

1 HONG KONG LEGISLATIVE COUNCIL -- 28 November 1990

HONG KONG LEGISLATIVE COUNCIL -- 28 November 1990 1

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 28 November 1990

The Council met at half-past Two o'clock

PRESENT

HIS HONOUR THE DEPUTY TO THE GOVERNOR (PRESIDENT)

THE CHIEF SECRETARY

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

THE FINANCIAL SECRETARY

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

THE ATTORNEY GENERAL

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

THE HONOURABLE 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 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 POON CHI-FAI, J.P.

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

THE HONOURABLE SZETO WAH

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

THE HONOURABLE TAM YIU-CHUNG

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

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

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

THE HONOURABLE 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 RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE PAUL CHENG MING-FUN

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

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

THE HONOURABLE RONALD CHOW MEI-TAK

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

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, J.P.

DR THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

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

THE HONOURABLE KINGSLEY SIT HO-YIN

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

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

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

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

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

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

ABSENT

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

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

THE HONOURABLE TAI CHIN-WAH, J.P.

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

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

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation	L.N. No.
Dutiable Commodities Ordinance	
Dutiable Commodities (Amendment)	
Regulations 1990.....	358/90
Public Service Commission Ordinance	
Public Service Commission (Amendment)	
Regulations 1990.....	359/90
Registration of Persons Ordinance	
Registration of Persons (Application for	
New Identity Cards) (No. 18) Order 1990.....	362/90
Supreme Court Ordinance	
Rules of the Supreme Court (Amendment)	
(No. 2) Rules 1990.....	363/90
Hospital Authority Ordinance 1990	
Hospital Authority Ordinance 1990	
(Commencement) Notice 1990.....	364/90
Judicial Service Commission (Amendment)	
Ordinance 1990	
Judicial Service Commission (Amendment)	
Ordinance 1990 (Commencement) Notice 1990...	365/90
Merchant Shipping (Registration) Ordinance 1990	
Merchant Shipping (Registration) Ordinance	
1990 (Commencement) Notice 1990.....	366/90

British Nationality (Miscellaneous Provisions) (Amendment) Ordinance 1990	
British Nationality (Miscellaneous Provisions) (Amendment) Ordinance 1990	
(Commencement) Notice 1990.....	370/90

Sessional Papers 1990-91

No. 22 -- Report of Changes to the Approved Estimates of
Expenditure approved during the First Quarter of 1990-91
Public Finance Ordinance : Section 8

No. 23 -- Ocean Park Corporation Annual Report 1989-90

Addresses by Members

Report of Changes to the Approved Estimates of Expenditure approved during the First
Quarter of 1990-91
Public Finance Ordinance : Section 8

FINANCIAL SECRETARY: Sir, in accordance with section 8(8)(b) of the Public Finance
Ordinance, I now table for Members' information a summary of all changes made to the
approved estimates of expenditure for the first quarter of the financial year 1990-91.

Supplementary provision of \$55.5 million was approved. It was fully offset
either by savings under the same or other heads of expenditure or by the deletion
of funds under the Additional Commitments subheads.

Approved non-recurrent commitments were increased by \$314.1 million during the
period, and new non-recurrent commitments of \$78.1 million were also approved.

In the same period, a net increase of 1 483 posts was approved, including over

500 for hospitals.

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

Ocean Park Corporation Annual Report 1989-90

MR ARCULLI: Sir, tabled before the Council is the Ocean Park Corporation's Annual Report for 1989-90.

In the financial year to 30 June 1990, the Ocean Park (including Water World and Middle Kingdom) welcomed 2.15 million visitors, including 562 000 from overseas. This total attendance represented a 5% increase over the previous year and the highest annual attendance since the Park opened to the public in 1977.

Operating income rose to HK\$194 million and the net operating surplus was HK\$30 million. With the addition of income derived from the Corporation's investments, the surplus for the year totalled some HK\$42 million.

Ocean Park's accumulated deficit, which stood at HK\$51 million when the Park became an independent statutory body in 1987, was finally eliminated and replaced at 30 June 1990 with an accumulated surplus of HK\$41 million.

These excellent results have enabled the Corporation to fund further attractions, maintaining a recreational balance between education and entertainment.

At the end of January 1990 Middle Kingdom, a Chinese cultural and historical complex, opened to the public. It has been well received by local residents and visitors from overseas. The Park's exciting and educational Shark Aquarium has been completed and is about to open. Further plans include a Japanese Garden, a 70 metre Sky Tower on the Headland, a Merry-Go-Round in the children's area, and facilities enabling visitors to arrive by sea at Tai Shue Wan.

It has always been the Corporation's intention that admission fees should be adjusted once the Park reached a continuous level of operating success. This stage of the Park's development has been reached, and special adjustments have already been introduced to benefit family groups and senior citizens. The Park will continue to

review the situation, in order to increase value for money wherever possible as well as providing new facilities.

Finally, in relation to the Ocean Park Trust Fund, I am glad to be able to advise that the fund had a successful year and increased to nearly HK\$208 million as at 30 June 1990.

Oral answers to questions

Emergency measures by MTRC

1. MRS LAU asked: Can the Administration inform this Council whether and if so to what extent it is satisfied:

(a) that the emergency measures and safety procedures being adopted by the Mass Transit Railway Corporation (MTRC) are sufficient to ensure the safe and speedy evacuation of passengers from trains whilst inside the tunnel in the event of:

- (i) power failure;
- (ii) outbreak of fire; and
- (iii) breakdown in the control system; and

(b) that the types and frequency of drills being carried out by the Mass Transit Railway Corporation are sufficient to ensure that its staff members can cope with emergency situations efficiently?

SECRETARY FOR TRANSPORT: Sir, the Government is generally satisfied that the emergency measures and safety procedures adopted by the Mass Transit Railway Corporation are sufficient to ensure the safe and speedy evacuation of passengers during emergencies.

The Corporation has well established emergency procedures endorsed by the Fire Services and the police. These are set out in a procedural manual which is regularly reviewed and updated. In addition, there are separate evacuation plans for different

types of emergency situations.

All these plans and procedures have also been reviewed and endorsed independently by the Chief Inspecting Officer of Railways in the United Kingdom. He is the Hong Kong Government's appointed agent on railway safety and reports directly to the Government.

All MTR staff on stations and trains are trained in emergency procedures. They also receive refresher training regularly. Two major emergency drills are carried out each year, involving both the Fire Services and the police. In addition, the Corporation carries out regular checks on ventilation and power control systems and emergency lights. It also conducts smoke tests throughout the year to check the arrangements and procedures. Improvements are made to these systems as and when necessary.

Sir, although the Government is generally satisfied with the above arrangements, there is no room for complacency in matters of public safety. The Government will continue to ensure that the emergency equipment and safety procedures of the Corporation are being maintained at the highest possible standard and that measures to protect passenger safety are reviewed regularly, and improvements introduced wherever necessary.

MRS LAU: Sir, I understand that the MTRC has a special working relationship with the Fire Services Department and the police to deal with emergency situations. Would the Administration agree that there is also a need for the MTRC to set up a special working relationship with the electricity supply companies to deal with power failures?

SECRETARY FOR TRANSPORT: Yes, Sir, the MTRC is fully in touch with all relevant organizations including the utilities concerned. Of course, in emergencies, the most direct relationship is that between the MTRC and the Fire Services Department and the police and this is very much part of the central system. Apart from this, the MTRC maintains close liaison with all departments, including Transport, Highways, Electrical and Mechanical Services and other departments and also the utilities. So, there is a very close relationship between them.

Chinese illegal immigrants

2. MRS TU asked: Will the Government inform this Council:

(a) how many Initial Applications to Register for Identity Card (ROP 85) have been issued to Chinese illegal immigrants in the past three years;

(b) how many of these illegal immigrants have subsequently been permitted to remain in Hong Kong permanently;

(c) how many have been repatriated;

(d) how many are still using these temporary documents, and

(e) whether those still using these documents would be prosecuted if found working in Hong Kong?

SECRETARY FOR SECURITY: Sir, the Immigration Department issued 57 such application forms in 1988, 162 in 1989, and 2 149 in the first ten and a half months of this year.

So far 19 of those issued with the form ROP 85 have been allowed to stay in Hong Kong, and 396 have been repatriated. The remainder, including many who surfaced in recent weeks, are still being investigated. I expect that more will be repatriated in the near future once investigations into their cases are completed.

ROP 85 is a form of acknowledgement which indicates that the holder's immigration status is being investigated. Persons issued with such forms have not been given permission to take employment in Hong Kong. They are liable to prosecution if found working in Hong Kong.

MR TAM (in Cantonese): Sir, what are the criteria the Government adopts when issuing ROP85?

SECRETARY FOR SECURITY: Sir, the majority of those issued with form ROP 85 are minor children, who claim to have been born in Hong Kong -- something like 60% fall into that category. Of the remainder, the majority are mothers accompanying minor

children and about 15% are persons who claim to be former Hong Kong residents and whose claims are being investigated.

MRS TU: Sir, may I ask the Secretary whether any of the holders of these identity papers have been found involved in criminal activities?

SECRETARY FOR SECURITY: Sir, I regret that I do not have information on that. I will try to give Mrs TU a written reply. (Annex I)

Separate taxation for married couples

3. MRS CHOW asked: Will Government inform this Council whether it is aware of the concern resulting from the introduction of the system of separate taxation for married couples, and whether the undertaking the Financial Secretary gave in this Council on 19 July 1989 that "the Commissioner of Inland Revenue will identify and issue the appropriate notification in every case where it will be to the advantage of the married couple to elect to be jointly assessed so that no married couple will become worse off under separate taxation" has been carried out as promised?

FINANCIAL SECRETARY: Sir, the Government is aware of the concern expressed by some married women at their higher than expected salaries tax assessments for 1989-90 following the introduction of separate taxation for married couples.

The concern is mainly due to the fact that some married women, who had not elected in 1988-89 to receive separate notices of assessment for the tax attributable to their own income, had no provisional salaries tax for set-off in their assessments. A wife's income had been grouped together with that of her husband, and therefore, any provisional tax had already been charged and paid by the husband. Since there was no legal basis to apportion that provisional tax, the husband had been credited with the full amount, and would pay less in the current year of assessment. Nevertheless, no married couple will in total be required to pay more tax under the new system than they would have paid under the previous aggregation system. The Inland Revenue Department issued a press release on 13 November to explain this situation.

Sir, turning to the assurance given by me during the debate on the Bill, I am glad to report that a computer programme which identifies couples who would benefit from joint assessment is now fully operational. Already, some 30 000 joint assessment election advices have been issued to these couples. In this transitional year from aggregated family assessments to separate taxation, the Inland Revenue Department is taking every possible action to expedite the process, and the Commissioner is confident that all who should pay less tax under joint assessment will be notified before the due date for payment of the first tax instalment.

MRS CHOW: Sir, a lot of confusion and concern arose from the fact that separate notices for husband and wife were sent out at different times and therefore the recipients could not piece together the total picture. Will Government inform this Council when all notices will be sent out?

FINANCIAL SECRETARY: Sir, the Commissioner intends to get all separate assessment notifications out by 22 December 1990. Those who would be better off under joint assessment will receive a Joint Assessment Election Form by then. The Commissioner will take a liberal approach to those who file joint assessment elections late. The important point is that nobody will be made to pay more tax than is due under joint assessment, even temporarily.

MRS FAN: Sir, to make things absolutely clear, could the Financial Secretary advise whether this means that those who can benefit from joint assessment on receipt of their joint assessment advice could actually, if necessary, defer the first instalment payment of their tax?

FINANCIAL SECRETARY: Sir, I would hesitate to attempt to make things absolutely clear by a statement in this Council this afternoon. I think a lot depends upon the position of individual taxpayers. Individual taxpayers will be getting notices from the Commissioner; they will be able to assess their position in relation to those notices. If they have any doubts, they should contact the relevant officer in the Inland Revenue Department.

MRS TAM (in Cantonese): Sir, since the introduction of separate taxation, the Government has cancelled the working wife allowance previously enjoyed by married couples under joint assessment. Will the Secretary inform this Council of the number of families who elect joint assessment and will have to pay more taxes as a result of the cancellation of the working wife allowance? Will the Government consider allowing some married couples who elect joint assessment to enjoy the working wife allowance again so that they will not be so much affected by the change of policy?

FINANCIAL SECRETARY: With regard to the latter part of that question, Sir, I do not think it would be wise at all to reintroduce the working wife allowance. I think that would introduce additional complications into our system. I cannot give the figures that Mr TAM has asked for, but I will certainly check and give an answer to that part of the question in writing. (Annex II)

MR PETER WONG: Sir, will the Secretary please confirm that the Inland Revenue Department will continue to give the advice through the use of the computer program in the years to come to ensure that couples continue to pay the minimum tax?

FINANCIAL SECRETARY: Yes, Sir, I can give that confirmation.

MRS CHOW: Sir, given that the new system has only been introduced this year for the first time, will the Inland Revenue Department design an information campaign to ease the present confusion and widespread public concern, particularly in the form of giving consistent advice in answering queries through a hotline?

FINANCIAL SECRETARY: Sir, I think the Inland Revenue Department has given consistent advice. To what extent it has been disseminated I cannot really say. Certainly, the Commissioner has briefed the press very frequently over this particular matter. How often the press has reported this, I cannot say. My notes here suggest that taxation is not a sexy subject. There is no accounting for taste.

Drug Trafficking (Recovery of Proceeds) Ordinance

4. MR LI asked: Have the provisions of the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405, been used since their coming into operation last year, and, if so, with what results?

SECRETARY FOR SECURITY: Sir, since the Drug Trafficking (Recovery of Proceeds) Ordinance came into operation, its provisions have been used as follows:

(a) Under sections 10 and 11 of the Ordinance, 68 orders have been made by the courts for the restraint or charging of property which may be liable to confiscation as the proceeds of drug trafficking. The total value of property restrained or charged has been over \$240 million.

(b) Secondly, under section 3 of the Ordinance, 11 confiscation orders to a total value of over \$933,000 have been made. Of this amount, over \$306,000 has so far been recovered.

(c) Under section 20 of the Ordinance, the courts have made 253 orders for material to be made available to authorized officers for the purpose of investigations into drug trafficking.

(d) A total of 196 search warrants have been issued by the courts under section 21 of the Ordinance.

(e) A total of 145 disclosures of suspicious transactions have been made to the authorities under section 25(3) of the Ordinance.

(f) And finally, three people have been charged with money laundering offences under section 25 of the Ordinance.

MR LI: Sir, how do these results compare with the Government's expectations regarding the effectiveness of the Ordinance in fighting the drug trade?

SECRETARY FOR SECURITY: Sir, we believe that the results so far achieved are very encouraging. However, we are keeping the Ordinance under constant review. We are making efforts to increase the awareness of financial institutions and other

professions, which deal with financial transactions, of the risk of their being used for money laundering. I am sure that, with increased awareness, more information on suspect financial dealings will be forthcoming. But overall, we are well satisfied with the results so far achieved.

MR MCGREGOR: Sir, can the Government put a figure on the approximate value of drugs processed through Hong Kong as an estimate so that we can evaluate this figure which the Government has now provided?

SECRETARY FOR SECURITY: Sir, I regret that I am not able to supply that figure now. I will see if an estimate can be provided and given in writing.

MR LI: Sir, are current government resources, both human and financial, sufficient to wage an effective campaign against the drug trade?

SECRETARY FOR SECURITY: Yes, Sir, I believe so. We devote very considerable resources to this, both in the police and in the Customs and Excise Department. Swimmers' safety in non-gazetted beaches

5. DR IP asked: In order to ensure the safety of swimmers in non-gazetted beaches next summer, will the Government consider proposals restricting the transportation of passengers by motorboats to designated areas of or places on these beaches?

SECRETARY FOR ECONOMIC SERVICES: Sir, the designation of specific landing places for motorboats at non-gazetted beaches would not in itself ensure the safety of swimmers. This is because the waters adjacent to non-gazetted beaches are not marked off for swimming and motorboats will still be able to approach a designated landing place from any direction.

The only other option would seem to be to prohibit motorized vessels from entering the waters adjacent to a non-gazetted beach. However, the effect would be to deny many members of the public access to these areas, most of which are remote and not easily accessible by any other means. Such a measure would not seem to be justified

in view of the very few accidents involving swimmers from vessels operating in the waters of Hong Kong.

DR. IP: Sir, will Government then consider marking off one corner of these beaches and adjacent areas, so that motorboat access, as earlier mentioned, will not be denied, and yet accidents involving swimmers and vessels, though few as earlier mentioned, can be prevented with swimmers being able to enjoy swimming without fear of being run over?

SECRETARY FOR ECONOMIC SERVICES: Sir, I think the only way to ensure safety is for non-gazetted beaches to be gazetted as proper beaches. This is a matter for the Urban and Regional Councils to decide on the advice of the Urban Services and Regional Services Departments. I am sure that if specific proposals are put to these Departments they will consider them, having regard to safety considerations and resource implications.

Foreign domestic helpers

6. MRS LAM asked (in Cantonese): Will the Government inform this Council how the policy requiring a foreign domestic helper to return to her place of origin within two weeks after the termination of her contract is being enforced, and whether there is any plan to review this policy since it was implemented in 1987 ?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as regards the first part of the question, the Immigration Department is responsible for enforcing what has come to be known as the "two-week rule". At the present time, a foreign domestic helper is allowed to work in Hong Kong for a specific employer under an approved contract of employment. The duration of these contracts is normally two years. On arrival in Hong Kong, the domestic helper's passport is endorsed with a condition which allows her to remain in Hong Kong for 12 months or for two weeks after the termination of her contract, whichever is the earlier. At the end of the first 12 months, so long as the domestic helper continues to work for the same employer, her stay will be extended for another 12 months. At the end of the two years, the domestic helper may choose to enter into a new contract with the same employer or with another employer, or return to her

country of origin.

Problems may arise if the contract of employment is terminated prematurely. If the contract was terminated by the domestic helper herself, the "two-week rule" would apply unless the Director of Immigration is satisfied that she has a good reason for staying longer. In that event the Director would normally grant her an extension of stay. Similarly, if the contract was terminated by the employer under certain circumstances, the domestic helper may also be granted an extension of stay.

Sir, as regards the second part of the question, the Government has recently reviewed the "two-week rule". We are aware that foreign domestic helpers have argued that the existence of this rule inhibits them from making complaints about bad treatment by their employers, and that two weeks is in any case too short a period of time for the purpose of finding an alternative employer. We have examined these criticisms carefully, and have reached the conclusion that there are insufficient grounds for modifying the "two-week rule". In all cases where sufficient and self-evident reasons have been advanced in support of an extension of stay, permission is always given. Moreover, the "two-week rule" was never intended for the purpose of enabling domestic helpers to find alternative employers. It was introduced in 1987 as a necessary form of control against job-hopping. If a domestic helper has a valid reason to seek an alternative employer, she should go to the Labour Department for counselling, and to the Immigration Department to ascertain whether she may be permitted to find an alternative employer and granted an extension of stay. In the circumstances, the Government considers that the "two-week rule" must be maintained.

MRS LAM (in Cantonese): The answer given by the Honourable K Y YEUNG, Secretary for Education and Manpower, is based on the assumption that all foreign domestic helpers will return to their place of origin at the end, or within two weeks after the termination of their contracts. Will the Government inform this Council, if some of the helpers do not comply with this policy, how they can be detected? And what measures will the Government take to ensure that the helpers return to their place of origin?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as regards the first part of that question, if foreign domestic helpers overstay at the end of their contracts, or on the termination of their contracts, they are liable to prosecution for overstaying. As

regards how they are discovered in the process of overstaying, I am afraid that is an operational matter on which I must defer to my colleague the Secretary for Security.

SECRETARY FOR SECURITY: Sir, the Immigration Department would take steps to detect overstayers, primarily through regular inspections at places of employment and also through inspections at immigration control points. I should, perhaps, say that in 1988, 95 foreign domestic helpers were prosecuted for overstaying; in 1989, 287; and in the first 10 months of this year, 183. I think those figures indicate that, given the overall size of the foreign domestic helper population in Hong Kong, overstaying is not a serious problem.

MRS TU: Sir, is the Secretary for Education and Manpower aware that when an overseas domestic worker intends to institute legal proceedings against her employer, there are always delays in seeking legal aid and court proceedings are lengthy? And would he agree that, as the worker is unable to find a new employer to support her livelihood during the waiting period, this policy is tantamount to preventing her from taking legal action and is therefore a denial of her civil rights?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, if a foreign domestic helper is involved in civil litigation or claims made against her employer for non-payment of wages, the first step that the Government would take would be for the Immigration Department to grant her an extension of stay which goes beyond the normal two weeks. Whether in those circumstances she is also granted approval to take out employment with an alternative employer would depend on the circumstances of the case. But I believe that all cases are looked at sympathetically.

MR MCGREGOR: Sir, would the Secretary note that many people consider that the "two-week rule" should be changed to a "four-week rule" and, given the fact that the Secretary for Security has indicated that there is very little overstaying among the domestic helpers, that a longer period would be much fairer than the present system?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I have taken due note of Mr McGregor's suggestion but I am afraid I cannot agree with it. As I mentioned in my reply, the

"two-week rule" was not really intended to give foreign domestic helpers the time to look for alternative employment. If they have trouble with their current employer they can always go to the Labour Department for counselling and to the Immigration Department for permission to change their employer. They do not necessarily have to do that at the end of the contract.

MRS CHOW: Sir, given that the Secretary has said that the "two-week rule" was never intended to enable domestic helpers to find alternative employers, what would then constitute a good reason for granting an extension of stay beyond the two weeks?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, there are many circumstances under which the Director of Immigration will sympathetically consider granting an extension of stay. The most common reason is involvement in claims made against the employer, usually before the Labour Tribunal, for sums owing to the helper in respect of wages and passages. These claims and the need to await the award of the Labour Tribunal account for well over 80% of all approved extensions.

MR TAM (in Cantonese): How many foreign domestic helpers applied for extension of stay in the past three years, and how many of them were granted approval by the Director of Immigration?

SECRETARY FOR EDUCATION AND MANPOWER: I am afraid, Sir, I do not have the precise number of cases with me at this moment, but the figures look as if they are as follows:

In 1988 approaching 300 cases
In 1989 close to 700 cases
Up to the first 10 months
of this year close to 600 cases.

I shall provide the precise figures in writing to Mr TAM. (Annex III)

MR MCGREGOR: Sir, in regard to the Secretary's reply to my previous question, why is the Government so wary of giving the domestic helper rather more time to find a

new job? Is there something wrong with a domestic helper trying to find a new job with sufficient time available to do so, given the fact that she may find herself working for an employer with whom she simply cannot work?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, this brings into question the duration of the "two-week rule" and is therefore a matter of policy. As I mentioned earlier, the "two-week rule" was not introduced for the purpose of giving the foreign domestic helper the time during which to find an alternative employer. It is there because there is a need to stop job-hopping. At the moment, but for the imposition of the "two-week rule", there is nothing in the employment visa which stops the foreign domestic helper, on the termination of a contract, from remaining for the duration of the employment visa and going on to any other form of employment. Now this situation is quite plainly intolerable. The scheme would be completely deprived of any form of control. If a foreign domestic helper needs advice, she can go at any time to the Labour Department for counselling. She can also go at any time to the Immigration Department, during the two-year contract period, for permission to change her employer.

Real estate agencies

7. MISS LEUNG asked: Will Government inform this Council whether it will introduce measures to regulate real estate agencies which deal in property transactions in order to curb speculative and fraudulent practices and ensure a reasonable standard of service for the consumers?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, Government has considered instituting controls on speculative activities in property before, at periods which appeared to warrant such controls much more than now. It has always concluded that controls would be unnecessary and might not be desirable, that they would be disruptive to development financing and hence property supplies, and would probably do more harm than good to the economy. I believe it would reach the same conclusion in this context also.

However, complaints to the Consumer Council against property agencies for 1988-89, 89-90 and for the period from April 1990 up to now numbered 99, 77 and 76 respectively;

Independent Commission Against Corruption received 63 and 46 in 1989 and the first 10 months of 1990. These are not really high figures in relation to the tens of thousands of transactions done through some 2 500 companies but the sums of money involved can be very large. The Consumer Council is seriously concerned and proposes to make a study of property agencies early next year. I could not now anticipate whether the Council will recommend controlling legislation, but I can assure Miss LEUNG that its report will be taken very seriously.

MISS LEUNG (in Cantonese): The question I am going to raise consists of two parts. First, is the Government aware of the malpractice of some of the real estate agencies? Second, why does the Government not consider introducing legislation in the form of licensing control, or laying down a code of practice to monitor the operation of these agencies so as to safeguard the interests of the consumers (buyers) and the principals of the agents (sellers) in order that a healthy market for property transactions via real estate agencies can operate smoothly in Hong Kong?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, information on malpractices is certainly coming through in the form of complaints to the Consumer Council and also in complaints to the Independent Commission Against Corruption. But I think this matter is going along the right lines at present -- with the Consumer Council being called in. It is primarily a consumer matter and the Consumer Council, with the encouragement of the Independent Commission Against Corruption, and of the Government, is going to look at this. As a result of its report, the Administration will be able to get sensible, well-researched advice on the subject on which to base a decision as to whether to take legislative action. I think that covers both parts of Miss LEUNG's question.

MISS LEUNG (in Cantonese): Why does the Government ask the Consumer Council to examine the practice of real estate agencies instead of taking direct actions by, for example, setting up a working party or asking the Buildings and Lands Advisory Committee to study the matter? I raise this point because not only are consumers victims of these fraudulent practices but also the principals of the real estate agents who are not consumers.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Consumer Council itself is

a creature of this Government and its expenses are at least contributed to by this Government. It seems to me perfectly proper that the Government should look to that council for advice on consumer matters. As I said before in reply to Miss LEUNG's first supplementary question, in most cases where the Consumer Council has made reports, that can lead to executive action. Supposing that the Government were to set up an alternative machinery, that would involve also additional resources being put into this particular subject. Insofar as involvement of the Consumer Council and the follow-up by the Government provides a satisfactory machinery for action, I do not think it is a reasonable thing to expect alternative courses.

MISS LEUNG (in Cantonese): An Independent Commission Against Corruption delegation was in the United States and Canada in February 1989 to study the operation of the real estate agencies there. In July the same year, a well-written report on this subject was submitted. Will the Government inform this Council how this report has been dealt with?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, that report has never got in my direction; I cannot give this Council an answer to that question. I will see whether it in fact has ever reached the Government.

Emergency services at Kai Tak

8. MR PETER WONG asked: Will the Government inform the Council whether it is satisfied with the emergency services at Kai Tak International Airport?

SECRETARY FOR SECURITY: Sir, yes, Kai Tak International Airport complies fully with International Civil Aviation Organization (ICAO) standards and recommended practices regarding response time to emergencies and level of protection afforded.

Comprehensive plans exist to deal with all sorts of emergency situations. These plans are regularly updated and tested to ensure that all government departments and other agencies are aware of their duties and responsibilities, and are able to respond quickly and efficiently.

MR PETER WONG: Sir, apart from plans, does our airport possess fire appliances and emergency rescue and lifting equipment, both for use on land and at sea, to handle a full emergency in the event of a 747 crash -- a 747 crash if I may so stress?

SECRETARY FOR SECURITY: Sir, yes, the Fire Services Department personnel at the airport consists of 121 men, approximately 40 people on each shift. There is a fleet of 10 specially equipped vehicles, and there are also boats and life rafts for fire-fighting and the rescue of survivors in the water.

MR PETER WONG: Sir, I recall that the last time of a crash it took nearly a day to rescue people from the plane. That was why I stressed "a 747" -- the previous one was a Trident. Do we have the necessary equipment to handle a 747 emergency?

SECRETARY FOR SECURITY: Yes, Sir.

Written answers to questions

Refund of rates

9. MRS FAN asked: Will the Government inform this Council whether consideration will be given to amending section 30 of the Rating Ordinance (Cap 116) to remove the anomaly that a refund of rates may be made in respect of vacant non-domestic premises but not vacant domestic premises? If the answer is negative, what are the reasons?

FINANCIAL SECRETARY: In 1972, my predecessor explained to this Council that there were two compelling arguments in favour of charging at least a portion of the rates on unoccupied premises. The arguments still hold true today. Unoccupied premises are provided with services to the same extent as those which are occupied. Furthermore, charging rates on unoccupied domestic premises may deter landlords from keeping premises vacant. In addition, the administrative cost of actually refunding rates paid and inspecting vacant premises is fairly substantial.

The Rating Ordinance originally provided for a refund of half the rates paid to

be granted in respect of all unoccupied premises. Subsequently, during the 1973-74 Budget debate, Members expressed concern regarding the number of flats then vacant and argued that there was a tendency to "hoard" by developers seeking a capital appreciation and by landlords seeking to raise rents. In response, the Administration acknowledged that a case existed for amending the Rating Ordinance to provide for full rates to be applied to vacant domestic premises. The Rating Ordinance was later amended with effect from 1 January 1974 to charge full, rather than half, rates for vacant domestic premises.

These refund provisions have been reviewed regularly since 1974. However, bearing in mind the arguments which led to the refund provisions being amended in the first place, the Administration considers that the prevailing circumstances do not warrant a departure from the existing policy. The demand is still strong in most segments of the domestic property market. Any relaxation of the policy could lead to additional upward pressure being exerted on domestic rents. This is clearly not desirable.

Half refunds for vacant non-domestic premises have continued to be allowed because there has never been any indication that such premises are being held vacant with a view to influencing the market.

The Administration keeps the policy to rate unoccupied premises under constant review. The advice of the Executive Council will be sought if proposals are developed to change the present practices.

Residence of foreign domestic helpers

10. MRS TU: Will the Government inform this Council whether it has any plans to simplify the arrangements whereby a foreign domestic helper who has the consent of her employer to reside at another address will only need to submit a written application to the Commissioner for Labour, giving the alternative address and the employer's agreement and so on, instead of having to go through the process of amending the terms of the standard employment contract as required in clause 13 of the said contract ?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, clause 3 of the standard contract of employment provides that a foreign domestic helper shall reside and work at a

particular address, that is, the employer's address. This clause can be amended by mutual agreement. However, under clause 13, any variation of the terms of the contract would require the consent of the Commissioner for Labour.

The Labour Department has recently completed a review of the standard contract to see if it can be simplified. The department considers that changes to the domestic helper's place of residence can be approved in writing by the Commissioner for Labour without the need for a formal amendment of clause 3. A recommendation to this effect is now being examined by the Government Secretariat.

Motions

PUBLIC FINANCE ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:

"That with effect from 1 December 1990 -

- (a) this Council approves the establishment of a special suspense account to be known as the Electrical and Mechanical Services Department Suspense Account ("the Account");
- (b) the Account shall be employed in relation to the purchase and holding of materials for, and the provision of services by, the Electrical and Mechanical Services Department;
- (c) the Account shall be administered by the Financial Secretary who may delegate his power of administration to other public officers;
- (d) subject to paragraph (e), the Director of Accounting Services and any public officer authorized in writing by him may pay from public moneys such sums as may be necessary for the purchase of materials for the Electrical and Mechanical Services Department and debit the payments to the Account;
- (e) total payments made under paragraph (d) shall not exceed in respect of any period specified by the Financial Secretary such sum as he may determine; and

(f) the Account shall not at any time be in debt to an amount exceeding \$70,000,000 or such lesser sum as the Financial Secretary may determine."

He said: Sir, I move the motion standing in my name on the Order Paper. The purpose of the motion is to establish a special suspense account under section 30(1) of the Public Finance Ordinance for financing a single store in the Electrical and Mechanical Services Department (EMSD).

The Director of Electrical and Mechanical Services is responsible for the maintenance of air-conditioning, electrical and mechanical plant and equipment, electronic equipment and building services installations, and for the upkeep of a fleet of about 7 000 vehicles for all government departments, the municipal councils and the Housing Authority. At present, the materials and spare parts required for repair and maintenance work in the workshops are mainly drawn from two different stores, namely the Unallocated Stores of the Government Supplies Department and the EMSD Allocated Stores.

A review of the present arrangements has concluded that both the Unallocated and Allocated Stores should be merged to form one single store under the control of the Director of Electrical and Mechanical Services. This will provide a single source of funding and a single authority for determining the appropriate level of stock-holding. It will enable EMSD to provide a more efficient maintenance service and in particular, minimize the downtime of government vehicles. I propose, therefore, to establish a special suspense account under section 30(1) of the Public Finance Ordinance, for the purpose of financing a single store, instead of having two separate stores under two different departments as at present.

Section 30(1) of the Public Finance Ordinance provides that a special suspense account may be established for the purpose of any commercial or industrial activity carried on by or on behalf of the Government. Special suspense accounts for financing stores have already been established in the Government Supplies Department and the Correctional Services Industries.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

TRAFFIC ACCIDENT VICTIMS (ASSISTANCE FUND) ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE moved the following motion:

"That the Schedule to the Traffic Accident Victims (Assistance Fund) Ordinance be amended, with effect from 1 April 1991, as follows -

(a) in Part I, by repealing "\$30" in items 1, 2, 3, 4 and 5 and substituting in each case "\$48"; and

(b) in Part II, by repealing "\$10" in items 1, 2, 3 and 4 and substituting in each case "\$16"."

She said: Sir, I rise to move the motion standing in my name on the Order Paper. Its purpose is to seek the Council's approval for increasing the levies on vehicle and driving licences so that sufficient income will accrue to the Traffic Accident Victims Assistance Fund for disbursement to claimants.

The objective of the Traffic Accident Victims Assistance (TAVA) Scheme is to mitigate the financial hardship which may result from death or injury in traffic accidents. It is a welfare measure designed to provide immediate cash assistance to the victims of a traffic accident, or to his dependants in the case of death, without regard either to the means of the family or to any element of fault in respect of the cause of the accident.

The Scheme is financed by contributions from three sources: a levy on vehicle licences, a levy on driving licences and General Revenue.

Until 1985-86, annual revenue of the TAVA Fund exceeded annual expenditure and thus generated a surplus each year. The position was, however, reversed from 1986-87 onwards, resulting in annual deficits. This is mainly due to the increase in TAVA payment rates on the one hand, and the general downturn of bank interest rates on the other. The surplus of the Fund was further reduced by the withdrawal of some \$83.2 million in 1986 to finance the Supplementary TAVA Scheme. Expenditure of the Fund will increase further when a package of improvement to the Scheme is introduced in the first quarter of 1991. The latest projection indicates that if the levies are not increased, the Fund will be completely depleted by 1992-93. It is therefore proposed that the annual levy on vehicle licences should be increased from \$30 to \$48, whereas the annual levy on driving licences should be raised from \$10 to \$16.

If approved by this Council, the new rates will come into effect on 1 April 1991. The present law allows advance renewal of driving and vehicle licences four months before their expiry date. To prevent avoidance of the revised rates, they will also be applicable to advance renewals made before 1 April 1991 for a validity period commencing on or after that date.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

IMMIGRATION ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

"That section 18(3) and Parts VIIA and VIIB of the Immigration Ordinance shall expire on 31 December 1991."

He said: Sir, I move the motion standing in my name on the Order Paper. It seeks to extend section 18(3) and Parts VIIA and VIIB of the Immigration Ordinance for a further year.

Section 18(3) of the Immigration Ordinance was enacted in January 1979 to enable the Government to deal with the problem of Vietnamese asylum seekers. It removes the limit of two months during which an immigration officer may remove a person refused permission to land in Hong Kong, if it appears to the Director of Immigration that the person was previously resident in Vietnam. This subsection has been re-enacted annually and will expire on 31 December this year unless extended by resolution of this Council.

Parts VIIA and VIIB of the Ordinance were enacted in August 1979 to provide more effective sanctions against the traffic in illegal immigrants. Under these provisions, any person who aids illegal immigrants to enter Hong Kong commits an offence. Offenders are liable on conviction to a fine up to \$5 million and imprisonment for life, while the ships and other property involved are liable to forfeiture. These two parts have also been re-enacted annually and will expire on 31 December 1990 unless extended.

Sir, I believe these provisions are still necessary. So far this year, some 6 000 Vietnamese boat people have arrived in Hong Kong. Although it is encouraging to note that the number of arrivals has decreased considerably as compared with 1988 or 1989, the problem is likely to be with us for some time yet.

In these circumstances it is essential that we should have adequate powers to implement in full the procedure laid down in the Comprehensive Plan of Action for asylum seekers from Vietnam: to give temporary asylum, to screen new arrivals to determine their claim to refugee status, to resettle genuine refugees and to return non-refugees safely to their homes in Vietnam. This is a complex and difficult process. There are still some 30 000 Vietnamese boat people in our camps awaiting screening, and the process of status determination inevitably takes time. We are working hard to secure the return of non-refugees to Vietnam, and I am pleased to be able to say that the repatriation programme is now developing momentum. But however fast that programme develops -- and I hope it will develop very quickly -- the process of repatriating all the non-refugees will take time. We therefore need to retain section 18(3) to give ourselves and the United Nations High Commission for Refugees time to make repatriation work.

We have also to make arrangements with the Chinese to return as illegal immigrants all those Vietnamese, of whom there are now some 200 in Hong Kong, who have come here after previously being settled in China. We aim to secure their repatriation as early as possible, but this process too inevitably takes time.

Of even more concern, however, is the increase in the number of illegal immigrants from China this year. In the first 10 months of this year some 24 000 illegal immigrants were arrested, an increase of 91% when compared with the same period last year. Many of these illegal immigrants were arrested on construction sites or at other places of employment. Part of the reason for this recent surge in illegal immigration is deliberate misrepresentation and the spreading of false rumours by the "snakeheads" involved in the trafficking in illegal immigrants. It is necessary to retain strong sanctions against those who engage in this trade.

It is against this background that we need to retain these provisions of the Immigration Ordinance, at least for one more year. We shall review the position again before the end of 1991.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

Second Reading of Bills

ELECTORAL PROVISIONS (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MR ANDREW WONG: Sir, 1991 will be the milestone in Hong Kong's constitutional history as it is the first time that 18 seats of the Legislative Council will be returned from direct election through geographical constituencies. It is an important step in the development of Hong Kong's system of representative government and will constitute a major change to the composition of this legislature. The primary objective of the Electoral Provisions (Amendment) Bill 1990 is, therefore, to expand the scope of the Ordinance to make provisions for direct elections to the Legislative Council. The opportunity is also taken to clarify the disqualifications for nomination and election and make provisions for the registration of only the genuine residential addresses in the registration of electors.

An ad hoc group consisting of 17 Members of this Council was set up by this Council's In-House Meeting to study this Bill together with five other Bills which seek to update the Ordinances governing the functional constituencies of the Council, the election and operation of the municipal councils and district boards and electoral offences in the form of corrupt and illegal practices. The group met a total of 11 times including three times with the Administration before we made our recommendations to the In-House Meeting for endorsement. The views of all the district boards and the two municipal councils were invited and they were generally in support of the proposed amendments in the Bills. In addition, the group had met the representatives of one district board and one political organization.

In scrutinizing the Electoral Provisions (Amendment) Bill 1990, Members expressed concern on a number of broad issues and put forward recommendations to the Administration for consideration. Some of these recommendations could, however,

only be implemented after the 1991 elections. Since the Electoral Provisions (Amendment) Bill 1990 is closely related to the Legislative Council (Electoral Provisions) (Amendment) Bill 1990, most of my remarks here also apply to the latter Bill, the debate on which will be resumed subsequently.

The group suggested that an automatic voter registration system should be introduced by linking up the information stored in the computer systems of the Registration of Persons Division of the Immigration Department and the Registration and Electoral Office. Members appreciated that there were practical difficulties in introducing such a system having regard to the fact that the data were not stored in a single computer system and the residential addresses being kept by the Registration of Persons Division were not very up-to-date given the high mobility in Hong Kong. Members also noted that there was also the legal problem in transferring the information on criminal records kept by the police to the Registration and Electoral Office in order to ascertain the qualification of voters. Nevertheless, Members strongly recommended that an automatic voter registration system should be implemented for the elections after 1991.

To maintain impartiality of the conduct of elections, the group felt that there was a pressing need to set up an independent body which could take the form of an Election Commission or at least a Boundary Commission. Its main functions would be to draw up electoral boundaries, oversee the conduct of elections and deal with other election matters. Its power should be clearly defined and confined; particularly there ought to be legislative criteria governing the drawing of electoral boundaries. Although the ad hoc group thought that this should be implemented as early as possible, Members accepted the Administration's explanation that the establishment of such bodies would require detailed consideration and legislative backing and as a result could not be achieved before the 1991 elections.

The group noted that the existing Ordinances governing the elections of the three tiers of representative government were interwoven and the definitions contained in the Ordinances were all closely related to one another which would easily lead to confusion. For the sake of clarity, the group suggested that all the electoral provisions governing direct and indirect elections should be consolidated into a single Ordinance or in separate Ordinances in such a way that there was no duplication. In view of the time constraints and the magnitude and complexity of the drafting work involved, the group agreed not to pursue it for the 1991 elections. However, the group urged that, in the overall comprehensive review to be conducted after the 1991

elections, consideration should be given to rationalizing and tidying up the various pieces of legislation on electoral provisions. We are therefore seeking the Administration's commitment now to such a comprehensive review in due course.

In the course of deliberation, the group had sought clarifications on a number of points relating to the text of the Bill, for example, the terms of "established office" and "non-established office" which would replace "public office" in the existing disqualifications provisions and ascertained that the new disqualifications provisions would not forbid temporary staff and consultants employed by the Government standing for elections. The group also suggested to include in due course the key personnel of statutory public bodies in the proposed schedule of specific offices, who would be disqualified on account of the public functions they performed despite their independent status.

Clarifications were also sought on the meaning of principal place of residence which would be used as the basis of determining the geographical constituency to which the voters belonged and in particular how the Government could ensure that changes to the residential address would be reported by the voters. As a result of the clarification, a Committee stage amendment would be moved to bring the residence requirement in line with the Immigration Ordinance.

After lengthy discussion, the group also agreed with the Administration on some amendments to the Electoral Provisions (Amendment) Bill. The most important amendments are in respect of section 37 of the Electoral Provisions Ordinance (Cap 367) mooted by my honourable colleague, Mrs Miriam LAU, the deputy convener of the group. Similar amendments are also proposed and agreed with the Administration to section 35 of the Legislative Council (Electoral Provisions) Ordinance (Cap 381). The purpose of the amendments is to clarify the various circumstances arising from the determination of the court at the conclusion of the trial of an election petition. The new section 42 of the Bill would, as a result, be also amended following the proposed amendments to section 37 of the main Ordinance. I will briefly explain them when the Council goes into the Committee stage.

Sir, with these remarks, I support the motion.

MR MARTIN LEE: Sir, next year, Hong Kong will experience a historic change as the people of the territory will be voting for the first time in a democratic election

for 18 Members of this Council. In addition, they will have the opportunity to vote in democratic elections for two-thirds of the members of the district boards and one third of the members of the Urban and Regional Councils. I am afraid, however, Sir, that because of the short-sightedness of the British colonial administration here, no well-defined, clearly established legislative framework exists to ensure the fairness of these elections and minimize the political abuses that we are already beginning to see.

Though Hong Kong is to take its first -- albeit small -- step towards democracy next year, the Government is insisting on retaining the present framework of colonial laws. The democratic election of 18 Members of this Council will not on its own replace the colonial system; what is also critically needed is the establishment of a democratic environment which must provide, first, a democratic electoral process from which Members can be elected and, second, a democratic legislative process within this Council itself through which Bills are passed.

Rather than seeking to develop the institutions and practices that will enable Hong Kong people to rule Hong Kong, the Government has sought to stifle the development of democratic institutions and retain as many of its colonial powers as possible before 1997. For example, why does the Government refuse to allow more than two-thirds of the district board or one-third of the municipal council seats to be democratically elected? If we are to become masters of our own house, it is imperative that we have the opportunity to practise democracy on a local level and become confident of our own ability to administer our Government through democratic means.

One of the critical institutions that must be developed if Hong Kong people are to rule Hong Kong is the establishment of a clear, comprehensive, and fair system of electoral laws. Just as the rule of law has enabled business to prosper through fair competition, so the rule of law is vital to the management of fair and successful elections. The experience of democratic countries has shown that clear and comprehensive electoral legislation is necessary to prevent political abuse and manipulation of the electoral process.

We must try to develop such electoral laws now so that they will be firmly in place by 1997. These laws should be as clear and thorough as possible so that the precedents which are set and accepted in the territory will be carried on after 1997. Anchoring the electoral process in the firm foundation of law would provide

much-needed stability during the transition to Chinese rule. In addition, since Annex II of the Basic Law stipulates that our electoral practices "shall be specified by an electoral law," it would be best if the post-1997 HKSAR Government could continue a set of electoral laws that have been tested and proven before 1997. Since we are to have continuity in the Legislative Council under the "through train" agreement, we also need to have continuity in the laws regulating the election of Legislative Council Members.

The attitude of the Government, however, has been to dismiss calls for the establishment of a comprehensive framework of electoral laws this year. The Government claims that it has not had enough time to examine the various issues involved and that changes must wait until the 1995 elections. Yet, the Government has had almost three years since it announced in February of 1988 that we would have democratic elections to this Council in 1991. And, many aspects of the electoral laws have been under examination since 1984. How much time does the Government really need? I regret to say, Sir, that the problems of the Government stem not from a lack of time but from a lack of will.

Clearly, we should put the laws into place next year, so that if there are problems that need to be corrected, we will have time to do so before 1997. Furthermore, I am afraid that I have little confidence that the British Administration in future will give up any of the colonial powers that it currently is holding on to so tightly. The Government has shown no willingness to change. It has indicated that it may examine certain issues after the 1991 elections, yet, acutely aware of the lack of public support for its actions, the Government has made no commitment to conduct a public review similar to the reviews it conducted in 1984 and 1987. Hence, I fear that the effort of the Government to postpone the development of election laws until after 1991 will only result in their permanent rejection, at least in relation to some of them.

In devising a framework of electoral laws, we should seek to implement a system which would promote wide participation from a well informed electorate. The electorate should be able to choose from a pool of high-quality candidates who have had an opportunity to represent themselves to the public and who are committed to representing the broad interests of the people of Hong Kong.

Equally important, the electoral system must be one defined and controlled by the rule of law. Under the current colonial laws, the Governor has unbridled

discretion in many areas. In addition to his power to appoint large numbers of members to all three levels of government, the Governor has the unilateral power to:

- (1) disregard the principle of one-person, one-vote and declare any area of any size to be an electoral constituency for all levels of election;

- (2) decide how many members of each district board are to be elected and how many are to be appointed; and

- (3) amend the list of functional constituencies or change the make-up of any particular functional constituency.

The experience in other countries has been that such unregulated discretion often serves to invite political abuse. And, sad to say, we are beginning to see such abuses in Hong Kong with the gerrymandering of constituency boundaries. For example, New Territories East has been tentatively drawn so as to have over 65% more voters than the adjacent New Territories North.

Such a practice of giving the Governor unbridled discretion, furthermore, runs directly contrary to the principle of separation of powers. It is very important that we put into place now the separation of powers between the executive and legislature that we are to have after 1997. And, few things could be more contrary to balance of powers than to allow the executive complete discretion as to vital elements in the way the legislature is selected.

In light of the urgency of establishing a clear legislative framework for the 1991 elections, I am distressed by the narrow nature of this Bill and its failure to include meaningful reforms. I would like to outline eight major reforms which were discussed by the ad hoc group on the Bill, but which the Administration has refused to implement. With the exception of automatic voter registration and an election committee, all of these measures are currently present in British law and the law of many democratic countries. Sir, I agree with what the Honourable Andrew WONG has said about this topic: automatic voter registration and an election committee. The Government owes a much better explanation than it has thus far offered as to why they are refusing to implement such proven elements of British election law in Hong Kong. The eight matters are:

- (1) Implementing a system of automatic voter registration;

- (2) Allowing overseas voters to register and vote;
- (3) Establishing an independent Boundary Commission;
- (4) Enacting legislative criteria mandating that the principle of one-person, one-vote be respected;
- (5) Creating an independent electoral commission;
- (6) Allowing for a six-word occupation or organizational affiliation to appear on the ballot paper;
- (7) Lowering the voting age to 18 years; and
- (8) Granting the Legislative Council the power to decide the constitution of the districts boards and Legislative Council functional constituencies.

The first reform would be to implement a system of automatic voter registration. It is imperative to maximize the number of registered voters for 1991 to allow for a high participation rate among eligible voters. Under the Registration of Persons Ordinance, the Hong Kong Government already has in its computers all the necessary information to register voters: name, age, identity card number, address, and residence status. That list should automatically become the list of registered voters. Such a system of automatic registration worked very well in the recent democratic elections in Eastern Europe and allowed for very high voter participation. The Government has listed a few technical reasons why such a system might be difficult, but I have found those reasons to be highly unpersuasive.

The second reform concerns allowing Hong Kong citizens who have been living overseas for less than five years to vote in Legislative Council elections. Not only is the Government refusing to implement a postal ballot mechanism for overseas Hong Kong citizens, it is now pushing through an amendment in this Bill denying them the right even to register. The addition of section 8(a) to the Electoral Provisions Ordinance by clause 6 of this Bill takes away the right currently held by Hong Kong permanent residents to register as voters even though they are overseas. Sir, voting is one of a citizen's most basic rights. That right should not be stripped away because of a temporary absence from Hong Kong. For example, citizens of the United Kingdom maintain their right to vote in parliamentary elections even if they have been absent from the United Kingdom for up to 20 years. Clause 6 therefore represents

a step in the wrong direction and I would therefore vote against it.

Granting the right to vote to Hong Kong permanent residents temporarily overseas -- who have not yet naturalized and assumed voting rights in another country -- will strengthen the commitment and personal ties of these persons to Hong Kong. Voting is a very strong symbol of whether or not we consider these persons to still be members of the Hong Kong community. Overseas voters would vote in the district of their last residence.

The third reform would establish an independent Boundary Commission to demarcate electoral constituencies. As noted above, to continue to allow the executive branch unlimited discretion in determining the size and shape of electoral districts is to invite political abuse and gerrymandering. Rather than the Governor, an independent Boundary Commission should be responsible for making non-political decisions as to the shape of election districts. The report of this Boundary Commission would then be enacted into law by the Legislative Council.

Just as important as the establishment of an independent Boundary Commission is the enactment of legislative criteria that must be followed in drawing electoral districts. Such criteria are necessary whether or not the Boundary Commission is formed, for they will ensure that whoever is responsible for constituency demarcation will not abuse their discretion. The most important of these criteria would mandate the constituencies to be of equal population so that the principle of one-person, one-vote is respected.

The fifth reform concerns the creation of an independent electoral commission similar to that in Australia. Such a commission would mean that civil servants would not have to make decisions that are highly political in nature. The commission would assume responsibilities that are currently divided between several government departments. Its major responsibilities would be to promote public education, arbitrate disputes, and administer matters relating to registration and election expenses.

The sixth, seventh, and eighth reforms are before this Council today in the form of amendments, and I will speak on them when they are tabled at the Committee stage.

Before I conclude, I would like to say a few words by way of explanation as to why we have felt it necessary to table these amendments at the present time. At the

beginning of my speech, I referred to the necessity of creating a democratic environment within the Legislative Council. One practice that stands in the way of creating this environment is that of the Legislative Council In-House Meetings. These regular meetings, held on Friday afternoons to discuss the upcoming business for the Council, are held behind closed doors; and that is why they are called "in-house" meetings.

The public knows nothing about decisions reached or opinions expressed at these meetings except what three Members on a duty roster basis choose to tell the post-meeting press briefing.

Sir, this system clearly is a relic of history when every Member of this Council was appointed by the Governor. It worked beautifully in the older days when disagreement was rare, and the meetings were conducted in a congenial, club-like atmosphere.

But with the introduction of elected Members into this Council in 1985, this system of trying to achieve consensus behind closed doors began to show cracks. On controversial issues like the Daya Bay Nuclear Plant, democratic elections for 1988, and the former section 27 of the Public Order Ordinance relating to the publication of false news, there were heated debates during the relevant In-House Meetings. But the majority was able to impose its will on the minority without the public knowing about the reasons for these decisions.

What made it worse was the fact that on all these occasions, the majority view of the In-House Meeting was diametrically opposite to the view of the public.

It is true that on these occasions, many Members chose to speak during the actual debates in this Council, so that the press was able to report their views and the reasons for them. But there were quite a large number of Members who chose not to say anything at all and merely voted with the Administration.

Sir, with the introduction of democratic elections next autumn, we must take a completely fresh look at this system. For this is the age of transparency, and we can no longer afford to come to our decisions behind closed doors and still hope to have any credibility with our people.

As for the three amendments which will be introduced by the Honourable SZETO Wah

and myself at the Committee stage, I should stress that all were introduced in full compliance with the Standing Orders of this Council. They were discussed during the meetings of the ad hoc group, for example, when the group met with representatives from the United Democrats of Hong Kong. And they were brought up during last Friday's Legislative Council In-House Meeting under "any other business"; yet the meeting had decided not to discuss them as they considered that the amendments had not gone through the proper channel of the ad hoc group.

I can only hope that Honourable Members of this Council will look at the merits of these amendments during the Committee stage; for it would be a shame if these otherwise meritorious proposals were to be rejected by this Council merely because some Members felt that our manner was not in keeping with the usual practice of this Council. I trust Honourable Members will forget the inconvenience caused to them, listen to the speeches to be delivered on them, and come to a decision on their merits alone. For that is the only way for us to discharge our duties as legislators.

For all of the reasons I have outlined above, I feel compelled to vote against the series of electoral law Bills before this Council today. The Bills fail to establish the comprehensive and fair electoral framework that is so necessary if our first-ever democratic elections are truly to be successful. We are missing a critical opportunity to put into place the institutions and practices that will enable Hong Kong people at last to rule Hong Kong. And, I will remind my Honourable colleagues that these issues will not simply go away even with the passage of these Bills into law.

MR NGAI (in Cantonese): Hong Kong is a free society. Everyone enjoys freedoms of action and speech as long as he keeps himself within the bounds of law. The Legislative Council, however, is a political entity. Each of its Members is entrusted with the fundamental responsibilities of striving for the well-being of the residents and the community as a whole.

Today, some of our colleagues in this Council, those who always claim to stand for democracy and freedom, have assumed a course in open defiance of the spirit of democracy. They have ignored the convention of the Council by evading the procedure of democratic discussions in In-House Meetings to promote their own package. Their motive is simple enough. They do not want to have democratic discussions. Neither do they want to face the possibility of a majority with views different from theirs,

or further more, their proposals being vetoed. What is better than taking a by-pass to save the trouble of a debate in which they will have to meet the challenge and defend themselves. Alas, what a pity it is to find those who claim to be defenders of freedom and champions for democracy to resort to non-democratic means in realizing their personal goals.

Sir, political moves that deviate from the art of compromise will get nowhere as they are too high-sounding to win any support. Yet, some political advocates of democracy have, instead of learning the lesson from experience in the past, impulsively repeated the same mistake. It is better to say that they are working for more interesting materials about themselves than to say that they are undaunted in their acts.

Sir, I would like to register in specific terms my opposition against the Committee stage amendments to be moved by the Honourable SZETO Wah on lowering the voting age, since the proposed amendments have disregarded the deliberation and the findings of the Legislative Council ad hoc group and the operational functions of the Legislative Council In-House meetings. Such an arbitrary approach is absolutely contrary to our democratic political development and a clear relinquishment of the collective social responsibility shouldered by Council Members.

It is clearly regretful that such overweening subjectivism and arbitrary approach in handling matters, which is a departure from the spirit of conciliation and co-operation, will greatly hamper genuine democratic developments in Hong Kong.

As to the dispute over lowering the voting age to 18 years, a thorough discussion on the report of the ad hoc group was conducted at the Legislative Council In-House Meeting on 4 May 1990. Almost 70% of the Members present voted against lowering the voting age from 21 years to 18 years. It is noteworthy that the majority opposed the change and the resolution has been recorded clearly in the minutes of the meeting.

Judging from the above, we may say that amendments to be moved by the Honourable SZETO Wah is actually a vote of non-confidence to the integrity or the aptitude for voting of all our colleagues, or at least of those who were present at that particular In-House meeting in which the resolution was passed. Worse still, should the amendments to be moved by the Honourable SZETO Wah be endorsed, it will only show that our colleagues have wavered in their stand in a short span of six months and their resolution is a trifling game.

Sir, I always feel that young people at the age of 18 are still immature, as they are lack of social experience, and are more emotional and more vulnerable to incitation of political activists. It is therefore absolutely inappropriate to lower the voting age to 18 years.

As regards the other amendments to be moved by the Honourable Martin LEE and the Honourable SZETO Wah in respect of the Electoral Provisions (Amendment) Bill 1990 and the Legislative Council (Electoral Provisions) (Amendment) Bill 1990, I deem they are unnecessary.

Sir, I vote against the amendments to be moved by the Honourable SZETO Wah and the Honourable Martin LEE.

MR SZETO (in Cantonese): Sir, the three-tiered elections next year should be an important step in Hong Kong's progress towards democracy, a high degree of autonomy, and "one country, two systems", but there are quite a number of aspects in this Bill that run counter to such an objective. A mouse can never give birth to a cat. The Bill slows down Hong Kong's pace towards democracy, a high degree of autonomy, and "one country, two systems." Now, I would like to underline two of the points:

First, the absence of legislation for the establishment of an independent and fair election committee to take charge of issues such as the delineation of electoral districts may directly affect the major provisions governing election results. At present, these major provisions are all decided by the Government. The Government can be considered to be the ruling party. In which democratic country in the world would the ruling party determine such major provisions regarding elections? Actually, the Government should keep away from suspicions and by proposing to establish such an independent and fair election committee it can avoid being criticized for taking sides. However, not only has such a proposal not been put forward, it has even been turned down. What are the reasons?

Some people believe that there is too little time, and that the election committee should be established after 1991. This is not a question of time, but a question of courage. The next election will be held in 1995. By that time, the "through train" is already on the roll, and the "north wind" will be blowing more severely. If courage is lost even now, would there still be courage then? Would the election committee

established at that time still be independent and fair? "By the time one feels cold, the winter has already set in, and pines and cypresses have already withered." By that time, how many pines and cypresses that have not withered will be left?

Second, the voting age is kept at 21, and the strong demands for changing it to 18 have not been accepted. This is unreasonable from the viewpoint of logic alone.

Apart from voting, other laws have stipulated the changing of the statutory age from 21 to 18. Then why is such a change not made in the case of elections? An 18-year-old youth can become a director of a registered company. If the company has voting rights in the functional constituencies, then he can be appointed a voter. Then, why do young people between 18 and 20 have to be divided into two categories, with one category being stripped of their rights, while the other category being given special rights?

According to the Constitution of the People's Republic of China, 18-year-old citizens have voting rights. According to the Basic Law, National People's Congress deputies of the Special Administrative Region will be elected in the SAR in the future. In the NPC deputies election in the SAR at that time, would it not be a violation of the Constitution if it were still stipulated that persons would have the right to vote only after they turn 21? Why would 18-year-old youths have the right to elect NPC deputies but not have the right to vote in the three-tiered council elections? If 18-year-old youths are still considered to be not mature enough, then is it that immature persons can elect NPC deputies but cannot elect members of the three-tiered councils? Would it not represent an insult to NPC deputies? I want to respond to what someone has just said about doing one thing under cover of another. In fact, there is nothing to cover in changing the voting age from 21 to 18. It is open and above board. In the last few years, some people have discussed this issue. Furthermore, someone said that issues voted and decided on in the Legislative Council In-House cannot be put forward here. Then, what is the purpose of this meeting? Can this meeting be replaced by In-House meetings? Can the voices of a small number of people be totally strangled in the Legislative Council In-House meetings? Is the person who has put forward this accusation today trying to strangle the voices of a small number of people in the In-House meetings?

Sir, with these remarks, and I do not support the motion.

MR CHOW (in Cantonese): Sir, American historian R.R. PALMER was of the view that the French Revolution was one of the aspects of the democratic revolution on the Atlantic seaboard. That era included the independence of the United States, the parliamentary reform of Ireland and England, and also the revolution that swept through Europe in 1848. The historical significance of the democratic campaign in China in 1989 was that it also inherited the past and ushered in the future, and that it broadly spread the thinking of freedom, democracy, rule of law, and human rights. Another great creation of the French Revolution was the formulation of the Human Rights Declaration, of which the most memorable was the stipulation in the declaration that: "The entire basis of sovereignty vests with the people. No organization or individual may exercise authority which does not clearly come from the people." From this, we can see that as early as 201 years ago, the French people had already formulated a basic interpretation of democracy. In fact, this interpretation happens to coincide with the "Hong Kong people ruling Hong Kong" concept stressed by the Government of China and Britain. To the people of Hong Kong, the year 1991 is also of great historic significance, for in the Legislative Council of this territory whose sovereignty will soon be returned to China, there will be the historic appearance of councillors returned by direct elections. Article 68 of the Basic Law also points out that the legislature will be constituted by elections, and that the objective of returning all councillors through general elections will be ultimately achieved. The 1991 direct elections to the Legislative Council is the first step towards this new cornerstone. It is a pity that some parts of the present Bill clearly violate the Human Rights Declaration and hinder the pace of representative government towards the democratic goal. These main points have been pointed out by Mr Martin LEE and Mr SZETO Wah.

We see that in the three-tiered structure, the district boards, the Urban Council, and the Regional Council will still have an appointment system -- an anachronism indeed. When we get to the two Bills relating to the two municipal councils later, I will put forward some more of my views. Sir, I will cast a dissenting vote against this Bill.

MRS LAU: Sir, when dealing with the Electoral Provisions (Amendment) Bill 1990 and the five other related Bills for that matter, one major consideration was the practicality of incorporating radical changes to our existing electoral legislation bearing in mind the very real need of having the amendments enacted like yesterday to deal with the elections which are just around the corner.

It is true that the ad hoc group did find certain proposals for improvement to our election system attractive, in particular the proposals for automatic voter registration and the setting up of an Electoral Commission or Boundary Commission. The Administration maintains that it is impractical at the present stage to adopt the proposals but has agreed that some of them will be considered when the comprehensive review is carried out after the 1991 elections. Personally I believe that many of these proposals, if implemented, would go a long way towards improving our election system. But at the same time, I appreciate that any changes to existing established systems must be thoroughly thought out and carefully planned. The reality of the matter is that many of these proposals, though ideal as a matter of principle, are lacking in detail and still need to be carefully worked out. Even if we assume that the Administration goes along with these proposals, which is not yet the case, we will have to await the Administration to work out the detailed framework. Can we really afford to hold up these six Bills? In the circumstances, we will have to strike a balance between what is ideal and what can realistically be attainable bearing in mind the exigency of the matter. I therefore accept with some reluctance the Administration's agreement to look into these proposals at a later stage. But I do urge the Administration to act expeditiously and not to leave matters until the eleventh hour. If a decision should be taken to implement any of these proposals, the necessary mechanism for implementation must be in place in good time for the 1995 elections.

Sir, in my view, our immediate target is to make the 1991 elections a success. There is no magic formula that if we should now adopt the major reforms suggested by the Honourable Martin LEE, automatic voter registration, boundary commission and so on, our 1991 election will be a success and that voters' turn-out will be good. In my view what is more important is that we should focus our attention on encouraging voters who have taken the trouble to register to turn up at the polling stations to vote. What is equally important is that we must ensure that our electoral provisions are clear and unequivocal so that prospective candidates can get on with their preparation for the elections. For the purpose of the present exercise, our first and foremost task is to remove all ambiguities and plug all loopholes in our legislative framework. Hopefully by doing so, we will be able to reduce the numbers of unnecessary election petitions that may be brought at the end of the day to challenge election results. Moreover, if the legislative provisions are clear, this would enable prospective candidates to know exactly where they stand and what they ought or ought not to do.

Sir, having participated in the ad hoc group to scrutinize these six Bills, I am quite convinced that there is a real need to redraft the entire set of electoral laws to streamline all the electoral provisions dealing with direct and indirect elections in all three tiers of government. At the moment, a prospective candidate will have to cross-refer to two or more Ordinances before he can hope to find out which provisions apply to him. And there is considerable duplication between different Ordinances. This is not only cumbersome but at times confusing. I appreciate that such a redrafting exercise as I mentioned earlier is a mammoth task which takes time and I accept that I cannot realistically insist that it be done now. However, I firmly believe that this is something that the Administration must deal with as a matter of priority immediately after the 1991 elections and I so urge.

Sir, with these remarks, I support the Electoral Provisions (Amendment) Bill and the five other related Bills.

DR LEONG: Sir, I would like to start by resounding the feelings of the Honourable Martin LEE that, whilst on the one hand, it appears to be promotion for the development of a representative government by the Hong Kong Administration, yet on the other, there is no provision for an environment to nurture a democratic reform. I do feel that at least three final areas should be studied in more detail. These are: (i) the setting up of an independent election commission or a boundary commission as suggested by the ad hoc group, (ii) a review of the sweeping power of the Governor over election matters and (iii) a study of the role of political parties.

With respect, Sir, I think there should be some kind of definition to the power that the Governor should enjoy over election matters. It is evident that in the event of more and more direct elections in the coming years to various government bodies, the role of political parties would become more and more important. The apparent overlooking of this issue will bring to Government a bad image. It seems as if it were committed and not sincere enough to push for more representative government for Hong Kong people. It is sardonical for Government on one hand to repeatedly call on Hong Kong people to take an active part in next year's election and on the other hand fail to set up a lighthouse, as it were, to guide individual candidates and political groups in future elections. For example, Sir, how can a candidate decide when to kick off an election campaign if he is not sure whether he can afford the legal fees when being accused of jumping the gun and charged? How can a candidate

be sure that any of the steps he takes will not violate election law? Sir, in amending the six election and election-related Ordinances today, Government, I think, has made two big omissions in the process of the review. One of these is that it has failed to review the sweeping power on election. Few governments, Sir, enjoy such power as the Hong Kong Government in determining and reviewing the number of constituencies and their boundaries so easily. It is a job that should be dedicated to an election commission instead. Government must be fair or seen to be impartial. Another is that the review did not result in Government extending a helping hand long enough to the interested parties or persons in the next year's election. There is no election manual to save the interested from the likely legal booby-traps to save the process of election. It will be too late for a candidate to consult his lawyers only after he has fallen into these traps.

I would like further to stress two particular issues. Firstly, it is an independent election commission. To maintain the impartiality of Government in election, it should set up an independent election commission to oversee election matters and take care of things like number of constituencies, their boundaries, alignment and re-alignment. I would like, Sir, also to take up the issue of voting age since it has been mentioned by a few of my honourable colleagues.

Despite a review on the lowering of the voting age having been done in May, I think it is necessary for me and my honourable colleagues to address this issue again, namely, that the voting age should really be lowered from 21 to 18. I think it is absurd that while 18-year-olds are told they could do certain things their parents could do at the age of 18, on the other hand they were told that they were still not mature to perform some other civic duties like voting in elections. I believe that the 18-year-olds are both mature internally and externally. By that I mean they are physically and socially mature enough to take up responsibilities. Let me caution here that, over a relatively short period of time, a political system new to Hong Kong will come into being. Among its features is a high degree of mass participation. Young people must be encouraged and allowed to shape their own destiny.

Sir, time is running short and we simply cannot wait until the advent of 1995, the last election year before the change-over of Government, before we start any detailed review. Lastly, Sir, I have reservation on our Government, or even Her Majesty's Government, who have emphasized repeatedly the importance of next year's election and stressed that it is vital to have them launched successfully. We have also heard that the success of this election would serve as a yardstick for further

democratization in this territory. But with only a half-hearted review of election laws, I doubt whether Government could really make this election a success.

MISS LEUNG (in Cantonese): I agree with the various points that Dr C.H. LEONG has put forward just now. In today's debate, I would only like to raise two points.

First, we should establish an independent and fair election committee as soon as possible to take charge of election matters and to ensure the fair handling of matters relating to the election Ordinances, the classification of functional constituency seats and the delineation of electoral boundaries. With regard to the Legislative Council direct elections in 1991, it may be too late to re-delineate electoral boundaries and decide on the classification of functional seats if the election committee is to be established in time, but I still hope that the Government will try to establish that committee before the 1991 direct elections to the Legislative Council so that it can handle complaints pertaining to elections before the elections are actually held.

Second, with regard to the lowering of the voting age from 21 to 18, I agree very much with the opinions that Dr C. H. LEONG and Mr SZETO Wah have expressed. Actually, during this Council's debate on the Law Reform (The Legal Effect of Age) Bill 1989 on 16 May this year, I also expressed similar opinions on these issues.

At that time, I disclosed that the ad hoc group formed to scrutinize that Bill had suggested that the two proposals of lowering the voting age and the age to marry without parental consent from 21 to 18 be included in the Bill then. However, as Mr S. K. NGAI has said, those proposals were vetoed by a large majority in the In-House meeting, and the reasons for the veto, as I then disclosed and as Mr NGAI has said a moment ago, were that youths between 18 and 21 are as yet incapable of reasoned thinking and are not mature enough to discharge the obligations of the adult.

Sir, Mr NGAI stressed that youths between 18 and 21 are not yet mentally mature, are emotionally unstable, and can easily be manipulated by politicians. I feel that these reasons are annoying, laughable, and regrettable. If, as Mr NGAI said, youths between 18 and 21 should not be entitled to the right of voting because they are emotionally unstable, would it then be necessary for all voters to undergo a psychological test before elections are held so that they can vote? Furthermore, if there is the fear that these people would be manipulated by politicians, then why

would people of other age groups not be manipulated by politicians? Mr NGAI is also a member of a political organization that has newly been established in Hong Kong. It is patent that it would be impossible to manipulate any voters of any age group. All that a candidate can do is to "sell" himself and his platform in the hope that electors will vote for him.

The reasons put forward by Mr NGAI just now to attack Mr SZETO Wah's proposal that the voting age be lowered from 21 to 18 have caused me deep regrets. I would like to reiterate my views expressed to this Council on 16 May this year on the lowering of the voting age, on which Mr SZETO Wah expressed similar views a moment ago. At present, in Hong Kong's sovereign state, that is, Britain which practises a form of welfare capitalism, the prescribed voting age is 18. We are making preparations for the territory's reversion to the motherland in seven years, and China, which is in the initial stage of the implementation of socialism, has also stipulated the voting age at 18. Apart from a small number of countries and regions, whose statutory voting age is at the more conservative 21, most countries and regions in the world have prescribed the statutory voting age at 18. Why does Hong Kong not follow suit?

Looking back at Hong Kong's current development, many youths between 18 and 21 have already undergone nine years of free and compulsory education, and most of them are continuing to pursue further studies. Compared to youths of the same age who are entitled to the statutory voting right in other parts of the world, and compared to older persons who are entitled to the statutory voting right in Hong Kong, especially elderly people, these youths, who are between 18 and 21, are generally equipped with better knowledge and broader experience, and they can adapt better to the rapidly developing world today. How can we say that they are not even capable of voting for the spokesmen of their choice? Sir, therefore, I feel that Hong Kong's statutory voting age should be lowered from 21 to 18 as soon as possible.

Sir, in a statement to this Council on 21 March this year on the development of representative government, the Chief Secretary pointed out that the Government discovered that young people had yet to fully come forward to become voters. That was the experience that the Government gathered from the registration of voters. Therefore, the Government decided to retain the voting age at 21 at this stage, but it would consider the lowering of the voting age to 18 in 1995.

Actually, we have never had any experience in letting youths between 18 to 21 register as voters. Hence, there is basically no data in this respect to support

the idea that young people between 18 and 21 should not be allowed to register as voters. Even if it is discovered that people of a certain age group have a lower voters' registration rate, this reason must not be employed to strip people of that particular age group of their registration rights. Therefore, Sir, I feel that the reasons put forward by the Chief Secretary then are unacceptable.

If we really hope to encourage the younger generation to participate actively in the operation of representative government and to promote the development of democracy, then I feel that the voting age should be lowered from 21 to 18.

MR MCGREGOR: Mr President, I agree with all the main points made by my honourable friend, Mr Martin LEE, in his sensible, and indeed inspiring, main address to this Council. It is a pity that this Council did not find it possible at the in-house stage to accept the proposals he has outlined which would have made for a more open and fair electoral system and a more open and fair constitutional system. However, decisions have been made and those of us who believe deeply in democratic freedom must consider how best now to proceed.

There is an opportunity today to express our personal views on a few of these issues and I will personally vote according to my conscience, and to my understanding of what is right and what is wrong. Specifically, I want to put on record, again in this Council, that I believe that the Government did make a mistake in not accepting the proposition that the voting age should be lowered to 18. I need not repeat the reasons for such a proposition as these are well known and documented. It is not, however, too late to rectify the situation. I believe that our young people are perfectly capable of judging for themselves who should represent the people of Hong Kong at all three levels of government, and to vote accordingly.

I will therefore strongly support the amendment now proposed that the voting age be reduced from 21 to 18. Thank you.

MR TIEN: Sir, next September, there will be 60 Members of this Council, of whom 18 will sit as the result of direct elections. Provided the voter is over 21, with some seven years' residence in the territory, he or she will be eligible to participate. Overall, we are considering about 3.6 million persons with full political rights.

It is difficult to over-estimate the importance of this change. We must recognize that Hong Kong is moving ahead into what are for it new and largely uncharted waters.

Sir, the question of the composition of the district boards together with the entitlement to vote are not to be dismissed too simplistically. Let me therefore explain why I do not support the argument to open up all district board seats for direct elections only. As we know, one has to be a resident in an area in order to vote. Hence those who do not live in an area, even if they work there, are disqualified. This is unfortunate. After all, the prosperity and well-being of any district are to be shared by residents who live there at night and by people who work there in the daytime. If these people do not reside in the area, then they have no say at all in discussing and deciding upon the amenities provided or not provided. Matters such as garbage collection and the siting of a bus stop, amongst many others, are nevertheless of great importance to the residents of the district. However, matters such as traffic congestion, job provision and pollution are equally important to the restaurant owners, industrialists and bankers who use the district in the daytime. When we have a mixture of elected and appointed members, we solve this problem. Appointed members from a local district, whilst exercising their freedom of right not to run in elections, can contribute their expertise for the welfare of the district. Political progress should proceed on the basis of including everyone in, not in keeping everyone else out.

Sir, there are also some depressing signs that Hong Kong has not really abandoned its old political apathy. Out of some 3.6 million eligible and possible voters, only about 1.6 million are on the electoral roll.

In order to improve the situation, a campaign has been mounted to stimulate a measure of interest in registration. The figures released however indicate that the campaign -- conducted between August 15 and November -- has recruited only 280 000 new names.

Let us not forget that people who change their addresses also re-register, as it were. Ironically, therefore, the progress of democracy in Hong Kong seems to rest upon the state of the housing market and, perhaps, upon the knowledge of the Post Office.

Sir, I have already queried our present system in my recent question on compulsory

voting. The more I consider the subject the more I am convinced that we should not let this subject drop simply.

I have looked at the pattern of turn-outs in recent elections. What emerges is quite unsatisfactory. In 1989, for example, if we consider the two municipal councils, only just over 17% of the potential electorate presented themselves at the polling booth. In other words, 83% of the voters did not even bother. In the district board elections, there has been a steady drop in turn-out from nearly 40% in 1982 to 30% in 1988.

At present under half of the electorate has not registered. If half of these 1.6 million actually registered then actually vote, we may expect, say, 800 000 persons will turn out to elect these 18 hopefuls next year.

These 18 may be tempted to argue that they have been popularly elected. In fact, if past experience is any guide, they will be hard put to it that they have a real claim to popular representation.

I would hazard a guess that next year's turn-out would be about 30%. Traditional apathy is still strong, and those intending to leave have little interest. Voter shyness is a particular Hong Kong problem. Research overseas has shown that those who do not vote are those who are in most need of help.

Now whatever Hong Kong is -- it is a town of winners. Nobody likes to lose. His Excellency the Governor wisely told us to be prepared to lose. There is no dishonour in losing. With respect, our people do feel losing as a serious hurt. But those who are fortunate enough to win will, in many cases, win by small numbers -- down to 10% of votes cast. So even for those who do win, it will be a very thin victory indeed. So the "victors" must resist the temptation to gloat. But their credibility and their version of democracy are at stake. The concepts of "one country, two systems" and "Hong Kong people governing Hong Kong" are also at stake. In Australia, with compulsory voting, the electorate shows a turn-out rate of 96%. We should not be satisfied with a rate of, say, 30% here.

After all, democracy needs voters, the raw material of democracy. Let us help them supply it. I now come back to my original idea of introducing some measure of voting encouraged by Government.

We can use either the stick or the carrot. Compulsory voting is the stick, but rewarding people for voting is the carrot. I have already raised the question of compulsory voting, only to be told that this is not acceptable to Government. But in Australia, where compulsory voting is in force, over 70% of the voters like it. If you do not have compulsory voting, how can the voters know whether they approve of it or not.

A more considered look at this question is required. Fining people who do not vote might not be the ideal solution. However, we should not just give up because the ideal eludes us. I would like to suggest that the Administration considers some methods of making voting attractive here in a city not yet used to voting.

Sir, elections in Hong Kong are here, and here to stay. But we are new at the game. I would draw attention however to our need to try to combat electoral shyness amongst our people.

MRS TU: Sir, I support the amendments proposed by Mr Andrew WONG. I deplored and said so clearly to the Administration in our ad hoc group meetings -- I deplored the fact that the Government has been dilatory in not considering earlier some of the proposals which Mr WONG has listed for discussion after 1991. The ad hoc group has indeed urged the Government to move more quickly on our proposals immediately after the 1991 elections. Those of us who attended most of the meetings of the ad hoc group -- and I emphasize those who regularly attended -- agreed that further amendments to all these Bills should be addressed as soon as possible after September next year. I agree in principle with most of the proposals made by Mr Martin LEE. As indeed he himself attended most of the meetings he will know that the old ad hoc group has already proposed most of them. The amendments proposed by Mr LEE and Mr SZETO today were first mentioned last Friday at the In-House Meeting and some of us had to obtain the details of the amendments from today's newspapers. That was too late for any of our elected Members to consult their constituencies about the matter. I therefore intend to support the amendments of the Bill as proposed by Mr WONG on the understanding that there will be further amendments after the 1991 elections.

MR PETER WONG: Sir, the Electoral Provisions (Amendment) Bill 1990 is highly technical and difficult to understand. Regrettably we have to wrestle with legal mumbo-jumbo

like -- "member" means a person who has been elected to act as a member but does not include an elected member. It is little wonder that many bitterly fought court battles, focussing on the interpretation of legal terms with ambiguous meanings, have sought to upset the ballot box results. It would seem that everything we now do to attempt to clarify the legislation before us will have to stand the trials of the ingenuity of the legal profession in the aftermath of the elections to come. This will apply to vexed questions like what is an election expense and within what period it is incurred. The legislation offers no clear answer and we have been fobbed off with the oft repeated excuse that we do not have enough time and we will try to do something better for the next elections, and I repeat "oft repeated".

Such problems had surfaced in relation to the definition in section 19(1)(a) of a "public office", and the amendment seeks to clarify what is or is not in reality a civil servant whose job and loyalty will put him in conflict with his role if elected as a legislator.

The solution arrived at, as set out in the amendment, is by way of disqualifying holders of "established, non-established and judicial offices," as well as holders of "any office as specified in the schedule".

I would welcome the Administration putting on record the precise meaning of these terms. I would also seek confirmation that board members of the myriad of statutory bodies under which Hong Kong people render community services, either for free or honoraria, are not thereby innocently caught and penalized for fulfilling their civic responsibility.

I would also request that when the Returning Officer receives the nominations, this intricate hazard be specifically pointed out and explained to candidates so that he can seek his own advice as to his own situation.

I would also draw attention to section 19(b) of the existing Ordinance which denies a convicted criminal while serving his sentence his basic right to vote in an election. I see no reason why this very fundamental right should be even denied.

Sir, with these remarks and the reasons explained by the Honourable Mrs Miriam LAU, I reluctantly support the motion because there are many matters which are necessary to run an election in this amendment.

MR CHEONG: Sir, first of all allow me to thank you for letting me speak at such short notice and, secondly, I would like to seek my colleagues' indulgence to listen to one more speech. I promise that my speech will not be long.

Sir, in the absence of the Honourable Allen LEE, I suppose I can claim today that I am the longest serving Member in this Council which is trying its best to serve Hong Kong and its people and, as such, I feel duty bound at least to respond to the Honourable Martin LEE on the subject of Legislative Council In-House meetings raised by him. If I am not mistaken, Mr LEE seems to infer in his speech that, since the In-House meeting is not open to the public, hence it is a relic of the appointments system and, as such, it is undemocratic. It has not served the public interest of Hong Kong and need not be respected. Whilst Mr LEE is perfectly entitled to his view, it is extremely misleading to infer that the In-House meeting discussions have been coerced or forged by Government. This, I am sure, all my other honourable colleagues will take extreme exception to as being an unjustified inference as to their integrity, because that should not be questioned.

Sir, the In-House meeting, may I take this opportunity to explain, is no more than a system of working -- a means to try to bring many diverse Members together to exchange views and to try to achieve the maximum benefit of collective wisdom. Within the In-House meeting's rules, whether during the days of the appointment system or now as a mixture of appointment and elected systems, I have never detected nor, I think, will I in future detect any attempt whatsoever to coerce or to subdue any minority views whatsoever. What we try to do in In-House meetings, in the case of this electoral provisions Bill or any other Bill for that matter, is simply to try to put together diverse views for the benefit of Members. When we bring any amendments to this particular Council this way, the rationale will be fully understood and the legislative process will be much more open.

Sir, I will not speak any longer in this particular episode. What some of my colleagues did was that they saw fit not to raise it at any In-House meeting whatsoever, so that the rest of our colleagues did not know and understand why such an amendment was coming up. There was no chance for these amendments to be discussed in earnest and in sincerity and that was why, during the last In-House meeting, there was heated debate on this point. There was no attempt whatsoever to prevent Members from putting up whatever amendments they wished to put up. In any case it is up to you, Sir, to accept whether the amendments introduced by my colleagues are within Standing Orders. This point I would like to clarify and I thank you for the opportunity.

SECRETARY FOR HOME AFFAIRS: Sir, I am most grateful to the ad hoc group and, in particular, to its chairman, Mr Andrew WONG, for the meticulous manner in which they have dealt with this Bill and for the long hours they must have spent on it.

Sir, perhaps I could start with a general point raised or partly raised by Mr Martin LEE and two or three others.

Mr LEE seems to want us to believe that the Governor and the Government have an authentic power to manipulate the legislative framework and that the Government could do almost anything. The fact of the matter is that a government proposal can only be given legal effect if this Council approves it. This Council can amend, can endorse or vote in any way it likes.

Sir, I have been serving in this Government for 35 years. So I think I know what I am talking about when I say that this Council is no rubber stamp.

Sir, the Bill before this Council, if passed, will provide the basis on which to conduct the 1991 direct election to this Council. I have listened very carefully to the comments made by my honourable colleagues and perhaps I will make a few responses to a few specific points.

On the question of the present system being carried into the direct elections to this Council, this system is modelled on the statutory framework which has been in use since 1982 for the direct elections to the district boards and to the municipal councils.

What we are proposing is therefore a typically Hong Kong solution based on a well-tried and successfully applied system with which the public is familiar. However, I do undertake that the Government will conduct a comprehensive review of the electoral provisions after 1991 in the light of the experience gained in the 1991 election.

Sir, many Members including Miss LEUNG Wai-tung, Mr Andrew WONG, Mr Martin LEE, Mr SZETO Wah and Dr LEONG refer to the establishment of an electoral commission.

In the countries which adopt the commission system, they already have a

well-developed party system and therefore partisan style of politics. It would seem that, in their circumstances, an independent commission would be desirable. But in Hong Kong, we are not yet in that advanced stage of political development. What we are proposing is a system operated basically by the Administration which is apolitical and which has no axe to grind in the electoral process.

Sir, the Government has no philosophical problem with the concept of an independent body attending to some of the electoral arrangements. During the course of our discussion with the Legislative Council ad hoc group on electoral legislation, we indicated that the terms of reference, composition, status and modus operandi of an election commission or boundaries commission would need careful consideration in the context of constitutional development in Hong Kong; and that time would be needed for the preparation of the necessary legislation well in advance of the elections in September next year. On the other hand, we believe it would be irresponsible of us to cast away the well-tried electoral system and instead to experiment with an untried new system hastily put together at this stage of Hong Kong's political development. However, the Government has undertaken to examine the concept and the practicability of the proposals for an independent body on electoral matters so that they could, if necessary, be implemented in 1995.

Electoral boundaries

Mr Martin LEE referred in particular to electoral boundaries. Sir, I totally reject any accusation that we have been gerrymandering over electoral boundaries. In reaching decisions on boundaries, the Government took account of the number of directly elected seats available in 1991, present and future population distribution, geographical considerations and the existing electoral and administrative boundaries.

I note the proposal to include legislative criteria governing the drawing up of electoral boundaries but I must point out that a broad description of the considerations which I have just mentioned in the law will not be very easy and helpful. And if arithmetical figures are prescribed, for example, to ensure a degree of population parity between the constituencies, this will not actually work in practice, especially in the New Territories, where the population is highly concentrated in the new towns which are often set far apart. I think the constituency arrangements announced earlier this year by the Government represent the best which we can work under the existing constitutional, geographical and population constraints. But let

me make one point absolutely clear: party politics was no part of our thinking.

Automatic registration

Sir, Mr Andrew WONG, Mr Martin LEE and Mr TIEN referred to the possibility and desirability of automatic registration. It has been suggested that voter registration should be made automatic, based on the records of the Registration of Persons Office. The proposal certainly has its attractions and for this reason it has been carefully examined. However, there are major practical difficulties. The records would not establish whether a person is qualified to register as an elector. It is also unlikely that the addresses would be up-to-date, given the mobility of the population within Hong Kong.

I have also heard remarks about compulsory voting, again this is a complex matter. One wonders whether, in a free society such as Hong Kong, it would be a desirable feature of our election law to compel people to vote. I think voting is as much a free act as any act in Hong Kong. But it is a matter the Administration will of course look into when it undertakes the review as promised. Mr Martin LEE made some heavy words on voting from overseas residents or ex-residents from Hong Kong. Sir, I do not think it is true to say that we have failed to introduce overseas voting arrangements for political reasons. It has never been the case. The question of whether a person should be allowed to vote in the place where he is no longer resident is a controversial one. But one thing we must bear in mind is that we do not base our right to vote on nationality. We base our right to vote on residency. Any person of any nationality, having resided in Hong Kong in the definition of "ordinarily resident", would have the right to vote. If an ex-Hongkong resident wishes to vote, he can come back to Hong Kong and reside here and he will be given the right to do so.

There has been some discussion on the question of voting age. Later on, Sir, in the Committee stage we shall be dealing with an amendment to that effect and I shall reserve my remarks on that subject to that particular time.

Sir, with these remarks, I move that the Bill be read the Second time.

Question on 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).

LEGISLATIVE COUNCIL (ELECTORAL PROVISIONS) (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MR ANDREW WONG: Sir, the provisions of the Legislative Council (Electoral Provisions) (Amendment) Bill 1990 will abolish the electoral college constituencies, that is, including my own constituency, and limit the scope of the Ordinance to "functional constituencies" only. It will give effect to the Government's decision to increase the number of functional constituencies seats from the existing 14 to 21 and clarify the disqualifications for nominations and elections, bringing them in line with the amendments proposed for the Electoral Provisions (Amendment) Bill 1990.

In the course of scrutinizing this Bill, concern was raised by some Members on the possible abuses of the rules and constitutions of some of the bodies in the functional constituencies as a result of the lack of legislative control. It was, however, noted that some safeguards had already been built into the legislation whereby any amendment to or replacement of the constitution, rules or articles of an association belonging to a functional constituency would require the written approval of the Chief Secretary.

Members noted that different formulations had been adopted for secrecy of vote for the Electoral Provisions Ordinance (Cap 367) and the Legislative Council (Electoral Provisions) Ordinance (Cap 381). At the suggestion of the ad hoc group, the Administration agreed to make the two versions tally with each other.

As I have mentioned earlier in my speech on the Electoral Provisions (Amendment) Bill 1990, there is a definite need to review and improve the form and structure of our existing electoral laws. Although it is not possible to do so for the 1991 elections, the Administration should be determined to conduct such a review in good time for the 1995 elections. Again the group do seek the Administration's commitment to such a comprehensive review.

With these remarks, Sir, I support the motion.

MR SZETO (in Cantonese): Sir, a consensus was reached when this Council discussed the Basic Law. The Bill before us today is a violation of that consensus. If one upholds one's principles, and is faithful to oneself and faithful to the consensus, then one should oppose this Bill today. Sir, therefore, I do not support this Bill.

I would like to especially mention the seats for the education and labour sectors. I am of the view that the seats for the education sector should be increased from one to two, and that the seats for the labour sector should be increased from two to three.

Compared with other constituencies, the education functional constituency has a large number of voters. It has ten times as many or tens of times as many voters as other constituencies. The education sector is in touch with each family in Hong Kong and is in constant contact with nearly one-quarter of Hong Kong's population. Furthermore, it is the most important developer of Hong Kong's only resource, namely, talent. Why can some other seats be doubled, while the education sector is still limited to one seat?

The labour sector forms the most massive stratum of society. It is the most diligent creator of wealth and the most important basis of prosperity and stability. The Bill provides for a total of 21 seats for the functional constituencies. When we look at them, we see the number of seats that the industrial, commercial, and professional sectors occupy. In comparison, the labour sector, which represents the grassroots, has only so small a number of seats allocated to it that it is disproportionate, and the balance is lost. Even if the two seats are increased to three, it will still be disproportionate and unbalanced. Why is such obstinacy and conservatism being adhered to in not increasing the number of seats for the labour sector?

In the labour sector, there were some who said: "We want meal tickets, not votes." With regard to issues such as the introduction of imported labour, the central provident fund and others, people who said those things should realize that votes are meal tickets. Such a view does not represent the feelings of the broad masses of labourers and violates their interests as a stratum of society. At present, these people are preparing actively for their participation in elections. They are acting

to negate what they said in the past. For the interests of the labour sector, "we will not mention past mistakes, but we should guard against them in the future." I would like to express my welcome to such a change. For the sake of the labour sector's interests, I hope that we will be able to strive together from now on!

Although the opinions that I have put forward today cannot change this Bill, I find it necessary to reveal what is in my heart. I feel that what I have said today may not be capable of realization, but if I do not say what I have said today, it will never have any hope of realization.

Sir, with these remarks, I do not support the motion.

MR PETER WONG: Sir, the Legislative Council (Electoral Provisions) (Amendment) Bill 1990 proposes a new Finance and Financial Services functional constituency consisting of two seats. One is for the banking sector which is now widened to cover restricted licence banks and the old category of deposit-taking companies in accordance with the scope of the current Banking Ordinance. This is a logical step and is to be welcomed.

As a non-executive director of the Securities and Futures Commission (SFC), I am interested in the proposed Financial Services electoral division since a properly structured functional constituency seat representing a significant part of our economy should enhance the workings of this Council.

Sir, I must apologize for an omission to follow up a paper I submitted to the ad hoc group on the constitution of this new division. I think it is only right that I should bring it up now.

Briefly the division comprises:

- (i) Stock Exchange which has about 700 entitled voters
- (ii) Futures Exchange which has about 80 entitled voters
- (iii) Chinese Gold and Silver Exchange with about 200 entitled voters
- (iv) insurers with about 270 entitled voters.

It is quite clear that this represents only the intermediaries or the brokers. It is to be noted that some 120 registered securities businesses which are not stock exchange members and who contribute to the overall turnover do not have a vote; and about 100 members of the Stock Exchange, whose registration is revoked by the SFC but whose status as voting Stock Exchange members is questionable, have really no place as voters in this constituency.

Above all, the non-inclusion of some 500 registered investment and futures trading advisers, who are one of the mainstays of Hong Kong's investment industry, is a real cause for concern.

The decision to exclude this sector was based on the fact that there is no self-regulating organization to represent and control trading advisers. I suggest that this is spurious because the same criteria was not applied to the insurance arm of the same constituency. If self-regulation is indeed the key factor, then it should have been applied to the Unit Trust Association which has the well proven record of complying with a voluntary code since 1978, but again they have no vote.

Equally, I question the parallel drawn with the General Chamber of Commerce and the Hong Kong Chinese General Chamber of Commerce. They have categories for every aspect of commercial life in Hong Kong and are not exclusive to any one specialist sector. The rationale of the 1984 White Paper is now questionable because of the effluxion of time and it certainly does not take into account the situation today.

Sir, the real issue at stake is the dominance of the Stock Exchange, which commands some 700 of the total voters of 1 300 making it an absolute deterrent to candidates and electors from other groups of the Financial Services functional constituency.

I have already made recommendations to resolve these problems; but since we have come to this stage of the legislative proceedings, I will be pleased to hear the Administration's response before I take up any more of this Council's time.

Sir, subject to the above, I support the motion.

MISS LEUNG (in Cantonese): Sir, I agree very much with what Mr SZETO Wah has said just now. The distribution of Legislative Council seats for 1991 that is being put

forward does not conform to the OMELCO consensus.

Possibly because it is restricted by the Basic Law's provisions regarding the development of the political system, the Government cannot but limit the number of directly elected seats to 18. I can accept this, albeit with reluctance, but I do not understand why the number of functional seats are increased from 14 to 21.

I have always had reservations about the proliferation of functional constituency seats, and I think that they are not in accordance with a truly democratic system. Looking at the present unfair distribution of functional constituency seats, one can very easily discover that in creating these functional constituencies (if I may refer to my speech to this Council on 1 June 1989 on the Basic Law draft) the Government has placed relatively more importance on the industrial, commercial, and financial sectors, and, following that, the professional sectors, especially those whose existence depends on the interests of the industrial, commercial, and financial sectors, or those that are closely related to these interests, and then following that, other professional sectors, and, lastly, other prescribed sectors such as the labour sector. This signifies that the functional sectors are classified in accordance with grade and importance. These arrangements are obviously far away from a democratic political system, and within the functional sector the interests especially of the so-called non-designated functional sector organizations, and those of the general public have wholly evaporated.

In a truly democratic system, all the people should have equal rights in electing whomever they trust as their representatives. Therefore, I deeply feel that only general elections are truly democratic elections, and that the functional constituency seats that are being put forward can only serve as a transitional measure.

I hope that we can strive to achieve, as soon as possible, the direct and geographically-based elections to the Legislative Council through one-person-one-vote. Therefore, I have reservations about this amendment Bill.

MR TAM (in Cantonese): Sir, I would like to thank you for permitting me to make an impromptu speech, for I have heard the voices of my colleagues of this Council calling for the increase of functional constituency seats of the labour sector. In fact, this issue has basically come to an end, but because there are people who support

the increase of seats for the labour sector, I would also like to reiterate the labour sector's request in the past. At present, the functional seats of the Legislative Council are divided into the commercial sector and the industrial sector, which have two seats each, the financial sector, the social service sector, the engineering sector, the medical sector, the education sector, the legal sector, the health sector, and the accounting sector, which have one seat each, but the labour sector, which represents the grassroots, only have two seats. Such a manner of distribution indicates that the vast majority of functional seats in the Legislative Council have been taken up by the industrial and commercial sectors, and also by the professional sectors, and that the grassroots labour sector, which comprises 50% of the Hong Kong population, only constitutes 14% of the functional seats. This is undoubtedly a fine piece of irony since the Government's reconstitution of the Legislative Council. All along, the labour sector has expressed extreme discontent about this unfair phenomenon, but the Government has remained oblivious to such discontent. According to the Legislative Council (Electoral Provisions) (Amendment) Bill, there will be seven new seats. Apart from the Urban Council, the Regional Council, and the Heung Yee Kuk, all the seats will be allotted to the industrial and commercial sectors, and to the professional sectors. Once again, the oblivion to the rights and interests of the grassroots labour sector is manifested. After the Government announced details of the re-allocation of Legislative Council functional seats in April this Year, I have written articles in newspapers in this respect to criticize the Government's measure, which is absolutely unfair to the grassroots labour sector and does not conform to the Legislative Council's principle of co-ordinating and striking a balance between the interests of the various sectors. I hope that the Government will review the existing policy, increase the functional seats of the labour sector, and listen more to the voices of the broad masses of grassroots labourers.

Question on 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).
5.08 pm

HIS HONOUR THE PRESIDENT: Before we move on to the Urban Council (Amendment) (No. 2) Bill, Members might appreciate a short break.

5.29 pm

HIS HONOUR THE PRESIDENT: The Council will resume.

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

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MR ANDREW WONG: Sir, the Urban Council (Amendment) (No. 2) Bill 1990, the Regional Council (Amendment) (No. 2) Bill 1990 and District Boards (Amendment) Bill 1990 are all inter-related and so the remarks that follow apply to all three Bills. To prepare for the 1991 elections it is necessary to introduce some ancillary changes to the Ordinances governing the operation and election matrix of the municipal councils and district boards corresponding to the proposed legislative amendments and disqualifications as detailed in the Electoral Provisions (Amendment) Bill 1990, and the Legislative Council (Electoral Provisions) (Amendment) Bill 1990.

The full range of disqualifications applicable to elected members should also be applied to appointed members and ex-officio members. The proposed amendments are supported by the ad hoc group.

Sir, with these remarks, I support the motion.

MR CHOW (in Cantonese): Sir, the Urban Council was established in 1936. Elected seats were introduced in 1952. In 1973, the Urban Council was the first organization to have 10 elected members. In the same year, the Government amended the Urban Council Ordinance and abolished official members. In 1984, the White Paper on Representative Government did not propose the abolition of the Urban Council's appointment system but even apply it to the Regional Council that was established in 1982. It is truly regrettable that this three-tiered structure has not been able to produce consultative organizations that truly represent the people's wishes. I feel that Urban Councillors should all be changed into elected councillors, but the seats of indirectly elected members can still be retained. Such a measure will strengthen the degree of representativeness and acceptance of the three-tiered structure. All

along, Hong Kong people have been considered to be the silent majority. They very rarely show an interest in politics, and their voting rate is not high. The activities of the district boards, the Urban Council, and the Regional Council are aimed at enhancing residents' co-operation so as to resolve issues. If the members of these boards and councils are brought about by democratic elections, then the significance of locally-expressed opinions will be enhanced. Especially because the interests of the grassroots level have not been sufficiently looked after over a long time, more importance will be placed on this opinion with the introduction of democratic elections.

Sir, I hope that you will study the abolition of appointed Urban Council seats as soon as possible and increase the number of elected seats so that the public can elect spokesmen who represent them in handling affairs in their respective districts. Such a measure can strengthen their sense of belonging towards their respective districts and can also enable them to experience their basic civil rights as Hong Kong residents. I do not support this Bill.

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

Bill read the Second time.

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

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

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MR CHOW (in Cantonese): Sir, membership of the municipal councils should be fully elected but indirectly elected seats on the two councils, and the three ex-officio seats on one of the councils held by members of Heung Yee Kuk should be retained so as to strengthen the representiveness and acceptability of the three-tier structure. Sir, my views on the Urban Council (Amendment) Bill and this Bill are the same. I do hope, Sir, that you can abolish all appointed seats on the Regional Council as soon as possible and increase the number of elected seats so that the public can foster a sense of belonging to their districts and learn their basic rights and privileges.

I shall vote against this Bill.

MR ANDREW WONG (in Cantonese): Sir, I would like to correct some misinformation given by Mr Ronald CHOW. The former Sanitary Board was renamed the Urban Council in 1936. Direct elections were introduced to the board as early as 1888, and following a period of interruption, the system was reintroduced in 1952 after the War. Some proposals before us today will, in my view, be unsound if based on an incomplete knowledge of our constitutional history.

Sir, I support the motion.

Question on 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).

DISTRICT BOARDS (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MR MARTIN LEE: Sir, my colleague, the Honourable Ronald CHOW, will speak on this issue later and I fully support what he has to say -- as I know what he is going to say -- especially with respect to the need for fully democratic election of all the members of the district boards. In addition to my disappointment in the failure of the Government to democratize the district boards, I am very opposed to the continuation of the current legislative framework under which the Governor can decide unilaterally how many members of each district board are to be elected and how many are to be appointed. Such a law gives the Governor far too wide discretionary powers. And just as the number of elected seats for the Legislative Council and the two municipal councils are set out in the law, so should the law specify the number of district board seats that are to be elected or appointed? Lodging such discretionary power in the Governor also violates the principle of separation of powers. The executive should not have the discretion to create or cancel district board seats merely as

they please while other decisions on such vital matter as the composition of the district boards should be made by the legislature. Questions of this nature must be subject to the rule of law. Otherwise, political abuses of the wide power given to the executive may occur.

MR CHOW (in Cantonese): Sir, because the chief executive and members of the judiciary will ultimately come into being through the democratic process and in the form of general elections after 1997, the representativeness of a local consultative organization that supervises district affairs, improves the environment in the district, promotes cultural and recreational activities in the district, and collects opinions in the district should not be inferior in representative status to that of the future Special Administrative Region legislature and the chief executive. If the British Government desires that it merely plays a custodian role during the transitional period, then it is even more necessary to allow the people of Hong Kong to get acquainted, as soon as possible, with the operational style of "Hong Kong people ruling Hong Kong." In fact, the Basic Law does not expressly provide for arrangements for elected district board seats. There is no actual need for the Government to over-react, be complacent and conservative, and forcibly restrict the number of elected district board seats and slow down the pace of development of representative government. At present, the degree of acceptance and representativeness of appointed members are queried in society, and especially by electors. Because there is no way in which they can select suitable spokesmen, they lack enthusiasm in participating in and showing concern for affairs in their respective districts. The biggest difference between district board members brought about by democratic elections and their appointed counterparts is that elected members must report their performance regularly to electors and be monitored by them, and that they have to shoulder political risks once their performance is not satisfactory. On the opposite, appointed members on district boards only directly report to the Hong Kong Government that has appointed them. In the 1990s, the world has been swept by the democratic trend. Because Hong Kong is an international cosmopolitan city, how can we take backward steps and go against the trend by employing the feudal system of more than 2 000 years ago and replacing elected members, who are monitored by the broad masses, with parent-like appointed members? Although district boards are not policy-making local organizations, they play an active and progressive role in collecting public opinion and promoting the residents' awareness. Sir, district boards are sufficiently equipped to undergo development as the training grounds for democratic elections. When district boards wholly comprise directly-elected

members, district board elections will light up the torch of democratic participation, and Hong Kong will be in a far better position and will gradually move towards the stage of "Hong Kong people ruling Hong Kong." It is distressing that appointed members should be used to obstruct the wish of the public to participate in district affairs. I suggest that starting from 1991, all appointed district board seats be abolished so that the torch of democracy can be quickly lit up in Hong Kong. Another point is that in the District Board Ordinance, it was originally provided that arrangements for district board seats be assessed and decided by the Governor of Hong Kong. However, the Legislative Council, being the major organization to monitor the operation of the Government, should be equipped with the authority to formulate, examine, and decide the composition of district boards so as to prevent the authority of the executive from becoming excessive. Furthermore, such a measure can also develop checks and balances between the executive and the legislature. I am casting a dissenting vote not because the motion for amendment that I put forward has been vetoed, but because the aforesaid two aspects represent a violation of the Human Rights Declaration and a feudal system that goes against the democratic process.

MR ANDREW WONG (in Cantonese): Perhaps it is necessary for me to declare an interest, for I am an appointed district board member and the convenor of this ad hoc group.

I would like to point out that when the ad hoc group was in the process of studying the six election-related Bills, a total of 11 meetings was held. For Members' reference, I would like to point out some attendance rates and the issues that had been discussed or had not been discussed in those meetings.

Mr Martin LEE and Mr SZETO Wah, who will be moving amendments today in the Committee stage, attended six and three meetings respectively. Mr Ronald CHOW only attended two meetings. With regard to the issues arising from the three amendments proposed to the Bills on the Urban Council, Regional Council, and district boards, ...

MR MCGREGOR: Sir, I should be grateful to know whether it is right and proper for the panel convenor to disclose either the attendance or the course of panel meetings, which are confidential, in this Council which is open.

HIS HONOUR THE PRESIDENT: I do not think there is anything in Standing Orders which will restrict statements of this sort by Members within this Chamber. They are of

course privileged within this Chamber. I think there is nothing to restrain a Member from revealing the contents of other meetings which may be held within the Legislative Council.

MR ANDREW WONG (in Cantonese): ...which are to the effect that the district board should be fully elected, and that apart from the ex-officio seats, the Urban Council and Regional Council should also be fully elected, such issues had never been brought up in the discussions. Even in the case of the political organization concerned, that is the Hong Kong Alliance, which met with the ad hoc group, there has not been any mention of this request either in letters or verbally. Therefore, although I agree in general with the spirit of the expressed views, it is still necessary to conduct further discussions, and it should not be put forward at this time.

Sir, I support the motion.

Question on 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).

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 25 July 1990

Question on Second Reading proposed.

MR ANDREW WONG: Sir, the Corrupt and Illegal Practices (Amendment) Bill 1990 seeks to make provisions for the increased levels of penalty for corrupt and illegal practices in respect of election offences and the creation of a new illegal practice relating to the making of false and reckless statements in respect of electoral registration or voting.

In scrutinizing this Bill, though Members were still worried that certain issues could lead to proliferation of litigation, for example, how to define election expenses, how to deal with surplus in donations and so on, the group accepted that it was impossible for the Ordinance to cover every possible scenario but nevertheless

urged the Administration to issue guidelines for prospective candidates to minimize unnecessary election petitions against election results.

The legislation has not kept pace with the technology and that publicity material using electronic means, like video tapes, has not been included as election publicity material. I urge the Administration to take a close look at the legislation governing elections in the coming review and make improvements to it where necessary.

In addition, two minor amendments to the Bill are proposed. I will speak on them later on.

Sir, with these remarks, I support the Bill.

MR TIEN: Sir, I would like to make a few comments on Part 4 and Part 6 of this amendment Bill. These amendments are quite properly concerned with voting offences and the declaration of election expenses. It also adds a new category relating to the making of false or reckless statements.

This latter point presumably includes references to political advertising by whatever means. Even now, some people are already advertising themselves in preparation for next year's election. Such a practice, if not controlled by law, can very well lead to the sort of abuse that this amendment seeks to remedy.

I note that Part 4 of the amendment Bill refers to the making of false or reckless statements by electors and voters. I wonder whether this should be made to apply to candidates also.

Incumbent Council Members, such as ourselves, can present particular problems, and they may be guilty, whether innocently or not, of "false and reckless" statements. For example, if an incumbent promotes himself or herself with posters all over town, using paid advertising in the press, on radio or television, claiming to consult the people, claiming to solicit their views while never actively performing that promised role, then he or she is conceivably only a step away from making "false and reckless" statement. Such advertising might not mention a word of re-election of the incumbent. However, the objective is obviously for re-election only. Therefore, such expenses should certainly count towards their election expenses.

Such paid advertising is clearly undesirable. The amendment Bill only glosses

over the possibility of such tricks. However, I support this amendment in the hope of further consideration given to my concerns.

Sir, I now turn to the declaration of election expenses. I should like to point out that it is not only the spending of money which matters; it is also important to be concerned with the raising of money.

At present, even after these amendments, anyone can raise money without approval from any authority claiming to use that money for the purpose of an election. True, there are real political groups already in Hong Kong. But, others can form at the drop of a pin. Thus a group describing itself as having a political purpose could solicit unlimited funds simply by entering one candidate, paying \$5,000 for a Legislative Council candidacy.

We might then subsequently imagine the consequences. The Star Ferry might be turned into a pseudo-political bazaar, as these groups turn out in large numbers to extract money from the public all claiming for election purposes and therefore do not require permission from any authority.

Campaign contributions are a matter of great concern in most countries. These are controlled by law in, for example, the United Kingdom, the United States and Australia.

These, and other countries too, see political finance as a crucial aspect of modern elections. Above all there is a fear that the power of the purse, as well as reckless, even false, advertising can be decisive in securing electoral victory.

My purpose here is to ask for further study to be made of the implications of these amendments. I hope these points can be taken on board by the Administration.

MR SIT (in Cantonese): Thank you, Sir. In principle, I agree with the proposed amendment, but I would like to make two points, for the speeches of Honourable Members that I have listened to have left me with two impressions. First, with regard to the problem of cheating in elections, I feel that it seems that there are already persons who are engaging in activities aimed at deterring or impacting elected councillors or people who participate in elections. They are in effect saying, "if you say too much, could it be that you are courting votes for the elections?" Does that

necessitate the formulation of some legislation? If there are people who attempt to make some people refrain from participating in elections or afraid of elections, would that be a crime? Because malpractice is an act, should we consider punishing those people who verbally harass people who are interested in participating in elections? It is in fact very simple. If we have such worries, then, is it that the people who say those things do not want elections? If there were no elections, and if we were all appointed, then there would be no need to be worried anymore! Would it be a good thing to take retrograde steps? However, society is advancing, and it is impossible for human history to retrogress. It is impossible for us to grow tails again. We have evolved, and we cannot desire to have tails again. Having a tail is not a good thing anymore.

The second point is that today is not the only occasion on which the attendance rate is employed to question the sincerity of some people in participating in discussions. I heard the same thing in the last meeting. I would like to ask today: is the attendance rate equivalent to a councillor's understanding of and sincerity towards an issue? In fact, I do not think so. Some people may have sat here for many years, or their attendance rate may be very good, but they have never spoken at meetings; they only know how to raise their hands, that is when there is a need for them to raise their hands, they raise their hands, and when there is no need for them to do so, they shut their mouths. Is it that appearing each time is synonymous with positively contributing? What I have said is an example of the employment of a particular aspect to make a generalization. We should place facts before us and talk reason. We should not make use of the so-called "technical coup", for that would amount to deceit. We should keep calm. Here, we all say that we are serving the public and striving for their interests. I feel that we should keep calm, place facts before ourselves, reason, and refrain from overpowering a minority by a majority. In fact, if one talks about democracy, I believe that Mr Martin LEE is very intelligent, but he has missed one point, that is, will democracy triumph in this Council? The answer is no. On the subject of elections, my experience is that hand-raising, not truth or reason, will triumph. However, outside this Council, I think that other people's views may not be the same. Finally, I still support the amendment. Thank you.

HIS HONOUR THE PRESIDENT: Could I remind Members that we are presently addressing the Corrupt and Illegal Practices (Amendment) Bill 1990. We seem to be straying somehow somewhere off the subject.

MR MCGREGOR: Sir, I would just like to add to some of the comments made by my honourable colleague, Mr James TIEN. I would point out that, for example, in regard to those practices which may, if it could be so put, subvert the course of democratic reform, it would be possible in my constituency for a person with \$2.5 million to register 1 000 companies and thereby be absolutely secure in his subsequent election. I am not sure whether it should be considered an improper or illegal practice but it is quite possible under the present rules.

Question on 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).

CRIMINAL LAW (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 14 November 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).

Committee stage of Bills

Council went into Committee.

ELECTORAL PROVISIONS (AMENDMENT) BILL 1990

Clauses 1 to 4, 8 to 14 and 17 were agreed to.

Clauses 5, 6, 15 and 16

MR ANDREW WONG: Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

Clause 6 is proposed to be amended to put beyond doubt that:

- (i) the person seeking registration as an elector must be ordinarily resident in Hong Kong and not, therefore, necessarily physically resident in Hong Kong.
- (ii) that the residential address declared by a person who is ordinarily resident in Hong Kong must be his principal place of residence in Hong Kong when he applies for inclusion in the register.

Amendments proposed to clauses 5, 15, 16 are consequential upon amendments proposed to further clarify the effects of election petitions. It is therefore necessary for me to also speak, with your permission, Sir, on a number of the proposed new clauses.

New clause 15 repeals the section which provides for procedure for presenting election petition. Because there is no equivalent provision in the Legislative Council (Electoral Provisions) Ordinance (Cap. 381), the Administration proposes to add such provisions into subsidiary legislation made under the principal Ordinance (Cap. 367) as is in the case of similar rules made under Cap. 381.

New clause 15B is proposed in order to clarify the determination of the court at the conclusion of the hearing of election petition. The amendments would remove certain legal ambiguities contained in the original provision. Corresponding amendments have also been made to the Legislative Council (Electoral Provisions) Ordinance (Cap. 381). The two provisions, as amended, are now consistent with one another and are worded in almost identical terms.

Sir, I beg to move.

Proposed amendments

Clause 5

That clause 5 be amended, in the new section 5F --

(a) by deleting paragraph (e); and

(b) in paragraph (f) by adding "(1)" after "42".

Clause 6

That clause 6 be amended, in the new section 8A --

(a) in subsection (1) --

(i) by adding "ordinarily" before "resident"; and

(ii) by adding "in Hong Kong" after "residence";

(b) in subsection (2) --

(i) by adding "in Hong Kong" after "residence"; and

(ii) by adding "in Hong Kong" after "dwelling-place".

Clause 15

That clause 15 be amended, by deleting paragraph (b).

Clause 16

That clause 16 be amended, in the new section 42 --

(a) by renumbering it as subsection (1);

(b) in subsection (1) by deleting ", or that the election was void,"; and

(c) by adding after subsection (1) --

"(2) Where the Court determines on an election petition that any person declared

to have been elected in the election has not been duly elected but some other person was duly elected in his place, such first-mentioned person shall cease to hold office as a member and such second-mentioned person shall commence to hold office as a member from the date of that determination."

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 6, 15 and 16, as amended, proposed, put and agreed to.

Clause 7

MR SZETO (in Cantonese): Sir, I move that clause 7 be amended as set out under my name in the paper circulated to Members.

I have been a subject of ridicule; indeed, just now, I heard again the derisory remark that, since the liberals have never managed to get any of their motions endorsed, and motions which were opposed by the liberals have never failed to be carried by this Council, why are they still so persistent in fighting this battle which they have no hope of winning.

In the words of Commissioner LIN Zexu, who was intimately involved in the early history of Hong Kong, "For the sake of my country I will risk my life; there is no question of my avoiding danger and pursuing fortune." It is sheer opportunism to sponsor only those motions which will definitely be carried and refrain from sponsoring those which might not. Should people who behave like that deserve to be called "politicians", in the derogatory sense of the word? If we all behaved like that, there would be only one voice left, but the world then would become a stagnant place, the realm of the dead.

The real brave person is not afraid to stand alone and uphold his principles, under certain circumstances, because he will make his point eventually; he does not speak solely in order to win endorsement. It is the existing political system, rather than me, which deserves to be laughed at. If the Legislative Council is made up of members who are entirely returned by directed election, then I would at least have to give my teasers the credit of not being entirely without political sense.

My motion actually involves amending the figure of 21 to 18, but it is nevertheless a significant motion. I have spoken on this issue in the Second Reading; I would like to add a few supplementary remarks here.

The Government is now trying every means to get the public to actively register as voters so that they may exercise their vote in the three-tiered elections scheduled for next year. In this regard, I fail to understand why young people between the ages of 18 and 20 should be deliberately excluded as voters.

Practice is an important part of education. Since we stress the importance of stepping up civic education for the benefit of our young people, why do we not allow the 18 to 20-year-olds to receive civic education through a real voting experience?

Words must be matched by deeds. As this issue of voting age is put to vote, it is a good opportunity to see for ourselves whether the beliefs of some people are borne out by their action.

Insofar as the people opposed to the voting age are concerned, it all comes down to a lack of confidence in our young people, and their belief that the young vote will turn the election outcome against themselves. Young people hold the key to our future. A lack of confidence in our young people is practically a lack of confidence in our future. Young people today are adults tomorrow; the 18-year-olds will become 21-year-olds in three years. If you do not trust them today, can you trust them in three years? Nobody can hold the clock back, nor could one resist the coming of each new day.

The issue of attendance was raised just now, but I have no idea who among us has the poorest attendance record. I know who has the best attendance record though; it must be the convenor himself. For without his setting a date for the meeting, and his attending it, there will be no meeting at all.

Sir, with these remarks, I move to amend the motion.

Proposed amendment

Clause 7

That clause 7 be amended --

(a) by renumbering the clause as subclause (1);

(b) to add subclause (2) --

"Section 9 is amended by repealing "21" and substituting "18".

6.00 pm

HIS HONOUR THE CHAIRMAN: It is now 6 o'clock and under Standing Order 8(2) this Council should now 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 for this afternoon to be concluded.

Question proposed, put and agreed to.

Question on the amendment proposed.

MR MARTIN LEE: Sir, it is unconscionable to say that those who are 18 to 20 years old, who are legal adults of our community, are old enough to carry guns as policemen and serve as company directors but they are not old enough to vote. The same 20-year-old who can vote in a functional constituency election as a company director cannot vote in a democratic election. In effect, by denying the vote to the 18 to 20-year-olds, we are disenfranchising a certain sector in our community. To disenfranchise these adults on the basis of their young age is no different from disenfranchising elderly persons over 70 on the basis that they are too old to vote.

For the benefit of my honourable colleague who spoke immediately after me during the Second Reading of this Bill, who is not in this Council at the moment, who had expressed the fear that the young adults of our community will easily be influenced by politicians, may I remind him -- albeit in his absence -- that exactly the same thing can be said of the old in our community. I also wish to remind the Honourable Member that if the old wish to have the respect of the young, then the old must be ready to show some respect and trust towards the young. After all, we have recently decided, in this Council, to lower the age of majority from 21 to 18.

Sir, to deny to this group of young adults their right to vote, even for one day, is already one day too long. To deny that right to them until the 1995 elections is totally irresponsible and unforgivable.

Sir, for these reasons, and those so eloquently given to this Council by my honourable colleague, Mr SZETO Wah, I support this amendment and I hope that the Official Members of this Council may be allowed a free vote on this important issue.

MRS TAM (in Cantonese): Sir, I should like to give my views on the proposed amendment to the Electoral Provisions (Amendment) Bill 1990 just moved by the Honourable SZETO Wah to lower the voting age from 21 to 18.

First, may I point out that when this Council scrutinized the Law Reform (Legal Effects of Age) Bill 1989 during the last Session, the question of voting age and that of marriage without parental consent had been discussed by Members. Although the subject fell outside the scope of the Bill, it was discussed both at a Legislative Council In-House meeting and during meetings of a Legislative Council ad hoc group chaired by myself. During the Bill's Second Reading in this Council, some Members, including myself, spoke to show concern for, and expressed our views on the issue.

In fact, most ad hoc group members were in favour of lowering the age of voting and of marriage without parental consent in line with the proposal to reduce the age of majority from 21 to 18. However, having regard to the controversial nature of the issues, the ad hoc group decided to refer the matter to the Legislative Council In-House meeting for further deliberation. At an In-House meeting on 4 May, Members discussed and even voted on whether to support the proposal to lower the voting age and the age of marriage without parental consent from 21 to 18. The result was that a majority of the 30-odd Members present were against the proposal (with seven votes for and 25 votes against the proposal to lower the voting age to 18). As the majority of Members did not support the proposed changes, the In-House meeting subsequently did not propose any amendment to the Law Reform (Legal Effects of Age) Bill 1989 in that regard. Sir, no doubt I was greatly disappointed at the outcome as the views which I personally endorsed did not have the support of the majority. I was equally disappointed when the Government declared in March this year that it had no intention of lowering the voting age in 1991.

I have all along been stating clearly, both inside and outside this Council, that I support the lowering of the voting age from 21 to 18. Up to now, my support for this cause remains all the more positive. As the Electoral Provisions (Amendment) Bill 1990 comes before this Council for deliberation today, I should not have raised any objection to an amendment moved by the Honourable SZETO Wah to lower the voting age. However, considering how the matter was handled, I cannot support his proposal for two reasons.

First, the Legislative Council In-House decision taken not long ago should be respected. To a certain extent, the course of recent discussions among Members over the voting age issue, which I have just described in detail, gives expression to an objective reality that views are divergent on this matter. From the time when the Law Reform Commission completed its report in 1986, discussions on this issue have lasted more than four years. The decision taken at a Legislative Council In-House meeting on 4 May, though only an internal agreement, represents nevertheless the majority view of the Members present. The Legislative Council In-House, of course, cannot replace the position of this Council; but it does assist the Council of its work. If all deliberations were to come directly before this Council, the workload would be so colossal -- we can envisage -- that it could never be coped with even if the Council met every day. For this reason, the Legislative Council In-House or ad hoc group has indirectly taken up part of the work of this Council. Unless some new mechanisms develop, decisions reached at the In-House meetings should be respected. So, although the outcome was not what I would hope for, I still think that the decision should be respected.

I also believe that to hold one's ground and to respect the outcome of discussions reflects the spirit of democracy. While we strive for our cause, we must also face up to the reality that personal aspirations might fall foul of the majority view and that the conclusions of discussions must be respected.

Secondly, according to the ad hoc group's report, there have not been any further discussions or recommendations on the lowering of the voting age during the ad hoc group's deliberations. Although Members of this Council are entitled to propose amendments as they wish, I regard such a move as showing no respect for the ad hoc group studying the Bill, especially when controversial issues such as the lowering of the voting age are involved. Though the amendment proposed by the Honourable SZETO Wah is very reasonable, his way of tabling the proposed amendment would mean that the ad hoc group exists in name only. This is something I cannot agree with.

Sir, may I reiterate that I have not the slightest intention to withdraw my support for the lowering of the voting age from 21 to 18. I still hope that the Administration will promptly review the matter and that the review should be carried out immediately after the 1991 elections.

For reasons mentioned above, I cannot support the amendment proposed by the Honourable SZETO Wah at this stage.

Sir, with these remarks, I oppose the amendment proposed by the Honourable SZETO Wah.

MR ANDREW WONG (in Cantonese): Sir, I already made it very clear at the debate in this Council on 16 May 1990 on the Law Reform (Legal Effects of Age) Bill 1989 that I totally support the Honourable Martin LEE regarding the appeal for the Government, in reviewing related electoral legislation, to lower the voting age to 18 (Chinese version of the full text at P 1218). I am saddened by the debate today because, basically, I am totally in favour of the proposed amendment motion.

On the rate of attendance, which I raised a moment ago, the convenor should have no problem at all. However, the question is really not one of whether a Member has a good or poor attendance record, but rather one of whether the Member concerned has put his idea forward for discussion within the panel. Today, apart from my own amendment motion, the other three motions, that is, the two motions moved by the Honourable SZETO Wah and the one moved by the Honourable Martin LEE, have not been brought up in the panel discussion. The question therefore is not one of how many meetings a Member has attended, but whether the Member concerned has attempted to convince other Members; after all, a Member does not need to convince the others for even if he fails to do that, it is entirely within his right to move an amendment before this Council. It is for this reason that I cannot agree with the three amendment motions.

This has nothing to do with democracy, or the lack of it. If one says that the In-House meeting is not democratic because there are too many appointed Members, then it is equally undemocratic to refer the matter to the full Council because it is also made up of a great many appointed Members. Nor is this a question of whether the procedure concerned is democratic or undemocratic. We cannot say that just because

an In-House meeting is not open to the public, then it must be undemocratic. When a procedure is in place, this Council must follow it. Members are entirely free, under the existing procedure, to raise their point in the full Council if they are not entirely satisfied after following through the In-House procedure. We must remind ourselves not to turn this Council into a "label-bandyng" venue, stigmatizing people for saying one thing and doing another; we must also remind ourselves of the importance of following procedures. Disregard of procedure in one's eagerness to secure a legal amendment would be tantamount to opening Pandora's box. For a political system which discards procedure cannot be a democratic political system.

Sir, with these remarks, I oppose the Honourable SZETO Wah's amendment motion.

MR ARCULLI: Sir, I rise to speak with some regret simply because the issue that I am about to speak on is one I actually favour in terms of the motion tabled by my honourable friend, the Honourable SZETO Wah. Sir, I fear that what my honourable friends, Mrs Rosanna TAM and Mr Andrew WONG, have addressed this Council this afternoon has a large measure of truth, because what I have seen here today tells me that there are some telltale signs that what we are witnessing today is the end of what I call a modus operandi that has served this Council well in the past years. The modus operandi I refer to really is the practice of using ad hoc groups to scrutinize Bills, the reporting procedure that the ad hoc groups make to the Legislative Council In-House with or without amendments, and the Legislative Council In-House deliberating and determining whether it wishes to accept those recommendations or not. If it does, then the Bill, with or without amendments, will go forward. If it does not, the majority rule and that is that.

Indeed, until I heard the Honourable Martin LEE speak today, I was under the impression, which seems to be obviously wrong, that he actually believed that the existing modus operandi worked. I will tell you why. I wish to remind Members of what happened in April of this year when we were discussing the Judicial Service Commission (Amendment) Bill 1989 which this Council subsequently passed. The ad hoc group had actually made its recommendations to the In-House, which voted on it and, on one particular recommendation, the In-House was equally divided. I, as convenor, then decided that it was right to move an amendment in this Council and I recall with regret that my motion was defeated by 26 votes against and 19 in favour. I also remember being congratulated by some Members of this Council, because they felt that I had won what they termed as a moral victory.

HIS HONOUR THE CHAIRMAN: Mr ARCULLI, I must remind you that Standing Orders require you to address the clause which is being amended by Mr SZETO Wah. We seem to be going well outside the range of that. Could I bring you back to the clause which we are now debating, please?

MR ARCULLI: Sir, I will come to that as quickly as possible. What I really would like to know is what has changed, if anything at all, over the last few months.

There does not seem to be much change as far as I can see. It may well be that we have come to a stage where we have to change the procedures of the work of this Council, but until that happens I believe that it is important that this Council preserves the integrity of the system under which this Council functions and if that includes ad hoc groups and Legislative Council In-House for the moment, so be it. That does not mean, Sir, that in terms of the amendments tabled today by Mr SZETO Wah and yet another amendment by the Honourable Martin LEE, they could be ruled out of order. I, for one, would be amongst the first to defend any Members' rights to table an amendment even though they might feel that they are in the minority. But what is at stake, if I may remind Council Members today, is really the integrity of the system under which we work. With regard to the amendments tabled by my honourable colleagues, Mr LEE and Mr SZETO, it is with regret that I find that I am unable to cast a vote in their favour; in my view, they amount to an attack on the integrity of the system. Indeed, if the amendments are defeated, there is a further opportunity in the future when there will be a review after the 1991 elections as to whether we wish to lower the voting age from 21 to 18, a position which I favour. But on the motion before the Council today, Sir, I regret that I have to vote against it.

MR CHOW (in Cantonese): Sir, it would seem to the public extremely ridiculous, if not farcical, for any debate to degenerate into personalities, instead of addressing the matter at issue. I do not want to take up the question of attendance which was raised just now, except to ask if, among the Aye-saying Members of this Council, there were any one who did not attend (the meetings) at all. Should we cry over it (if the meetings were in fact shunned by them as well)? Personally, I am in support of the motion standing in the name of the Honourable SZETO Wah, which calls for the lowering of the voting age from 21 to 18. Most of the existing legislation has used

18 as the age of majority, which is to say that anyone attaining the age of 18 will have to accept legal responsibility. The majority age of 18 is used as a criterion, in the Control of Obscene and Indecent Articles Ordinance as well as in the Registration of Persons Ordinance. Most western countries set the voting age at 18. It can be seen therefore that there is a consensus among the nations of the world that people above the age of 18 have sufficient knowledge and judgement to decide who to speak for them. It is regrettable that the Government indicated earlier that it had no intention of lowering the voting age to 18. It was premised on the extremely preposterous rationale that it would be an abrupt change and that most of the 18-year-olds are tertiary students who may be manipulated by certain organizations. For with the expansion of the nine-year compulsory education, people who are 18 or above have at least completed Form III, Form V, or even tertiary education, which means that they have attained a reasonable standard of education. Also, given the fact that Hong Kong is a cosmopolitan city with very advanced information technology, our young people are not in lack of the kind of knowledge which will help them decide right from wrong. It is for this reason that I believe that the 18-year-old is already well equipped to exercise his right to vote and be responsible for the choice he makes, just as he is now legally responsible for his other actions. Personally, I feel that the worry that our young people will be manipulated by political organizations is quite unnecessary. If even a reasonably educated and knowledgeable 18-year-old adult is unable to make a sensible choice, then does it mean that we have to be equally sceptical of each and every voter and not to allow him to vote unless he manages to pass a series of scrutinizing tests.

Sir, with these remarks, I support the amendment motion of the Honourable SZETO Wah.

MRS LAU: Sir, I wish to make it very clear that I have always personally supported the reduction of the voting age to 18 years. However, I entirely agree with the Honourable Mrs Rosanna TAM's views in regard to Mr SZETO's proposed amendment. I shall not repeat the argument.

Sir, allow me to say that I personally feel that the majority view which has been taken from Members of this Council in a democratic manner after full discussion under a process which has long been adopted by this Council ought to be respected.

I therefore do not support the proposed amendment.

MISS LEUNG (in Cantonese): Sir, I think the Honourable SZETO Wah's assertion that none of the motions sponsored by the liberals had ever been carried was probably a gross exaggeration. I hope that Members of this Council will support all worthy motions, irrespective of their sponsors, in a spirit of addressing the issue rather than discriminating against personalities, because fortunately, there is no party politics, yet, in Hong Kong.

Sir, whether we would endorse the Honourable SZETO Wah's motion that the voting age be lowered from 21 to 18 may hinge on individual Member's understanding of the democratic political system, and his sincerity in promoting it. I support the motion for reasons which I have already given at the Second Reading debate of the present Bill, and I have no intention of repeating them now.

Sir, allow me to comment on the statement by a number of Honourable Members that deliberation over the advisability of lowering the voting age had in fact taken place at In-House meetings six months ago and the result was that most Members were opposed to the idea. The honourable Members have expressed the view that for a Member to differ from the majority view would constitute disrespect for the other Members involved, but I find it difficult to agree with this. I think it would suffice to say that six months is a considerable period of time. We can all recall 4 June 1989, and following the June 4 incident in 1989, many Members of this Council have changed their views on the future of Hong Kong within a very short period of time. However, if the Honourable SZETO Wah had been able to introduce his amendment motion for discussion a little bit earlier, then the atmosphere today would not have been as tense as it is now.

Sir, I support the motion standing in the Honourable SZETO Wah's name.

MR MCGREGOR: Sir, I simply want to make the point that as time goes along, in regard to this kind of legislation and the kind of position taken by individual Members of this Council, it will become very necessary for those individual Members to make sure that their views are heard in this Council. It is not the integrity of the system which we have used for many years that is at stake; it is the system itself that is now coming under study.

And I should just like to make the point that some of us who are elected and will

perhaps seek to be re-elected would like the electors to know, individually, what the position is for each one of us.

So I think in future, Sir, this is something which this Council must take into account -- the need for change. Thank you.

SECRETARY FOR HOME AFFAIRS: Sir, I certainly am not blind to the fact that young people now mature earlier. This phenomenon has, for example, been recognized by the Law Reform Commission and we are already moving to bring the age of majority for some other practical matters down to 18. Also we would like to develop a greater sense of involvement among young people in the government of their affairs. Against these, we weighed the very major changes already proposed for 1991 and the need to move forward cautiously. In addition, experience of voter registration so far suggests that young people are somewhat less prepared to come forward as voters. Our records show that those in the age group 21-25 recorded average registration rate of about half of those above this age group. The lower the age in that group, the poorer the response. We have therefore proposed that, for the present, we should maintain the voting age at 21 but to consider lowering it to 18 in 1995. Therefore, Sir, at this stage I am unable to support the motion.

Question on the amendments put.

Voice votes taken.

The Chairman stated that he thought that the amendments had been negatived.

MR MARTIN LEE: Sir, may I respectfully ask for a division?

HIS HONOUR THE CHAIRMAN: A Member has called for a division. The Council will divide. The Clerk will call out one by one the names of Members who may say "Aye" if in favour of Mr SZETO Wah's amendments or "No" if against the amendments or may abstain from voting.

Mr CHAN Ying-lun, Mr Martin LEE, Mr SZETO Wah, Mr Ronald CHOW, Miss LEUNG Wai-tung,

Mr Jimmy MCGREGOR and Mr Kingsley SIT voted for the amendments.

The Attorney General, the Financial Secretary, Mr Stephen CHEONG, Mr CHEUNG Yan-lung, Mrs Selina CHOW, Miss Maria TAM, Mrs Rita FAN, Mr CHENG Hon-kwan, the Secretary for Home Affairs, Mr CHUNG Pui-lam, Mr HO Sai-chu, the Secretary for Planning, Environment and Lands, Mr POON Chi-fai, the Secretary for Transport, Prof. POON Chung-kwong, the Secretary for Security, Mrs Rosanna TAM, Mr TAM Yiu-chung, Dr Daniel TSE, Mr Andrew WONG, the Secretary for Economic Services, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Paul CHENG, Mr Michael CHENG, the Secretary for Health and Welfare, Mr David CHEUNG, Mr Daniel LAM, Mrs Miriam LAU, the Secretary for Education and Manpower, Mr LAU Wah-sum, Mrs SO CHAU Yim-ping, Mr James TIEN, Mrs Elsie TU and Mr Peter WONG voted against the amendments.

During the division, Mr MCGREGOR asked whether it would be permissible for him to vote on behalf of Dr C. H. LEONG. The Chairman ruled that it would not be permissible under Standing Orders so to do.

The Chairman announced that there were seven votes for the amendments and 36 votes against. He declared that the amendments were negatived.

New clause 15A Signature and presentation of petition

New clause 15B Section substituted

New clause 15C Section substituted

New clause 16A Secrecy of vote

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

MR ANDREW WONG: Sir, I have already spoken earlier on new clauses 15A, 15B and 15C. Now new clause 16A is proposed so as to make consistent equivalent provisions on secrecy of votes in the two Ordinances concerned and these are the Electoral

Provisions Ordinance and the Legislative Council (Electoral Provisions) Ordinance.

Sir, I beg to move.

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

Clauses read the Second time.

Proposed additions

New clauses 15A, 15B, 15C and 16A

That the Bill be amended, by adding after clause 15 --

"15A. Signature and presentation of petition

Section 33 is repealed.

15B. Section substituted

Section 37 is repealed and the following substituted --

"37. Determination of Court

(1) At the conclusion of the trial of an election petition the Court shall --

(a) in the case of an election which was not contested, determine whether any decision of the returning officer as to the validity of any nomination was correct and, if not correct, determine whether the person declared by the returning officer to have been elected in that election was duly elected; or

(b) in the case of an election which was contested, determine whether the person whose election is questioned was duly elected and, if not duly elected, determine whether some other person was duly elected in his place; and

(c) certify the determination of the Court in writing under the hand of the judge and the seal of the Court, and the determination so certified shall be final as to

the matters at issue on the election petition.

(2) A copy of the certificate of the Court shall be transmitted to the Chief Secretary and, in the case of an election in respect of the Urban Council, the Regional Council or a District Board, to the Designated Officer.

(3) The Court may of its own motion or at the request of the Governor make a special report to the Governor as to any matters arising in the course of the trial of an election petition where in the opinion of the Court such report ought to be submitted to the Governor.

15C. Section substituted

Section 41 is repealed and the following substituted --

"41. Validation of acts done pending election petition

Where under section 37 the Court certifies a determination that a person declared to have been elected in an election has not been duly elected, acts done by him in the execution of his office as a member before the time when the certificate is received by the Chief Secretary or, in the case of an election in respect of the Urban Council, the Regional Council or a District Board, by the Designated Officer shall not be invalidated by reason of that determination."."

That the Bill be amended, by adding after clause 16 --

"16A. Secrecy of vote

Section 44 is amended by repealing ", in any legal proceeding to question the election,"."

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

New clause 17A The Electoral Provisions (Procedure) Regulations

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

MR MARTIN LEE: Sir, I move this amendment in order to bring the practice in Hong Kong in line with that of Britain and other democratic countries. The intention of the amendment is to allow the ballot paper to include a six-word occupation or organizational affiliation. As for the Chinese text, it will be six Chinese characters. In many countries, the candidate is allowed to include his party affiliation, yet I believe it is more appropriate for Hong Kong to follow the British system in which the candidate can choose whatever identifier he wishes.

The purpose of allowing the six words on the ballot paper is to help voters cast ballots in a well-informed manner, for many voters will identify and recognize candidates by their occupation such as school headmaster or organizational affiliation such as the Heung Yee Kuk, mutual aid committee of a particular district, political party, and so forth. For many voters, solely the name of the candidate will not be enough to enable them to identify the candidate positively. We know that in elections in England, there were over 10 Margaret Thatchers. This is especially true in the situation of Hong Kong where many candidates will have the same surnames, and many voters will not be familiar with all the candidates.

Hence, the inclusion of a candidate identifier on the ballot paper is a vital aid for our voters, and we ought to apply this well-tested practice to Hong Kong. Sir, I only hope that Honourable Members will not even repeat the performance of what they did in relation to an earlier amendment to the voting age, namely, by voting against it, even though many of them have actually said that they support and have always supported the reduction of the voting age, for we must not sacrifice public interest and our own convictions before the high altar of comradeship -- or what has been glorified as the integrity of the system -- even though it has no legal status whatsoever in the Standing Orders of this Council.

As for what the Honourable Andrew WONG said, as convenor of this ad hoc group, about the attendance rate of various members of the group, I can only repeat what the Honourable SZETO Wah said that the convenor is always there because he is fixed in consultation with his diary and not that of the other members.

What the Honourable Andrew WONG then said in the second speech is but, as I have mentioned, only to show that they have not brought forward these proposals in discussions in the ad hoc group. If it was so there would have been no need for the

Honourable Andrew WONG to have mentioned the attendance rate. Is there?

Sir, for the reasons I have given earlier, I commend this proposal to our honourable colleagues on its merits and ask for their support.

I move that clause 17A be read the Second time.

Question on Second Reading of the new clause proposed.

MR ANDREW WONG (in Cantonese): While I totally endorse the spirit of the Honourable Martin LEE's amendment motion, my heart aches when I reflect on the way events have turned out. It was a point never raised by Members who were also Hong Kong Democrats at the meetings. Though it was raised by the delegates of the Hong Kong Democrats at their interview with the ad hoc group, yet the proposal then was for 10 words. Of course, the six words proposed now are in keeping with United Kingdom legislation, but the matter has not gone through the stage of ad hoc group discussion. Although there is nothing wrong with the spirit throughout the whole process, I find it difficult to accept that an instant decision has to be taken while the matter is still at the Committee stage. I think the best way out is to leave it pending the comprehensive review of 1991. Indeed, I already made it clear to the Secretary for Constitutional Affairs, Mr Michael SUEN, that it is up to the OMELCO Panel on Constitutional Development to work with the Government Constitutional Affairs Branch before the 1991 elections, not after it, so that we can lay the groundwork for a comprehensive review to be undertaken following the elections in 1991. It all comes down to whether we would rather institute amendment after we come to a good understanding of the whole corpus of views, or would we rather do some ad hoc mending, fixing holes as we happen to find them. It is for the reason which I have given above that I cannot support the Honourable Martin LEE's amendment motion.

MR McGREGOR: Sir, I rise to support the amendment moved by Mr Martin LEE. I cannot see, in all honesty, that a simple amendment of this kind needs to wait until after the 1991 elections. It is not something we would need to debate at any length. It is not something that needed to be brought into a special committee or council for consideration over a long period of time. It is a very simple amendment providing information which does not seem, to most of us, to be particularly difficult to apply.

Sir, I therefore suggest that this Council can, in all honesty, take a view and vote on it.

MISS LEUNG (in Cantonese): Sir, basically, I agree with what Mr MCGREGOR said just a few moments ago. If the amendment motion is not carried when the Council votes on it later, I hope the Administration will not, as Mr Andrew WONG suggested a while ago, wait until after the 1991 elections to conduct the review.

I understand that this is only a very simple proposal. So even if the proposal fails to gain the support of this Council today, the authorities concerned should examine it as soon as possible. I hope everybody will soon understand and accept this proposal so that it will be ready for implementation in the elections to this Council next year.

Sir, I support the Honourable Martin LEE's amendment motion.

MR SIT (in Cantonese): Sir, I support the Honourable Martin LEE's amendment motion because the election process, so far from being affected by the amendment, will positively benefit from it. The Honourable Andrew WONG was among Members who voiced their opposition; he has not been able to provide a good reason for not supporting the motion, except to say that he has suffered a heartache. We should note that heartache is not a way to solve problems because we are not talking about surgery. I think that we should not object lightly, that we have to have good reason to believe that the Honourable Martin LEE's motion will adversely affect the 1991 elections in order to oppose it. We can oppose it if it is unfair, unjust or impracticable, but I personally cannot find evidence of such shortcomings. I hope Members will point out such shortcomings, if they find any; for otherwise I do not really see anyone should object; that is, unless people object just because they see the Honourable Martin LEE as a nuisance to be silenced anyway. Otherwise, I just fail to understand why. Thank you, Sir.

MRS CHOW (in Cantonese): This is the first time I speak in Chinese in this Council. I think there is a very serious point which we need to consider here. The proposal here comes from a political party; have we consulted other political parties, and what are their views on this? Have we consulted other election candidates, and what are their views on this? I have no way of knowing because I have not been involved

in the ad hoc group meetings. But these were the questions which came to mind when I was studying the motion. Of course, superficially, I do not see any big problem with the motion. But I feel that since this motion comes from a political party, we should deal with it fairly and allow enough time for consultation. For there may be areas which we fail to see, but which other organizations or individuals may want to comment on. I therefore support the Honourable Andrew WONG's proposal. We, as responsible legislators, should take it upon ourselves to thoroughly think through the issue and be accountable to all parties concerned. I absolutely support the Honourable Andrew WONG's views on this matter.

MR CHEONG (in Cantonese): Sir, I frankly admit that I am not as knowledgeable as my colleagues on the implication of this motion. I did not know about this until Saturday. I would of course respect the views of my colleagues. All Members are free to put anything on the agenda of this Council; however, I also hope that Members, in stating their views, will also respect the views of other Members, and seriously consider whether there are other, better, views which they may take into account also. If, instead of following the procedure of letting all of us collectively consider, review and exchange opinions, Members choose to defy the rules in asserting their opinions, then I can see no other motive than the desire to advertise themselves as the only people who are working for Hong Kong on the one hand, and to denigrate others as "ineffectual" on the other. Some Members have expressed in their speeches a rather low opinion of our appointed Members who, it seems, are not only worthless, but also quite unfit to live. I am most reluctant to say this on this kind of occasion, but like the Honourable Andrew WONG, my heart aches at the thought of this. What Hong Kong needs now is for us to work together in a spirit of solidarity; the last thing we want is an opposition party determined to smash the Government and bring destruction to Hong Kong. We need time to work, so I absolutely oppose the motion of the Honourable Martin LEE.

SECRETARY FOR HOME AFFAIRS: Sir, I am afraid the subject of the amendment is rather more complex from the way that I can look at it. First, unlike the United Kingdom -- just as an example -- where the Labour Party or the Conservative Party would mean something to the electorate, in Hong Kong, the political parties are relatively new. The public is largely unfamiliar with even the names of emerging political parties let alone their political platforms.

Putting it in a more graphic manner, will the voters be able to distinguish between, say, "The United Democrats of Hong Kong", "The Hong Kong Democratic Federation", "The Liberal Democratic Federation of Hong Kong", "Hong Kong Association for Democracy and People's Livelihood" -- I can go on. I am of the view, Sir, that the inclusion of political affiliation in the ballot paper would confuse rather than educate the voters. Our preference is for the ballot paper to be simple, easy to understand, and therefore easy to use.

Secondly, would it really be fair to those candidates who are not affiliated to such organizations but who would wish to stand on their own merits? Should they not be given adequate notice that political affiliation would become part of the ballot paper, so that they could then have a choice as to whether or not to avail themselves of a political affiliation? Such a decision on the part of the candidate must be a complex matter for him.

I do not think that it is right or proper to make the change proposed by Mr Martin LEE, without having had the matter aired and debated in public.

Sir, I shall vote against this amendment.

Question on the Second Reading of the new clause put and negatived.

LEGISLATIVE COUNCIL (ELECTORAL PROVISIONS) (AMENDMENT) BILL 1990

Clauses 1 to 6, 8 to 16 and 18 to 20 were agreed to.

Clause 7

MR ANDREW WONG: Sir, I move that clause 7 be amended as set out under my name in the paper circulated to Members.

These, together with the new clauses 16A, 16B and 16C to be considered by the Committee later on, follow the amendments to the Electoral Provisions (Amendment) Bill 1990 which were agreed to a moment ago. The reasons of the amendments have been stated in my speech previously when moving the amendments to the other Bill.

Sir, I beg to move.

Proposed amendment

Clause 7

That clause 7 be amended, by deleting paragraph (a) and substituting --

"(a) by repealing paragraph (e);

(aa) in paragraph (f) by adding "(1)" after "40"; and".

Question on the amendment proposed, put and agreed to.

Question on clause 7, as amended, proposed, put and agreed to.

Clause 17

MR SZETO (in Cantonese): Sir, I move that clause 17 be amended as set out under my name in the paper circulated to Members.

Sir, clause 17 originally provides that the Governor has the authority to decide what kinds of functional constituencies the Legislative Council will have and how many seats will be allocated to each of them. But I do not think that is the way the system works in terms of real operation, nor is it likely that the Governor would personally wish it to work that way. If that is indeed the case, why do we have to retain in the statute such absolute powers which would tarnish the image of the Governor. My amendment motion, if passed, will transfer the said powers to the Legislative Council, which is more in keeping with the democratic principle. Functional constituency seats in the Legislative Council will be increased to 30 in 1995, which is one half of the total number of seats. It is in this context that which functional groups should be represented and how many seats they should each be allowed in this Council will become issues which are that much more important. It is because by then it would become possible for the Governor to exercise his influence by controlling half of the seats of the Legislative Council. If that should be the case, then this Council would be stripped of whatever democratic trappings it may have.

If one says, "I support your view, but since you failed to take the proper way

to express it, so I would have to withdraw my support and oppose you instead." I would like Members to think about this and decide if that is the right attitude to take.

It was also said that some people had been criticized as entirely worthless, but was such criticism in fact made? Even if such a criticism has in fact been made, there is no need to automatically start at the remark like a guilty thing upon a fearful summons. It was also alleged that the very act of introducing the amendment motion without giving advance notice would bring destruction to Hong Kong. But is it true that Hong Kong can be destroyed so easily? Let us not use scare tactics; if Hong Kong can perish just like that, then perhaps there is no need to destroy it after all because it must already be rotten to the core.

Sir, I think that my amendment motion stands to reason, if only in deference to the Governor's own wishes and for the protection of his good name.

Sir, I move the amendment motion standing in my name.

Proposed amendment

Clause 17

That clause 17 be amended, by deleting the clause and substituting --

"17. Amendment of Schedules

Section 46 is repealed."

Question on the amendment proposed.

MR CHEONG: Sir, in relation to this amendment, I rise to oppose it. First, it is improper for Mr SZETO Wah to say that it is the Governor who decides, when in fact it is not the Governor but the Governor in Council. I would like to make this correction first. And in so far as the Governor in Council is concerned, it involves the Executive Council.

There is no doubt that, in relation to the Sino-British Joint Declaration, the relationship between the Executive Council and the Legislative Council has not been

clearly spelt out. Under such a situation, it has been the system of Hong Kong that the Governor in Council -- Governor in conjunction with the Executive Council -- is the proper authority to make most decisions in the executive branch of the Government. The executive branch, having made decisions, then refers the matter to the Legislative Council for monitoring, and if there are any public funds that are needed it is the Legislative Council's Finance Committee members who decide to vote or not to vote funds.

Mr SZETO's amendment, albeit couched in very innocuous terms, in one stroke tries to change the modus operandi of this Administration, both now and in the future. And that is that administration is not going to be vested in the executive branch; it is going to be vested in the legislature. It is legislation that they do not believe in, be it under any system of operation whatsoever. Could anybody -- 56 of us -- at any time, at any moment, voice anything like that in this sort of meeting. Under that situation, where is our efficiency?

If that is the case, if we cannot run Hong Kong or administer Hong Kong with efficiency, where is this going to lead us? Mr SZETO says it is going to rot. Surely it is going to rot because they do not know a thing about how to run Hong Kong and they simply try to get their names in the newspapers without due regard to the future interests of this place at all. Thank you.

MR HO SAI CHU (in Cantonese): Sir, I do not want to waste the time of my colleagues, but as I come from a functional constituency, the commercial functional constituency to be exact, then it would seem that I should be the one who is better at counting numbers. Under the present circumstances, I find it difficult to go along with the Honourable SZETO Wah's argument for the addition of seats for the two functional constituencies on the ground that they have vast memberships. If we go by numbers, then there are certainly many functional constituencies which should not have been included because their numerical importance is certainly not matched by their much greater "functional" importance. I do not agree with the plea for more seats if it is motivated by selfish interest, and in any case, the issue was brought up in a hasty manner without careful deliberation. I feel that the motion should not be supported in a rash manner, so I oppose it.

MR MARTIN LEE: Sir, I think the Honourable HO Sai-chu misunderstood this particular amendment. It has nothing to do with the addition of seats in functional

constituencies. It is only to delete an existing clause of the law which allows the Governor to amend unilaterally any aspect of the functional constituencies. This, Sir, flies in the face of both logic and principle. First, if the Legislative Council is entrusted with the responsibility of enacting the Second Schedule and thereby delineating the functional constituency seats, only this Council should be able to amend that Schedule. What is the purpose of our enacting the Schedule if the Governor can change it in any fashion he pleases?

Second, the Schedule determines what the make-up of each functional constituency will be. It says which persons and groups will have the right to vote in functional constituency elections. Hence, the content of the Schedule will have a great influence on which candidates are to be returned. This is fundamentally contrary to a notion of separation of powers if the executive has unbridled discretion to determine the election methods for a substantial number of legislators. The Secretary for Home Affairs said in an earlier speech that the Governor in fact does nothing of the kind and he always leaves it to this Council. If so, then I expect the Secretary for Home Affairs to support this amendment because it is meant to ensure proper carrying out of the process by statute law and the Secretary need not worry about the sanctity of the In-House Meeting because as an Official Member, he is not entitled to attend.

As to some Honourable Members whose hearts were hurt by some of the amendments proposed by Mr SZETO Wah and myself, I need only to remind them that there are thousands and hundreds of thousands of hearts which are even more hurt by the way legislators have chosen to behave in this Council described by the Honourable Stephen CHEONG, today's Senior Member, as "this sort of meeting".

For the above reasons, Sir, I respectfully submit that only this Council ought to have the power, through appropriate legislation, to amend the Schedule for the functional constituencies. I, therefore, support the amendment.

MR ANDREW WONG (in Cantonese): Sir, my speech may be rather long. As a matter of fact, the Honourable SZETO Wah's amendment motion involves what we, during the ad hoc group discussions, had identified as key issues, such as by what criteria a constituency is to be determined, whether the criteria should be specified in each of the Ordinances, namely, the District Board Ordinance, the Urban Council Ordinance and the Regional Council Ordinance, by what criteria functional constituencies should

be determined, whether the 18 directly elected seats in the Legislative Council should be single or double seats, and whether a constituency should be determined by the demographic or geographic factor -- which are legislative criteria in the sense that they have to be specified in the legislation. Another question that arose when we discussed the legislative criteria as to the demarcation of constituencies was whether the authority vested with powers to demarcate electoral districts or constituencies had laid down clear demarcating criteria. For while some of these powers rest with the Governor under certain Ordinances, others are not, in the sense that they actually rest with the Governor in Council.

We should also consider the setting up of an election commission to take charge of the delineation of constituencies in accordance with these legislative criteria so that the task is seen to be done in a fair and just manner and be readily acceptable to the public. Then the commission will be further charged with conducting fair elections.

In this regard, the problem will not be solved, as the Honourable SZETO Wah suggested, just by repealing section 46 of the Legislative Council (Electoral Provisions) Ordinance. For even if section 46 has been repealed, the problem will not go away since it does not follow that any decision made by the Legislative Council will necessarily be any less political than that made by the Governor in Council. In other words, the introduction of more directly elected seats, as the Honourable Ronald CHOW mentioned just now, to the district boards, the two municipal councils and the Legislative Council will also bear on this question. I think that any rash move to repeal section 46 without first carrying out research would mean that we are not getting our priorities right.

How does the existing section 46 operate? Suppose we retain section 46, bearing in mind that the original schedule is enacted by the Legislative Council, the Council has the power to overturn within 28 days whatever amendment the Governor in Council makes to the schedule, rendering the amendment null and void or modifying it. If it is considered that 28 days are not enough, then an extension of 21 days is also obtainable by resolution. I think therefore that the amendment motion proposed by the Honourable SZETO Wah is not entirely a matter of procedure, but rather of rash improvisation. The amendment motion which has not been well thought out will not solve any problem; rather it would only afford an opportunity, characteristic of a fun day, for all and sundry to express their opinions.

Sir, I oppose the amendment motion of the Honourable SZETO Wah.

MR ARCULLI: Sir, I do not know when other Honourable Members of this Council received the Committee stage amendment now before the Council. I received mine at 12.45 pm this afternoon. And, I think, after that, I had to go straight to lunch and therefore I really saw it and read it during lunch time. And I think, again, it illustrates the fact that if this had been brought up and been considered by the ad hoc group, by the In-House, or by whatever method, it would have been far better.

I have the greatest admiration for Mr Andrew WONG's knowledge of these matters, and having heard what he has said, I have learnt a little -- enough to say that I would wish to vote against it, as my knowledge now stands -- and I would not really want to rush in where angels fear to tread.

MRS TU: Sir, my words will be few. I was not aware of the substance of the amendment until I read it in the newspaper. I did not even get the amendment in writing. I think it may well be a good amendment. But I think it would be very undemocratic for me to support it at the drop of the hat without discussing it with any colleagues or with my constituents. Therefore, I am afraid I shall have to vote against it.

SECRETARY FOR HOME AFFAIRS: Sir, Mr Andrew WONG has ably covered a point that I want to make but perhaps I could add two other points to it.

I oppose this motion because it would represent a departure from the established practice and also because of what Mr Andrew WONG said. But I would like to give it a legal basis. The legal basis is in the Interpretation and General Clauses Ordinance which requires that any decision made by amendment to the schedule by the Governor in Council would have to be laid before this Council and this Council would be able to make changes to it by resolution.

Question on the amendment put and negatived.

New clause 16A Determination of Court

New clause 16B Validation of acts pending election petition

New clause 16C Vacancy where candidate not duly elected

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

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

Clauses read the Second time.

Proposed additions

New clauses 16A, 16B and 16C

That the Bill be amended, by adding after clause 16 --

"16A. Determination of Court

Section 35(1)(a) is repealed and the following substituted --

"(a) in the case of an election which was not contested, determine whether any decision of the returning officer as to the validity of any nomination was correct and, if not correct, determine whether the person declared by the returning officer to have been elected in that election was duly elected; or

(aa) in the case of an election which was contested, determine whether the person whose election is questioned was duly elected and, if not duly elected, determine whether some other person was duly elected in his place; and".

16B. Validation of acts pending election petition

Section 39 is amended by repealing "candidate" and substituting "person".

16C. Vacancy where candidate not duly elected

Section 40 is amendment --

(a) by renumbering it as subsection (1);

(b) in subsection (1) by repealing "or that the election was void,";

(c) by adding after subsection (1) --

"(2) Where the Court determines on an election petition that any person declared to have been elected in the election has not been duly elected but some other person was duly elected in his place, such first-mentioned person shall cease to hold office as an elected Member and such second-mentioned person shall commence to hold office as an elected Member from the date of that determination."."

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

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

Clauses 1 to 4 were agreed to.

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

Clauses 1 to 8 were agreed to.

DISTRICT BOARDS (AMENDMENT) BILL 1990

Clauses 1 to 7 were agreed to.

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1990

Clauses 1 to 6 were agreed to.

New clause 4A Provisions as to addresses, bills, notices, etc.

New clause 4B Offences in relation to ballot papers

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

MR ANDREW WONG: New clauses 4A and 4B are moved to rectify two minor inadvertencies, typographic or otherwise, found in the principal Ordinance. These relate to "printed material" instead of "printed matter" and "any" ballot paper instead of "and" ballot paper.

Sir, I beg to move.

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

Clauses read the Second time.

Proposed additions

New clauses 4A and 4B

That the Bill be amended, by adding after clause 4 --

"4A. Provisions as to addresses, bills, notices, etc.

 Section 19(1) is amended by repealing "matter" and substituting "material".

4B. Offences in relation to ballot papers

 Section 23(a) is amended by repealing "and" and substituting "any".

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

CRIMINAL LAW (AMENDMENT) BILL 1990

Clause 1 to 5 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

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

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

DISTRICT BOARDS (AMENDMENT) BILL 1990 and

CRIMINAL LAW (AMENDMENT) BILL 1990

had passed through Committee without amendment and the

ELECTORAL PROVISIONS (AMENDMENT) BILL 1990

LEGISLATIVE COUNCIL (ELECTORAL PROVISIONS) (AMENDMENT) BILL 1990 and

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1990

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

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

Bills read the Third time and passed.

Adjournment and next sitting

HIS HONOUR THE PRESIDENT: In accordance with Standing Orders I now adjourn the

Council until 2.30 pm on Wednesday, 5 December 1990.

Adjourned accordingly at eleven minutes past Seven o'clock.

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