation from the court's supervision and there may be good reasons



in the public interest why an application should be supported or opposed, it is appropriate for the Official Receiver to be given the right to be heard on any application for conversion.

Sir, other points of concern on the Bill have been raised by the Society of Accountants. I understand my honourable colleague, Mr. Peter WONG, will speak to them and I will not therefore repeat them now. These points have however been looked at by the ad hoc group and we remain of the view that the Bill should be supported.

With these words, Sir, I support the motion.

MR. PETER WONG: Sir, I find great difficulty in supporting this Bill in which I have to declare a possible interest as my firm is involved in insolvency work. The problem started with the Legislative Council Brief which stated that this Bill "reflects a recommendation of the Standing Committee on Company Law Reform" but did not tell us that both the Hong Kong Society of Accountants (HKSA) and the Law Society were not in favour of the proposals.

The story only unfolded after my insolvency partner briefed me on the background. This elicited a three-page response from the Administration followed by a barrage of correspondence from the Administration and insolvency practitioners. I would question whether the Executive Council were given all the pertinent facts when they recommended this Bill for passage.

The main point of contention of accountants, who perform the bulk of insolvency work in the private sector in conjunction with the lawyers, is the inequitable way that liquidations undertaken by the Official Receiver is charged on a fixed percentage basis on both assets realized and bank deposit income. It is for the public good that the Official Receiver's office is established to wind up the affairs of the bankrupts and insolvent companies. But is it fair that those with high proportion of assets should subsidize those with little or no assets?

The Hong Kong Society of Accountants feels that this central issue should be addressed with a full review of insolvency legislation rather than passing a piece-meal legislation that this No. 4 Amendment Bill presents.

I believe that time costing records should be kept by all professional staff of the Official Receiver's Office so that charges can be based on work done and not on percentages. This convenient, traditional percentage way ensures that

inefficiencies are buried and individual officers are not accountable for their performance. Time records are a useful management tool for all professionals who have to organize their time wisely. I understand that the Official Receiver's Office is introducing time sheets this autumn, but would strongly urge that the Official Receiver adopts commercial discipline and also uses time spent as an alternative and fairer way of charging his fees.

I would submit that the public good requires that the Official Receiver charges his work on an individual case by case basis at time cost or actual assets available whichever is the lower. Shortfall on company insolvencies should be paid for by a standard or scaled levy on businesses registered. Individual bankruptcies should be a charge against general revenues.

The HKSA also questions the need of spelling out in section 209A(2) the 10 criteria for the judge to consider. I am given to understand that this is already standard and well tried practice, but the enactment of guidelines into law will mean that everything now has to be formalized and additional evidence of doubtful value presented since the judge must now be formally satisfied on all 10 points.

The HKSA is also fearful that the three-month deadline for conversion under section 209A(1) will mean that in all but the most simple cases, liquidators will automatically apply for an extension of time just to protect themselves against any unforeseen circumstances. So this legislation, instead of streamlining the operation, will only create more red-tape and cost.

Sir, as I said at the start, I find it difficult to support this Bill because of the fundamental flaw in the manner in which the exercise is to be paid for. Although the amended Bill achieves the objectives set out, the exercise will not really help in streamlining insolvency work. I would have voted against the passage of the Bill but for my possible interest, and would therefore abstain.

FINANCIAL SECRETARY: Sir, I am grateful to Mr. BARROW and other members of the ad hoc group for their careful consideration of, and support for, the Bill.

In his speech, Mr. BARROW has identified two major issues over which concern was expressed to the ad hoc group by, among others, the Hong Kong Society of Accountants (HKSA). Mr. WONG has highlighted in his speech other points of concern to the HKSA.

Before addressing those issues, I wish to point out that the HKSA and the Law Society's comments were carefully considered and taken into account by the Standing Committee on Company Law Reform in making its recommendations to the Administration. I also regard the comment that we have adopted a "piece-meal" approach as misconceived. Section 209A is a provision which stands very much on its own and which can therefore be amended separately, without impinging on the other winding-up provisions of the Ordinance.

#### Time limit (section 209A(1))

Let me now address the issues in respect of which concern was expressed to the ad hoc group. The first relates to the time limit for an application for conversion to a voluntary winding-up and the possibility of the Official Receiver's Division functioning on a time-cost basis. Concern has been expressed that the time limit of three months from the first meeting of the creditors and contributories is too short and that it would be unnecessary to impose a time limit if the Official Receiver could charge fees on a time-cost basis. As explained by Mr. BARROW, the proposed change to a system of time-costing would pose significant practical problems for the Official Receiver. I should, however, reiterate that under the present system, creditors can seek conversion at any time during the course of a compulsory liquidation to avoid the payment of fees to the Official Receiver for his investigatory work. Indeed the main reason which has been given in most of the successful conversions to date is that of avoiding payment of such fees. This is an unsatisfactory situation and needs to be rectified.

Our proposal to remedy this weakness is to require any application for conversion to be made within a period of three months from the statutory first meetings. We believe that this time period should in normal circumstances be sufficient for creditors to reach a decision on the way forward and for them to prepare the necessary documents. We accept, however, that there may be particular circumstances in which creditors will need more time to consider the question of conversion. Accordingly, the Bill provides for an adjournment of the meeting. Creditors can also apply to the court for an extension of the time limit. There are thus adequate safeguards available to the creditors and contributories.

#### Public interest (section 209A(2))

The second area of concern is in respect of the various matters relating to the

public interest to which the court should have regard, and to the Official Receiver's right of audience before the court on the hearing of an application for conversion. The HKSA considers that the various matters set out in new section 209A(2) should not be made mandatory as not all the factors will necessarily apply in each case. The purpose of section 209A(2) is to specify various matters of public interest which the court shall consider before exercising its discretion under the new subsection (1). If certain factors cannot apply in a particular case, then clearly the court would not need to have regard to them.

The HKSA has also expressed the view that the Official Receiver should maintain a neutral stance and that his right of audience under the new subsection 209A(7) should be removed. As pointed out by Mr. BARROW, it is important for the Official Receiver to have the right to be heard on any application for conversion, as there may be good reasons in the public interest for him to support, or oppose, a particular application. I am glad therefore that the ad hoc group shares our view that no amendment to section 209A(7) is required.

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).

COMPANIES (AMENDMENT) (NO. 5) BILL 1990

Resumption of debate on Second Reading which was moved on 30 May 1990

Question on Second Reading proposed.

MR. BARROW: Sir, in his speech moving the Second Reading of this Bill on 30 May 1990, the Financial Secretary explained why the existing system for the registration of company names was considered unsatisfactory and why the introduction of a new system was called for. I shall not repeat this today but will highlight some of the issues which have been considered by the ad hoc group.

The first issue relates to the concern expressed about the disappearance of statutory safeguards for existing companies. Under the new system, the registrar is no longer required to make a decision on whether a proposed new name is too like an existing company name. A company name may be registered as long as it is not the same as that of an existing company. Such change has aroused concern that the protection for names of existing companies under the present system would disappear.

We note, however, from our discussion with the Administration that under the existing system where a fair amount of subjective judgement is required to determine whether a proposed company name resembles an existing company name too closely, it takes up to three months to incorporate a new company.

We also note that each of the 2 000 applications per month would have to be checked against the 250 000 names of existing companies and 40 000 reserved names, which is a chief reason for the delay in incorporating new companies. This is much longer than that require in other jurisdictions and is in our view against Hong Kong's interest as an international financial centre.

A more efficient system is required to cope with the needs of today's business environment. In any event we consider that the proposed legislation has provided for adequate safeguards for existing companies since a Companies Registrar may, within 12 months of the incorporation of the new company, direct the company to change its name on appeal from a pre-existing company. After the expiry of the 12-month period the pre-existing company would still be able to start passing-off actions in the courts.

These provisions, together with the Company Registry's plans to enhance public access to the index of the company names, should address the concern about safeguards for the existing companies.

The second issue relates to the potential hardship to new companies which may arise when a company is directed under the new section 22 by the Registrar within 12 months of its incorporation to change its name.

The ad hoc group, however, considers that promoters of proposed company names have the obligation not to register names that resemble existing company names too closely in the first place. With the enhancement of the system to facilitate public access to the index of company names, promoters should ensure a thorough search on

existing names is done before applying for incorporation.

Finally, we were concerned about the possibility of abuse of the new system by unscrupulous promoters seeking to blackmail existing companies by incorporating new companies with similar names deliberately.

The use of characters which are different but are identically phonetical in Chinese names may also increase the chance of abuse. We feel that the Administration should adopt a firm line against any abuse of the new system. We have also suggested that the penalties in respect of a company's failure to comply with the direction of the Registrar to change its name under the new section 22 should be increased to enhance their deterrent effect. This has been agreed by the Administration and Committee stage amendments to this effect will be moved by the Financial Secretary later today.

Sir, I should like to take this opportunity to point out that the ad hoc group has carefully examined the views expressed by various organizations before making a decision to support the Bill. And we are convinced that the new system which will help reduce the time required to incorporate a new company significantly is a change in the right direction for Hong Kong.

With these remarks, Sir, I support the motion.

FINANCIAL SECRETARY: Sir, I am grateful to Mr. BARROW and members of the ad hoc group for their careful consideration of, and support for, this Bill.

In his speech, Mr. BARROW has identified two issues over which concern was expressed to the ad hoc group. The first related to the protection for names of existing companies. As Mr. BARROW has indicated, under the proposed system, where a company name is registered which, in the opinion of the Registrar of Companies, is too similar to a name already entered in the index of companies, the Registrar may, within 12 months of registration, direct the company to change its name. I can confirm that adequate facilities for name searches will be made available to ensure that the public has ample access to the record of company names. I am glad that the ad hoc group shares our view that adequate safeguards are thus available for existing companies.

The second issue related to the possible hardship to a new company which might be directed by the Registrar to change its name within 12 months of its incorporation. Both the Administration and the ad hoc group consider that the responsibility for checking the index of companies to guard against "too like" names should rest with the private sector. It is for the promoters of any new company to ensure that a thorough search is conducted before applying for incorporation. As I have already said, we shall be ensuring that adequate facilities are made available for such searches.

Finally, the ad hoc group itself has expressed concern about the possibility of abuse of the new system by unscrupulous promoters. We agree that a firm and hard line must be taken against any abuse of the new system. To this end, I shall be moving Committee stage amendments to increase the penalties in respect of a company's failure to comply with the Registrar's direction to change its name.

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).

4.39 pm

HIS EXCELLENCY THE PRESIDENT: The Council still has a good deal of business to get through this afternoon. Members might welcome a short break at this point.

5.04 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume. I think we have a quorum.

HANG LUNG BANK (ACQUISITION) (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 11 July 1990

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).

## SECURITIES (INSIDER DEALING) BILL 1989

Resumption of debate on Second Reading which was moved on 12 July 1989

Question on Second Reading proposed.

MR. CHEONG: Sir, I think Members probably know that I will speak for a long time and this is why they are not attending.

When the Securities (Insider Dealing) Bill was first introduced into this Council, Sir, in July 1989, the Legislative Council ad hoc group set up to study the Bill was vested with the onerous task of ensuring that the legislation that eventually passed through this Council was effective but not to the extent of killing the market. The right balance has to be struck in order that Hong Kong remains an attractive market for investors.

Thirteen months have passed and I am pleased to report back in this Council that, despite certain periods of slow progress, we have been able to reach an agreement with the Administration for a number of important changes to be made to the Bill. Let me hasten to add that such period of seemingly slow progress was not the result of inaction by the ad hoc group. It was due to the need of the Administration to seek advice from relevant quarters on major points of principles such as whether or not the taking away of the right of silence will contravene the forthcoming Human Rights Bill. Many of the changes to the Bill will go some way to address the various concerns in the market about the scope of the Bill. Since some of the amendments will be moved by my honourable colleagues on the ad hoc group later today, and they will explain in greater detail the rationale behind these amendments, I shall be brief in covering these points.

Sir, before I talk about the ad hoc group's work, I should like to express my heart-felt thanks to the 18 organizations and individuals making submissions to the



ad hoc group. The constructive comments made in the submissions have helped us focus our attention on many of the major problems associated with the Bill, and have also helped us better understand the sentiment and concern of the market as well as the Administration.

#### Width of the scope of insider dealing

Sir, a predominant concern expressed by the submissions relates to the width of the scope of insider dealing that arises from provisions like "connected with a corporation" (clause 3) and definition of "relevant information" (clause 7). It is felt that the resulting uncertainty may become a deterrent to market activities, and is not, therefore, conducive to the continued development of Hong Kong as an international financial centre. As a result of the discussions with the Administration, a number of changes to the Bill aimed at restricting the scope of the provisions have been agreed; a number of clarifications have also been sought.

First, in respect of the definition of what constitutes "relevant information" under clause 7, it is our concern that the two key components of the definition, namely information which is "not generally available", and information which would be likely to bring about "a material change in the price" of any listed securities of a corporation, are wide and lack clarity.

We have, after a series of exchange, persuaded the Administration to adopt an alternative definition proposed by the ad hoc group. The new definition, which models after the wording of the United Kingdom Company Securities (Insider Dealing) Act 1985, will be moved by my colleague, the Honourable Mrs. Miriam LAU. I am sure she will explain further the rationale. Despite reservations expressed by the Administration about the lack of tested cases in the United Kingdom, and the United Kingdom's possible intention to replace the existing wording of the United Kingdom Act by that of the European Communities Council directive, which resembles the wording of the Bill more closely, we feel that the new definition proposed today has served to narrow down the scope of "relevant information" and will afford greater certainty to the market.

Secondly, the width of the definition of a person "connected with a corporation" under clause 3 has resulted in unease about the possibility of a person being caught without actually knowing that they are connected. A number of hypothetical cases have been presented to the ad hoc group to illustrate the concern.

In general, the Administration's line is that the net has to be cast wide for the legislation to be effective. Nevertheless, they have assured the ad hoc group that there are important tests, such as the test on motive, to be applied and important procedural safeguards against implicating the innocent.

Based on the hypothetical cases, however, we have persuaded the Administration to provide for a number of additional defences or exceptions in the Bill, some of which will be moved by my colleague the Honourable Peter WONG. The Administration has also, in relation to the concern about the lack of a clear distinction between a true insider dealer and a negligent person in general, proposed to introduce a new concept of an "insider dealer" in the Bill. Provisions will also be made to cater for the concern about negligent director being implicated.

Despite the agreed changes to the Bill, we feel that many of the hypothetical cases presented by the market organizations have stemmed from a lack of understanding of the procedures to be followed in the investigation into possible cases of insider dealing before a decision is made to set up a tribunal. Accordingly, the Administration has been requested to brief us on how the mechanism is expected to work.

In short, it is envisaged that the Securities and Futures Commission (SFC) would be responsible for initial investigation, and would have to be satisfied that there is a case to be answered and investigated by a tribunal before making a recommendation to this effect to the Financial Secretary, who would then have the ultimate say on whether a tribunal ought to be set up. We believe that a clear knowledge of the mechanism will go some way in addressing unfounded fear about how the system would work. We have therefore requested the Financial Secretary to explain in greater detail these procedures today. My colleague, the Honourable Martin BARROW, will also be moving amendments to clauses 9 and 10 of the Bill to address concern about the mechanism.

The Administration has also, in the course of the discussion, obtained legal advice which confirmed that innocent principals who completely entrust the management of their stocks with third parties would not be caught by the provisions.

On the question of arbitrage and hedging, which are common market mechanisms employed by major institutional market players to safeguard their position. The

Administration considers that it is difficult to provide a specific defence under clause 9 in an acceptable manner although of course the general defence under clause 9(3) that "he enters into the transaction otherwise than with a view to the making of a profit or the avoiding of a loss by the use of relevant information" may be available.

I deal now with the second issue which is the controlling shareholders as buyers and sellers of the last resort. It actually deals with the market liquidity problem of the stocks.

Another major issue dealt with by the ad hoc group relates to the role played in Hong Kong by controlling shareholders of listed companies in acting as the buyers or sellers of the last resort in the shares of their companies. It is a common feature of the Hong Kong market that a large proportion of the shares of many listed companies are held by controlling shareholders cum management, who are from time to time approached by brokers for the purchase or sale of large lines of the shares of their companies. Such activities of the controlling shareholders play a vital role in maintaining the liquidity of the market, which in turn is essential for maintaining the attractiveness of Hong Kong to international investors and maintaining the viability of the Hong Kong market.

It has been argued that controlling shareholders, who respond to such unsolicited deals chiefly for the sake of ensuring liquidity of the shares of their companies, would be deterred from continuing to do so lest they should risk being brought before a tribunal to prove in public that they are innocent.

After a series of discussions with the ad hoc group, the Administration maintained that it would not be possible for them to make a blanket exception of such activities of controlling shareholders who, unlike genuine "market-makers" in other markets, have the liberty to decide whether or not to respond, largely to suit their own circumstances.

However, a way forward was found using the "caveat emptor" principle by providing an exception in the Bill on the basis that a dealing should not be prohibited if the party to be involved in a transaction with a controlling shareholder was aware that he was dealing with a person who was a connected person and who might therefore be in possession of relevant information, that is the other party accepting the possibility of being disadvantaged by engaging in the deal. A new clause 9(6) will

be moved by my colleague the Honourable Peter WONG and I am sure he will speak further on this particular subject.

In response to the ad hoc group's query about what would be done specifically to address the concern about liquidity of the market, the Administration has suggested that liquidity would be enhanced by three measures which would be put in place as quickly as possible. The first is a proposal to allow the buyback of shares by listed companies, which is expected to be in place by the end of 1990. The second one relates to the bringing into force of existing legislation which allows stock borrowing or lending free of stamp duty. The third relates to permitting short-selling.

The Administration has further agreed to defer the commencement of the Ordinance until legislation relating to buyback and stock borrowing are introduced possibly by the end of 1990. The group's view is that these two measures may be marginally but not significantly effective in addressing the issue of liquidity. The group accepts that short-selling will be more of an effective tool. Nevertheless, given the complexity of drafting the necessary legislation for short-selling, the group accepts that the Insider Dealing Ordinance should not be held up for a further year. Accordingly, we believe that the introduction of the "caveat emptor" provision plus the introduction of the two measures mentioned above should go some way to address the problems of market liquidity as uniquely experienced in Hong Kong.

#### Motive test

Sir, clause 9(3) stipulates that a person shall not be held to have been involved in insider dealing if he can prove that he did not enter into the transaction with a view to making a profit or avoiding a loss by the use of relevant information.

Despite the Securities and Futures Commission's (SFC) persistent representations that the motive test should not be retained in the Bill on the ground that such a defence would seriously hamper the effectiveness of the legislation, the ad hoc group shares the view of the Administration and the market that the defence is necessary to avoid penalizing the innocent. We feel that it would be unacceptable to remove the test, as suggested by the SFC, because it would be too much of an overkill and would only further weaken active participation by bona fide investors in the Hong Kong market.

#### Criminalization of insider dealing and the right to silence

We have received representations from the legal profession that it is unsatisfactory to deprive those people subject to inquiry of the right to remain silent. It has been further argued by some that insider dealing should perhaps be criminalized so that an individual would not be deprived of the right to remain silent.

The question has been a subject for discussion with the Administration, which argues that experience in other jurisdictions has proved that it would be extremely difficult to prove insider dealing if the right to silence were to be enshrined in the Bill, and would, therefore, render the legislation ineffective.

Whilst we cannot fault the logic of the legal profession's representation, we feel that, on balance, the issue of criminalizing insider dealing should not be pursued at this stage. We have, however, asked the Administration to address the concern about the possible erosion of civil liberty in the context of the Bill of Rights.

The Administration's view, in short, is that although it is not possible to rule out totally the possibility of a conflict with the Bill of Rights, there is no reason for holding up the Bill in question simply because it may happen. After all, the courts can be relied upon to resolve any doubts should they arise. We accept this line of reasoning for the time being but wish to put down a marker here that the Administration should consider conducting a review on the subject in the light of experience.

#### Hearings of Tribunal

As regards the concern about the potential stigmatizing effects of the public hearings of the Tribunal, we have noted the legal profession's argument that it would be in the interest of the administration of justice to have hearings in public. Furthermore, since the Tribunal will have the discretion to hold certain parts of its hearings in private, there should be safeguards for the individual's rights where necessary. This point will be elaborated further by my colleague, the Honourable David LI, when he moves an amendment to the Schedule of the Bill.

As regards procedural safeguards for persons called in to give evidence by the Tribunal, we have been assured by the Administration that a person called in by the Tribunal would be issued a "Salmon Letter", stating whether he is suspected of having

been involved in insider dealing or whether he is just being called in to give evidence. Secondly, a person would be entitled to be represented legally. He would also have a right to be heard before a finding could be made against him.

As regards a person suspected of insider dealing summoned to appear before the Tribunal half way through its hearings, the Administration has confirmed that such a person would be given access to all previous papers on the Tribunal's hearings.

Sir, there are a number of other amendments to the Bill which I shall not detail here, but they do represent a step forward in setting the provisions of the Bill in the right direction. Before I close, Sir, may I add that no change to the Bill can reflect the amount of time and effort made by members of the ad hoc group as well as the Administration in ensuring that whatever legislation is passed by this Council, the objective of a balanced regulatory environment is maintained. May I pay tribute to members of the ad hoc group, who have toiled to find acceptable solutions to the many problems associated with the Bill. I would also like to thank the Honourable Mrs. Peggy LAM in particular for her contribution in scrutinizing the Chinese text of the Bill which is a no less difficult task. Last but not least, I would like to take the opportunity and pay special tribute to the OMELCO secretariat and the OMELCO legal unit. Their dedication and hard work not only enhanced the value of the work of the ad hoc group, they are in my view, truly fine examples of the excellent quality of our Civil Service whose contribution to this society should never be underestimated by anyone at any time.

With these remarks, Sir, I support the motion.

MRS. LAM (in Cantonese): Sir, in scrutinizing the Chinese version of the Bill, the first problem we encountered is the difficulty in identifying the Chinese equivalents for the English terms.

The first term in question is "reputed spouse", the true meaning of which is a male and a female who, having lived together for a certain period of time, are recognized by others as a married couple. In the Chinese version, ②公認配偶① is used. To reflect its meaning more precisely, it is now proposed that ②公認配偶① be amended as ②一般公認配偶①.

The second term is "securities instrument", which is ②證券的文書① in the Chinese text. Because the word "instrument" in the Bill means document, it is proposed that

its Chinese equivalent be amended as ②證券的文件①.

The third thing to be considered is the clause "whether such member or employee is temporary or permanent". In the Chinese version it reads ②不論其成員或僱員職位屬長設或臨時性質①. We consider that ②長久① is more appropriate than ②長設① for the word "permanent".

The fourth term is "take-over offer". According to my understanding, it is known as ②收購建議① to the market practitioners. The law draftsman explained to us that, from a legal point of view, the word "offer" should be translated as ②要約 ① rather than ②建議①. According to Ci Hai (an authoritative Chinese dictionary), ②要約 ① is a legal term meaning with a view to entering into a contract. We accept the law draftsman's view that the term ②收購要約 ① should be used and we hope that the coinage is also acceptable to the practitioners.

The fifth and a more important term is "material change" as mentioned in the definition of ②有關消息①. The Chinese version uses the term ②實質變動① which is slightly different from its meaning in English. After further consideration, the law draftsman proposed to use ②不是無關重要① to express the true meaning of the word "material".

Another English term in question is "reasonably practicable". We feel that the phrase ②按常理可行① in the Chinese version cannot reflect the meaning of "reasonable" in English law. ②常理① is not the same as ②合理①. So we propose to use ②按理可行①.

As the Bill has wide legal implications, in scrutinizing the Chinese text, special attention was paid to the consistency of meanings of corresponding clauses in the Chinese and the English versions. Because of slight discrepancies in clauses 13(1) and 14(f) between the Chinese and English versions, we have amended the Chinese version of these two clauses. Furthermore, the sentence structure of certain clauses were also altered in order to reflect the meaning more clearly.

Sir, with these remarks, I support the motion.

MR. PETER WONG: Sir, I would first of all declare my interest as the non-executive director of the Securities and Futures Commission (SFC) in this as well as a subsequent number of Bills in connection with the securities field. Sir, I have all along

disagreed with the fundamental tenet of this Bill to give the regulatory authority draconian powers and to impose very severe fines but falling just short of criminalizing the act and hence denying the full protection of the criminal code against self-incrimination. We are adopting a unique Hong Kong solution and thus defy the wisdom of the major powers in the securities field which is firmly fixed on criminal sanctions. I have reluctantly bowed to this policy decision and tried to make the non-criminalization method work.

I am disappointed that the Administration has given in to the ad hoc group's new definition of "relevant information" which is based upon the existing United Kingdom definition of "inside information".

I have been informed by the staff of the SFC that the United Kingdom definition is shortly to be replaced by a new definition which is contained in the European Community Directive in respect of which the United Kingdom Department of Trade and Industry played a very active part. This means that we will adopt a definition which will soon be outdated and therefore we are unlikely to get much help from the decisions of the European courts to assist us to interpret the fine points of the definition.

I will therefore be pleased to hear the Financial Secretary's full explanation for this rejection of the European Community definition in favour of the United Kingdom one. I would also welcome the Financial Secretary's confirmation that the definition will be reviewed once the United Kingdom adopts the European Community definition.

The United Kingdom definition refers to persons "who are accustomed to or would be likely to deal" in particular securities. This may be all very well in the United Kingdom where the Stock Exchange and Reuters information systems can be used as the yardstick for dissemination of information. We have no such clear yardstick in Hong Kong and hence the definition is likely to lead to uncertainty.

There is concern that if the price of a certain share moved because of dealings between a connected person and a small limited number of other persons to whom the information was confined, the Insider Dealing Tribunal, having no criteria to guide it, may be forced to draw the conclusion that those limited number of persons are persons who are accustomed to deal or who would be likely to deal in those securities. This may give rise to effectively legalizing small insider dealing clubs.



I understand that one of the reasons for the new wording is to assist financial analysts who might be passing on their recommendations in relation to particular securities to a selected number of clients. It is difficult to see how such recommendations could amount to inside information if they are based on research into publicly available information. If, on the other hand, they result from tips from directors in possession of inside information, the analyst should not be dealing or encouraging his clients to deal on the basis of such tips.

I feel that it would be better to leave the text as it was in the previous draft of the Bill and which is currently in the existing legislation and that is the insider must show the information was "generally available". In practice, this has meant publication in the financial media. I note that similar phraseology is being used in the European Community directive definition where the test is that the information must have been made public. That is the latest thinking and one finds it hard to see therefore why we are departing from existing language which has proven to be uncontroversial in the three insider dealing inquiries which have been conducted to date.

Hong Kong is not unique in having to solve this very difficult problem of insider trading which is making use of privileged information for personal and unfair gain. We have to give the SFC, our designated regulatory authority, effective means to bring those insider dealers to book. We also have to balance those means against the possible intrusions upon the rights of the individuals. In this Bill, we have been attempting to balance those powers and intrusions.

Sir, I have expressed a strong reservation of the definition of relevant information, but this does not prevent me from supporting the Bill as a whole because there are many areas, such as in appeal, which are to the benefit of the whole. These have been elaborated upon by my colleagues.

Sir, I support the Bill.

FINANCIAL SECRETARY: After I introduced the Securities (Insider Dealing) Bill to this Council in July last year, an ad hoc group under the chairmanship of Mr. Stephen CHEONG was established to study the Bill. An enormous amount of time and effort has gone into this task and I would like to express my appreciation to Mr. CHEONG and members of the ad hoc group for their helpful and constructive approach to this subject.

At the Committee stage a number of amendments will be moved by members of the ad hoc group and myself. I shall be brief when moving the amendments, highlighting only the essential points and major amendments of special interest to the securities industry or this Council.

In the course of studying the Bill, members of the group addressed a number of issues in respect of which concern had been expressed to them. The first related to the proper balance between the powers of the Insider Dealing Tribunal and the rights of the individual. Several separate points were made.

### Criminalization

The first point was whether or not insider dealing should be criminalized. As I made clear when introducing the Bill to this Council, our view remains that insider dealing should not for the present be made a criminal offence but that the position should be reviewed in the light of experience of the effect of increased Tribunal sanctions and the effectiveness of enforcement action. Criminal sanctions have in fact proved ineffective elsewhere because of the difficulties of prosecution and of securing convictions. We firmly believe that at the present time the tribunal approach represents the most flexible and effective way to tackle the problem in Hong Kong.

### Right to silence

The second point concerned the so-called "right to silence". It has been suggested that, given the quasi-criminal sanctions being made available to the Tribunal, the non-application of this right should be lifted. We do not support this suggestion. The privilege against self-incrimination or "right to silence" applies to criminal proceedings. Insider dealing is not a criminal offence, notwithstanding the Tribunal's power to impose penal sanctions. The whole purpose of retaining the tribunal system is to ensure that as far as possible the Tribunal is able to get at the truth. We believe this approach is necessary to tackle more effectively the problem of insider dealing which, by its nature, is most difficult to prove.

### Bill of Rights

Concern has been expressed by the ad hoc group about the implications of the Bill

of Rights in relation to the "right to silence". The Attorney General's Chambers have been consulted and their advice is that it would be most unlikely for the courts to find the legislation to be in conflict with the Bill of Rights. The courts can be relied upon to resolve doubts should the need arise. We firmly believe that clause 16, which is central to the effectiveness of the tribunal approach, should be retained.

#### Hearings in public

The third point concerned the hearings of the Tribunal. We continue to favour hearings in public with a discretion for the Tribunal to hold sittings, or part thereof, in private if the interests of justice so require. The virtue of public hearings is that public scrutiny assists in preventing oppressive or unfair procedures being employed. Public awareness of what is taking place dispels suspicion of oppression and unfairness. We believe that the wider public interest calls for public hearings. But to meet the legitimate concern about possible injustice, there must be a discretion to hold sittings in private. The Tribunal is best placed to exercise this discretion.

#### Procedural safeguards (Right to be heard)

The fourth point concerned the procedural safeguards: whether they were adequate and whether they should be enshrined in the law.

We believe the Tribunal procedures to be adequate and that they need not be enshrined in the law. First, the Insider Dealing Tribunal, like any other tribunal, is subject to the rules of natural justice. The Tribunal has a duty to act in a judicial and fair manner and no person shall be condemned unless he has been given prior notice of the allegations against him and an opportunity to be heard -- the principle of *audi alteram partem*.

Secondly, their enshrinement would impose unnecessary restraints upon the Tribunal. The Tribunal's proceedings are investigative or inquisitorial by nature. The flexibility which this approach affords is the main attraction of the tribunal system. Any attempt to lay down formal procedural requirements would inhibit the Tribunal and would undermine the very flexibility which is crucial to the effectiveness of the system. We prefer therefore to allow the Tribunal to set its own procedures in the light of the circumstances of each inquiry, bearing in mind its duty to observe the rules of natural justice.

## Scope of the Bill and market activities

A second issue of concern related to the scope of the Bill and its effect on market activities. Here again there were a number of separate points.

### Definition of "a person connected with a corporation"

The first point concerned the definition of "connected person" under clause 3. It was suggested that a person might be regarded as an insider dealer even though he did not know that the information he possessed was relevant information or that he was a connected person.

Knowledge that the information is relevant information is already a test under clause 8. In fact we would expect most people to deal precisely because they know the information in their possession to be relevant, that is, price sensitive. We do not think the definition of "connected person" is unnecessarily wide. Nor do we believe the definition will cast doubt on normal commercial deals.

### Investigation procedures

In our view, the net must be cast wide to be effective. There are important tests which have to be applied and there are also important procedural safeguards. I can assure Members that there will be a careful screening process. Clause 13(1) of the Bill empowers the Financial Secretary to institute an inquiry by the Tribunal, whether following representations by the Securities and Futures Commission or otherwise. In actual fact, we envisage that an investigation will usually be initiated by the Securities and Futures Commission (SFC), and the Commission would not make representations to the Financial Secretary unless it had reasonable grounds to believe that insider dealing had taken place, that is, that there was a prima facie case to be investigated by a tribunal. The Financial Secretary will only institute an inquiry if he is satisfied that a prima facie case has been established and that it would be in the public interest to have a full investigation. He will normally seek legal advice before deciding whether an inquiry should be instituted.

### Negligent directors

The second point related to negligent directors. The ad hoc group has expressed

concern about the lack of protection for negligent officers, that is, officers of a corporation who do not consent to or connive at an insider dealing, but are negligent about taking precautions to prevent such dealings. To address the problem, we now propose that the Bill should refer to an "insider dealer" instead of "a person involved in insider dealing". This will allow a distinction to be drawn between a true insider dealer and a negligent officer, without restricting the Tribunal's discretion to have regard to the nature of involvement of all persons concerned.

#### Definition of relevant information

The third point concerned the definition of "relevant information" in clause 7. It is the view of the ad hoc group that the proposed definition is vague and that the uncertainty would cast a wide net on what would constitute insider dealing under clause 8. After considerable discussion and debate we have agreed that a revised definition along the lines of the definition in the United Kingdom Company Securities (Insider Dealing) Act should be adopted subject to minor modifications. The ad hoc group considers that the new definition will narrow down the scope of relevant information and bring greater certainty to the market. I should point out, however, that, as Mr. Peter WONG has identified, it is understood that the present United Kingdom definition will shortly be replaced by the definition used in the European Communities Council Directive co-ordinating regulations on insider dealing. In the circumstances, we will wish to consider in due course whether the European Community's definition should be adopted. It is, therefore, our intention to review this issue in the light of experience of the legislation in operation.

#### Transactions not insider dealing

The fourth point concerned transactions which are not to be regarded as insider dealing for the purpose of the Ordinance.

We accept that an off-market transaction between two insiders should be exempted if the parties concerned can establish that each had the same level of information when they entered into the transaction. Another defence to be included will be the so-called "caveat emptor" provision. Under this provision, a person who enters into a transaction in which the other party is aware, or ought reasonably to be aware, that he is dealing with a connected person will not be held to be an insider dealer. The connected person would, however, be well advised to take the precaution of obtaining a written acknowledgement from the other party that he has the required

awareness and to report the details of the transaction to the SFC.

## Market liquidity

Concern has been expressed by both the ad hoc group and the securities industry about the effect of the Bill on market liquidity. We believe the long-term solution to the "liquidity" problem is to encourage the development in Hong Kong of dealers who are able to act as market makers in the proper sense of the term and have the capital to support such operations. Any marginal reduction in liquidity over the short term will, in our view, be more than offset over time by the extra investment which will be attracted by greater public confidence in the integrity of the market and by improved perception internationally.

We were asked by the ad hoc group to consider the possibility of granting exemption to major shareholders to help market liquidity. The exemption of off-market deals between two insiders and the "caveat emptor" provision of which I have already spoken will in fact provide a measure of exemption to such persons but, this apart, it is our firm view that insider dealers, big or small, should be caught by the law. It would be utterly unfair to exempt insider dealing by major shareholders simply for the sake of market liquidity. This would not be in the interest of the investing public and would tarnish the image of Hong Kong as an international financial centre. If the Bill is to have any real deterrent effect, it must equally apply to all investors.

Instead, there are a number of measures which are currently being developed which will, we believe, significantly improve the liquidity of the market. These include proposals to allow the buyback of shares by listed companies, stock lending and borrowing free of stamp duty and short-selling.

The first two of these proposals are in fact close to being finalized and, in recognition of the concern of the securities industry and the ad hoc group, we have agreed not to bring this Bill into operation until they have been implemented. Draft legislation is currently under preparation in respect of the buyback of shares by listed companies; if everything goes according to plan, it will be enacted by end of the year. As regards stock borrowing and lending, the Stamp Duty (Amendment) Ordinance 1989 has already been enacted and will be brought into effect once a proper risk management system for stock borrowing and lending is in place. Good progress is being made and there is a good prospect of bringing the Ordinance into force in about three months' time.

Sir, with these remarks, 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).

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 18 July 1990

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).

COMMODITIES TRADING (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 18 July 1990

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).

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 18 July 1990

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).

SECURITIES AND FUTURES COMMISSION ( AMENDMENT ) (NO. 2) BILL 1990

Resumption of debate on Second Reading which was moved on 18 July 1990

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).

WATER POLLUTION CONTROL (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 23 May 1990

Question on Second Reading proposed.

MR. EDWARD HO: Sir, the Water Pollution Control (Amendment) Bill 1990 seeks to introduce a number of amendments to the Water Pollution Ordinance which is the principal legislation for the control of pollution of the aquatic environment in Hong Kong.

Under the existing legislation, discharges in existence when a water control zone is declared are, subject to certain conditions, entitled to be exempt from control unless and until they have increased by more than 30%. This provision, coupled with the practical difficulty the Director of Environmental Protection has experienced in the past few years with the administration of the Ordinance, have meant that harmful effluents and toxic metals continue to pollute the local waters.

The Bill seeks to introduce three important changes to existing provisions on exemptions. Firstly, the right of exemption from licensing is deleted entirely for discharges in future water control zones. Secondly, in existing water control zones, the right of exemption from licensing is deleted entirely after two years and replaced by a right to a licence under specified conditions. Thirdly, when setting licensing conditions, the Director of Environmental Protection is to be guided by effluent



standards which are to be laid down in a Technical Memorandum issued by the Secretary for Planning, Environment and Lands.

According to the Administration's assessment, nine trades generate significant volume of effluents and it is estimated that 11 500 establishments in these trades will incur additional costs to meet the requirements of the Bill. In view of the far reaching impact of the Bill on industries, a Legislative Council ad hoc group was set up to scrutinize the Bill. The group has held nine meetings and has met 15 groups of industrialists and environmentalists and has also received a number of written representations.

The representations received are generally in support of the Government's intention to control water pollution and accept the necessity of the Bill. There are however conflicting views on the timing of the Bill. Whilst environmentalists undoubtedly would like the Bill to take immediate effect, industrialists would like to be given time to understand the problems involved and to assess the implications.

The industrialists are concerned about the standards laid down in the Technical Memorandum which they find too stringent. They are also worried that the Bill as drafted would mean that the Secretary for Planning, Environment and Lands could change the standards any time. Also to comply with these standards, a great number of factories in the textile bleaching, dyeing and finishing industry, the electroplating industry and the printed circuit board manufacturing industry, will need to install treatment equipment in their factories. According to them, the costs involved (relative to the total capital investment) are exorbitant. Moreover, space is also a great problem because most of the small to medium sized factories are usually housed in multi-storey buildings. As a result, many factories will be driven out of business. Industrialists have also complained of the lack of sufficient advice as to what they are required to do. They have pointed out that, given the small number of professionally qualified experts in Hong Kong, it is doubtful whether a two-year period is sufficient for industries to install equipment and revise operations to meet the standards stipulated in the Technical Memorandum.

To seek an impartial view on the claims made by the industrialists, the group also met a representative of the Hong Kong Productivity Council. The views put forward by the representative however did not dispel entirely the concern of the group on the effect of the Bill on the economy.

The Administration has refuted the industrialists' claims and quoted the

equipment on display in the Centre of Environmental Technology for Industry which are reasonably priced, economically run and compact enough for small to medium sized factories. The Administration does not think the standards in the Technical Memorandum are difficult to comply with for most of the factories although a few of the small ones will have some difficulty.

After hearing the views of different parties, the ad hoc group feels that the controversy is on the standards in the Technical Memorandum and considers that there are merits if the industries and the Administration could meet to clear any misunderstandings on the Technical Memorandum. To this, the Administration agrees and has suggested that the enabling Bill should be passed first without the Technical Memorandum. The Administration has also proposed that a Technical Standards Committee should be formed, comprising members of the concerned industrial associations, the Administration and interested institutions like the Hong Kong Productivity Council, to consider the standards stipulated in the Technical Memorandum. The ad hoc group agrees with this proposal and has suggested that to ensure continuity of work, the Committee should be made a standing one and should preferably include Legislative Council Members.

We initially felt that the standards, once agreed by the Committee, should form part of the Ordinance in the form of subsidiary legislation to be approved by positive resolution. This is to ensure that the Technical Memorandum will not take effect until the legislature has time to agree on it and to ensure that the standards in the Technical Memorandum will not be arbitrarily changed by the Administration. The Administration is of the view that there is no need for the Technical Memorandum to be passed by positive resolution and has counter-proposed that the procedure in the Noise Control Ordinance on the Technical Memorandum be followed. After long discussion, we agree to go along with the Administration's proposal on the understanding that changes in the Technical Memorandum will only be introduced into this Council after the Technical Standards Committee is consulted and that the Administration will let the Council know in advance if any major changes are to be tabled. The Administration will be proposing an amendment to this effect in the Committee stage.

We have also proposed that the Technical Standards Committee should be given three months after the enabling Bill is passed to agree on the Technical Memorandum. If the Technical Memorandum is agreed by the Committee, it will be published in the Gazette and laid on the table of the Legislative Council. The Council will be given

28 days, and if necessary extended 21 days, to consider the Technical Memorandum. If the Committee cannot reach a consensus on the Technical Memorandum, the matter will be referred back to the Council for a solution. In order not to delay the matter any further, we have agreed that the Council should reach a decision within one month. Thereafter the Ordinance will take effect not later than 1 December 1990.

In our meeting with the industrialists, we were told that industries had asked for many years for special areas to be set aside for the affected industries so that they could share treatment facilities. We feel that this is a proposal worth pursuing and we urge the Administration to seriously consider the proposal.

It has also been suggested to us by the environmentalists that the Administration should consider engaging consultants to provide advice to industries should the Hong Kong Productivity Council or the Centre of Environmental Technology for Industry fail to cope with the demand for their service. In this way, factories can implement pollution control proposals at an earlier stage. We hope the Administration will also consider this proposal should there be a need.

Sir, the protection of our environment requires the concerted efforts of all and I am encouraged by the industrialists' willingness to contribute to pollution control. This piece of legislation will save our environment from further deterioration. I therefore have great pleasure in supporting it.

MR. PETER WONG: Sir, I rise to strongly support the passing of this Bill that is absolutely essential to the protection of Hong Kong's environment. It is vital that the Bill be passed and the announced programme be implemented without any unnecessary slippage.

I am taking the industrialists at their word that they are genuinely supportive of the aims of this legislation and will not use the most reasonable short delay to come to agreement over the Technical Memorandum to indefinitely stall the operation of the measures. The timing is critical -- any further delay would result in the long-term destruction of our habitat. I would suggest that no amount of profit is worth that.

As is the Air Pollution Control Bill, there has been considerable misinformation given about the effects of this Bill which accounts for the persistent requests from certain sectors of industries to delay implementation. I would say that the

industrial sector knew that these measures were coming, albeit not in great technical details; but they did not do sufficient preparatory work prior to the introduction of these measures. They could have been far better prepared.

The communication gap between the Environmental Protection Department (EPD), the industrialists and even the Centre of Environment Technology for Industry (CETI) of the Hong Kong Productivity Council is very much to be deplored. We simply cannot protect the environment just by issuing edicts and rely on everyone to understand and apply the law. It is a matter of co-operation with and education of the polluters who are often not in a good position to help themselves, specially factory owners operating in small premises.

The Administration must spare no efforts to work with and not against the polluters. Cajoling is far more effective than threats, especially if you can also demonstrate the benefits you are bringing. Much more can be done by the Administration to fund institutes like CETI and also to ensure that there are sufficient consultants to assist industries at a fair price to meet the requirements. The EPD should also give convincing proof that it is indeed practical for the bulk of industry to meet the standards in good time. Genuine cases of difficulty must be handled sympathetically.

The environmental agencies were lulled into believing that this piece of legislation was but a foregone conclusion. They had underestimated the power of the industrial lobby which will not give up their existing rights without a fair fight. Thus the industrial lobby will be fighting for their rights to minimize the downside of the Technical Memorandum. The EPD, assisted by the environmentalists, must fight equally hard and fair to protect the environment. Since the industrialists have offered their goodwill, so the environmentalists must co-operate in turn and work out a satisfactory Technical Memorandum together. In a tightly packed society like Hong Kong, we are all in it together. We cannot afford confrontation and the only way to save ourselves from total destruction of our habitat is to work together.

It is in the spirit of co-operation that we accepted the proposal to form a committee of the industrialists, government departments concerned and environmentalists to work out a mutually acceptable Technical Memorandum, but we proposed a more practical three months. We trust that we will be able to enact the Technical Memorandum when this Council reconvenes.

Doubts have been expressed that even at the raised level of fines, they are not a sufficient deterrent for the die-hard polluters who see them as a mere cost of doing business. I have accepted my colleagues' assurances that we will re-examine fines as well as possible custodial sentences if persistent polluters are not deterred by the proposed fines.

Sir, I support the passing of the Water Pollution Control (Amendment) Bill 1990 as it is the most important environmental protection legislation that has come before this Council.

6.00 pm

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

ATTORNEY GENERAL: 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 completed.

Question proposed, put and agreed to.

MR. CHEONG: Sir, on behalf of the great majority of industrialists in Hong Kong, I would like to declare that we are as anxious as anyone in this community that we should live in a better and cleaner environment. I have no doubt that industry at large will accept responsibility to try our best to do whatever that is possible in contributing towards a cleaner Hong Kong. Hence, we support this Bill in principle.

However, as Chairman of the Federation of Hong Kong Industries, it would be remiss of me if I do not share with colleagues some practical concerns that we have.

First, it is a fact that the majority of our industrial enterprises are housed in multi-storey flatted industrial buildings. To install equipment to cope with temperature and COD problems of the effluents may physically require much more space than is currently available in individual enterprise. May I take this particular opportunity to inform Members that the design capacity of the model unit on display at Citypoly can only treat three cu m of water effluent per hour, that is, in the

12-hour working day, 36 cu m whereas a medium-size dyeing factory ranges in discharge of effluent from 1000 to 2000 cu m per day. This factual constraint must be recognized by the authorities so that due regard has to be taken in the establishment of standards that are technically and practically achievable. In this regard, like other colleagues, I welcome the setting up of the Technical Standards Committee thereby bringing the Administration and industry together in addressing practical issues. Both the Honourable James TIEN and myself have made great efforts to impress upon our colleagues in industry that discussions within the Committee should be conducted in a non-confrontational and pragmatic manner.

Secondly, given that most of our industrial enterprises are small and medium size in nature, we have to be prepared to accept that some of them will fall by the wayside on account of increased cost. We can only hope that such unfortunate incident will not lead to too devastating an effect. It is therefore imperative that implementation of whatever regulations be approached fairly, pragmatically and, where possible, with a degree of understanding.

Finally, I would like to point out that both the dyeing and finishing industry as well as the electroplating industry are very crucial support industries to other manufacturers in Hong Kong. For example, the death of dyeing and finishing industry in Hong Kong would bring immediate adverse impact onto the competitiveness of our apparel industry which still accounts for around 38% of our total domestic exports. The death of the electroplating industry would immediately hamper our domestic export or even re-export of toys, metal products, watches, jewelleryes, house ware and gift ware industries. Sir, I hasten to add that in pointing out these knock-on effects, the intention is not to discourage our efforts in combating problems of pollution. I point this out because we should be aware of all implications. In macro-economic terms, the death of one industry may not in itself seem significant. However, if we deliberate without clear understanding of all the knock-on adverse impacts, then we run the risk of making decisions the consequence of which may create other serious problems to the community later.

With these remarks, Sir, I support the motion.

MR. MARTIN LEE: Sir, we must pass this Bill if we are to protect our rapidly deteriorating marine environment. We must, at the same time, ensure that the standards which will be adopted under the Bill are strong enough to limit the polluting

discharges that daily pollute our waters.

The intention of the original Ordinance was to prevent water quality from deteriorating beyond what in 1980 was thought to be an acceptable water quality standard. At that time, the decision was taken to concentrate on controlling new discharges but allow the then existing discharges to continue provided that they did not increase in volume by more than 30%. By the time the first Water Control Zone was implemented in 1987, however, industrial production in Hong Kong had grown to such an extent that uncontrolled discharges were causing an unacceptable degree of water pollution in many parts of Hong Kong.

There are already several highly visible examples of poor water quality in Hong Kong. The first is the Rambler Channel, which is polluted by a nauseating variety of sewage and industrial wastes -- including over three tons of toxic metals per day -- and is probably the most polluted stretch of sea in the world. The second is the Tolo Harbour, where the heavy pollution caused by sewage and industrial wastes has led to high nutrient levels and the formation of red tides. Sir, it is a deep shame that Hong Kong has abused and defiled its natural environment to the extent that we have in the Rambler Channel and the Tolo Harbour.

In addition to providing for a baseline of environmental protection, this Bill provides for a more straightforward system of water pollution control. The new system will be easier for the government authority to implement, for it will set out standards in a statutory document. The setting of clear standards will also enable factories to plan rationally the development of their industrial projects. By contrast, the existing system of measuring exemptions according to the available information often leaves the authority with no choice but to assess the level of pollution according to the consumption of raw materials such as water, flour, sugar, vegetables and rice in a food factory. Such a laborious and inexact practice wastes valuable staff resources that could be better employed in tracking down illegal discharges.

In publicizing the original Water Pollution Control Bill 10 years ago, the Government gave notice of its intention to control water pollution. The White Paper published in June 1989 set out a programme for implementing the Water Control Zones. Four of these zones are now in force, and the remaining six will be introduced by the end of 1991.

As the intention to amend the Ordinance was well publicized in the White Paper, factories have already had ample time to adapt their industrial processes and install any necessary treatment plants. Further, I understand that detailed consultations with industrial organizations had already begun in October 1989 and have continued as more of the details of the proposed Bill became available.

A central feature of the Bill is that it will remove the current exemption for pre-existing discharges whenever a new Water Control Zone is implemented. For once the new zones are implemented, all discharges will have to be licensed, and the licensing conditions will be set out in a statutory Technical Memorandum.

The holders of exemptions at the time the new measures in the Bill are implemented will be granted licences on very similar terms, valid for two years. Since the guidelines will be spelled out in the Technical Memorandum, they will thus be able to know well in advance what standards they will have to meet at the end of the two-year period. Factories in the three zones around the harbour (Western Buffer, Eastern Buffer and Victoria Harbour), where most discharges occur, will have until the expiry of the two-year compliance period before they need to comply fully with the standards in the Technical Memorandum. This generous two-year adjustment period greatly exceeds the nine months within which industries presently have to comply with in the already existing Water Control Zones.

Existing factories will have the responsibility of examining the standards in the Technical Memorandum that apply to their situation. If they do not meet those standards at present, they will need to look for ways to minimize the production of waste. We are told by the Administration that on the basis of over 400 cases examined by the Environmental Protection Department, only certain textile bleachers, dyers, finishers, and factories using toxic metals will have any significant problems in complying with the standards proposed in the draft Technical Memorandum.

We are further told, Sir, that in the textile bleaching, dyeing, and finishing sector, over 70% of all factories will need to do no more than follow simple cooling and pH control procedures, and that a further 15% will only need to adopt housekeeping measures to reduce their waste production. We are told that many of the remaining 15%, which is composed mostly of the largest companies that have their factories on their own lots rather than rented premises, will have to adopt methods that reduce the Biochemical Oxygen Demand (BOD). This BOD measures the level of organic pollution by determining the level of oxygen in the water. The Administration has



stated that the installation of processes to reduce the BOD will not take up an unreasonable amount of factory space, and that the authority does not envisage the use of large biological treatment plants common in other industrialized economies.

Now, the actual effect on factories is almost entirely dependent on the standards prescribed in the Technical Memorandum. The standards to be set out in the Technical Memorandum are therefore critical in determining whether the scheme contained in this Bill will be effective in combating water pollution. Though there has been strong lobbying by some industrialists against the enactment of the Bill, such lobbying has sought mainly to provide this Council with a means of controlling the content of the Technical Memorandum, which was originally intended to have been gazetted on the authority of the Secretary.

The compromise ultimately agreed upon between the ad hoc group and the Administration allows this Bill to go ahead without exemptions and without delaying the introduction of new Water Control Zones. After the Bill is passed, a Technical Standards Committee, comprising specialists from industry, Government and academic institutions, will allow for an in-depth review of the environmental standards. It is imperative that these pollution standards be set at a level sufficient to improve significantly the quality of our waters, and that this Council approve such standards when they come before us as subsidiary legislation. If we adopt overly loose restrictions, then the whole purpose of this Bill will have been thwarted and we will have failed to halt the tide of pollution. It is my hope that the Technical Standards Committee can establish levels that will protect our waters and be acceptable to both the Administration and the ad hoc group.

In debating this Bill, Sir, we should remember that polluting discharges do not all come from industry; for many commercial establishments and even residential complexes with their own sewage treatment facilities will need to check the level of their polluting discharges. The Government must also be more vigorous in providing sewers where new or improved capacity is required, and in constructing appropriate treatment facilities. Such facilities will also be subject to the provisions of the Ordinance. In addition, the pollution from livestock waste is already subject to control in the Waste Disposal Ordinance, and more must be done to implement the controls contained in this Ordinance throughout the territory.

In conclusion, this Bill can prove to be effective in improving the quality of our water only if this Council will approve reasonable pollution control standards.

Sufficient standards, combined with other necessary anti-pollution measures such as the Waste Disposal Ordinance, can be effective in restoring our water quality.

Sir, we in Hong Kong have been blessed with marvellous natural water resources. If we waste or abuse these resources, or if we allow the demands of the few to overshadow the needs of the majority, then future generations shall never forgive us for our selfishness and short-sightedness.

Sir, I support the motion.

MR. NGAI (in Cantonese): Sir, the Water Pollution Control (Amendment) Bill 1990 proposes significant amendments to the existing Water Pollution Control Ordinance to enable greater control over environmental protection by the Government in a bid to alleviate the problem of water pollution in Hong Kong. The spirit of this amendment Bill has all along been supported by all sectors of the community, including the industrial sector.

The main proposals of the amendment Bill aim at deleting entirely the right of exemption from licensing for discharges in water control zones and replacing it by a right to a licence under specified conditions. When setting licensing conditions, the authority concerned will be guided by effluent standards laid down in a Technical Memorandum. However, certain standards as set by the proposed Technical Memorandum are far too strict to accommodate the practical needs of Hong Kong. They will create formidable difficulties for industries whose operations involve huge consumption of water, for example, the bleaching, dyeing and printing, and electroplating industries. Several important manufacturing industries which are closely related to the aforesaid operations will in turn be seriously affected. Industries dealing in textile, weaving, garments, clocks and watches, toys, electrical products and plastic products, all of which are the major exports of Hong Kong, will be among those to suffer from the loss of effective and flexible support provided by the bleaching, dyeing and printing and electroplating operations. They will be like birds with broken wings and it will be hard for them to soar to new levels. Our economy as a whole will be seriously hampered. Take the garment industry for instance. There are totally 8 800 garment factories of various sizes in Hong Kong hiring about 260 000 workers. The value of exports generated by the garment industry amounted to \$72 billion last year, making up more than 30% of our total domestic exports. Coupled with the impact on the value of exports of several other industries, the extent of possible financial

loss resulting from the formidable hurdles set up by the unduly restrictive standards of the Technical Memorandum will be alarming.

I am pleased to note that the Government has acted wisely and decided to adopt the cautious attitude of the Legislative Council ad hoc group by tackling the problem in a pragmatic and realistic way. The first step is to set up a Technical Standards Committee comprising representatives of various related industries to scrutinize and revise the proposed standards laid down in the Technical Memorandum. It has also been agreed that the Technical Standards Committee should be a standing one to facilitate consultation and revision in the future. The Administration undertakes to inform and consult this Council in advance if there is to be any major changes to the Technical Memorandum. Sir, under the leadership of the Convener, the Legislative Council ad hoc group has held meetings with many organizations concerned to listen to their views extensively. The conscientiousness of the members of the ad hoc group as well as the prudent attitude of the Government should be highly commended. However, much to my regrets, there have been some unfair allegations against the industrial sector, denouncing for instance that the industrialists were trying to procrastinate the passage or implementation of the Bill by objecting to the Technical Memorandum. The allegation is absolutely ridiculous.

Sir, for environmental protection measures to succeed, we have to strike a proper balance between the overall socio-economic benefits we may have and the price that we are paying. It is worrying that the Government does not seem to have adequately assessed the possible implications brought about by this amendment Bill on our overall socio-economic commitments before it comes into effect. Should the amendment Bill be implemented hastily, our economy will suffer seriously. According to estimates provided by the Government, some 11 500 industrial undertakings or 23% of the establishments in the manufacturing sector will be affected if the amendment Bill comes into effect. If the factories are forced to suspend business or close down due to a lack of space or exorbitant costs, the resultant social impacts such as shortfalls in logistic support for our major industries and the plight of workers in finding new jobs and so on will be hard to fathom. The Government should seriously take into account all these factors, otherwise our industrial activities and our economic lifeline would be unduly afflicted.

Sir, as a former president and current vice-president of the Chinese Manufacturers' Association of Hong Kong with a membership of 4 500 manufactories, I feel obliged to take this opportunity to express the view of the majority of our

members in the industrial sector.

Sir, environmental protection is desirable. The survival of our economy is also desirable. But to implement an environmental protection policy at all costs is absolutely undesirable. The Government should give very careful thought to this issue. With these remarks, I support the motion.

MR. TIEN: Sir, as Hong Kong has steadily prospered, our waters, like so much else in our environment, have become steadily polluted. Now, we finally have a government initiative and the determination to protect the waters of Hong Kong by introducing this amendment Bill.

However, after having done so little over the past 40 years, are we now being practical trying to do everything up to international standards in the next two years?

As far as industry is concerned, the Technical Memorandum (TM) that follows this Bill is crucial because it sets out clearly the discharge requirements for compliance. To enable industry to comply with the TM, Government must introduce a comprehensive support programme, otherwise, factories will either cease operation or simply pay fines and continue polluting. Both are consequences which we do not wish to see.

Industry does not agree with Government's assessment that 70% of the factories, mainly small ones, have to do nothing.

Sir, three main areas of concern are:

Firstly, Hong Kong factories lack the knowledge of methods by which water pollution can be minimized, if not eradicated. Secondly, there is a serious shortage of technically qualified persons in pollution control. Thirdly, there are just not enough foul sewers available; our factories are compelled to discharge effluents into storm sewers.

Now, we must ask ourselves: What could be done about it?

In the first place, we must ensure that the discharge requirements in the TM must be consistent with treatment technologies currently available to industry. For example, in multi-storey building, current technology is feasible for heat recovery,

temperature reduction, pH adjustment, removal of some metals and toxic substances. However, current technology cannot cope with pollutants like coloration, suspended solids, BOD, and CODs in confined spaces.

When more space-intensive treatment technologies are developed for small and medium factories located in multi-storey industrial buildings, the discharge requirements in the TM can be modified to keep pace with treatment technology development.

Secondly, the discharge requirements as currently laid down in the TM have the effect of discouraging the establishment of communal treatment facilities because the discharge requirements become more stringent as the discharge volume increases.

I would urge Government to revise the discharge requirements in the TM to encourage the establishment of communal treatment facilities.

Thirdly, Government should urge tertiary academic institutions to produce graduates at two levels:

- (i) At graduate level to take on the design work of treatment systems and,
- (ii) At diploma level to operate and maintain treatment facilities.

Lastly, since many factories are located in areas that do not have adequate foul sewerage systems yet, I would urge the Government to allow those factories to discharge into designated storm sewers as an interim measure until permanent facilities are built by Government; and I further urge that these be built as soon as possible.

Sir, I very much welcome the setting-up of the Technical Standard Committee to review discharge requirements as set out in the Technical Memorandum.

This committee is widely representative of all relevant sectors of industry and also includes an expert from the Hong Kong Productivity Council (HKPC).

I can assure Members that HKPC, with over two decades of close collaboration and trust in industry, will play its full role to achieve the highest possible standard that industry can currently support, both financially and technically.

Finally, Sir, declaring my interest as a concerned industrialist and someone who spends many a weekend around the waters of Clear Water Bay, and seen how things have deteriorated over the last 10 years, I wholeheartedly support this Bill.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, may I thank Mr. Edward HO and members of the ad hoc group for the support they have given to this Bill and, in some cases, their tolerance of a fairly obstinate Administration line. I also appreciate very much the advice given this evening.

Sir, when the Bill was moved in this Council on 23 May 1990, the Administration stressed that the deteriorating state of our waters required the early implementation of the amendments. The crux of these amendments are the deletion of the exemption provisions, their replacement by the right to a licence under specified conditions, increased penalties and the introduction of a Technical Memorandum setting down guidelines on effluent standards.

I am happy to say that the urgency associated with the need for these reforms has been reflected in the discussions on this Bill the Administration had with the ad hoc group of OMELCO.

Sir, lost though this may seem to be in the massive programme of legislation on this very exhausting evening, the passage of this Bill is a very significant milestone in environmental protection, for with the removal of the exemption provisions, Hong Kong should at last begin to move forward towards an era of cleaner waters. As Mr. Martin LEE has pointed out, this will not be done without additional major investment on sewerage and treatment works. This investment would be largely wasted if we failed to take this legislation forward. We do not have the option of avoiding this Bill or that expenditure.

Sir, the Administration has never suggested that there will be no pain involved in this legislation. There will be pain. And the setting of technical standards will necessarily be a balance between the anticipation of pain and the ensurance that we really move forward at all in protecting the environment. I view the establishment of the Technical Standards Committee as a very important step and I echo the eloquent call by Mr. Peter WONG for both sides -- that is, industry and the Administration and the environmentalists -- to understand the other's problems.

I now move the amendments to the Bill agreed with the ad hoc group which have

been circulated to Members. Briefly the minor amendments to clauses 4, 11 and 15 are clarifications which better define the prohibited discharges into a water control zone or waters of Hong Kong and the flow rate authorized by .....

HIS EXCELLENCY THE PRESIDENT: I think I should interrupt you here. The amendments should be moved when the Bill is in Committee. If you wish to deal with general points, of course you could deal with them now.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Shall I say, Sir, that "I now turn to the amendments"? Perhaps that would be more correct.

HIS EXCELLENCY THE PRESIDENT: Yes, please.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I do apologize to the Council. The amendments to clause 14 and schedule 1 concern the proposed Technical Memorandum. This memorandum is intended to guide industry and the authority on the permissible limits and the physical characteristics and chemical components of discharges and deposits. While it is clear that there is acceptance by industry of the need to remove the exemption provisions and the principle of a Technical Memorandum is welcome, some concerns have been expressed over the limits and controls that will be set down in the Technical Memorandum and these concerns have been echoed this evening and industrial representatives have asked for further time to consider this rather lengthy technical document.

The ad hoc group was also concerned that the Bill should not be brought into force until industry had examined and commented on the Technical Memorandum and indeed the ad hoc group had itself been consulted on it. Accordingly it has been agreed with the ad hoc group that the Technical Standards Committee to study the Technical Memorandum should be set up as soon as possible and that industrialists should be invited to sit on the committee. I am glad to report that the committee has already been established and its first meeting has been scheduled very shortly. It is important, Sir, that this committee completes its deliberations as quickly and as constructively as possible. I would expect that an agreed version of the Technical Memorandum would be laid on the table of this Council early in the next Session. The

procedure to be followed in this respect will be the same as that which was agreed for the introduction of technical memoranda under the Noise Control Ordinance (Cap. 400).

Sir, with the amendments to the Bill and subject to the agreement on the Technical Memorandum, we now have a Bill that satisfies most parties. I concur with honourable Members in stating that the discussions on the Technical Memorandum will be crucial to the success of the Bill.

May I appeal most wholeheartedly to industrialists that in viewing the measures and standards necessary to control environmental pollution, they do not fall back on self pity and that they should adopt the same kind of enterprise which they would apply to the other facets of their businesses and in which they have throughout the years been so successful.

Sir, with the amendments to the Bill and subject to the agreement on the Technical Memorandum, we now have a Bill that satisfies most parties. The Administration and the ad hoc group are agreed that the amendment Bill, once enacted, should take effect not later than 1 December.

Sir, with these remarks, 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).

HOSPITAL AUTHORITY BILL 1990

Resumption of debate on Second Reading which was moved on 2 May 1990

Question on Second Reading proposed.

MR. ANDREW WONG: Sir, let me begin with a few words by way of background. In 1985, Government appointed an Australian management consultancy firm to review the management of medical services in Hong Kong. The "Scott Report" was subsequently published in March 1986 for public consultation on its major recommendation to set



up an independent statutory Hospital Authority (HA). The public consultation indicated that, on the whole, the proposed formation of a HA was supported provided it was made clear that Government would not relinquish its responsibility for financing medical services. Following public consultation, in September 1987, Government decided in principle to set up a statutory HA, which should aim at achieving a high quality of medical services in all government-funded hospitals through an integrated public hospital system administered independently outside the civil service hierarchy. To steer the formal establishment of the HA, the Provisional Hospital Authority (PHA) was eventually set up on 1 October 1988. On 4 April 1990, Government published the report of the PHA. The PHA report was subsequently endorsed by the Governor in Council with some modifications.

The Bill, which in essence is a piece of enabling legislation, has been drafted on the basis of the broad principles recommended in the PHA report as endorsed by Government. Its aim is to establish the HA as a body corporate to manage and control public hospitals in order to promote, develop and maintain hospital services provided by such hospitals. An ad hoc group consisting of 11 Members and under the convenership of Mrs. Rosanna TAM who cannot be here today and myself was formed to study the Bill. The group held a total of 12 meetings including three with the Administration.

Having gone through the Bill clause by clause, the group has agreed with the Administration on amendments to 14 clauses and two schedules in the English version, and eight clauses and one schedule in the Chinese version of the Bill. I have already given notice to move these amendments during Committee stage later this evening after the Bill has received its Second Reading.

Sir, I do not propose to go through the amendments here in detail as many of them are of a technical nature. Instead I will simply outline some of the major provisions of the Bill and the more significant amendments and agreements. First, the powers of the HA. The ad hoc group is of the view that whilst the HA should be given adequate powers to discharge its functions, it is important that adequate control over the activities of the HA should be retained by Government which in turn is to be held accountable to this Council. The Administration has explained that whilst the HA will have a high degree of autonomy, various provisions in the Bill do enable Government to have a considerable degree of control especially on the resources of the HA, the charging of fees for hospital services, the ceiling of expenditure by the HA, borrowing and investment by the HA, and auditing by the Director of Audit and

so on. The group is satisfied that adequate safeguard already exists in the Bill for Government to monitor the work of the HA. However in order to spell out more precisely that the powers of the HA to do certain things, for example, to alter, remove, demolish and replace buildings and so on are subject to the agreements made by the HA with Government or with the subvented bodies as the case may be, the group has proposed and the Administration has agreed that clause 5(f) should be amended by adding a proviso accordingly. In relation to the power of the HA to establish, own and acquire under clause 5(n) bodies corporate, the group is concerned that the power might be interpreted too widely -- with HA to be the mother company and these bodies to be subsidiaries -- to the extent that the HA might establish bodies corporate that might not be directly relevant to the functions and duty of the HA which are to provide hospital services. The Administration has now agreed to amend clause 5(n) to provide that any body corporate to be set up shall have the approval of the Secretary for Health and Welfare.

Second, fees and charges for hospital services. Clause 4(d) provides that the HA shall recommend to the Secretary for Health and Welfare appropriate policies on fees for the use of hospital services by the public, "having regard to the principle that no person shall be prevented, through lack of means, from obtaining adequate medical treatment." The Administration has assured the group that Government has not endorsed the proposal by the PHA that fee levels should be at 15% to 20% of costs. In deciding on any new policy recommended by the HA, Government will take into account the costing of hospital beds; waiver arrangements based on the principle provided in clause 4(d); the affordability of patients; and the quality of the hospital services provided. Moreover, any fee increases would be implemented gradually by phases and would not take place until significant improvements in services have been made. The Administration has also intimated to the group that an inter-departmental working group has been formed to consider the strategic plan on fees and corresponding waiver arrangements and it was estimated that it may take two to three years before any new policy would be introduced. On the assurance provided by the Administration, the group is satisfied that the framework expounded in clause 18, which provides that the Government has the ultimate power to give directions to the HA on the policies on fees and charges, and that the HA will in turn give directions on fees to Hospital Governing Committees (HGCs) which will prescribe the actual fees and charges to be charged, is acceptable arrangement subject to some minor technical amendments. The Administration has also taken the group's suggestion that hospital fees should be published in the Gazette.

Third, public participation. In order to further strengthen the public participation element in Regional Advisory Committees (RACs) and HGCs, the group has succeeded in persuading the Administration to agree to amending paragraph 11(f) of Schedule 3 by adding "(in particular involvement in community or district organizations)" with regard to membership for a RAC, and paragraph 15(e) of Schedule 3 to include "not less than 3 other members" in a HGC.

Fourth, the status of schedule 3. As schedule 3 contains important provisions on the structures and procedures of the HA and is in a way an extension of the main Ordinance, the ad hoc group has succeeded in securing the Administration's agreement that clause 20 should be so amended that the Governor's power to amend the schedule shall be subject to the approval of this Council.

Sir, I will now deal with some of the representations on the Bill received by the group. Shortly after the publication of the Report of the PHA and the introduction of the Bill, concern was expressed by some quarters about a number of matters in the report which, though not directly relevant to the Bill, are nonetheless related to it. As the PHA report and the Bill are inter-related and could not be looked at entirely in isolation, the group and the OMELCO Standing Panel on Health Services, headed by Dr. C.H. LEONG, have therefore liaised closely to ensure consistency in approach and facilitate exchange of public views on both documents. The ad hoc group and the Health Services Panel, separately or jointly, have received 17 deputations and two written submissions; and this afternoon while I was coming into this Council, we received two more.

Two issues stand out as major controversies, so much so that they, at one time, appeared to threaten the passage of the Bill. The first has to do with fees and charges for hospital services. I have already spoken at length on this issue earlier on. Suffice it to say that since fees and charges policy is a government responsibility, the so-called cost-recovery policy can be adopted even in the event no HA is established. Here I would like to seek Government's unequivocal assurance that in the event Government contemplates a policy change, the public will again be fully consulted.

The second issue has to do with HA's terms and conditions of service, bridging-over arrangements, and the mixed staff situation in the new HA. Although these are strictly also outside the scope of the Bill, they are of grave concern to the group. In response to the group's concern, the Administration has advised that

civil servants would be consulted on the Memorandum of Administrative Arrangements to be entered into by the Government with the HA, insofar as it relates to staffing matters. It is also expected that similar consultative arrangements would be made by the governing bodies of subvented hospitals in respect of their employees. The Administration also recognizes that there would be cause for genuine concern if a large majority of HA's staff is not its own employees. After consultation with staff, and based on the recommendations of the PHA, proposals on a number of modifications to the HA's terms of service and bridging-over arrangements were made and announced. Given the inevitable mixed staff situation that we have to face this afternoon, to civil servants who wish to retain their existing terms, the Administration and the PHA will be wise to follow the principle of equity in operational and personnel matters. Moreover, PHA will soon issue the HA's personnel policies summary and the employees' handbook to staff for comments and consultation. Although the group remains concerned in this regard, we appreciate that it would not be reasonable to expect that all matters concerning the HA's staffing could be ironed out before its establishment. The group has therefore urged the Administration to take all possible steps, in conjunction with the PHA and the future HA, to finalize agreements on staffing before implementing the integrated hospital system.

The group has carefully assessed the views advanced against the setting up of the HA. The group, however, holds the view that the policy principles and objectives for HA's establishment have evolved and have become generally accepted after careful deliberation and assessment of the community over the past few years. The group is satisfied that the proposals by the PHA for the future hospital system will, given time, achieve the positive results that the community has come to expect, and any alternative measures advocated at this late stage for improving hospital services will take a much longer time to develop. Furthermore, the objection to setting up the HA has so far been based primarily on the concern of some sectors in the community about the PHA's proposal on the policy of fees and charges. On this, the Administration has assured the group that the PHA proposal is but one option Government will consider and only consider in the future, and members of the public will have ample opportunities to reflect their views on this issue. The group considers that this aspect alone does not constitute a valid reason for not setting up the HA. This Council and the OMELCO Health Services Panel will continue to keep a watchful eye on any development in this regard. Besides, the HA will have a strong public participation element in its entire operation at all levels. Together with the integrated public hospital system, enhanced public participation should produce a positive effect on improving hospital services.

Now on the proposal that the Bill should be deferred, the group considers that no useful purpose would be served by pursuing this course. As advised by the Administration, many of the necessary arrangements, including the taking over of public hospitals, cannot be made until the HA has acquired its own legal status. Having regard to the efforts made by the Administration and the PHA to work out acceptable arrangements in particular for the staff, the group feels that there is no apparent benefit in deferring the passage of the Bill. To do this would only unnecessarily prolong the process of implementing the proposals for improving hospital services.

Other matters raised in the representations include matters relating to existing subvented hospitals, such as: the preservation of the identity, traditions and characteristics of the hospitals; the appointment of the chairman and members of HGCs; and the appointment of the Hospital Chief Executives and other staff. The ad hoc group appreciates that an intricate network of formal relationships will be in place among the HA, the governing bodies of the existing subvented hospitals, employees and staff, and has been given to understand that details of these formal relationships are being worked out between the parties concerned in the form of agreements. These cannot indeed be finalized and formalized until some time after the legal establishment of the HA. The group has however urged the Administration to take expeditious steps to facilitate the early completion of the relevant documents, in full consultation with all the relevant parties. The Administration has already assured the group that whilst it is not envisaged that the board of governors themselves of the subvented hospitals would have any direct role in the arrangements leading to appointment, the HGCs, on which the relevant governing body of individual subvented hospitals will have a strong presence, would be given delegated authority by the HA to select and appoint all hospital staff, and appointments would be made in the joint names of the hospitals and the HA.

The group has all along considered that the principles of preservation of traditions and devolution of responsibilities to the hospital level can be satisfactorily implemented through the drawing up of mutually acceptable agreements between the HA and subvented hospitals and that this arrangement was agreeable to subvented hospitals themselves. However, it now transpires that at least three hospitals would like to see the Bill amended in a number of clauses and paragraphs. As these representations had not been made until as late as yesterday, neither the group nor the Administration can possibly study them in detail. Although I

personally find many of the fears to be genuine and the suggestions reasonable, I am, at the same time, also personally confident that there is no disagreement in principle among the Administration, the PHA and the subvented hospitals concerned. What is needed will be the technical amendment of the Bill to stipulate more clearly the intended relationship between the HA and the governing bodies of the subvented hospitals. Here, I would urge the Administration and the PHA to study these representations carefully with a view to removing the subvented hospitals by legislative amendments early next Session if necessary.

One additional matter before I conclude, Sir. A number of representations highlighted the importance of a comprehensive White Paper on Medical and Health Services which is long overdue, the last one being way back in 1974. I find their reasoning to be cogent and urge the Administration to take it up as a matter of urgency, perhaps soon after the completion of the primary health care study.

Sir, having taken into consideration the background leading to the introduction of the Bill and the representations received concerning the PHA Report and the Bill, the group is of the view that the principles on which the proposal for establishing the HA are based should be supported. With the amendments that have been agreed with the Administration, the group considers the Bill itself to be consistent with the policy objectives for the HA's setting up and we recommend support for it.

With these words, Sir, and subject to the amendments mentioned earlier, I support the Bill.

MR. HUI (in Cantonese): Sir, in regard to the Hospital Authority Bill 1990 under debate today, I would like to urge the Government, in setting up the Hospital Authority, to fully respect the views of the social service sector and social workers on two issues.

First, although it is stated in clauses 4(d) and 18 of the Bill that the Government will still be accountable for the levels of fees and charges determined in future by the Hospital Governing Committees, I found the fee charging principle proposed in the Bill to be far from satisfactory. I have reservations about the passage of these clauses on the following grounds:

1 Based on favourable statistics obtained from two opinion surveys, the Provisional

Hospital Authority (PHA) recommended that the fee charging policy should be aimed at recovering a certain percentage of the total costs of maintaining hospital beds, which means "the charges for a hospital bed will be pegged to its maintenance costs". The PHA also believes that the target of eventually recovering through fees and charges 15% to 20% of the costs involved is a level affordable by the public.

I think, however, that the findings of the survey quoted by the PHA contain a major flaw which could well overturn the basis of its recommendations. I am referring to the calculation of a family's medical expenditure as a percentage of its annual total income. Such an approach has completely ignored the fact that there are still many low income families which can hardly make ends meet, and which have to raise money urgently should its family members need hospital care, thus causing delay to the hospitalization of the patient. And there are others who may, because of the high hospital fees, refuse to be hospitalized until their conditions deteriorate, and thus pay an even dearer price in the end.

Although the Administration has undertaken to introduce a fee waiver scheme for needy patients before raising gradually the cost recovery percentage, it is apparent from the policy on fees and charges as provided in clause 4(d) that the Administration has adhered to the principle of "helping those least capable of fending for themselves" laid down by the Social Welfare Department over 10 years ago. Under the present arrangements, only people who are utterly destitute will be afforded some benefits. As regards those slightly above that level and the middle income group, they will be forced to accept an even more unreasonable system of medical service, with higher fees charged and the lack of any protection scheme.

The social service sector has always maintained that it is the basic duty of the Government to provide proper and reasonable medical and health care services to the public. Although the costs of providing medical services are extremely high nowadays, the Government is duty-bound to heavily subsidize the expenditures just the same. For when a member of the public falls ill, he can only turn to the less expensive public hospitals for treatment. The social service sector supports the annual revision of hospital beds charges and out-patient consultation fees according to the inflation rate. But we are opposed to pegging the charges of hospital services to the costs. It is because on the one hand, the costing by hospital beds is extremely complicated, while it will also lead inevitably to the broadening of the fee charging base. As a result, more patients will need to apply for fee waivers, and the Government will have to shoulder a higher administrative cost in assessing and

processing those applications. This is indeed a waste of manpower and public funds. On the other hand, as cost recovery is to be based on the principle that the better-off will pay more, it is possible that in future, the Hospital Authority will tend to provide a large number of hospital beds of second class and above at the expense of third class beds, making it even more difficult for the grassroots to use a hospital bed should they need to be hospitalized. Furthermore, we are also worried that the charging policy will set an undesirable precedent for other social services, thereby deepening the misgivings that the Government is trying to shirk its responsibility by privatizing social services.

Sir, where the provision of low-cost public housing is concerned, the Housing Authority has never made reference to construction costs when revising the rents of public housing unit. I therefore cannot understand why in the provision of medical services, which is a matter of life and death to the general public, the Administration should find it necessary to peg the charges to the costs involved. According to the 1990-91 Budget the funds to be spent on medical and health services in the coming year will amount to as much as \$12,479 million. This represents, however, a mere 2% of Hong Kong's Gross Domestic Product. The low percentage indicates that there is still room for our expenditure on medical services to be further increased.

2 I fully appreciate the Government's difficulties in having to improve the quality of medical services on the one hand, and to tap fresh resources and minimize expenditure on the other. But to recover a certain percentage of the total costs spent is obviously not an effective or proper solution. The Administration should in fact consider introducing a central medical insurance scheme, to be put under the management and supervision of a central body comprising government and civic representatives and professionals from relevant sectors who will act as guarantors of the scheme. All employees earning a salary above the public assistance income limit should be required by law to join the scheme by paying a small percentage (say 2%) of their salaries as a premium. This, together with an equal amount of contribution to be paid by the employers in respect of each employee, will be placed under a centrally monitored insurance fund for meeting future medical expenses. Those who are more well-off and wish to receive better medical services can of course pay a higher premium. As for citizens with special needs, such as some old people who require long-term convalescence care and families under the Public Assistance Scheme, the Government can have their fees waived or subsidize them out of a small portion of the insurance fund.



Such an insurance scheme can ensure that all productive members of our society will shoulder a fair share of our medical expenditures, hence helping to relieve the heavy burden borne by the Government. It can also avoid some of the drawbacks of private insurance schemes, such as the abuse of medical services, the premium being unaffordably high for those most in need, and the need on the part of the Government to deploy additional manpower and resources to closely monitor these schemes.

I shall now move on to the second issue. Clause 4(c)(ii) of the Bill provides that the Hospital Authority should improve the efficiency of hospital services by developing appropriate management structures, systems and performance appraisal measures. I am of the view that to put the professionally trained medical social workers under the management of the administrative department as recommended by the PHA runs contrary to the spirit of the above clause. The only possible remedy will be to place the medical social workers under the Supplementary Medical Services Department by the Hospital Authority, because medical social workers provide rehabilitation and preventive services to the patients just like the other professional staff in the same department. Moreover, once the authorities are set to push forward the primary health care programme, medical social workers will make valuable contributions in that direction, by maintaining close contacts between the hospitals and local social and health services centres thus ensuring the continuity of the health services given to patients. It can be seen, therefore, that the work of medical social workers is not as simple as writing reports for patients or making referrals, and should in no way be regarded as administrative in nature.

To conclude, the smooth operation of the future Hospital Authority hinges not only on the bridging-over arrangements for medical staff but also on the policies on fees and charges and the commitment of funds. The Administration should conduct an extensive and in-depth public consultation before formulating its policies, in order to find out the best solutions to the problems. The Administration should also seek the views of the medical social workers as a gesture of recognizing their professional status and contributions to the Hospital Authority, and to fully utilize the manpower resources.

Sir, with these remarks, I support the Bill with reservations.

MR. MARTIN LEE (in Cantonese): Sir, Hong Kong's medical system is riddled with problems. In view of this, there is a general feeling among various sectors of the community that Hong Kong's medical services are in need of a wide-ranging review and

comprehensive revamp. Although many medical profession groups hold the view that the setting-up of the Hospital Authority (HA) is a reform measure limited to the administrative side of the medical system and as such is far from being wide-ranging, some others are of the opinion that this nevertheless constitutes the first step towards reform in the delivery of medical services. The HA's reformed concept of administration which is to manifest itself in various areas such as devolution of authority, flexibility of approach, financial autonomy, cost control, the staff appraisal system, public participation and monitoring has found general support.

However, since last April when the Provisional Hospital Authority (PHA) report was published and also last May when the consultation process in respect of the present Bill got underway, a number of controversial and as yet unresolved questions have arisen. These will directly affect the effective operation of the future HA. Therefore in deliberating the present Bill prior to its passage this Council must unflinchingly take on those questions.

First, I would take issue with the Administration's argument that staff arrangements and passage of the present Bill are two different and unrelated matters which could be dealt with separately. I believe that the effective functioning of the future HA will have to depend on staff participation. If most of the government medical and paramedical staff opt to stay in the Civil Service, the HA will be no more than a hollow set-up. As a matter of fact, the Government has failed to consult staff adequately on bridging-over arrangements which has led staff into thinking that the Government lacks sincerity resulting in staff's complete lack of confidence in the Government. Government medical and paramedical staff have expressed strong dissatisfaction with the bridging-over package announced last April and with the revised package announced this month. Most of the staff have indicated that they will not switch over to become HA staff. Even now the government staff have not been provided with the necessary information and data; neither has the package concerned been explained to them in sufficient detail. Both the Government and the staff have yet to hold bilateral, open and frank discussions on the matter. Thus, the Government, in choosing the present moment to hurriedly pass this Bill into law without first securing the full support of its medical and paramedical staff, will be dealing a reeling blow to staff morale which will directly affect the effective operation of the future HA. The Government must give a guarantee to the staff that they will not stand to lose from the bridging-over arrangements.

The second question which has aroused grave public concern relates to the

principle suggested in the PHA report that hospital fees and charges should be pegged to costs. Though the Government has not yet accepted this principle it has not ruled out the possibility of applying this principle when fixing the scale of hospital fees and charges in the future. There is nothing wrong in raising the fees and charges if this will lead to proper utilization of resources. However, before the costs are worked out, the rate of increases determined and the fee-to-cost percentage fixed, the public will have no means of knowing by how much the fees and charges will go up. In the absence of a comprehensive medical insurance scheme in Hong Kong, the postulation of this principle will cause public anxiety. The Government's failure to lay down a fee policy before this present Bill is passed into law will fuel public misgivings as to the future fee policy and its reasonableness despite the Government's generalized comment that it will abide by the long established principle of "not denying any person adequate medical attention because of his lack of financial means".

The third question relates to the controversy over the internal monitoring system of the HA. Nurses have expressed their strong objection to the proposal that the HA will let consultant doctors make performance appraisals on nurses. Such a proposal is deemed prejudicial to the professional standing of the nurses and their prospects of promotion. It was further pointed out that the arrangement will smack of outsiders supervising insiders. One of the important objectives in the setting up of the HA is to attract, encourage and retain qualified staff. Many of the medical and paramedical people have pinned high hopes on the HA as being a body capable of providing opportunities for professional development. However, under the new power structure as designed for the HA, the professional status of nurses, so far from being enhanced, will be weakened. This is patently contrary to the objective of setting up the HA as mentioned above. The medical and nursing staff have pointed out that if the system of consultant doctors being assigned the task of staff appraisal is established it will deal a severe blow to staff morale, aggravate staff wastage and affect the intention of those people about to join the medical and nursing professions. In view of the serious wastage among nurses, which is close to 9%, the Government cannot afford to ignore the potential hazard mentioned above. For many years the medical and nursing professions have repeatedly conferred with the Government to discuss this matter. But up to date no practical solution has been found. If the present Bill is passed now, the morale of the medical and nursing staff will nosedive. They will lose confidence in the HA.

Finally, I will turn to a subject which has not been very much a focus of concern. This, however, does not mean that it is unimportant. Before I embark on the subject,

I should like to declare my interest as an honorary director of Our Lady of Maryknoll Hospital, which is a government-subsidized hospital. Many of the subsidized hospitals in Hong Kong are run by religious organizations. These hospitals are generally of a non-profit-making nature and each have its own particular founding objectives and style of services. The contribution they make to the medical services of Hong Kong has been widely recognized by the general public. They have provided diversified medical services for Hong Kong. Hospice care, for instance, provided by Our Lady of Maryknoll Hospital has been widely acclaimed by the community. Therefore after the setting up of the HA subsidized hospitals must enjoy a high degree of autonomy and the right to retain their original characteristics and traditions. This should be so not only out of respect for the founding organizations but also from a need to put in place an integrated system which will provide flexible and diversified medical services. The PHA report also agreed to this merger principle and made a promise to such effect to the subsidized hospitals.

The subsidized hospitals supported the setting up of the HA because it would bring about even distribution of resources between public and subsidized hospitals as well as pay parity between staffs of public and subsidized hospitals. However, the PHA recently (about late June) sent a draft agreement to each of the subsidized hospitals. The contents of the draft agreement represent serious inroads by the future HA upon the autonomy of subsidized hospitals. This has aroused misgivings among the subsidized hospitals. Clause 1 of the draft agreement is in the following terms:

".....The Governing Body (of the subsidized hospital)..... transfers and assigns to the Authority all of the Governing Body's rights and powers of management and control of all of the property of the Hospital and delegates to the Authority all of the Governing Body's rights and power of management and control of all of the employees of the Hospital....."

Furthermore, members of the board of a subsidized hospital will not automatically become members of the Hospital Governing Committee under the HA; only some of the board members will be appointed to the committee. It could therefore be argued that a subsidized hospital board will be a nonentity except only in name.

Clause 11 is in the following terms:

"In considering the appropriate scope and standard of hospital services to be provided by the Hospital the Authority shall have regard to its overall strategy on the

provision of hospital services. The Hospital shall comply with the Authority's directions as to the scope and standard of services to be provided."

In other words, the HA may, having regard to a particular need in the context of an overall policy, alter the service functions of a subvented hospital; for example, the Government may, on the ground of community need, terminate hospice care in order to enhance accident and emergency services.

Furthermore, some smaller hospitals are worried lest they should be relegated to become second or third line subsidiaries to a handful of major hospitals once they come under the control of the HA. Let me quote an example to illustrate this point. The HA could, on the excuse of economizing or of manpower shortage, transfer patients who have long been hospitalized in the major hospitals to the smaller hospitals for treatment or convalescence, thus radically changing the original functions the latter hospitals have been set up for.

Another point which compels concern is that the present Hospital Authority Bill fails to provide adequate safeguards for the existing powers of subvented hospitals. There is no provision in the Bill to the effect that subvented hospitals will each have a representative sitting on the HA; nor is there a provision to the effect that the board of a hospital must be consulted on the appointment of its Hospital Chief Executive Officer; nor is there a provision purporting to empower a hospital board to elect the chairman to the Hospital Governing Committee or nominate the majority of members to the said committee.

Some may argue that the draft agreement is no more than an initial draft and any points therein over which there is disagreement could be revised after consultation without the need to defer passage of the present Bill. But the fact of the matter is that the draft agreement was not sent to the subvented hospitals until late June. Most subvented hospitals had not expected that the agreement would so drastically curtail their autonomy. The point that deserves particular concern is that once the present Bill is passed the subvented hospitals will have no choice but to go along. It is because if they do not join the HA, upon lapse of the three-year period within which to consider whether to join, the Government will cease financial aid altogether. It is therefore imperative that before passage of the present Bill adequate safeguards must be provided to maintain the existing powers of subvented hospital boards to ensure their independence and autonomy.

Although reform of Hong Kong's medical services should proceed without delay, yet practical solutions have not been found for certain key questions such as bridging-over arrangements for staff, the HA's fee charging policy, resentment on the part of nurses against the proposed system of consultant doctors writing staff appraisals and the definition of powers between the HA and subvented hospitals. The parties concerned have yet to discuss a variety of matters. If the Hospital Authority Bill is hastily passed today it will arouse resentment among the various organizations concerned which will directly affect the future operation of the HA. Sir, for the above reasons, I shall abstain from voting.

MR. PANG (in Cantonese): Sir, based on the recommendations of the Scott Report submitted in December 1985, the Government set up the Provisional Hospital Authority on 1 October 1988 to conduct a series of studies on how to reform the hospital management system in Hong Kong. The Hospital Authority Bill 1990 was subsequently introduced to this Council, for the purpose of bringing all government and subvented hospitals within an integrated management system with a view to improving the efficiency and quality of our medical services.

The Bill provides the Hospital Authority with very extensive powers, giving it a status equivalent to that of statutory bodies such as the well-known Housing Authority or the Board of Directors of the Kowloon-Canton Railway Corporation. The Hospital Authority will take over from the Government the responsibility to provide public medical services. Clause 18 of the Bill deals with the fees and charges of hospital services. It is intended that hospital governing committees will be set up in individual hospitals to determine the levels of various fees and charges. Sir, the Scott Report proposes and I quote:

"It is generally recognized that the cost of hospital services is likely to continue to rise more rapidly than that of most other public or community activities. This means that if no improvements are made to existing services, the proportion of the total government budget devoted to health services (which in recent years has been 8% to 9%) will increase steadily, unless the resources deployed are utilized more efficiently or additional revenue is raised by the introduction of higher charges." (para 12.2 of the report of the Provisional Hospital Authority)

It is obvious that the present policy on fees and charges can be changed. If hospital fees are set on the basis of the cost of providing hospital beds, aiming at recovering

15% to 20% of the actual cost incurred, the current fee of \$29 per day for a third class hospital bed will probably be increased to \$195 - \$260, and even more as the cost of hospital beds continues to go up.

Sir, at present, the charge for a third class hospital bed is only \$29 per day. Yet, there are 6% of patients who require recommendation by medical social workers for the charge to be waived because they cannot afford it. The grassroots of our society will inevitably be faced with even greater financial hardship when they require hospital services in future. Reinforcing management work and improving services have always been used by public utilities companies as pretexts for increasing charges. But the Government is in fact duty-bound to effect improvements on medical services. The middle and lower income families rely heavily on public medical services. It is imperative that the Government should implement a comprehensive medical insurance scheme to cater to the needs of the community. I hold that clause 18 of the Bill should be shelved indefinitely to allay the anxiety of the public.

Sir, regarding the transfer of government medical staff to the Hospital Authority, a satisfactory set of bridging-over terms must be worked out to lead to a complete transfer. Otherwise, the mixed staff situation in our hospitals is bound to affect morale and create problems concerning promotion and other issues.

Sir, as the Government has yet to confirm the policy on the fees and charges of hospital services and the bridging-over terms for medical staff, I have reservations about the Bill and shall abstain from voting.

MR. TAM (in Cantonese): Sir, I wish to make the following comments on the Hospital Authority Bill 1990.

Firstly, whether all the staff can be successfully persuaded to join the new authority has a direct bearing on the effective operation of the future Hospital Authority. Regrettably, up to now, it is still doubtful whether each and every serving member of the Hospital Services Department will wish to join the proposed Hospital Authority. Since the setting up of the Provisional Hospital Authority, we have incessantly heard of disputes between the authorities concerned and the staff side on matters relating to their transfer to the Hospital Authority. Such controversy stems from the fact that the terms and conditions of service offered by

the Hospital Authority cannot meet the expectations of the staff. The impasse makes it doubtful whether the ultimate goals will be achieved by setting up the Hospital Authority.

An integrated hospital system to provide medical and hospital services throughout the territory is the ultimate objective in the setting up of the Hospital Authority, whereby the management of hospital services and allocation of resources can be integrated and better co-ordinated with a view to enhancing the efficiency of hospital services. It is commonly known that ways to improve management are manifold, but the crux of the problem lies in human factor, that is, ways to enhance the sense of belonging, commitment and involvement among staff will be crucial in solving the problem. However, a mixed staff situation is very likely to be found in the future Hospital Authority, that is, staff assuming the status of Hospital Authority employees, civil servants and subvented hospital employees will be found within the future Hospital Authority, each group having different sets of terms and conditions of service. Thus there will be a state of confusion in staff management. Although the authorities concerned announced a revised package of conditions of service two weeks ago, there is still uncertainty as to whether the new package can really attract the majority or even all of the staff concerned to transfer to the Hospital Authority. I take the view that in order to boost the staff morale and to attract them to transfer to the Hospital Authority the Administration should give due consideration to the interests of the staff concerned and ensure that they will not lose anything in comparison with their original welfare benefits. This will not only be beneficial to the staff side, but will also be conducive to improving hospital management and medical services.

Secondly, the principle of "cost recovery" on fees and charges will reduce hospital services to commercial items, curtailing the basic right of the public in getting hospital services and resulting in heavier burden on the people at the grass-roots level. I personally will not accept "cost recovery" as the principle of charging medical fees whatsoever.

Public medical services are currently provided as an item of social welfare and very low fees are charged with a positive effect of redistribution of wealth, thus helping to bridge the gap between the poor and the rich in Hong Kong. However, if the charging of hospital fees is to be based on the principle of "cost recovery" and the recommendation of introducing B-class beds is accepted, medical services will in a sense be regarded as a kind of commodity. Hospital fees will be escalated



according to market prices and different levels of services will be provided on the basis of individual financial means. Should this be the case, there will be changes in the nature of the existing services as a kind of social services, resulting in increasing burden of the people at the grassroots level, the greater disparity between the haves and the have-nots and undesirable impacts on social stability.

It is noted that the Administration has made it known publicly that the Government accepts in principle a recommendation contained in the report that the hospital fees will be increased to the level of 15% to 20% of the cost of hospital bed in five years. The proposed increase in fees is substantiated by the calculation that the median level of household income is around \$100,000 a year. However, the definition of a median level of income tells exactly that only half of the households in Hong Kong have annual income at levels higher than that of the median income. What will happen to the other households whose annual incomes are lower than the median level? How is the affordability of these households?

Furthermore, the median level of annual household income of \$100,000 does not refer exclusively to the users of third class beds of public hospitals. It also covers all households in Hong Kong. In actual fact, the majority of the users of third class beds belong to the lower social stratum. The generalization made on the basis of the median level of annual incomes of all households in Hong Kong will overestimate the affordability of these genuine users of third class beds.

Moreover, the calculation quoted in the report is based on the existing cost of \$1,300 for each hospital bed. However, in view of the rising cost of medical services, if the hospital fee is charged at the level of 15% to 20% of the cost of hospital beds after five years, then the fee for each hospital bed will be very different from the estimated fees of \$195 to \$260 as mentioned in the report of the Provisional Hospital Authority; and the rising hospital fee will be higher than the currently estimated figure. Statistical figures reveal that in 1986 the cost of a hospital bed was only \$800, but in less than four years' time the cost has risen to \$1,300 now. The increase of cost is 62.5% which is higher than the pay rise of local workers. If the charging of fees is made on the basis of a percentage in accordance with the "cost recovery" principle, the growth of the wages of the working class will never catch up with the rising cost of medical fees, thereby increasing the financial burden of the lower class. Furthermore, if the principle of "cost recovery" is established, it is likely that the percentage applied in the "cost recovery" process will also be on the increase, thus endlessly pushing up the level of fees.

As a result of the above analysis, I am against the adoption of the "cost recovery" principle as the basis of charging of fees and propose that the fees and charges for public hospitals should be considered on the broad principle of affordability of the general public. Any increase in fees and charges should be subject to the genuine monitoring of the public. The Administration has recently claimed that the principle of "cost recovery" as proposed by the Provisional Hospital Authority has not yet been accepted and that even without reference to the Authority, the Government can still formulate the policy of charging of fees by itself. In other words, the Government can change the existing policy on fees and charges at any time. The Government hopes that the public will set their mind at ease and accept the proposal of setting up of the Hospital Authority first. In my opinion, regardless of whether the Government has actually accepted the Provisional Hospital Authority's proposal or not, it is evident in the course of consultation that there is a tendency on the part of the Government that accepting the policy of recovering the cost of hospital services will be adopted in future. It is therefore quite understandable that the general public object to the Hospital Authority, the advantages of which are yet to be verified but the Authority will most likely adopt a policy of raising hospital charges. This is something that the Government should keep in mind.

On the other hand, many people think that the principle of "cost recovery" could be considered if there is a medical insurance system. However, my opinion is that unless we have a centralized and mandatory medical or social insurance system which has the effect of redistribution of wealth, it would not be of any help. Judging by the experience of the labour sector in its fight for a central provident fund scheme for years, I doubt whether the Government will be in favour of implementing a comprehensive medical insurance scheme.

The third point that I wish to make concerns the overall improvement of medical services in relation to the Hospital Authority. In the past few years, the Government concentrated its efforts on the preparation for the setting up of a Hospital Authority as if that was the answer to all our problems in medical services and as if the solution to these problems would not be forthcoming without the Authority. Therefore, it seems that it is a must to set up the Authority. However, what has been made known to the public is only the operational framework of the Authority, whereas the logic and analysis of the above assumption have been missing.

Obviously, the quality of medical services in Hong Kong has to be raised, but the problem of medical services is not just a management one. Regrettably, the

setting up of the Authority reflects the Government's preoccupation with structural reforms in hospital management without taking heed of other problems in medical services. At present the Government only highlights structural reforms in hospital management. However, what will be the operational relationship between hospital services and out-patient clinic service and other primary health care services? Will a segmented medical services system be of any benefit to the public? Has the Government considered the overall direction that the medical system ought to take? These questions have yet to be answered. I maintain that without looking at the matter in a wider perspective, our reforms in medical services would be fragmentary and partial and might even stifle our thinking and jeopardize the possibilities of further reforms.

On the other hand, the Government has proposed to introduce structural reforms in hospital management through the Hospital Authority. However, I feel that there are some important management issues that have yet to be finalized before we can have full confidence in the proposal. For instance, so far we have not had access to the specific details of the Memorandum of Administrative Arrangements which prescribes the responsibilities of the Government and the Authority. This is no doubt a very important document. Therefore it is rather ludicrous that we are asked to endorse the establishment of the Authority without any knowledge of these details. It reminds me of the story about "cutting the feet to fit the shoes". What worries me is that to fit the shoes of the Authority, in future we may have to run the risk of having our feet cut.

One final point is that, in setting up the Hospital Authority, I suggest the Government should consider the following two areas so that there will be an organic link between the development of the Authority and reforms of the overall medical services and that the development of the Authority will not run contrary to public interests. On the one hand, policy Secretaries should undertake regular policy reviews with the Authority to examine the rationale of its establishment, its operation and policy objectives, structure as well as the relationship with government departments. On the other hand there ought to be regular investigations into financial management of the Authority to ensure that its resources are put to effective use. In fact these are the recommendations made by the Finance Branch in its 1989 Public Sector Reform report on the monitoring of the operation of non-government public bodies.

Sir, in view of the above-mentioned three points and my analysis expounded therein,

I shall abstain from voting.

7.30 pm

HIS EXCELLENCY THE PRESIDENT: There are still a number of Members who wish to speak on the Second reading of this Bill and Members might appreciate a further short break at this point.

7.59 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume.

MR. CHOW (in Cantonese): Sir, after two months of deliberation by the Legislative Council ad hoc group on the Bill before us, the Hospital Authority (HA), which has been on the drawing board for many years, will presumably come into being with the chorus of "ayes" made by Members a moment later.

The Government is apparently bent on getting it running. Even before the passage of the Bill, the Administration is prepared to seek a handsome appropriation of funds from the Finance Committee to the Hospital Authority. At a time when the public and the staff of subvented hospitals are still disgruntled, the hasty passage of the Bill will inevitably give people the impression of being presented with a fait accompli.

As a person who has always been concerned about medical services, involved in the establishment of the Provisional Hospital Authority (PHA) and the deliberation of the Legislative Council ad hoc group on the Hospital Authority Bill, I do not agree with the passage of the Bill at this moment. I must stress that I am not against the principle of setting up a HA, nor do I intend to obstruct any opportunity to improve the medical service of Hong Kong. I just wish that the future operation of the HA, on which high hopes are pinned, will not be hampered due to innate deficiencies. A slight deferment of the passage of the Bill by several months will absolutely help in eliminating such drawbacks.

The primary functions of the Legislative Council are to enact legislations, control public finance and monitor the performance of the Administration. Through exercising the above functions, Legislative Council Members can exert their influence

over government policies. As the Government has assumed a secondary role in some public services, with the establishment of corporations, non-departmental public bodies and trading fund department to replace the traditional government departments, the watchdog function of the Legislative Council in these areas has become increasingly indistinct. It is because the Government's role in the day-to-day operation and even at the policy-making level of these bodies is far from clear. For example, it is stipulated in the Hospital Authority Bill that the membership of the Authority should include no more than three government officials. Nevertheless, it is still unknown whether policy branch officials will become ex-officio members, nor is it clear if they are answerable for the policy decisions made by the HA. Such uncertainties arise because after the introduction of the Public Sector Reform last year, the ex-Secretary for Health and Welfare repeatedly expressed reluctance to become a member of the HA due to a possible conflict of roles. This of course does not mean that the Government will not be held responsible for the overall medical service in Hong Kong. What about the decisions made by the HA which may have far-reaching effects, such as, doctors under the HA being engaged in private practice in public hospitals? My honourable colleagues will probably recall the terse reply given by our dear Secretary for Transport in response to a question raised by our colleagues concerning the Kowloon-Canton Railway (KCR) fare structure. He claimed in not more than 33 English words that the power of policy-making in that regard does not rest with the Government. In this context, in order to exert influence on government policy, we have to attach greater importance to our functions of enacting legislations and controlling public finance.

Unfortunately, some Members do not seem to have much interest in our medical policy. The voluminous PHA report contains significant recommendations for the future reform of our medical service, yet it can hardly arouse the interest of Members for discussion and debate. Even the Legislative Council ad hoc group formed to deliberate on the Bill confines its scrutiny to the legal points of the Bill, without touching upon the policy aspects in the report. Even though Members have given up the only chance of influencing medical policy on whether the legislative procedure for the setting up of the HA should be endorsed, they absolutely cannot shirk their responsibilities for addressing the problems arising from the establishment of the HA. Today, when everyone is talking about the inadequate monitoring of the KCR, those legislators who were involved in the passage of the relevant Bill in the past should be duly held responsible, since the Ordinance does not provide for proper monitoring of the public body. If we pass the Bill today and allow the mixed staff system of the HA to lead to confusion and thus a deterioration in the quality of medical service

in future, will the legislators who claim today that the problems are not related to the Bill feel remorseful? In a narrower sense, when scrutinizing a Bill, a legislator will naturally focus on the contents of the Bill itself, but should they not, as legislators who are supposed to guide, represent and reflect public opinion and play a role different from the "neutral" law drafter, consider the consequences of the passage of the Bill too? Are we really willing to sign on a cheque with the amount left unfilled? Is a Bill really no more than just a Bill? If 10 or eight authorities of whatever nature are to be set up in future, should we pass the Bills concerned simply because no legal difficulties arise from their contents, even though the corresponding policies are not yet in place?

Let me now turn to the problems which may arise from the passage of the Hospital Authority Bill today, or the deficiencies of the present proposal. Since the publication of the Hospital Authority report and the bridging-over arrangements, there have been continuous clamours of dissent from the staff. Various surveys on staff preference, including those conducted by the league of Hospital Services Department and Department of Health Staff Unions, Government Doctors Association, Joint Council of Subvented Hospital Doctors and my own office, indicate that 70% to 90% of the staff are reluctant to switch over. Admittedly, a mixed staff system appears to be quite inevitable. The question is whether the majority of the staff under the management of the HA are civil servants or HA staff. Most of my honourable colleagues work at the senior management level and are experienced in managing commercial organizations, factories, civic bodies and schools. They should know very well that from the management point of view, if most of the people who work in an organization are not its own staff, it will not be possible to establish an identity and sense of belonging among them. In such a situation how can conflicts be avoided in the day-to-day operation? The success of reform hinges on whether the staff of the radically reformed organization can identify themselves with the new management structure, and whether a new type of management culture can be established. I am convinced that the Executive Council is well aware of the importance of such a sense of identity, which explains why the Council took the unusual step to further amend the bridging-over arrangement and the terms and conditions of service. However since the new arrangement has just been released for two weeks, do the staff have sufficient time to digest the package? Do they fully understand its details? Even government officials also stressed that the staff might not understand the package well. This being the case, are we taking a big risk to pass the Bill today? Although the new package may be more acceptable to the staff than the old one, yet there are still many ambiguities. For example, the Government has yet to provide an evaluation of

departmental quarters. So we are still uncertain whether the bulk of the staff would switch to the HA. As I have just mentioned, a sense of identity among the staff is crucial. In persuading Members to pass the Bill, the Government should in fact provide adequate proof to show that the majority of the staff are willing to change over. Unfortunately, since the release of the new package, there has not been sufficient time for the staff to consider it, let alone the completion of an opinion poll on their preferences. Since we attach so much importance to staff co-operation, why can we not wait for just one or two more months until such time as we can prove with poll findings that most of the staff will opt to cross over to the HA. Would it not be more acceptable to all if the HA is officially established only until then? Should the staff still find the new package unsatisfactory after studying it, the Government will have room to manoeuvre. Once the HA is established with the staff problems left unresolved, will the HA not become chicken ribs which, though tasteless, are yet a bit wasteful to be thrown away? We should avoid failure at the last moment for lack of a final effort.

Another noteworthy issue which will create much more conflicts in the health care sector is the double reporting system. At present, the management duties of hospital wards fall mostly on the nurses. Under the existing arrangement, nurses simply have to report to their seniors with the chain of accountability being kept within the nursing grade. The recommendations of the PHA formally recognizes the Ward Manager status of the nurses. In terms of management hierarchy, one rank above the Ward Manager is the Department Operations Manager to be staffed by a nurse above whom is the Chief of Service presumably to be staffed by a doctor. Problems arise from the reporting system of the Department Operations Manager. The arrangement proposed by the PHA are basically the same as the recommendations made by the report. The latest arrangement is that the management performance of the Department Operations Manager will still be appraised by the Chief of Service, except that the Chief Nursing Officer may, apart from making an appraisal of the Department Operation Managers' professional performance, also comment on their management ability. Such an arrangement has given the nurses cause for concern about their being subjected to outside control. The findings of the questionnaire survey on the double reporting system conducted by my office in June indicates that 90% of nurses are still discontented with the revised arrangement. (The survey is territory-wide, covering both government and subvented hospital staff.) The PHA cites an example that Britain also implements a similar system. However, it is learnt that, due to opposition by health care workers, such system does not operate smoothly in Britain, and that conflicts arise instead. Some may argue that a system requiring the Department

Operations Manager to report to his supervisor is sound in management principle, and that there is no problem of one profession controlling the other. Nevertheless, when I pointed out during a meeting of the PHA that, according to the same management principle, all personnel of a hospital ward should be responsible to the ward manager, the response I got was that all staff concerned, except doctors, should be responsible to the ward manager. As such, the claim that nurses' objection to the double reporting system is irrational does not make sense in itself.

At any rate, when a new system is opposed by 90% of the staff concerned, will it be in the public interest to push it through arbitrarily?

Those who join in the chorus of objection are not confined to the staff only. The board of directors of subvented hospitals also share the worries. After reading the agreement made with the HA, some even pointed out its resemblance to the Sino-British Joint Declaration. Both documents purport to allow a high degree of autonomy and let the people concerned continue with their management responsibilities, while in fact the real power of the board of directors of subvented hospitals will no doubt be taken over by the central authority. Until yesterday, there are still subvented hospital directors who openly expressed reservation about the Hospital Authority Bill. However, since the Government has given subvented hospitals a one-year ultimatum, and will cease financing them three years later, it is very difficult for subvented hospitals not to subdue under such pressure.

Throughout the process of preparing for the establishment of the HA, how much consideration has been given to the wishes of the members of public, the users of medical service? The PHA proposals lay emphasis solely on the management aspect, paying little regard to the needs of patients, the receivers of the service. Can the public be guaranteed of quality service provided at affordable charges? In future, patients' interests will not be positively promoted, and hospitals may not necessarily set up working groups comprising health care staff to ensure the quality of service. The public are denied any bargaining power in respect of hospital fees. Sometimes, they are even left in the dark about government policy on fees. The PHA report clearly proposes that the principle of partial "cost recovery" should replace the existing basis on which hospital bed fees are charged, and that the rate of cost recovery can be as high as 15% to 20%. In the news coverage on 4 May following the press conference on the previous day, it was generally reported that the Government would gradually raise the third class bed fees in order to achieve the above-mentioned rate of cost recovery within five years. Could it be that the journalists mistook



the Ching Ming Festival for April Fool's Day and pulled the legs of the Government? Or, did they fail to catch the real meaning of the officials' words? Anyway, the officials concerned were quick to deny that decision had been made to attain the above cost recovery rate of hospital maintenance fee within five years. Later, the press pointed out that government officials and Executive Council Members denied the finalization of the cost recovery principle. Until now, I am still at a loss as to whether the Government has made a final decision on an increase in hospital bed fees, or the principle of charging on the basis of partial cost recovery. Or has the Government finalized the 15% to 20% rate of cost recovery, and the raising of fees to the above rate within five years? I have repeatedly raised objection against the above-mentioned principle of cost recovery. Even with the introduction of a medical insurance system, the problems may still be there. If the American type of private medical insurance is adopted rather than the centralized and collective system of the European type, it will defeat the objective of collectively bearing the cost of such an expensive and inflexible medical service. The aged and the handicapped will be denied medical insurance because, with their low income, they can ill afford the high premium.

In connection with the aforesaid confusion of information relating to the proposed fee hike, I have to refer to the degree of transparency of the HA. We are told that the HA will provide more opportunities for the public to participate in policy making, and regional committees will be set up to absorb public opinion. It seems that the decision making process will be more open and that information will be more accessible to the public. Nevertheless, the regional committee as recommended in the 1985 Scott Report is a body vested with physical power, while under the existing proposal, it is downgraded to an advisory organization. As regards the transparency of the HA, we may get some hints from the operation of its predecessor, the PHA. I feel honoured to have been appointed to sit on the PHA, but experience shows that the PHA is far from transparent. On the contrary, it had treated us as if we were "transparent", that is to say, someone non-existent. In the face of strong reaction from the staff, the PHA standing committee re-opened discussion on the package of terms and conditions of service. After repeated deliberations by the standing committee, the new package was finally submitted to the Government for consideration, without the knowledge of the PHA members. It is ridiculous that PHA members (I am not the only one) first learnt about the details of the new package from newspapers. Such is the myth of the so-called boosted transparency! It is to be hoped that in future, the HA will really be more open in its process of decision making and information flow, rather than trying harder to treat the public as

"transparent".

Sir, let me reiterate that if we are willing to defer the establishment of the HA, some of the aforesaid problems may be resolved. At least the possible identity crisis among staff members can largely be reduced. Some Members are in favour of an immediate passage of the Bill. But since we have waited for such a long time, why can we not hang on just a bit longer?

Sir, with these remarks, I object to the establishment of the Hospital Authority at this moment.

MRS. LAM: Sir, our colleague, Mr. LAU Wah-sum, who intends to speak on this Bill today, is now in Canada and is unable to return in time due to some unforeseen circumstances. However, Mr. LAU has provided me with a number of points which are for the setting up of the Hospital Authority. In preparing my speech, I have incorporated Mr. LAU's ideas.

The advancement of medical technology in the past decade has given rise to higher costs for new drugs and sophisticated equipment for the improvement of medical and health delivery services. This has increased the cost more rapidly than that of other public services. It can be foreseen that this trend will continue in the coming years. In order to keep in progress with medical technology development and to maintain our present high standard of services, someone has to pay for the increased cost, either the patients or the taxpayers. At present, more than 95% has been borne by the taxpayers. Before we review this ratio, we must improve our productivity and cost efficiency for the delivery of hospital services.

In 1985, the Scott Report recommended that in order to cope with the advancement of medical technology and to use modern management techniques to improve our efficiency, hospital services should be separated from the public service hierarchy. They also recommended the integration of subvented and government hospitals for the purpose of good resource allocation and management.

After 18 months of detailed study, the Provisional Hospital Authority (PHA) submitted their report in December 1989 in which, among other recommendations for the improvement of the structure and management of hospitals, it confirms the views of the Scott Report that subvented and government hospitals should be integrated and

reformed into public hospitals under a Hospital Authority, and the Hospital Authority should be run independently from the Civil Service.

Sir, I welcome the introduction of the Hospital Authority Bill 1990 as this will enable the blueprints laid down by the PHA to be implemented as soon as possible.

Our ratio of population/beds compares favourably with Singapore and other Asian countries; yet camp beds in Hong Kong hospitals are well-known in this region. The inefficient bed utilization and overcrowding in the present hospital set-up are clearly due to outdated method of management. Under the recommendations of the Provisional Hospital Authority report, the responsibility for delivery of services in each hospital will be wholly delegated to the chief executive of the hospital and he will be fully responsible for the management and the utilization of resources. He will be at the same time accountable for the performance of services to the Hospital Authority under a "line" management system. The Hospital Authority will also maintain highly sophisticated staff functions which will advise each hospital on the updated technological development and research to keep abreast with the modern medical and management technology. Other staff functions include the introduction of modern information technology in hospitals and other management function such as catering, purchasing, and so on.

The implementation of the PHA report will also create community involvement in the public hospital system. The regional advisory board will compare the efficiency of each hospital and advise on the need of the future development of hospital services in the region. This community feedback will create a joint effort to improve services to patients. These improvement in management will not only increase the efficiency of the services, but also maintain a high morale of the medical staff and their expertise will be correctly used. It will also attract ambitious young people to find it meaningful and worthwhile to join the Hospital Authority through which they could contribute their services for the well-being of our people.

Needless to say, we have to appropriate funds for front-end cost to set up the Hospital Authority and to reform both subvented and government hospitals. This includes the cost of building up the necessary staff for both the "line" and "staff" functions of the Authority. I am sure that this investment will yield good returns from the increasing productivities of hospital delivery services after we have reformed all subvented and government hospitals in the manner recommended in the PHA report.

With regard to hospital fees which the general public is rightly concerned, I strongly urge that apart from adjustment for inflation, we should not raise our fees before improving our services. An efficient fee waiver system should be implemented before any revision of hospital fees. It is our declared policy that no one will be deprived of hospital services merely because of lack of financial means and that the Government will stand behind the Hospital Authority to finance its services. The Bill empowers the Government to give directions to the Hospital Authority on fee policies and financial management through the Secretary of the Treasury. This is, therefore, not a privatization for self-financing of the hospital services as many have misunderstood. It is a corporatization scheme to improve the productivity and cost-effectiveness in the delivery of hospital services for the well-being of the people of Hong Kong.

Sir, with these remarks, I support the motion.

DR. LEONG: Sir, allow me to start by declaring my interest as a member of the Provisional Hospital Authority (PHA) and also as the representative of the Medical Functional Constituency. What I would be saying today, however, will not be just reflecting the views of the PHA or just the views of some sectors of the medical profession. Rather, it is to express the views of the medical profession in total and to express my own views as a citizen of Hong Kong who has been working in, influenced by and very much involved in the medical service of Hong Kong.

Sir, today we are here to hear the Second and Third Readings of the Hospital Authority (HA) Bill and to all intents and purposes to witness the passage of the Bill. Yet, Sir, there are many outside this building who are calling for deferment or even scrapping of the Bill. They include disgruntled staff and worried public. There are also many inside this Chamber, as we have just heard and will probably hear, who have expressed similar reservations. Is there something wrong with the Bill? Or is it something wrong with the HA itself? Will the HA then be a real oasis in a desert of sorrowful state of health and medical services or will it be a "Trojan Horse" -- sad to have it discarded and yet doubtful of its value?

Perhaps it would be worth going back to history and consider some of the facts that eventually led to the moulding of the concept of the HA.

Despite satisfactory mortality figures and a reasonable number of hospital beds, our public hospitals are grossly over-crowded and the waiting time is unacceptably long.

There is inefficient utilization of the subvented hospitals. Although often expected to provide high standard of patient care, the subvented hospitals receive a much smaller budget and staff are entitled to less benefits.

There is an over-centralization of management power and an over rigid management structure leaving individual hospitals with little autonomy or decision-making power and incentives.

There is inadequate public participation in the planning and running of hospitals resulting in ineffective communication and skepticism among the public.

I think it is only logical to assume that the then Medical and Health Department (now the Hospital Services Department) must have contemplated changes, although piecemeal, to improve this poor state, yet nothing significant has been forthcoming.

It is obvious then that a total revamp of the management system of hospitals must be initiated to have any meaningful improvement.

The concept of the HA was therefore born. The future HA will be "freed" from bureaucratic red tape and rigidity and that the ultimate hospital system will have a maximum devolution of power to provide the highest degree of autonomy to individual hospitals. This then is the so-called "new HA culture".

Sir, up to this point in time there have been few, if any, dissenting voices arguing against the principles of the HA. The Hong Kong Medical Association (HKMA) for example has consistently supported the HA concept and so has the Government Doctors' Association (GDA). Even pressure groups have not been a challenger of this particular principle. What then had gone wrong with it? If the concept is acceptable why is it that some five years after the publication of the Scott Report, after hours of devoted efforts by PHA members, and after a substantial amount of public money being spent, there are still bombardment from every angle?

Sir, with respect, the idea of improving hospital services alone was wrong from the very beginning. It is not the management concept of the HA that has caused foul.

It is the lack of policy vision to revamp the whole medical services in total that produces some of the confusion we are in today. Similarly, the complete lack of direction into the study of health economics, coupled with the untimely introduction of the concept of partial cost recovery for hospital care, has produced extensive public outcry.

There should be little surprise to find the public reacting in panic, firstly to the thought that hospitals will be "privatized" by the HA concept, that is to say to make their own ends meet, and secondly to the sudden introduction of the proposal that hospital fees will tag highly to cost. At the end of the day, Government is being seen as shirking her responsibility in the provision of adequate medical care for all and the whole service will fall on the shoulder of an independent body. The HA therefore becomes the scapegoat.

The Secretary for Health and Welfare has repeatedly stated that this is not the Administration's intention and that hospital fees "pegged to cost" could be introduced any time irrespective of the establishment of the HA. This may well be true. But to introduce this concept as an option for the future policy when the HA is about to be formed, though on rather shaky ground, the Administration is adding fuel to fire, to say the least. Furthermore, it is most bewildering that at a recent review of hospital charges, the Administration is still unwilling to come up with the concept of tagging charges to cost irrespective of percentage.

How can Government win back the trust from the public that she is not washing her hands off the medical services and how can Government ensure the public that the future HA will have the necessary checks and balances promised, both from the public and from the Administration.

Sir, if the handling of the public is bad, the deliberation with the staff would leave even much more to be desired. Throughout the whole period of the deliberation and discussion by the PHA, the Administration had failed to reflect the feeling of the staff to the PHA.

From the onset, the HKMA, representing the medical profession, has stressed the need for adequate staff representation in the PHA. We see the danger in the lack of emphasis being given to views of the staff, for this could cause a breakdown of communication leading to set-back affecting the implementation of an otherwise sound concept; but unfortunately to no avail.

One would have thought that at least the different government branches would be feeling the pulse of the staff all the time and would be feeding in staff sentiment continuously to the PHA. Similarly one would expect representatives of respective government branches to make alternative proposals should any issue arise that appeared to deviate from staff interest. After all, officials from respective branches do sit on all committees of the PHA. But this again was not so, and the Administration failed to reflect and to fully take account of staff sentiment all along PHA's operation.

At the same time it was also true that there was a complete lack of consultation between the Administration and the staff during the period of PHA deliberation. Even after the PHA report was tabled and despite the arrangements of more than some 50 meetings between the Administration and the staff, one wonders how effective these meetings had been in conveying the concepts and aims of the HA to the staff. Furthermore, the sincerity of these meetings was always in doubt and in the words of the staff: "Are they lectures or are they actual consultation?"

The Secretary for Health and Welfare has said and I quote: "If I had been involved from the beginning I would have approached the problem slightly differently, maybe a lot more differently. I would have probably excited some debate early on rather than later on. We would have thrown the package open for analysis.....". I respect her sentiment and her concern. But alas, we cannot ponder on the past. Time and tide wait for no man. What then can we do? Should we forego the vision of revamp of the medical service and retract into oblivion? Worse still, should the public and the staff be the scapegoats for the scrapping of a once-in-a-lifetime chance for improving medical and health services? Should doctors go down in history as culprits for blocking improvement in medical service and be the victims of ineffectual bureaucratic red tape?

Sir, the public is frustrated with the current medical system, the staff are boiling to see effective changes, and I am convinced that the concept of HA could be the beginning of a whole chain of successful revamp for the medical service for the greater benefit of the public. Yet, it is obvious that for the HA to have any degree of success, there must be people and this was amply expressed by the Honourable Martin LEE in Cantonese just now. Not only must there be people who are willing to work under the environment of the HA, but people who are convinced of the culture of the HA and who are willing to accept the challenge of change. I have full

confidence that the medical staff are devoted to the patient service and that the majority will do their utmost, come what may, to help revamp the medical system in Hong Kong for the better. But should these dedicated people be "worse off" because they are willing to accept the challenges and change-over to the HA? Is it fair?

There have been allegations that staff are taking this opportunity to get a bigger chunk of pay from the public purse. Nothing is farther from the truth. Any doctor who looks for a high income would hand in a letter of resignation and join the private practice. Why then do they still bother to endlessly argue with the Administration for a better service? What they are seeking is to be treated fairly and to be given a remuneration package comparable to that of the existing Civil Service as promised. What they are asking is a transparent calculation to show them that they are offered the principles of equity.

What about the HA Bill? While some may consider the Bill as an all enabling Ordinance, if passed, to set up the HA, and others consider the Bill as Government's intention of selling health service down the river. The Bill must be considered as an important document. For within the intricacies of the Bill, and if one reads between the lines, there would emerge a clear picture of the sorrowful state of our hospital service. This Bill, if treated properly, could therefore become the foundation of reorganizing the total health care system of Hong Kong in the future. However, the HA Bill would be superfluous if it is to establish a HA that will not work. In passing the Bill, the medical profession therefore calls upon Government to:

ensure full financial commitment for the establishment of the HA, as well as additional resources required to effect improvement of the service under the new system;

ensure no major changes in the fee structure of public hospitals before the HA can achieve improvement of service;

ensure staff acceptance by constant communication with staff and demonstration of the comparability of the new package to their existing terms of service. The HA can only succeed when the great majority of staff are willing to bridge over;

ensure urgent release of the HA regulations for staff consultation. Adequate provisions and fair treatment to staff who opt to remain in their original terms of employment should also be guaranteed.



What more should be done in the future? Much needed to be done even if the Bill is to be passed. The setting up of the HA should not imply that the HA will be taking over the management of all the public hospitals without amicably solving the misconception and the concerns of the staff. Nor does it imply that the Administration will immediately wash her hands off the staff. Some of the points that need to be considered are:

there must be adequate commitment from the Administration that she will stand by the staff to ensure that the HA will provide a fair working environment, promotion prospects and a staff regulation and programme acceptable to all;

concerns have at the eleventh hour been raised by subvented organizations that their autonomy appears to be slowly usurped from them. These must be looked into and subsequent amendments made in the Ordinance are deemed necessary to allay the worries of these groups to ensure that they will feel happy to come under the wings of the HA;

adequate professional input would be necessary at the HA Board level. For although an effective management will go a long way, yet, unlike a multi-national business organization where the ultimate goal is a good profit, human lives are involved in a hospital and the utmost aim of any hospital service is to ensure that patients leave hospitals cured and happy;

similarly, there should be staff representation on the HA Board -- frontline doctors who can reflect not only the feelings of the workers but also provide an indepth input of the workability of the system.

Last but not the least, the medical profession feels that the political and social aspects of the establishment of the HA has to be addressed. They are:

The uncertain and ambivalent role of Government

What would be the relationship between the HA and the Government? As the operational relationship between the HA and the Government would only be defined in a memorandum of administrative arrangements (MAA) which is not available at present, the exact degree and extent of this indirect involvement of the Government is unknown and probably undecided yet. This uncertainty is further complicated by the nature of the MAA which is just an administrative document and can be altered easily with

a stroke of the pen. How much leverage can Government exert on the work of the HA other than by virtue of funding? All these questions need to be answered to settle the mind of the public.

The uncertainty of the monitoring mechanism of a new and different entity -- the HA with primary responsibility

Apparently the HA will be a separate entity taking up the hot seat of being primarily responsible for overseeing hospital medical services. As such and as a necessary corollary of what is said above, will the usual channels and mechanisms of public monitoring of government actions be applicable? Or should new channels of public monitoring be devised?

Competition with private hospitals

With the provision of B-class hospital beds and other facility with a price hierarchy, it is likely that such facilities will pose a competition to the services available in the private hospitals. What will be the impact? How will the private hospitals take this onslaught? Or should this be just seen as providing more freedom of choices for patients who can afford the expenses?

At the end of the day the success of the HA lies in the commitment of the Administration and the goodwill of the staff. But the HA should not be taken as a panacea to cure the medical service. At best it is the beginning of a badly needed health service reform.

Three further steps, therefore, must be addressed without delay:

1. A complete look at the policies in the development of medical and health services in the short and long-term future. A White Paper on medical policies is therefore urgently called for and this was suggested a moment ago by the Honourable Andrew WONG.
2. An indepth look into health economics to determine the need for different or alternative funding resources for health care in the face of escalating medical costs. Government should, therefore, take a leading role in reviewing the current health and medical insurance scheme in order to complement any changes in policy.
3. Medical services cannot and should not be sectorized. The upgrading of primary

health care and other similar health care must therefore be taken simultaneously with that of the hospital service. Furthermore, proper integration must be instigated at once.

All these, together with the HA, will be needed to pave the way and direction of medical reform in the future.

With these remarks, sentiments and reservations, Sir, I support this Bill.

MR. TIEN: Sir, so far this afternoon, many Members have spoken clearly and in depth on the general principles of this Bill. As a member of the Provisional Hospital Authority (PHA) and of the ad hoc group, I fully share their concern.

We have all considered carefully the question of fees and charges. Ultimately, these must be related to general policy objectives of Government. Fees and charges may be aimed at recovering roughly 15% to 20% of costs over a period of years, but only when hospital services provided have shown substantial improvements. And that realistically would not happen in a year or two.

Moreover, those patients who genuinely are unable to pay for treatment can be relieved even of these modest charges. Government has repeatedly assured the ad hoc group that no one in Hong Kong will ever be turned away from any of our public hospitals because he or she cannot afford to pay. At the end of the day, fees and charges will cover only a fraction of the total costs of providing these critical medical services. Government, and ultimately the taxpayers, will foot the balance of the bill.

Different subvented hospitals have different views. The Yan Chai Hospital, of which I am one of the ex-chairmen, fully supports the terms and conditions as recommended by the PHA report.

Sir, my principal concern today is with the nitty-gritty of the benefits which staff members of the new Hospital Authority will enjoy. If we turn firstly to retirement benefits we will see a package deal as follows.

A Provident Fund will be set up by the Hospital Authority which will cost the employee nothing. The Hospital Authority as an employer will contribute all 15% to maintain this fund.

Compared with the pension arrangements available to civil servants, the proposals are indeed demonstrably more generous. For example, the Provident Fund will be funded separately and there is no worry that the employer will be unable to deliver the promised future pension to the employee.

The scheme will be handed over to professional managers whose objectives will be to get the best return together with the most reasonable level of security.

Also impressive is the flexibility of the scheme. Staff will not have to wait for retirement age to get their benefits. They can take away one lump sum when they leave, after meeting the qualifying service requirements. That is quite different from the more restrictive system which permits only one half of the accrued pension to be taken in a lump sum with the other half paid out on a monthly basis.

Secondly, I believe the proposal to commute current fringe benefits into cash allowances is very practical to staff.

Such cash allowances will be paid at rates ranging from 4.5% to 60% of staff member's salary.

More than this, however, is the particularly valuable benefit that the cash allowance, expressed not as an absolute dollar figure, but rather as a percentage of salary, will be increased in proportion with salary increases as years go on. At present, fringe benefits do not necessarily provide that.

Thirdly, as for housing benefits, staff will be able to take out a mortgage up to a maximum of 60 months' salary. The Hospital Authority is prepared to subsidize half of the interest payable up to a maximum liability of 6% which means the Hospital Authority subsidy therefore will remain at 6% if the interest rate is higher than 12%.

Moreover, the Hospital Authority will try to negotiate with banks to cover 100% of the value of the chosen property. And if this is successful, staff will not be required to make any down payment for the flat or property concerned.

Some calculations have revealed that under certain circumstances, the Hospital Authority's subsidy can be as high as 30% of the staff salary.

Moreover, once repayments have been made, the flat becomes the property of the staff member. Such is a solid tangible appreciating benefit in the form of property.

Finally, certain bridging-over arrangements must be mentioned. As staff move over to the Hospital Authority from the Civil Service, they have been assured that they will not lose out anything. As they make the transition to the Hospital Authority they have been assured that they will enjoy the same pension as if they had stayed in the Civil Service. All these benefits that have been mentioned are already very generous indeed.

Sir, when the Scott Report produced its recommendations, its clear intentions were to devise for Hong Kong an improved public hospital system. This hospital system was to serve all of our nearly 6 million citizens. This is the ideal which we - and staff -- should always keep in mind.

This Hospital Authority is for Hong Kong's benefit and its mandate is to run, as efficiently as possible, the present and future public hospital system in Hong Kong. I do not believe that we should think of the scheme only as a means of staff benefits -- important though these are. We should have a right ordering of priorities; we should not see our work here merely as a means of providing all the impressive benefits, which I have discussed above.

We are here not to provide golden handshakes or handouts to the staff. We are here -- and so are the staff -- ultimately for the good health and well-being of our fellow citizens of Hong Kong.

Finally, Sir, I support the Bill and urge its full acceptance both inside and outside this Council.

MRS. TU: Sir, I shall merely summarize the reasons why I consider this Bill should be delayed for two or three months.

We have been told that the medical staff have been fully consulted about this Bill, but the staff consider that they have had only an explanation, not consultation. Many issues remain unsolved or unknown. The staff have been virtually asked to agree first and ask questions later, hardly a formula for good relations.

This Council has been urged to support the Bill because it is for the public good. I sincerely hope that that is true. However, two main issues leave me in doubt. They are:

First, it cannot be good for the public if the staff who take care of the sick feel insecure and unhappy about their conditions of service. Nor can it be in the public good that medical staff are divided into groups serving different masters, the Civil Service, the Hospital Authority, the subvented organizations and the University Teaching School. And now we have just heard today how management and staff of subvented hospitals also seem to be dissatisfied with the arrangements. Seen from the outside, we get a picture of utter confusion and mistrust, which cannot possibly be in the public's interest.

Second, the public has been left in the dark about likely fees and charges. We have merely been told that no one will be left without hospital care because he/she is poor. But we have not been told what the Government's definition of "poor" is. Is it similar to the definition of "poor" as applied to kindergarten fee assistance, which means living at or below the bread-level? Is it similar to the definition setting out the income limits for rented public housing by the Housing Authority, which leaves a sandwich group that can never qualify for rented housing yet also cannot afford to go for Home Ownership? Or will it be like the Legal Aid Scheme, which leaves many unable to get free legal aid, yet who also cannot afford the high fees of private lawyers? The public needs more facts before anyone can claim that the Hospital Authority is for the public good. The public needs assurance in concrete terms before steps are taken to deprive them of adequate medical care at a price they can afford to pay.

It may well be that the Hospital Authority is good for all concerned. But the truth is far from evident at the moment, and we are being asked to buy a pig in a poke. Only when the package is unwrapped shall we know what it contains. And until I feel assured that it contains what is good for the public, Sir, I cannot at this time support the Bill.

MR. PETER WONG: Sir, I rise to support the Hospital Authority Bill 1990. First, I must declare my interest as a member of the Provisional Hospital Authority (PHA) and a deputy chairman of the Society for the Relief of Disabled Children. I regret that

so much has been said on fees and charges in the arguments against the passing of the Bill as it now stands. Strictly those arguments are not relevant in the context of the overwhelming need to form the Hospital Authority (HA) as soon as possible.

The over-riding objectives of the hospital reform is to place our public hospitals under a new management system and to redress the inequities of the subvented hospitals. Instead it has almost threatened to be an excuse for political one-upmanship to present the Government's plans as an attempt to make the cost of hospitalization borne by everyone, including the poor.

I would like to put to rest once and for all the charges that the Government, through the PHA, is attempting to put the charges up to 15% - 20% of costs. Those critics just have not read carefully paragraph 12.4.9 on page 122 of the PHA report.

Let me repeat part of the paragraph.

"It is proposed that the initial step should be to change the basis of charging from the cost of food only to a percentage of cost recovery, rather than to aim at a significant increase in revenue. The PHA recommends that sharp increases in charges should not be introduced until some significant improvements to the service have been made. Once the principle of cost recovery has been accepted, it would be possible to increase the percentage charge in phases over a number of years as further improvements in services are made. The PHA believes that the eventual cost recovery should be aimed at between 15% and 20%."

The timing for launching the new fee charging scheme has also been misinterpreted. Based upon my knowledge of what is the likely pace of progress in the HA, it would be towards the end of 1991 before we can start to introduce the Interim Management Information System (MIS) into the first of the pilot hospitals. The MIS will give us some of the costing figures, but I believe that it will be another two years before we can really master those figures and make full use of the new management systems in our hospitals.

Thus I expect that in 1993 we will begin designing the full MIS with comprehensive costing elements for the Authority. It will probably take until 1995 to implement and obtain meaningful results. Only then, will we be in a position to make proposals for fees and charges along the lines which I have quoted. By that time, the public will be able to judge for themselves whether the reforms have been to their

satisfaction.

The PHA report proposed a landmark policy on health care, and that is the provision of "heavily subsidized public hospital services to the community and that no one would be deprived of hospital services purely because of a lack of financial means". This historic milestone in the setting of our health policy has been endorsed by the Executive Council. I hope that we will hear some broad outlines of that policy and how the waiver system will be administered in practice. The system should be fair but care must be taken to ensure that the costs of administration do not outweigh the losses from the abuses.

The HA still lacks one essential ingredient. It has been of grave concern to me and the PHA that the Administration has not been able to provide the first full draft of the Memorandum of Administrative Arrangement (MAA) or even the section concerning the financial arrangement between the Government and the future HA. This is vitally important to the HA, (because it will set out the services and funding that will be provided to each other and how they will be paid for).

A figure has to be placed on the cost of those services. The outturn can fall either to the Government's or the HA's advantage. I would like the Secretary's assurance that the delay will not be used to the detriment of the HA so that outturns favourable to the Government will be revised in the final MAA whilst those unfavourable to the Government will be left as is. The delay in finalizing the MAA is also detrimental to the negotiation of the individual agreements between the HA and the subvented hospitals, since we cannot promise a subvented hospital more than what the HA can get in turn from the Government in the first place.

One last word on the remuneration package that is the bee in the bonnet of oppositions against the formation of the HA right now. While I agree that more consultation between management and staff could have minimized the regrettable conflicts, I must point out that the new remuneration package is a bonanza for hospital staff because the terms of the existing packages are so good and the real benefits unfortunately so well disguised that our civil servants do not know how well-off they are. The revised package now being offered is about as generous as is acceptable to legislators and the benefits have been stretched to the optimum level. The housing loan is a good deal assuming a rising market and it is highly recommended. However, I am also fearful that everyone else will ask for a similar package.



Sir, we have all heard the speeches of honourable Members. One thing has come over very clearly -- there is a distinct lack of trust in the sincerity of the Administration to come up with the goods. Now I would like to remind honourable Members that without exception, the members of the PHA are totally sincere in ensuring that Hong Kong has a decent hospital service for which we can hold up our heads high. The HA urgently needs Hong Kong's trust and goodwill. That, Sir, we must at least give to the HA otherwise it will be a stillborn HA.

Sir, I fully support the Hospital Authority Bill 1990 as a first step in a long journey to bring Hong Kong's health care into the 21st Century.

SECRETARY FOR HEALTH AND WELFARE: Sir, at this late hour of the day we all appreciate the virtue of brevity. I shall try to be brief although I very much prefer this virtue in other people.

I would like, first of all, to acknowledge with gratitude the work of the ad hoc group for their careful scrutiny of the contents of the Bill. I would also like to thank all Members who have spoken before me for their eloquence, their concern, their constructive criticism and the diversity of views, including the expression of dissent which only goes to show that the subject under debate is a very complex one.

In his speech Mr. Andrew WONG has eloquently analysed and highlighted the essential provisions of the Bill and I only need to confirm that the various amendments that will be moved during the Committee stage are technical improvements and do not alter the substance of the Bill and therefore have the support of the Administration.

In debating this Bill, it is important, I think, to ask ourselves two questions:

What is the purpose of the Hospital Authority (HA)?

and

Where does our duty lie?

This is particularly necessary as during the past few months of intense briefing and consultation the diverse views expressed, some without the foundation of fact, have unfortunately clouded the issue. Some of us are no longer certain of what we want.

We need to refocus. To put it simply, we want the HA because we want better service. As so admirably put by my friend, Dr. C. H. LEONG, the establishment of the HA will be the most important step in revitalizing the public hospital system and in ensuring that it will serve the next generation better than in the past. Our hospital system has become too big, too inflexible, too fragmented. We are tired of camp beds. We are tired of the strictures that impede us from responding to community aspirations. The sole aim of setting up the HA is to make the system better, more user-friendly and to improve patient care. This is the first major step forward in the way of health service reforms.

The main benefits to the community which deserve to be repeated, even at the risk of being boring, are:

first of all, it will provide a framework for bringing government and subvented hospitals together in an integrated public hospital system for better co-ordination and deployment of manpower and resources while at the same time preserving the traditions and characteristics of individual hospitals. Since the Authority will offer common terms of service to all the staff, differences over fringe benefits which have been a frequent source of complaints among staff in the subvented sector will eventually be removed;

by being established outside the Civil Service, the HA will be able to provide the greater devolution of authority from the central to the operational levels and greater flexibility in management thereby responding more quickly to changing demands;

community participation in the provision and operation of public hospital service will be enhanced through the various regional advisory committees, hospital governing committees that will be established and, in particular, the HA Board itself.

Turning now to fees and charges -- a very important and emotive subject -- a number of my colleagues have spoken on this issue and with great eloquence. I do not think I can do better than Mr. Peter WONG who has clarified the much misunderstood fees and charges. I think I need only to highlight, and perhaps repeat myself ad nauseam, that a broad strategic plan for fee and waiver arrangements must be put in place before any changes to the current policy were introduced and that unless there were improvements to services, no changes to such fee policy would be instituted. I do not think I can be more reassuring or say anything in more concrete terms -- there is no question of keeping anyone in the dark.

Here I would like also to acknowledge with thanks the suggestions made by Mr. TIEN, Mr. HUI, Mr. TAM, Mr. PANG and Mr. CHOW on the very need to institute and put in place other measures to cope with the waiver system so as not to complicate the administrative measures. However, lest the emotions of our concern for the fees and charges should once more blur our vision, I think it is of relevance to point out that the Bill contains important safeguards. It ensures that hospital fees remain a matter on which the Government will ultimately determine policy; the Government has not washed its hands of the matter. This is further reinforced by the amendments to clause 18 to be moved in Committee. Moreover, clause 4(d) states that no person should be prevented through lack of means from obtaining adequate medical treatment. Never before, Sir, has this principle, the cornerstone of the Government's policy on health care, been so clearly enshrined in the law itself. Never before has there been such a safeguard for our people.

Turning now to staff reaction, their concerns are well-known. Although these concerns are outside the provisions of this piece of enabling legislation, I think these issues are very important. I therefore tend to agree with my honourable friends, Mr. Martin LEE, Mr. CHOW, Mr. TAM and Mrs. TU, that it cannot be good for the public if the health-care staff themselves -- the professionals involved who are the key to our proposed reforms -- are untrusting and disgruntled. We need their support and I plead for goodwill and understanding. It would be a great pity if the plan which is the result of many years of hard work by many experts should founder on a lack of trust. It would be equally a great pity if we have to throw the baby out with the bathwater on a lack of goodwill.

I must therefore now turn to the subject of consultation which is already adequately explained by Mr. Andrew WONG. Since 1985 there have been continuous, protracted consultations. This was stepped up in 1988 culminating in intensive briefing and consultation since April this year, not only with staff but also with the general public. We have had numerous meetings and presentation of the HA case to district boards and other local communities. We have arranged 70 sessions with staff although 20 of them had been boycotted. Nevertheless we had 50 sessions and in our genuine effort to reach out to the staff, we published leaflets, established hotlines, arranged small group discussions and directly and indirectly through mass fora and various other channels reached out.

Furthermore, in our endeavour to explain to staff and to dispel any

misapprehension, we, in consultation with the Provisional Hospital Authority (PHA), re-engaged at considerable expense to the public purse a consultant to explain to our staff how certain formulae were arrived at in order to dispel their fears and to allay their concern. I think one philosopher once said, "Consultation is like a good meal; it must come to end when you have had enough." Now I do not really agree with that philosopher because I think we are still continuing with this meal, that is to say, this dialogue. I think, however, we have done the best we can. If I just might add, at a human level many of my colleagues have lost a tooth or two, some have lost sleep and a lot of us have lost weight -- though that is something I would welcome for myself. And I can assure this Council that notwithstanding all this, we, civil servants, do not fare as well as some non-government Members of this Council. We shall defer to Dr. C. H. LEONG's advice and we shall endeavour to do even better next time. There is always room for improvement, even room for accommodating a scapegoat or two. (Laughter)

In our earnest endeavour to address the legitimate concerns of staff, the terms of service and bridging-over arrangements were revised to represent a considerable improvement on what had previously been offered. I hope that many more of the existing hospital staff will find the new terms attractive. Notwithstanding this, if anyone should still be in doubt and perceive a personal loss he will be free to retain his existing terms. No one, but no one, will be compelled to accept the HA terms against his will. They will have three years to consider the personal circumstances before exercising their option. There will be detailed briefing sessions; there will be careful explanations. We intend to continue with these briefing sessions for both the government and subvented sectors. For what is worth doing is worth doing well.

In this context, I would like to mention that the PHA has re-examined the proposed management structure in the light of the views expressed by nurses. Certain modifications have been made, particularly to the arrangements for staff appraisal. I am given to understand that the staff will be consulted again. The new management structure will not be introduced immediately upon the inception of the HA, and even then only an initial phase of three to five hospitals. There will clearly be ample time for further consultation.

As regards the HA's personnel regulations, a summary has been prepared together with an employees' handbook as a basis for consultation with staff. This process will commence early next month. The personnel regulations and policies will be revised

having regard to staff views before being finalized. Here in response to Mr. Peter WONG's suggestion, I shall also undertake to chase up my colleagues to achieve an earlier finalization of the Memorandum for Administrative Arrangement (MAA).

Many of my honourable friends here have questioned the viability of a mixed staff situation and have queried the purpose of retaining the Hospital Services Department since it would no longer have operational responsibilities once the public hospital system had been brought under the management and control of the HA. Let us remind ourselves that the mixed staff situation was envisaged right from the outset. No doubt, during the initial years, there will be civil servants and subvented staff working for the HA but retaining the existing terms. The retention of the Hospital Services Department, even with a diminishing role, will help to facilitate the process of transition and assure those concerned that their legitimate interests will be looked after. I must admit that I am an incorrigible optimist. I do not share the pessimism of some of my friends in this Council. I firmly believe that given a common objective, goodwill, understanding, and a sense of fairness under the leadership of the health professionals, we will surmount any problems likely to emerge. We will make it work.

Turning now to the communications which I received late yesterday and mentioned notably by Mr. Andrew WONG, Mr. Martin LEE and Mr. Ronald CHOW, I think the representations received mainly relate to the relationship between the boards of subvented hospitals with that of the future HA. These are important communications. I am sure the present PHA and the future HA will give due consideration that these communications deserve.

Indeed, I understand the PHA has been and will formally consult individual subvented hospital boards before finalization of details which will be spelt out again in a formal agreement. This they cannot do unless the HA is set up. And without the enactment of this Bill, we cannot set up the HA. So this really speaks for early passage of the Bill rather than the other way round. Of course, there are always provisions for subsequent amendments under existing legal procedure.

I am grateful to all those who have supported the Bill at this present time. I am sorry to hear suggestions of deferment with an implication for stopping now and rethinking the whole thing again. I should like to remind Members that it was originally planned to set up an HA much earlier. In my first meeting in this Council I was accused of delay. That was in January this year. Deferring the passage of

this Bill now would mean further uncertainty and more confusion. I believe that it would be difficult to justify such a delay, particularly as the main reasons for it do not affect the provisions of the Bill. To talk about alternative measures now as suggested by some Members of this Council would be a little too little, and a little too late. It is ironic that after some five years of talking, when we finally come to action, some of us should have cold feet! I, for one, share the optimistic belief that we must plan for our future in order to have a future. We must fight the good fight of reform, not because we know we will win, but in order to win. If we do not effect reform measures now, then when? If we do not do it this way, then how? Let us give justice to the Bill. Let us be fair to ourselves and to the public.

However, it will be wrong, in my view, to underestimate the magnitude of the mission before us. The setting up of the HA involves some 35 000 people working in 34 hospitals and involving all members of the community because in the final analysis we are all stakeholders in the long-term health of the territory. The passage of the HA Bill will lead in other reform measures as mentioned in this Council, like primary health care which is also inter-related with the Academy of Medicine on which we are working. It is a whole package of reforms. Thus the passage of the HA Bill will not only mark the beginning of reform or, shall I say, the birth of a new life; it will also signify the beginning of a life-long endeavour. More opportunities will be there of course. But more hard work lies ahead. There is no question of resting. This is the beginning of real work. For those of us, therefore, who have hope in the future, who are prepared to give of our best and who believe that what we do is right, I think we should stand up now and be counted.

Sir, I ask that we do our duty. I ask that we be united in our purpose and that we remain unswerving in our commitment. We owe it to ourselves. We owe it to Hong Kong.

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).

## CRIMES (AMENDMENT) BILL 1989

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

Question on Second Reading proposed.

MR. CHUNG: Sir, the main objective of the Crimes (Amendment) Bill 1989 is to create criminal sanctions to deal with nuisances associated with prostitution. The main features of the Bill are:

(a) to create an offence of publicly displaying a sign advertizing prostitution and to provide for the removal of such signs; the maximum penalty for the offence is a fine of \$10,000 and six months' imprisonment;

(b) to provide for the closure of premises for a period of six months, and the forfeiture of any vessel, in relation to which two specified offences are committed within a 12-month period beginning four months after the first conviction. The specified offence are keeping a vice establishment, permitting premises or a vessel to be kept as a vice establishment or used for habitual prostitution; and operating a massage establishment without a licence.

The Bill, as a separate issue, also increases the maximum fine for soliciting for any immoral purpose from \$1,000 to \$10,000.

The ad hoc group to study the Bill had held a total of eight meetings, including three meetings with the Administration, to examine the Bill in detail and agreed with the Administration on some 30 amendments which will be moved during the Committee stage. A submission has been received from the Hong Kong Association of Banks expressing concern on the closure and forfeiture provisions in the Bill which might affect the banks' position as a mortgagee. The group has sought the Administration's views on these comments. The amendments to be moved will, I believe, alleviate the concerns of the bankers.

I would like to highlight the main points of concern considered by the ad hoc group:

1. As a matter of principle, the group has sought clarification as to why a vessel was liable to forfeiture but a premises was only to be closed for six months for the

same offences committed. The Administration explained that it was impossible to physically close a vessel. The temporary impounding of vessels would also create serious problems both in finding suitable moorings and in maintaining the vessels. The severity of the penalty was recognized, and hence, provision was made for applications for forfeiture to be heard before a magistrate who was to decide each case according to all the surrounding circumstances. On the other hand, the closure of premises upon second conviction was mandatory and automatic. The group was satisfied with the Administration's explanation.

2. The Bill proposed that a landlord be given a grace period of four months following a first vice-related conviction in respect of his premises to enable him to take appropriate action to evict the offending tenant and regain the premises. During the grace period, a further conviction relating to vice on the premises concerned would not activate the closure order. Some members were concerned that the grace period of four months might be inadequate to recover possession of a premises, especially in contested cases. The Administration's worry was however that those involved in vice activities could take advantage of a prolonged grace period to continue their vice operations. In order not to undermine the effectiveness of the scheme, the group suggested and the Administration agreed that the four-month grace period be reviewed after a trial period.

3. To protect the interest of innocent owners, the group suggested that apart from affixing a notice to a conspicuous part of the premises to which the first conviction related and publishing it in one Chinese and English newspaper, there should be statutory requirement for a written notice to be sent to the last known address of the registered owner on the details of the first conviction and the consequence of a second conviction. Initially, the Administration was of the view that since the addresses in the Land Office records were not entirely up-to-date, and there was no guarantee that the address from other sources (for example, the Inland Revenue Department and Registration of Persons Office) would be up-to-date, a defective service of the statutory notice was not acceptable. After lengthy discussion, it was agreed that as an administrative measure, the registered owner would be sent a copy of the registered notification of conviction at the last known address according to the records of the Land Office.

4. There was no provision in the Bill for the registration of the first conviction, and the first and the second sets of proceedings in relation to the premises with the Land Office. The group felt that this would seriously affect the interests of



prospective purchasers and mortgagee banks as well as the process of conveyancing. The Land Law and Conveyancing Committee of the Law Society has been invited to comment in this respect. The Committee shared the ad hoc group's view that the Bill should provide for the registration of the first and second convictions and commencement of the first and second prosecutions. The Administration agreed that there should be provisions in the Bill for the registration of all charges and convictions. The same procedures would also apply in relation to vessels.

5. The original intention of the Administration was to restrict applications for a suspension of the closure order to persons who were in a position to directly control the premises upon its re-opening. Since the security of the mortgagee would be lost if the premises were closed, the group considered that mortgagees and chargees should be entitled to make a claim. The Administration agreed to the proposal.

6. The group noted that although bona fide purchasers and mortgagees or chargees of a flat which had been the subject of a first conviction could seek remedy through applying for a suspension order, the mandatory two-year suspension would still detract from the value of the property and the purchaser would suffer financial losses or the interest of the mortgagee or chargee affected through no fault of their own. In order to cater for possible omission of registration of a first conviction in the Land Office, Members suggested that the court should be given power to order rescission of a closure order basing on the circumstances of the case. The Administration accepted Members' proposal.

7. An application for forfeiture under section 153E(1) of the Bill was for the purposes of section 8 of the Magistrates Ordinance a complaint. The group noticed that under the provisions of this Ordinance a hearing might not take place unless the defendant was present. A possible procedural problem would arise in forfeiture proceedings regarding a vessel if the vessel owner or his authorized person could not be brought to court. To avoid this problem, the Administration proposed to follow forfeiture proceedings in other Ordinances and specify in the new section that automatic forfeiture should apply in cases where no claims come forward within a specified period. In view of the severity of the penalty, the group proposed that a provision for moral claim to the Governor in Council be added so that vessel owners could submit a claim for return of the forfeited vessel if he missed the notice or he had other moral grounds. This was accepted by the Administration.

8. The ad hoc group considered that closure of premises might be too severe for operators of unlicensed massage establishments as a "massage" act might not

necessarily be of indecent nature; and the operators could have already been prosecuted if they allowed their premises to be used for vice-related activities. The Administration has agreed that there was no need to extend the closure order scheme to unlicensed massage establishments. Clause 6 will therefore be deleted accordingly.

I must thank my honourable colleagues for their strenuous efforts and thoroughness in studying this Bill, the able counselling of the Legal Adviser, the understanding and responsive attitude of the Administration in compromising on the amendments to be introduced.

Before closing, I must caution honourable Members that this Bill may infringe upon the right of those who have enjoyed viewing the 'fascinating' signs in the streets and have relied upon these signs to lead the way to their beloved places.

Sir, with these remarks, I support the Bill.

SECRETARY FOR SECURITY: Sir, I am grateful to Mr. CHUNG Pui-lam and the Members of the ad hoc group for the care with which they have examined the proposals in the Bill.

The proposals for the closure of premises and the forfeiture of vessels where vice-related offences have repeatedly taken place are designed to control nuisances associated with vice establishments. However, I agree with Mr. CHUNG and his ad hoc group that there is also a need for additional safeguards to protect the interests of innocent owners, prospective purchasers, mortgagees and chargees. The Administration therefore agrees with the recommendations of the ad hoc group:

(a) that all charges and convictions relating to specified vice-related offences in premises or vessels should be registered with the Land Office and the Marine Department respectively;

(b) that there should be a provision for the court to discharge a closure order if a bona fide purchase or mortgage of the affected premises is concluded in the absence of registration of a charge or conviction in the Land Office; and

(c) that vessel owners who cannot be located to attend forfeiture hearings should be given the right to make a moral claim for the return of the forfeited vessels.

Amendments to the Bill to give effect to these recommendations will be moved by Mr. CHUNG Pui-lam and Mr. Kingsley SIT at the Committee stage.

I also welcome the other recommendations of the ad hoc group, which should enhance the effectiveness of the measures introduced by the Bill.

As to the ad hoc group's concern about the adequacy of the grace period of four months after a first conviction, I agree that it should be reviewed when we have had some experience of its operation.

Sir, I move that the Bill be read a Second time.

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.

MUNICIPAL SERVICES APPEALS BOARDS BILL 1990

Clauses 1, 2, 6 to 8, 10, 11, 13, 15, 16 and 19 to 22 were agreed to.

Clauses 3, 4 and 14

MRS. FAN: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members for the reasons given earlier in my speech.

Proposed amendments

Clause 3

That clause 3 be amended --

(a) in subclause (3)(b), by deleting "2 or more members" and substituting "1 member", and by deleting "an equal number of" and substituting "2";

(b) in subclause (4), by deleting "decide the number of members, and nominate the members," and substituting "nominate the members".

#### Clause 4

That clause 4 be amended --

(a) subclause (3)(b), by deleting "2 or more members" and substituting "1 member", and by deleting "an equal number of" and substituting "2";

(b) in subclause (4), by deleting "decide the number of members, and nominate the members," and substituting "nominate the members".

#### Clause 14

That clause 14 be amended, by deleting all that follows "majority of the" and substituting "persons constituting the Board, and the Chairman (or, if he is not presiding, the Vice-chairman) shall have a casting as well as a deliberative vote.".

Question on the amendments proposed, put and agreed to.

Question on clauses 3, 4 and 14, as amended, proposed, put and agreed to.

Clauses 5, 9, 12, 17 and 18

CHIEF SECRETARY: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

#### Clause 5

That clause 5 be amended, by deleting the clause and substituting --

"5. Persons excluded for membership

For the purposes of any appeal against a decision, a Board shall not include any person who, or any member of a committee or other body which, was involved in making -

(a) the decision; or

(b) any decision confirmed, varied, suspended or cancelled by the decision, otherwise than by delegating the power to make the decision or any such decision (as the case may be).".

Clause 9

That clause 9 be amended, by deleting subclauses (2) and (3) and substituting --

"(2) Where a statement is lodged under subsection (1)(a) and -

(a) before the Board starts to hear the appeal, the Chairman; or

(b) after the Board starts to hear the appeal, the Board,

considers that the statement does not contain adequate information, the Chairman or the Board (as the case may be) may order the respondent to serve on the appellant and any other person who is bound by the decision appealed against, and lodge with the Board, within the time specified in the order, such other information as it may specify.

(3) Where, after the end of the period of 28 days specified in subsection (1) and --

(a) before the Board starts to hear the appeal, the Chairman; or

(b) after the Board starts to hear the appeal, the Board,

is of the opinion that a particular document or a document included in a

particular class of documents may be relevant to the appeal and a copy of that document has not been lodged with the Board by the respondent, the Chairman or the Board (as the case may be) may serve on the respondent a notice in writing stating that he or it is of that opinion and requiring the respondent to lodge with the Board, within the time specified in the notice, a copy of that document if it is in the possession or under the control of the respondent."

#### Clause 12

That clause 12 be amended, by adding after subclause (1) --

"(1A) For the purposes of an appeal, the Chairman may, before the Board starts to hear the appeal, by notice in writing signed by him require any person to attend before the Board at any hearing and to give evidence and produce documents."

#### Clause 17

That clause 17(1) be amended, by deleting "A Board" and substituting "The Chairman".

That clause 17(2) be amended, by deleting the subclause and substituting --

"(2) Upon application in writing by a party to an appeal to the Board and if satisfied that there is good cause for doing so -

(a) the Chairman may, before the Board starts to hear the appeal;  
and

(b) the Board may, after the Board starts to hear the appeal,

extend the time within which that party is required or permitted to do any act under this Ordinance."

#### Clause 18

That clause 18(a) be amended, by adding "or the Chairman" after "a Board".

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 9, 12, 17 and 18, as amended, proposed, put and agreed to.

#### COMPANIES (AMENDMENT) (NO. 4) BILL 1990

Clause 1 was agreed to.

Clause 2

FINANCIAL SECRETARY: Sir, I move that clause 2 be amended as set out under my name in the paper circulated to Members.

The addition to section 209A(1)(b) of the words "from the date" is to make the time period in this sub-section consistent with that in section 209A(1)(a).

The proposal to amend section 209A(3) is to make it clear that the court is only required to direct separate meetings of creditors and contributories in respect of summary procedure orders under section 227F. In all other cases, the wishes of creditors and contributories as to whether to make a section 209A application will usually be ascertained at the first statutory meeting (or any adjourned meeting) held under section 194, and it will not be necessary to hold two separate meetings to consider these issues.

The amendment to section 209C(2) is necessary to clarify that the transitional provisions will only apply to a company wound up by the court after 30 August 1983 and before the commencement of the amending Ordinance, and creditors of such companies are given a three-month grace period to apply for conversion under the provisions of the former law.

Sir, I beg to move.

Proposed amendment

Clause 2

That clause 2 be amended --

(a) in the proposed section 209A(1)(b), by adding "from the date" after "months".

(b) in the proposed section 209A(3), by deleting everything before "direct that" and substituting "Where an application has been made under subsection (1) in relation to a company in respect of which an order had been made under section 227F then, without affecting the generality of subsection (2)(a) and subject to subsection (4), the court shall before hearing the application".

(c) in the proposed section 209C(2), by deleting ", may, before the expiration of 3 months from the date of commencement of the amending Ordinance" and substituting "and before the commencement of the amending Ordinance may, before the expiration of 3 months from that commencement".

Question on the amendment proposed, put and agreed to.

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

COMPANIES (AMENDMENT) (NO. 5) BILL 1990

Clauses 1 to 4, 6, 7, 9, 11 and 12 were agreed to.

Clauses 5, 8 and 10

FINANCIAL SECRETARY: Sir, I move that Clauses 5, 8 and 10 be amended as set out under my name in the paper circulated to Members.

The ad hoc group has expressed concern about the adequacy of the penalties in respect of a company's failure to comply with the direction of the Registrar of Companies to change its name under the new section 22.

There could well be circumstances where a company might refuse to comply with the Registrar's direction, regarding the penalties as business expenses. Even a substantial increase in monetary penalties might not be adequate in such a case. We consider that only the possibility of imprisonment would ensure compliance with the



Registrar's direction. To this end, we propose that the penalties under clause 10 be increased to a one-time fine of \$50,000, a daily default fine of \$500 and a maximum term of imprisonment of six months. This proposal is in line with other penalties prescribed under the Companies Ordinance.

We also propose to bring the penalties under the existing section 337B(7) of the Companies Ordinance to the same level as that proposed under the new section 22(6). This is to ensure that locally incorporated companies and overseas incorporated companies will be subject to the same penalties.

Sir, I beg to move.

Proposed amendments

Clause 5

That clause 5 be amended, in proposed section 22(6), by deleting everything after "liable" and substituting --

"to -

(a) a fine and, in the case of an individual, imprisonment; and

(b) for continued default, a daily default fine."

Clause 8

That clause 8 be amended --

(a) by being renumbered as subsection (1);

(b) by adding after subsection (1) -

"(2) Section 337B(7) is amended by repealing everything after "liable" and substituting -

"to -

(a) a fine and, in the case of an individual, imprisonment;  
and

(b) for continued default, a daily default fine,

but nothing in subsection (5) or this subsection shall  
invalidate any transaction entered into by the company."."

Clause 10

That clause 10 be amended --

(a) by deleting "item relating to section 22(2)" and substituting "items  
relating to sections 22(2) and 337B(7)";

(b) in the proposed amendment to the Twelfth Schedule,

(i) by deleting "\$10,000" and substituting "\$50,000 and 6 months";

(ii) by adding the following item -

"337B(7)	Overseas	Summary	\$50,000	\$500".
	company	and 6		
	carrying on	months		
	business			

after being

given  
notice under  
section 337B

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 8 and 10, as amended, proposed, put and agreed to.

HANG LUNG BANK (ACQUISITION) (AMENDMENT) BILL 1990

Clauses 1 to 7 were agreed to.

SECURITIES (INSIDER DEALING) BILL 1989

Clauses 21, 23 to 25, 30, 33 and 35 were agreed to.

Clauses 1, 11, 16, 22, 29, 32, 34 and 36 to 39

FINANCIAL SECRETARY: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 1(2) provides that the Ordinance shall come into operation on a date to be appointed by the Governor. This enables us to bring the Bill into force at a later date when the buyback of shares by listed companies and stock borrowing and lending free of stamp duty are in place.

Proposed amendments

Clause 1

That clause 1 be amended --

(a) in the heading by adding "and commencement" after "short title";

(b) by deleting "1989" and substituting "1990"; and

(c) by renumbering the existing clause as subclause (1) and adding after subclause (1) -

"(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette."

Clause 11

That clause 11 be amended, by deleting "within the meaning of this Ordinance".

Clause 16

That clause 16 be amended, by deleting "section 18" and substituting "section 17".

Clause 22

That clause 22 be amended, by deleting "having been involved in insider dealing" and substituting "an insider dealer".

Clause 29

That clause 29 be amended --

(a) by deleting the heading and substituting "Offences by corporation, etc."; and

(b) in subclause (1) --

(i) by deleting "director, manager, secretary or other similiar"; and

(ii) by deleting "in any such capacity" and substituting "as an officer of the corporation".

Clause 32

That clause 32(b) be amended --

(a) by deleting "having been involved in insider dealing" and substituting "an insider dealer"; and

(b) by deleting "1989" wherever it occurs and substituting in each case "1990".

Clause 34

That clause 34(b) be amended --

(a) by deleting "having been involved in insider dealing" and substituting "an insider dealer"; and

(b) by deleting "1989" wherever it occurs and substituting in each case

"1990".

#### Clause 36

That clause 36 be amended --

(a) by deleting "1988 (63 of 1988)" where it secondly occurs and substituting "(Cap. 396)"; and

(b) by deleting "1989" where it thirdly and fourthly occurs and substituting in each case "1990".

#### Clause 37

That clause 37 be amended, by deleting "1989" wherever it occurs and substituting in each case "1990".

#### Clause 38

That clause 38 be amended, by deleting "1989" wherever it occurs and substituting in each case "1990".

#### Clause 39

That clause 39 be amended, by deleting "1989" wherever it occurs and substituting in each case "1990".

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 11, 16, 22, 29, 32, 34 and 36 to 39, as amended, proposed, put and agreed to.

Clauses 2 to 4, 8, 13, 27 and 28

FINANCIAL SECRETARY: Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

Clause 2(1) sets out a new definition of insider dealer by reference to a person who perpetrates any act which is an insider dealing within the meaning of clause 8. This avoids difficulties in determining a person's "involvement" in an insider dealing. It also refers to a person who is to be regarded as an insider dealer under the new clause 13(6).

Clause 13 is amended by deleting sub-clause (4) and replacing it by a new sub-clause to draw a clear distinction between a "negligent officer" and a "true" insider dealer. A negligent officer will be a person who fails to take necessary precautions to prevent a corporation from perpetrating an insider dealing.

Clause 13 is also amended by adding a new sub-clause (5) to enshrine the right to be heard before any finding is made by the Tribunal.

Clause 27 is amended by adding a new sub-clause (2) to empower the Court of Appeal to make orders as regards an appeal against a decision of the Tribunal.

Sir, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended --

(a) by adding after the definition of "inquiry" -

"insider dealer" (内幕交易者) means a person who perpetrates any act which is an insider dealing within the meaning of section 8 and also means a person who is to be regarded as an insider dealer under section 13(6);

"insider dealing" (内幕交易) means an insider dealing within the meaning of section 8;"

(b) in the definition of "listed securities" by deleting "within the meaning of section 8";

(c) by adding after the definition of "listed securities" -

"officer" (高級人員) in relation to a corporation includes a director, manager or secretary, and in relation to an unincorporated body includes every member of the governing body thereof;"; and

(d) in the definition of "relevant share capital" by deleting "in all circumstances".

Clause 3

That clause 3 be amended --

(a) in subclause (1)(c)(i) by deleting "a director" in the second place where it occurs and substituting "an officer"; and

(b) in subclause (3) by deleting "securities of that corporation having" and substituting "the relevant share capital of that corporation which has".

Clause 4

That clause 4 be amended, in subclause (1) by deleting "obtains" and substituting "receives".

Clause 8

That clause 8 be amended, in subclause (1)(a) --

(a) by deleting "knowingly"; and

(b) by adding "information which he knows is" before "relevant information".

Clause 13

That clause 13 be amended --

(a) in subclause (3)(b) by deleting "person involved in the insider dealing" and substituting "insider dealer"; and

(b) by deleting subclause (4) and substituting --

"(4) Where the Tribunal identifies a corporation as an insider dealer under subsection (3)(b) the Tribunal may also identify any officer of that corporation to whose breach of the duty imposed on him by section 10B the insider dealing in question is directly or indirectly attributable.

(5) The Tribunal shall not identify any person as an insider dealer or as a person to whose breach of the duty imposed on him by section 10B the insider dealing by a corporation may be directly or indirectly attributable without first giving such person an opportunity of being heard.

(6) Where the Tribunal identifies a corporation as an insider dealer under subsection (3)(b), if the insider dealing took place with the knowledge, consent or connivance of any officer of the corporation then such officer as well as the corporation shall be regarded as having been so identified."

Clause 27

That clause 27 be amended --

(a) by renumbering it as subclause (1) thereof;

(b) by deleting "section 26" and substituting "section 26(1)";

(c) by deleting "and may make such order as to costs as it thinks fit"; and

(d) by adding after subclause (1) --

"(2) In the case of an appeal under section 26(2) the Court of Appeal may -

(a) quash the order appealed against; or



(b) in place of such order substitute such other order as it thinks appropriate (whether more or less onerous) being an order that the Tribunal had power to make against the appellant.

(3) In the case of any appeal under section 26 the Court of Appeal may make such order as to costs as it thinks appropriate."

Clause 28

That clause 28 be amended --

(a) by deleting "The" and substituting "Neither the lodging of an appeal nor the"; and

(b) by deleting "not".

Question on the amendments proposed, put and agreed to.

MRS. LAM: Sir, I move that the clauses be further amended as set out under my name in the paper circulated to Members.

Proposed amendments

Clause 2

That clause 2(1) be amended --

(a) in the definition of "機構", by deleting "不是法人的" and substituting "非法人"; and

(b) in the definition of "證券", in paragraph (c) by deleting "文書" and substituting "文件".

That clause 2(3) be amended, by deleting "參照" and substituting "依照".

Clause 3

That clause 3(1)(c) be amended, by deleting "常理" and substituting "理".

Clause 4

That clause 4(1) be amended, by deleting "長設" and substituting "長久".

Clause 8

That clause 8(2)(6) be amended, by deleting "以於" and substituting "於".

Clause 13

That clause 13(1) be amended, by deleting "(不論是否在考慮監察委員會的陳述之後)" and substituting "在考慮監察委員會的陳述之後或在其他情況下,".

Clause 27

That clause 27 be further amended, by deleting "上訴庭" and substituting "上訴法院".

Clause 28

That clause 28 be further amended, by deleting "上訴庭" in both places where it occurs and substituting "上訴法院".

Question on the amendments proposed, put and agreed to.

Question on clauses 2 to 4, 8, 13, 27 and 28, as amended, proposed, put and agreed to.

Clauses 5, 6, 12, 14, 15, 17, 18 and 31

MRS. LAM: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 5

That clause 5 be amended, by deleting "是否" and substituting "其本人或".

Clause 6

That clause 6 be amended, by deleting "部分" in both places where it occurs and substituting "分數".

Clause 12

That clause 12(1) be amended, by deleting "維持" and substituting "繼續".

Clause 14

That clause 14 be amended --

(a) in paragraph (b), by deleting "由";

(b) in paragraph (d), by deleting "盤問" and substituting "訊問";

(c) in paragraph (f), by deleting "或聆訊的部份中" and substituting ",或聆訊中閉門進行的部份所"; and

(d) in paragraph (h), by deleting "按察司" and substituting "大法官".

Clause 15

That clause 15(1)(e) be amended, by deleting "接受" and substituting "監理".

That clause 15(7) be amended --

(a) by deleting "可證明他的行為並非出於企圖" and substituting "如可證明他並非意圖"; and

(b) by adding "則可" before "作為".

Clause 17

That clause 17(2)(e) be amended, by deleting "或聆訊的部份中" and substituting ", 或聆訊中閉門進行的部份所".

Clause 18

That clause 18 be amended, in the Chinese text by repealing clause 18 and substituting--

"18. 受保密權涵蓋的資料

(1) 凡(2)(4)

(a) 任何人的行為是研訊對象(1)本條例並不規定擔任該人的銀行或財務顧問的特准機構 (1)披露該人以外的其他客戶的事務資料(8)

(b) 任何人在高等法院訴訟中(1)有權以法律專業保密權為理由而拒絕披露或出示某些資料(10)簿冊或其他文件(1)本條例並不規定該人披露或出示這些資料(10)簿冊或文件(4)但法律執業者仍須披露其客戶的地址及姓名或名稱(3)(8)本條例亦不賦權予任何人接管該人所管有的這些簿冊或文件(9)一。

Clause 31

That clause 31 be amended, by deleting "按察司" and substituting "大法官".

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 6, 12, 14, 15, 17, 18 and 31, as amended, proposed, put and agreed to.

Clause 7

MRS. LAU: Sir, I move that clause 7 be amended as set out in the paper circulated to Members.

During the ad hoc group's deliberations on the Bill, considerable concern has been expressed over the loose definition of "relevant information" under clause 7.

This is a very important definition in that the possession of relevant information in relation to a corporation is an essential ingredient of insider dealing. The ad hoc group's principal objection is to the vagueness of the phrase "generally available" under the definition which permits of a variety of interpretations. It makes it difficult for a person who is in possession of information relating to a corporation to be sure as to whether or not such information is "generally available" as required by the law and whether or not he is free to deal.

The ad hoc group feels that a more specific definition of relevant information is called for to provide clarity and precision so that people would know where they stand. The ad hoc group also feels that the scope of relevant information should not be so wide as to prohibit all dealings unless the information is already made known to the public at large.

Under the United Kingdom Company Securities (Insider Dealing) Act 1985, "unpublished price sensitive information" is defined as information which "relates to specific matters relating . . . . to that company" and "is not generally known to those persons who are accustomed or would be likely to deal in those securities . . . .". The ad hoc group strongly favours the adoption of wording similar to those contained in the United Kingdom legislation. Firstly by including the word "specific", the type of information relating to a corporation that may ground liability for insider dealing is restricted to those of a specific nature rather than general, thus narrowing the scope of culpability. Secondly, by substituting the element of "knowledge" in place of "availability", and by requiring that such knowledge need only extend to those accustomed to or would be likely to deal in those securities, people would still be entitled to deal provided the relevant information is known to the interested class of persons most likely to be affected even though it may not be known to the general public. This relaxes the rigidity of insisting that all relevant information must be made public before people may deal. Thirdly by modelling our provision on the United Kingdom legislation, reference may be made to precedent cases in the United Kingdom should there be dispute in the future as to the true meaning of this provision.

Sir, the ad hoc group is aware that the existing United Kingdom definition will shortly be replaced by the definition in the European Community Council directive co-ordinating regulations. We do not know the reasons motivating such a proposed change in the United Kingdom and we must not assume that what is good for the United Kingdom must necessarily be suitable for Hong Kong. If we are to adopt the European

Community definition, we must be sure that it is more appropriate to the local circumstances of Hong Kong than the wording now proposed. For the time being, the ad hoc group is not yet so convinced.

Initially, the Administration was not agreeable to following the United Kingdom wording. Instead, it suggested that the existing wording of the Bill should remain, but there will be an explanatory note serving as guideline as to the scope and meaning of the section. Ironically, the draft explanatory note, when produced by the Administration, contained substantially the same wording as contained in the United Kingdom definition. The logical inference is that there is merit in the United Kingdom definition which must not be ignored.

Sir, I beg to move.

Proposed amendment

Clause 7

That clause 7 be amended, by deleting clause 7 and substituting --

"7. Relevant information

In this Ordinance "relevant information" in relation to a corporation means specific information about that corporation which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation but which would if it were generally known to them be likely materially to affect the price of those securities."

Question on the amendment proposed, put and agreed to.

Question on clause 7, as amended, proposed, put and agreed to.

Clause 9

FINANCIAL SECRETARY: Sir, I move that clause 9 be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 9

That clause 9 be amended --

(a) by deleting the heading and substituting "Certain persons not to be held insider dealers";

(b) in subclauses (1), (2), (3) and (4) by deleting "within the meaning of section 8";

(c) in subclauses (1) by deleting "have been involved in an insider dealing for the purposes of this Ordinance" and substituting "be an insider dealer";

(d) in subclauses (2), (3) and (4) by deleting "have been involved in insider dealing for the purposes of this Ordinance" and substituting "be an insider dealer"; and

(e) in subclause (2) --

(i) by adding "whose securities are the subject of the insider dealing" after "concerning the corporation"; and

(ii) by deleting "that corporation" and substituting "the first corporation".

Question on the amendment proposed, put and agreed to.

MR. BARROW: Sir, I move that clause 9 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 9

That clause 9(1), (2), (3) and (4) be further amended, by deleting "to the satisfaction of the Tribunal".

Question on the amendment proposed, put and agreed to.

MR. PETER WONG: Sir, I move that clause 9 be further amended as set out under my name in the paper circulated to Members. Subclauses 5 and 6 give a defence to two insiders dealing with each other off the market.

Proposed amendment

Clause 9

That clause 9 be further amended, by adding after subclause (4) --

"(5) A person who enters into a transaction which is an insider dealing shall not be held to be an insider dealer if he establishes -

(a) that the other party to the transaction knew, or ought reasonably to have known, of the relevant information in question before entering into the transaction; and

(b) that the transaction was neither recorded on the Unified Exchange nor required to be notified to the Unified Exchange under its rules.

(6) A person who enters into a transaction which is an insider dealing in respect of the listed securities of a corporation shall not be held to be an insider dealer, other than as a person who has counselled or procured another person to deal in listed securities, if he establishes that the other party to the transaction knew or ought reasonably to have known that he was a person connected with that corporation."

Question on the amendment proposed, put and agreed to.

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



Clause 10

FINANCIAL SECRETARY: Sir, I move that clause 10 be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 10

That clause 10 be amended --

(a) by deleting "within the meaning of section 8";

(b) by deleting "have been involved in insider dealing" wherever it occurs and substituting "be an insider dealer";

(c) by deleting "for the purposes of this Ordinance"; and

(d) by deleting "the advice of" and substituting "advice obtained bona fide from".

Question on the amendment proposed, put and agreed to.

MR. BARROW: Sir, I move that clause 10 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 10

That clause 10 be further amended, by deleting "to the satisfaction of the Tribunal".

Question on the amendment proposed, put and agreed to.

MRS. LAM: Sir, I move that clause 10 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 10

That clause 10 be amended, by deleting "參照" and substituting "依照".

Question on the amendment proposed, put and agreed to.

Question on clause 10, as amended, proposed, put and agreed to.

Clause 19

MR. PETER WONG: Sir, I move that clause 19 be amended as set out under my name in the paper circulated to Members. This clause requires the Tribunal to issue a report and give reasons for its findings and the order so made. It will allow anyone named in the report to know clearly why he has been so named and, if he wishes, to appeal in accordance with the new clause 26 which I will be moving.

Proposed amendment

Clause 19

That clause 19 be amended, by adding after subclause (1) --

"(1A) A report prepared and issued by the Tribunal under this section shall contain the reasons for its determinations under section 13(3) and (4) and the reasons for any order made under section 20, 20A(1) or 22."

Question on the amendment proposed, put and agreed to.

MRS. LAM: Sir, I move that clause 19 be further amended as set out under my name in

the paper circulated to Members.

Proposed amendment

Clause 19

That clause 19(2)(b)(ii) be amended, by deleting "常理" and substituting "理".

Question on the amendment proposed, put and agreed to.

FINANCIAL SECRETARY: Sir, I move that clause 19 be further amended as set out under my name in the paper circulated to Members.

Clause 19(2)(b)(iv) is amended to empower the Tribunal to furnish a copy of the Tribunal Report to any professional body of which an insider dealer or a negligent officer is a member. This will serve as a formal notice to the professional body upon which it may consider taking appropriate disciplinary action.

Proposed amendment

Clause 19

That clause 19 be further amended, by deleting subclause (2)(b)(iv) and substituting --

"(iv) where a person identified in the report as an insider dealer or as an officer of a corporation to whose breach of their duty imposed on him by section 10B the insider dealing is directly or indirectly attributable, is a member of a professional body, furnishing a copy to that professional body."

Question on the amendment proposed, put and agreed to.

Question on clause 19, as amended, proposed, put and agreed to.

Clause 20

FINANCIAL SECRETARY: Sir, I move that Clause 20 be amended as set out under my name in the paper circulated to Members.

Clause 20(1)(C) is amended to remove any criminal connotation associated with the word "fine" and to allow the Tribunal to impose a penalty upon an insider dealing corporation or an officer of such a corporation who has failed to discharge his duty to prevent insider dealing, regardless of who made the profit or avoided the loss. This is to give the Tribunal the necessary flexibility to impose penalties as it sees fit in all the circumstances.

Proposed amendment

Clause 20

That clause 20 be amended --

(a) in subclause (1) --

(i) by deleting "having been involved in insider dealing" and substituting "an insider dealer"; and

(ii) in paragraph (c) --

(A) by deleting "fine" and

(B) by deleting "that person" where it secondly occurs and substituting "any person";

(b) in subclause (2) by deleting "any director, secretary or" and substituting "an";

(c) by adding after subclause (2) --

(2A) In subsection (1)(a) "listed company" (上市公司) means  
a company in the case of which securities are listed on the Unified  
Exchange.

(2B) For the purposes of subsection (1)(a) a company may be specified by name or by reference to a relationship with any other company."; and

(d) in subsection (3) by adding "or under section 20A(1)" after "subsection (1)".

Question on the amendment proposed, put and agreed to.

MR. LI: Sir, I move that clause 20 be further amended as set out under my name in the paper circulated to Members.

In our discussion with various organizations, the ad hoc group found that one of the major concerns about the Bill relates to the rather heavy sanctions which may be imposed upon a person identified to have been involved in insider dealing. The penal provisions under clause 20 appear to some sectors of the market to be quasi-criminal in nature.

Having considered the provisions under the clause, we feel that while it is not unreasonable to impose a fine on a multiple of the profits gained or loss avoided, it appears unnecessarily harsh that a person should be debarred from having any direct or indirect involvement with any company, which may include any publicly listed or private company.

We feel that, in principle, the sanction should be confined to publicly listed companies, and their subsidiary or affiliated companies since involvement in the shares of such companies would affect the interests of other investors. There is no reason why such persons should not be allowed to run businesses of their own.

The proposed amendment makes the penalty more reasonable.

Sir, I beg to move.

Proposed amendment

Clause 20

That clause 20(1)(a) be amended, by deleting "company" wherever it occurs and substituting in each place "listed company or any other specified company".

Question on the amendment proposed, put and agreed to.

MRS. LAM: Sir, I move that clause 20 be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Clause 20

That clause 20(3) be amended, by deleting "在仍在發出通知書之日(1)或該通知書指明的較後日期" and substituting "仍自發出通知書之日(1)或自該通知書指明的較後日期起".

Question on the amendment proposed, put and agreed to.

Question on clause 20, as amended, proposed, put and agreed to.

Clause 26

MR. PETER WONG: Sir, I move that clause 26 be amended as set out under my name in the paper circulated to Members. It replaces the old clause 26 and gives a much wider ground of appeal which is commensurate with the penalties now being introduced. Not only will the aggrieved party have an absolute right to appeal on a point of law, he will be able to appeal on a question of fact if he obtains the leave of the Court of Appeal. He now has the added comfort of being able to appeal against the actual order made.

Proposed amendment

Clause 26

That clause 26 be amended, by deleting clause 26 and substituting --

"26. Appeal to Court of Appeal

(1) Any person named in a report of the Tribunal who is dissatisfied with any finding or determination of the Tribunal may appeal against such finding or determination -

(a) on a point of law; or

(b) with the leave of the Court of Appeal, on a question of fact, to the Court of Appeal.

(2) Any person against whom an order under section 20, 20A or 22 has been made may appeal against such order to the Court of Appeal."

Question on the amendment proposed, put and agreed to.

Question on clause 26, as amended, proposed, put and agreed to.

New clause 2A           Application

New clause 10A   Exercise of right to subscribe for or acquire securities

New clause 10B   Duty of officers of corporation

New clause 20A   Order against officer of corporation

New clause 20B   Limitation on aggregate amount of penalties

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

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

Clauses read the Second time.

Proposed additions

New clause 2A

That the Bill be amended, by adding after clause 2 --

"2A. Application

This Ordinance shall not have effect with respect to an insider dealing in relation to the listed securities of a corporation which has taken place before the commencement of this Ordinance."

New clauses 10A and 10B

That the Bill be amended, by adding after clause 10 --

"10A. Exercise of right to subscribe for or acquire securities

A person who exercises a right to subscribe for or otherwise acquire securities of a corporation shall not be held to be an insider dealer if he establishes that the right was granted to him or was derived from securities that were held by him before he became aware of any relevant information concerning the corporation."

"10B. Duty of officers of corporation

It shall be the duty of every officer of a corporation to take all such measures as may from time to time be reasonable in all the circumstances for the purpose of ensuring that proper safeguards exist to prevent the corporation from perpetrating any act which is an insider dealing."

New clauses 20A and 20B

That the Bill be amended, by adding after clause 20 --

"20A. Order against officer of corporation

(1) Where a corporation perpetrates any act which is an insider dealing and such insider dealing is directly or indirectly attributable to a breach by any officer of the corporation of his duty under section 10B, then, although such officer has not been identified as an insider dealer in a report



made under section 19 or an order made under section 20, he may, if the Tribunal thinks it appropriate, have any such order as is mentioned in section 20(1)(a) or (c) in respect of an insider dealer made against him.

(2) The Tribunal shall not make an order in respect of an officer of a corporation under subsection (1) without first giving such officer an opportunity of being heard.

20B. Limitation on aggregate amount of penalties

Where a penalty is imposed on more than one person under section 20(1)(c) or under section 20A(1), or under both sections 20(1)(c) and 20A(1) the aggregate amount of the penalties imposed shall not exceed three times the profit gained or loss avoided by all persons as a result of the insider dealing."

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

Schedule

FINANCIAL SECRETARY: Sir, I move that the schedule be amended as set out under my name in the paper circulated to Members.

Proposed amendment

Schedule

That schedule be amended, by deleting paragraph 8.

Question on the amendment proposed, put and agreed to.

MRS. LAM: Sir, I move that the schedule be further amended as set out under my name in the paper circulated to Members.

Proposed amendment

Para. 14 Schedule

That paragraph 14 of schedule be amended --

(a) by deleting "的爭議" and substituting "的問題"; and

(b) by deleting "爭議點" and substituting "論點".

Para. 16 Schedule

That paragraph 16 of schedule be amended, by deleting "代為申辯" and substituting "作為代表".

Question on the amendment proposed, put and agreed to.

MR. LI: The question of whether the hearings of a tribunal should be held in public has been one of the major issues on the agenda of the ad hoc group's discussions. The stigma of public hearings is of particular concern to many in the market since very often damage is done before the findings of the tribunal are available. Yet the ad hoc group is conscious that in the interest of the administration of justice, it is generally desirable that the hearings of the tribunal should be held in public but with a discretion for the tribunal to hold parts of a hearing in private under paragraph 15 of the Schedule. The proposed paragraph 15(A) is intended to extend the discretion by allowing the tribunal to decide to hold in private a hearing of an application to hold a sitting in private. This will provide more protection to an individual where necessary.

Sir, I beg to move.

Proposed amendment

Schedule

That schedule be amended, by adding after paragraph 15 --

"15A. The hearing of an application to the Tribunal to hold a sitting or part thereof in private shall be held in private."

Question on the amendment proposed, put and agreed to.

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

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1990

Clauses 1 to 4 were agreed to.

COMMODITIES TRADING (AMENDMENT) BILL 1990

Clauses 1 and 2 were agreed to.

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1990

Clauses 1 to 5 were agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) (No. 2) BILL 1990

Clauses 1 to 3 were agreed to.

WATER POLLUTION CONTROL (AMENDMENT) BILL 1990

Clauses 1 to 3, 5 to 10, 12, 13 and 16 to 23 were agreed to.

Clauses 4, 11, 14 and 15

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendemnts

Clause 4

That clause 4 be amended --

(a) in paragraph (a) by deleting "or polluting"; and

(b) in paragraph (b) in the proposed subsection (1A), by deleting ", noxious or polluting" and substituting "or noxious".

#### Clause 11

That clause 11 be amended, in the proposed section 15(4) by adding "maximum" after "authorize a".

#### Clause 14

That clause 14 be amended --

(a) in the proposed section 21(1) --

(i) by deleting ", by publication in the Gazette,";

(ii) by deleting "governed by this Ordinance" and substituting "in a water control zone";

(b) in the proposed section 21(3) by deleting "published in the Gazette"; and

(c) by adding after the proposed section 21(3) --

"(4) A technical memorandum issued under this section shall be published in the Gazette and shall be laid on the table of the Legislative Council at the next sitting after its publication.

(5) Where a technical memorandum has been laid on the table of the Legislative Council under subsection (4), the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiration of a period of 28 days after the sitting at which it was so laid, provide that the technical memorandum shall be amended in any manner consistent with this section.

this (6) If the period referred to in subsection (5) would but for subsection expire -

(a) after the end of a session of the Legislative Council or a dissolution thereof; but

(b) on or before the day of the second sitting of the Legislative Council in the next following session thereof,

that period shall be deemed to extend to and expire on the day after that second sitting.

(7) Before the expiration of the period referred to in subsection (5) or that period as extended by virtue of subsection (6), the Legislative Council may by resolution in relation to a technical memorandum specified therein extend that period or that period as so extended by a further period not exceeding 21 days.

(8) A resolution passed by the Legislative Council in accordance with this section shall be published in the Gazette not later than 14 days after the passing thereof or within such further period as the Governor may allow in any particular case.

(9) A technical memorandum issued under this section shall come into operation -

(a) in the case where before the expiration of the period referred to in subsection (5) or, before the expiration of that period as extended under subsection (6) or (7), the Legislative Council does not pass a resolution amending the technical memorandum, upon the expiration of that period or, upon the expiration of that period as so extended, as the case may be; and

(b) in the case where the Legislative Council passes a resolution amending the technical memorandum, upon

the expiration of the day next preceding the day of the publication in the Gazette of such resolution under subsection (8).".

Clause 15

That clause 15 be amended, in the proposed section 23A(7) by adding "maximum" after "authorize a".

Question on the amendments proposed, put and agreed to.

Question on clauses 4, 11, 14 and 15, as amended, proposed, put and agreed to.

Schedule 1

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I move that schedule 1 be amended as set out in the paper circulated to Members.

Proposed amendment

Schedule 1

That schedule 1 be amended, opposite "29" in column 1, by deleting from column 3 the entry relating to the addition of proposed subsection (6).

Question on the amendment proposed, put and agreed to.

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

Schedule 2 was agreed to.

HOSPITAL AUTHORITY BILL 1990

Clauses 1, 7, 12, 14, 15, 19 and 24 were agreed to.

Clauses 2 to 6, 8 to 11, 13, 16 to 18 and 20 to 23

MR. ANDREW WONG: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members on 20 July.

Proposed amendments

Clause 2

That clause 2(1) be amended --

(a) by deleting the definition of "executive officer".

(b) by adding after the definition of "prescribed hospital" --

"principal officer" (主要行政人員) means a person employed by the Authority to be a principal officer of the Authority;"

(c) in the definition of "public hospital", by deleting "公立" and substituting "公營".

(d) by deleting the definition of "Secretary" and substituting --

"staff", in relation to the Authority, includes employees referred to in section 5(a) the management and control of whom have been vested in the Authority under an agreement referred to in that section."

Clause 3

That clause 3 be amended --

(a) in subclause (3)(c) by deleting "executive" and substituting "principal".

(b) in subclause (4), by deleting "醫管局的成員即為醫管局的管治機構" and substituting "醫管局的管治機構由醫管局的成員組成".

(c) by adding after subclause (7) --

"(8) Every appointment under subsection (3) shall be notified

in the Gazette."

#### Clause 4

That clause 4 be amended --

(a) in paragraph (d), by adding "for Health and Welfare" after "Secretary".

(b) in paragraph (f) --

(i) by deleting "加入" and substituting "參與";

(ii) by deleting subparagraph (i) and substituting --

"(i) 教育及訓練參加或將參加與醫院服務或其他公眾健康服務的人的事宜<sup>⑧</sup>及".

#### Clause 5

That clause 5 be amended --

(a) by deleting "或對執行職能" and substituting "或對更有效執行其職能".

(b) in paragraph (a) --

(i) by adding "and carry out," after "enter into";

(ii) in subparagraph (i) by adding ", or managed and controlled," after "held".

(c) in paragraph (b) by deleting "如醫管局認為需要任何類別的財產供以下用途<sup>(1)</sup>取得及持有該等財產" and substituting "取得及持有醫管局認為需要的任何類別的財產供以下用途".

(d) in paragraph (c) by adding "carry out," after "enter into,".

(e) in paragraph (d) by deleting "地方".

(f) in paragraph (f) by adding after "hospital services" --



"subject to the terms and conditions upon which any such property is managed and controlled pursuant to an agreement referred to in paragraph (a)".

(g) in paragraph (j) by deleting "相類" and substituting "類似的".

(h) in paragraph (k) by adding "and solicit" after "accept".

(i) in paragraph (l) by adding "for Health and Welfare" after "Secretary".

(j) in paragraph (n) by deleting "establish" and substituting "with the approval of the Secretary for Health and Welfare, establish (including own and acquire)".

#### Clause 6

That clause 6(1) be amended, by deleting "將其職能或權力轉授給以下委員會或人士(1)並在視乎該局認為適當而附帶或不附帶限制執行這些職能或行使這些權力的限制條件" and substituting "按其認為適當的限制條件(1)或不加限制條件(1)將其職能或權力轉授給以下委員會或人士".

#### Clause 8

That clause 8 be amended, in subclauses (2) and (3) by adding "for Health and Welfare" after "Secretary".

#### Clause 9

That clause 9 be amended --

(a) in the heading by deleting "Use" and substituting "Investment".

(b) in subclause (2) by adding "for Health and Welfare" after "Secretary".

#### Clause 10

That clause 10 be amended --

(a) in subclause (3) by deleting "第~~カ~~款規定的帳目及第~~ガ~~款規定" and substituting "第~~カ~~款規定須備置的帳目及第~~ガ~~款規定須擬備".

(b) in subclause (4) by adding "for Health and Welfare" after "Secretary" in the two places where it occurs.

#### Clause 11

That clause 11(5) be amended, by deleting "(1)" and substituting "(1)".

#### Clause 13

That clause 13(2)(b) be amended, by deleting "be the governing body of" and substituting "govern".

#### Clause 16

That clause 16 be amended --

(a) in the heading by adding "for Health and Welfare" after "Secretary" where it first occurs.

(b) by adding "for Health and Welfare" before "shall".

(c) by deleting "(1)" and substituting "(1)".

#### Clause 17

That clause 17 be amended --

(a) in the heading by adding "for Health and Welfare" after "Secretary".

(b) by adding "for Health and Welfare" after "Secretary" in the two places where it occurs.

(c) by adding ", liabilities" after "property".

(d) by deleting "核實" and substituting "核證".

#### Clause 18

That clause 18 be amended --

(a) in subclause (1) by adding ", subject to any directions given to it under subsection (5)," after "may".

(b) in subclause (2) by adding ", subject to any directions given to it under subsection (6)," after "may".

(c) in subclause (3) by adding ", subject to any directions given to it under subsection (5) or (6), as the case may be," after "may" where it first occurs.

(d) in subclause (3) by adding ", subject to any directions given to it under subsection (5) or (6), as the case may be," before "cause", and by adding "in the Gazette" after "published".

(e) in subclause (5) by adding ", subject to any directions given to it under subsection (6)," after "may".

(f) in subclause (6) by adding "for Health and Welfare" after "Secretary".

#### Clause 20

That clause 20 be amended, by adding at the end "but any order to amend Schedule 3 shall be subject to the approval of the Legislative Council".

#### Clause 21

That clause 21 be amended --

(a) in subclause (2)(d) by deleting "指明物業的侵犯者" and substituting "侵犯指明物業的人".

(b) in subclause (3) --

(i) in paragraph (b) by deleting "提起" where it twice occurs and substituting "提出";

(ii) by deleting paragraph (c).

#### Clause 23

That clause 23 be amended, in subclause (1) --

(a) by adding ", acting in good faith," after "committee" where it first occurs;

(b) in paragraphs (a) and (b), by adding "or on behalf of" after "by";

(c) by deleting "acting in good faith".

Question on the amendments proposed, put and agreed to.

Question on clauses 2 to 6, 8 to 11, 13, 16 to 18 and 20 to 23, as amended, proposed, put and agreed to.

Schedules 1 and 2 were agreed to.

Schedules 3 and 4

MR. ANDREW WONG: Sir, I move that schedules 3 and 4 be amended as set out in the paper circulated to Members.

Proposed amendments

Schedule 3

That schedule 3 be amended --

(a) in paragraph 1 --

(i) in the definition of "Director of Operations" --

(A) by deleting "醫務";

(B) by deleting "executive" and substituting "principal";

(ii) in the definition of "Hospital Chief Executive Officer" by deleting "Officer" in the two places where it occurs.

(b) in paragraph 3 --

(i) in the heading, by deleting "executive" and substituting "principal";

(ii) in subparagraph (1) --

(A) by deleting "the executive" in the two places where it occurs and substituting "the principal";

(B) by deleting "an executive" and substituting "a principal";

(iii) in subparagraphs (2) and (3) by deleting "An executive" and substituting "A principal".

(c) in paragraph 5(1)(b) by deleting "a servant" and substituting "an employee".

(d) in paragraph 6(1) by adding "for Health and Welfare" before ", after".

(e) in paragraph 8(2) by deleting "多數票" and substituting "過半數票".

(f) in paragraph 10 --

(i) in the heading, by deleting "Staff" and substituting "Employees, etc";

(ii) in subparagraph (3)(c) by deleting "到期";

(iii) by deleting subparagraph (4) and substituting --

"(4) The Authority may --

(a) establish, manage and control; or

(b) enter into an arrangement with any company or association for the establishment, management and control by that company or association either alone or jointly with the Authority of,

any fund or scheme for the purpose of providing for the pensions, gratuities, benefits and payments referred to in subparagraph (3).".

(g) in paragraph 11 --

(i) in subparagraph (b) by deleting "醫務";

(ii) in subparagraph (f) by adding "(in particular, involvement in community or district organizations)" after "qualifications".

(h) in paragraph 13(1) --

(i) in sub-subparagraph (a) by deleting "醫務";

(ii) in sub-subparagraph (b) by deleting "Officer";

(iii) in sub-subparagraph (c) by deleting "employee" and substituting "member of the staff".

(i) in paragraphs 14(b) and 15(c) by deleting "Officer".

(j) in paragraph 15 --

(i) in subparagraph (b) by deleting "醫務";

(ii) in subparagraph (e) by deleting "more" and substituting "less".

(k) in paragraph 17(1)(c) by deleting "a servant" and substituting "an employee".

(l) in paragraph 18(1) and (2)(b) by adding "for Health and Welfare" before  
", after".

(m) in paragraph 22 by deleting "executive" and substituting "principal".

#### Schedule 4

That schedule 4 be amended --

(a) by adding after item 2 --

"2A. Dangerous Drugs In the Fourth Schedule,  
Ordinance item 18, repeal "and Hospital  
(Cap. 134) Services Department of the  
Government" and  
substitute "of the Government  
and the Hospital Authority  
within the meaning of the  
Hospital Authority Ordinance  
1990 ( of 1990)".".

(b) by deleting item 13.

Question on the amendments proposed, put and agreed to.

Question on schedules 3 and 4, as amended, proposed, put and agreed to.

#### Long Title

MR. ANDREW WONG: I move that the long title be amended as set out in the paper  
circulated to Members

Proposed amendment

Long title

That the long title be amended, by adding "用" after "公立醫院,".  
Question on the amendment proposed, put and agreed to.

Question on the long title, as amended, proposed, put and agreed to.

CRIMES (AMENDMENT) BILL 1989

Clauses 2 and 3 were agreed to.

Clauses 1, 4 and 6

MR. CHUNG: Sir, I move that the clauses specified be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 1

That clause 1 be amended, by deleting clause 1 and substituting --

"1. Short title and commencement

(1) This Ordinance may be cited as the Crimes (Amendment) Ordinance 1990.

(2) This Ordinance shall come into operation on 1 October 1990."

Clause 4

That clause 4 be amended, in the proposed section 147B(3), by adding "by virtue of this subsection" after "place".

Clause 6

That clause 6 be amended, by deleting clause 6 and the headings above it.



Question on the amendments proposed, put and agreed to.

Question on clauses 1, 4 and 6, as amended, proposed, put and agreed to.

Clause 5

MR. CHUNG: The deletion of "or under section 4 of the Massage Establishments Ordinance (Cap 226)" from the proposed sections 153A(1)(a) and (4)(c) and 153C(1)(a) and (3)(c) is consequential to the deletion of clause 6. The reasons for not extending the closure order scheme to unlicensed massage establishments have been given in my earlier speech.

The amendments to the proposed sections 153B(1)(b) and 153L(2) are to make it clear that a person shall be guilty of an offence if he enters or is in a closed premises without lawful authority or reasonable excuse.

The amendments to the proposed sections 153B(1)(d), 153G(1) and 153H(2)(b) are to extend the right to apply for a suspension of a closure order and for variation of conditions attached to the suspension order to a person who is the mortgagee or chargee of a premises.

The proposed inclusion of a new section 153BA is to protect an innocent person who has bought in a flat which had been the subject of a first conviction. To cater for possible faults in the closure order scheme, for example, the omission of registration of a first conviction or charge in the Land Office, a bona fide purchaser, mortgagee or chargee of an interest in the premises can apply for the closure order to be rescinded under this section.

The amendment to the proposed section 153G(5) is to make it clear that vacancy is permitted when the suspension order is in force.

The amendments to the proposed section 153K is to provide for the registration of charges and convictions relating to premises and vessels for reasons given in my earlier speech.

Sir, I beg to move.

Proposed amendment

Clause 5

That clause 5 be amended --

(a) in the proposed sections 153A(1)(a) and (4)(c) and 153C(1)(a) and (3)(c), by deleting "or under section 4 of the Massage Establishments Ordinance (Cap. 266),";

(b) in the proposed section 153A(2)(b), by adding after "the order" --

" , sealed with the seal of the court or signed by the magistrate,";

(c) in the proposed section 153B(1)(b), by adding after "6 months" --

"and that any person who enters or is in the premises after they have been closed or who, without lawful authority or reasonable excuse, interferes with anything used to close the premises commits an offence";

(d) in the proposed sections 153B(1)(d), 153G(1) and 153H(2)(b), by adding "who is a mortgagee or chargee of the premises or" after "person";

(e) in the proposed sections 153B(1)(d)(i), 153G(1)(a) and 153H(2)(b)(i), by adding "or possess" after "occupy";

(f) by adding after the proposed section 153B --

"153BA. Protection of bona fide purchaser or mortgagee

(1) Where a closure order has been made in respect of any premises or place, any person to whom this section applies may, in accordance with section 153J, apply in writing for the closure order to be rescinded.

(2) This section applies to any person who became a bona fide purchaser, mortgagee or chargee for valuable consideration of

an interest in the premises or place -

(a) after another person had been convicted of an offence or had been charged with an offence for which he was subsequently convicted, that conviction being one upon which the closure order was based; and

(b) before a notice relating to that conviction or charge was registered in accordance with section 153K.

(3) An application under this section shall state the name, address and business or occupation of the applicant and, where the applicant is an individual, be accompanied by a copy of a document which is proof of his identity for the purposes of Part IVA of the Immigration Ordinance (Cap. 115).

(4) Upon receipt of an application under this section the court or magistrate shall -

(a) appoint a date for the hearing of the application; and

(b) send a copy of the application and of the accompanying document of identity to the Commissioner of Police and inform him of the date of the hearing.

(5) A court or magistrate -

(a) after hearing an application under this section and after hearing any representations made by or on behalf of the Commissioner of Police;

(b) if satisfied that, at the time the applicant became a bona fide purchaser, mortgagee or chargee of an interest in the premises or place, he did not know of the charge or conviction (as the case may be) in relation to which a notice had not been registered in accordance with section 153K; and

(c) if satisfied that, having regard to all the circumstances, it would be unjust for the applicant to be affected by the closure order,

may rescind the closure order.

(6) A court or magistrate that rescinds a closure order under subsection (5) shall, as soon as reasonably practicable, send to the Land Officer and to the Commissioner of Police a notice in writing, sealed with the seal of the court or signed by the magistrate, stating that fact.";

(g) in the proposed section 153F(2), by deleting "section 153G for the suspension of the order" and substituting "section 153BA for the order to be rescinded or under section 153G for the order to be suspended";

(h) in the proposed section 153F(3), by adding "or declaration" after "the order";

(i) in the proposed section 153F, by adding after subsection (3) --

"(4) Where a court rescinds a closure order under subsection (3), it shall as soon as reasonably practicable send a notice in writing, sealed with the seal of the court, to the Land Officer stating that fact.

(5) Where a court rescinds a declaration under subsection (3), it shall as soon as reasonably practicable send a notice in writing, sealed with the seal of the court to the Director of Marine stating that fact.";

(j) in the proposed section 153G(5)(a), by deleting "occupied by the person proposed and used only for the purpose proposed" and substituting "used only for the purpose proposed and, when occupied, to be occupied by the person proposed";

(k) in the proposed section 153G(8), by deleting "a copy of the order to the Land Officer" and substituting "to the Land Officer and to the

Commissioner of Police a copy of the order, sealed with the seal of the court or signed by the magistrate";

(l) in the proposed section 153I(2)(b) --

(i) by adding after "summons to" --

"the occupier of the premises, the immediate landlord of the occupier of the premises, and";

(ii) by deleting "him" and substituting "them";

(m) in the proposed section 153I(3), by adding after "complaint" --

", but -

(a) where the place of abode of the immediate landlord of the occupier of the premises is not known, a summons to him may be served on him by leaving it with any person at the premises; and

(b) where the identity of the immediate landlord is not known, a summons may be issued to him by reference to his status as such, without naming him";

(n) in the proposed section 153I(5)(b), by adding after "subsection (4)" --

", sealed with the seal of the court or signed by the magistrate,";

(o) in the proposed section 153J --

(i) by adding in the section heading, "153BA," after "section";

(ii) by adding "153BA," after "section";

(iii) by adding after paragraph (b) --

"(c) where the closure order was made by the High Court,

be made to the High Court and, so far as is practicable, be made to the judge who made the order.";

(p) be deleting the proposed section 153K and substituting --

"153K. Registration of notices and orders relating to premises

(1) Where the Land Officer receives a notice sent to him under section 145A, 153BA(6) or 153F(4), or a copy of an order sent to him under section 153A(2), 153G(8) or 153I(5), he shall as soon as reasonably practicable, -

(a) prepare and verify a memorial of the notice or copy of an order, that memorial being in the form prescribed and containing the particulars required by or under the Land Registration Ordinance (Cap. 128); and

(b) register the notice or copy of an order.

(2) A notice or copy of an order required to be sent to the Land Officer under the provisions referred to in subsection (1) shall be deemed to be an instrument affecting land, but a failure to register such a notice or copy of an order shall not, save as is provided in section 153BA, affect its validity as against any person.

(3) A memorial prepared under subsection (1) shall be regarded as complying with the Land Registration Ordinance (Cap. 128).

"153KA. Registration of notice and order relating to vessels

Where the Director of Marine receives a notice sent to him under section 145A or 153F(5) or a copy of an order sent to him under section 153C(2) and the notice or order relates to a vessel licensed in accordance with regulations made or deemed to have been made under Part IV of the Shipping and Port Control Ordinance (Cap. 313), he shall as soon as reasonably practicable register the notice or copy

of an order in a register maintained by him.";

(q) in the proposed section 153L(2), by adding "without lawful authority or reasonable excuse" after "who".

Question on the amendment proposed, put and agreed to.

MR. SIT: Sir, I move that clause 5 be amended as set out under my name in the paper circulated to Members.

The ad hoc group noticed that under the proposed forfeiture proceedings a hearing may not take place unless the vessel owner is present. To avoid possible procedural problems where the vessel owner cannot be located or is abroad, the proposed section 153(C)(2) and 153(D)(5), 153(E)(1), (4) and (5) should be amended to provide for automatic forfeiture where no claimant comes forward on expiry of a specified period.

The reason for inserting section 153EA after the proposed section 153E is to enable a vessel owner to submit a moral claim. As forfeiture of vessel is a severe penalty, the ad hoc group considered that the Bill should include a provision for moral claim to the Governor in Council so that a vessel owner could submit claims for return of the forfeited vessel if he missed the notice.

Proposed amendment

Clause 5

That clause 5 be further amended

(a) in the proposed section 153C(2) by adding after paragraph (a) --

"(aa) as soon as reasonably practicable, send a notice in writing to the Director of Marine identifying the vessel and stating that it has been declared under this section to be liable to forfeiture;"

(b) in the proposed section 153D(5), by deleting "at any time" and substituting ", at any time before the end of the appropriate period of time specified in subsection (3) for the giving of a notice of claim,";

(c) by adding after the proposed section 153D(5) --

"(5A) If, at the end of the appropriate period of time specified in subsection (3) for the giving of a notice of claim, no such notice has been given in writing to the Commissioner, the vessel shall be forfeited.";

(d) in the proposed section 153D(6)(a), by deleting "of" where it occurs for the second time and substituting "has";

(e) by deleting the proposed section 153E(1) and substituting --

"(1) Where a notice of claim is given under section 153D(3) and the Commissioner does not terminate the seizure under section 153D(5), the Commissioner shall apply to a magistrate for the forfeiture of the vessel.";

(f) by deleting the proposed section 153E(4) and (5) and substituting --

"(4) On the hearing of an application under subsection (1), the magistrate may order that the vessel -

(a) be forfeited;

(b) be released to the owner or his agent subject to any condition that he may specify in the order; or

(c) be disposed of in such manner and subject to such conditions as he may specify in the order.";

(g) by adding after the proposed section 153E --

"153EA. Claims for return of forfeited vessel

(1) The owner of any vessel forfeited under section 153D or his agent may within 6 weeks after the vessel was forfeited give notice in writing to the Commissioner of his intention to submit



to the Governor a moral claim in respect of the forfeited vessel.

(2) Where the owner of a vessel or his agent has given notice under subsection (1) and has submitted a moral claim to the Governor by lodging it with the Chief Secretary within 1 month from the date of that notice, the Governor may -

(a) order the return of the forfeited vessel to the claimant;  
or

(b) direct that the claim be referred to the Governor in Council.

(3) Where a claim is referred to the Governor in Council under subsection (2) he may -

(a) order the return of the forfeited vessel to the claimant;  
or

(b) reject the claim."

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

New clause 2A          Application of section 145A

New clause 2B          Section added

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

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

Clauses read the Second time.

Proposed additions

New clauses 2A and 2B

That the Bill be amended, by adding after clause 2 --

"2A. Application of section 145A

Sections 139, 143, 144 and 145 are each amended by being renumbered as subsection (1) and by adding after subsection (1) -

"(2) Where -

(a) a charge under this section is preferred against a person or is withdrawn; or

(b) a person is acquitted or convicted of, or successfully appeals against a conviction for, an offence under this section,

section 145A applies."

2B. Section added

The following is added after section 145 --

"145A. Notification of charge, conviction etc.

(1) Where a charge under section 139, 143, 144 or 145 is preferred against a person or is withdrawn, the Commissioner of Police shall as soon as reasonably practicable send to the appropriate person a notice in writing stating that fact and the date on which it occurred and setting out the specified information.

(2) Where a person is acquitted or convicted by a court or magistrate of, or successfully appeals against a conviction for, an offence under section 139, 143, 144 or 145, the court or magistrate or the appellate court (as the case may be) shall as soon as

reasonably practicable send a notice in writing to the appropriate person stating that fact and the date on which it occurred and setting out the specified information.

(3) In this section -

"appropriate person" means -

(a) in the case of an offence alleged or proved to have been committed in relation to any premises or place other than a vessel, the Land Officer; and

(b) in the case of an offence alleged or proved to have been committed in relation to a vessel, the Director of Marine;

"specified information" means the address of the premises or place, or the identity of the vessel, in relation to which the offence is or was alleged or proved to have been committed and, where the alleged offence or the offence related to part of any premises, place or vessel, the location of that part."."

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

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

MUNICIPAL SERVICES APPEALS BOARDS BILL 1990

COMPANIES (AMENDMENT) (NO. 4) BILL 1990

COMPANIES (AMENDMENT) (NO. 5) BILL 1990

SECURITIES (INSIDER DEALING) BILL 1990, the original short title of which was the SECURITIES (INSIDER DEALING) BILL 1989

WATER POLLUTION CONTROL (AMENDMENT) BILL 1990

HOSPITAL AUTHORITY BILL 1990 and

CRIMES (AMENDMENT) BILL 1990, the original short title of which was the CRIMES (AMENDMENT) BILL 1989

had passed through Committee with amendments and

HANG LUNG BANK (ACQUISITION) (AMENDMENT) BILL 1990

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1990

COMMODITIES TRADING (AMENDMENT) BILL 1990

STOCK EXCHANGES UNIFICATION (AMENDMENT) BILL 1990 and

SECURITIES AND FUTURES COMMISSION ( AMENDMENT ) (NO. 2) BILL 1990

had passed through Committee without amendment and 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

MORRISON SCHOLARSHIPS FUND BILL 1990

Resumption of debate on Second Reading which was moved on 11 July 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

MORRISON SCHOLARSHIPS FUND BILL 1990

Clauses 1 to 15 were agreed to.

Council then resumed.

MR. SZETO reported that the

MORRISON SCHOLARSHIPS FUND BILL 1990

had passed through Committee without amendment. 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.

End of Session

HIS EXCELLENCY THE PRESIDENT: It is now 10.10 pm; that makes it the longest sitting of this Session. Members have shown great stamina in this Session and great speed at the end of this particular sitting. It has in fact been a Session with some very substantial business done. For those who are interested in statistics, the Council has passed a total of 90 Bills during the Session and that compares with 66 last Session. For amendment, the Council has passed a total of 410 amendments and 56 of those related to one particular Bill passed today.

The Council is not some sort of legislative Olympic games where we simply seek to set records. What these figures do show, I think, is the immense amount of hard,

detailed work done by Members of this Council, done not only for what happens in the Chamber, but also done outside this Chamber which is not seen by the two cameras looking down on us and which does not earn you any particular grading from some of those who report on the affairs of this Council. A great deal has been done during this year by Members of the Council who promote Hong Kong as an international financial and commercial centre; a great deal has been done by Members to make sure that British Members of Parliament, of the House of Commons in particular, have been kept fully up to date on what is happening in Hong Kong so that they know what is happening here when they pass any legislation affecting Hong Kong.

So, at the end of this long sitting, I should like most warmly to thank all Members of the Council for the immense amount of hard work done, and not simply those who sit in the Chamber but also those who sit outside the Chamber to back up the work done by this Council, without whom the work of the Council could not be carried out so effectively and efficiently as it is; and they have worked particularly hard today.

You have all, inside and outside the Chamber, earned a rest. I wish you a very happy summer and we shall meet again at 2.30 pm on Wednesday 10 October 1990.

Sitting adjourned accordingly at twelve minutes past Ten o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of Hong Kong Bill of Rights Bill 1990, Municipal Services Appeals Boards Bill 1990, Securities (Insider Dealing) Bill 1989, Securities and Futures Commission (Amendment) Bill 1990, Securities and Futures Commission (Amendment) (No. 2) Bill 1990, Hospital Authority Bill 1990 and Morrison Scholarships Fund Bill 1990, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.<sup>1</sup> HONG KONG LEGISLATIVE COUNCIL -- 25 July 1990

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