

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 12 July 1995

The Council met at half-past Two o'clock

## PRESENT

THE PRESIDENT

THE HONOURABLE SIR JOHN SWAINE, C.B.E., LL.D., Q.C., J.P.

THE CHIEF SECRETARY

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.B.E., J.P.

THE ATTORNEY GENERAL

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

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

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, 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.

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D., J.P.

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

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

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E., J.P.

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

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

DR THE HONOURABLE TANG SIU-TONG, J.P.

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

THE HONOURABLE ALFRED TSO SHIU-WAI

THE HONOURABLE LEE CHEUK-YAN

**ABSENT**

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

**IN ATTENDANCE**

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR MICHAEL SUEN MING-YEUNG, C.B.E., J.P.  
SECRETARY FOR HOME AFFAIRS

MR RONALD JAMES BLAKE, J.P.  
SECRETARY FOR WORKS

MR JAMES SO YIU-CHO, O.B.E., J.P.  
SECRETARY FOR RECREATION AND CULTURE

THE HONOURABLE MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.  
SECRETARY FOR THE CIVIL SERVICE

MR HAIDER HATIM TYEBJEE BARMA, I.S.O., J.P.  
SECRETARY FOR TRANSPORT

MR DONALD TSANG YAM-KUEN, O.B.E., J.P.  
SECRETARY FOR THE TREASURY

MR NICHOLAS NG WING-FUI, J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR MICHAEL DAVID CARTLAND, J.P.  
SECRETARY FOR FINANCIAL SERVICES

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.  
SECRETARY FOR HOUSING

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.  
SECRETARY FOR HEALTH AND WELFARE

MR BOWEN LEUNG PO-WING, J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MRS ELIZABETH MARGARET BOSHER, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MRS REGINA IP LAU SUK-YEE, J.P.  
SECRETARY FOR TRADE AND INDUSTRY

MR KENNETH JOSEPH WOODHOUSE, J.P.  
SECRETARY FOR SECURITY

THE DEPUTY SECRETARY GENERAL  
MR LAW KAM-SANG

**PAPERS**

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

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Schedule of Routes (China Motor Bus Company) Order 1995 .....	310/95
Swimming Pools (Regional Council) (Amendment) (No.2) Bylaw 1995 .....	311/95
Employees Retraining Ordinance (Amendment of Schedule 4) Notice 1995 .....	312/95
Builders' Lifts and Tower Working Platforms (Safety) Ordinance (23 of 1995) (Commencement) Notice 1995 .....	313/95
Motor Vehicles Insurance (Third Party Risks) (Amendment) Ordinance 1995 (46 of 1995) (Commencement) Notice 1995 .....	314/95
Employees' Compensation (Amendment) (No.2) Ordinance 1995 (47 of 1995) (Commencement) Notice 1995 .....	315/95
Official Languages (Authentic Chinese Text) (Crimes Ordinance) Order .....	(C)49/95

## Sessional Papers 1994-95

- No.103 — Kadoorie Agricultural Aid Loan Fund Report  
for the period 1 April 1994 to 31 March 1995
- No.104 — J.E. Joseph Trust Fund Report for the period 1  
April 1994 to 31 March 1995
- No.105 — Report of the Legislative Council Panel on  
Administration of Justice and Legal Services  
Concerning the Briefing Out Costs in the  
Bumiputra Malaysia Finance Limited Case  
June 1995

- No.106 — Statement of Accounts for the Customs and Excise Service Welfare Fund for the year 1994-95
- No.107 — Pneumoconiosis Compensation Fund Board 1994 Annual Report
- No.108 — Hong Kong Provisional Airport Authority Annual Report 1994-95
- No.109 — Report on the Administration of the Immigration Service Welfare Fund from 1 April 1994 to 31 March 1995 prepared by the Director of Immigration
- No.110 — Report of the Subcommittee on Proposed Legislation on Wong Wai Tsak Tong Legislative Council Panel on Planning, Lands and Works March 1995

## ADDRESSES

### **Report of the Legislative Council Panel on Administration of Justice and Legal Services Concerning the Briefing Out Costs in the Bumiputra Malaysia Finance Limited Case June 1995**

MR SIMON IP: Mr President, on behalf of the Legislative Council Panel on Administration of Justice and Legal Services, I have the honour to table the Panel's report on the study of the briefing out costs in the Bumiputra Malaysia Finance Limited (BMFL) case.

The study was initiated as a result of a revelation in November last year of a substantial amount of fees paid to a former legal officer of the Legal Department. Since then, the Panel has held eight meetings, including six public meetings, to look into the background of the case.

This report sets out the circumstances surrounding the briefing out and the Panel's views on the responsibility of the persons concerned. The Panel has also made a series of recommendations on how the systems in the Department could be tightened up to improve the management of public funds.

Mr President, it is not my intention this afternoon to go over all the conclusions and recommendations of the Panel. However, I think it would be appropriate for me to highlight some of the Panel's findings and the main recommendations.

The Panel does recognize the need for briefing out by the Legal Department to private practitioners. Nevertheless, the manner in which the BMFL case had been briefed out has cast serious doubts on the systems then in place in the Department. There was little concern for accountability in the spending of public money, no checks and balances in the decision-making process, a lack of budgetary control and review mechanisms, and an overall cavalier attitude towards financial management.

The Panel finds it hard to accept that such a significant amount of public money should have been spent in such a manner, and that this should have taken place in a government department where the administration of justice is its prime concern. The Panel is concerned with the adverse effect which the handling of the case would have on the morale of the 900 staff members of the Department and on the public image of the Department. The Panel concluded that both the Attorney General and the former Director of Public Prosecutions should share responsibility for the failure to contain the briefing out costs on this case and the failure to exercise budgetary control over the use of public money.

The Panel has made a number of recommendations in major areas where improvements are needed. The Panel believes that the Administration should take concrete steps to ensure that the Department is put under stronger leadership and more effective and competent management. This should then be reinforced by injecting into the departmental management a stronger sense of cost and accountability. The Chamber Manager's role in the control and briefing out vote also requires strengthening. In addition, the Attorney General should arrange for all briefed-out cases to be reviewed periodically to ensure better cost control. He should keep the Panel informed about the effectiveness of the improvement measures introduced earlier this year. I urge the Administration to expedite the implementation of the Panel's recommendations.

Mr President, the Legal Department has recently set up two working parties, one to review the briefing out system and the other to examine the decision-making process in the Prosecutions Division pursuant to the motion debate held in this Council on 7 June 1995. It is to be hoped that these working parties' recommendations, coupled with the recommendations of the Panel's report, would bring a more efficient, effective and accountable department.

Mr President, I wish to emphasize that this report has no relevance to the legal issues of the BMFL case. The focus of the Panel has been exclusively on management aspects in the context of public money costs controls.

I wish to express my gratitude to Members of the Panel, to all persons who provided information to the Panel, and to the Legal Adviser and staff of the Legislative Council Secretariat for their assistance throughout the Panel's Study.

Thank you, Mr President.

## **Hong Kong Provisional Airport Authority Annual Report 1994-95**

FINANCIAL SECRETARY: Mr President, in accordance with section 10 of the Provisional Airport Authority Ordinance, the Annual Report and audited accounts of the Provisional Airport Authority for the year ended 31 March 1995 are tabled today. As in previous years, the Report contains a detailed review of the Authority's activities covering events up to June this year.

The Report details further intense activity by the Authority in the development of Hong Kong's new airport. Good progress has been made in construction, operational planning and negotiation with private sector investors on the provision of essential airport support services. I would like to take this opportunity to thank the Board, the management and the staff of the Authority for their very hard work over the year.

The year under review also saw a number of positive developments on the institutional arrangements under discussion between the British and the Chinese sides of the Airport Committee of the Sino-British Joint Liaison Group. These include the agreement reached on overall financing, the arrangement for the granting of the airport island to the Authority, the Airport Authority Bill and, recently, the very welcome agreement on the Financial Support Agreement for the airport and air cargo franchises.

The resumption of the Second Reading debate on the Airport Authority Bill is now scheduled for 19 July. I very much hope that the Bill will be supported by Members, which will mean that this Report will in fact be the last one issued by the provisional body. More importantly, with the enactment of the Airport Authority Ordinance, the Authority will be able to keep up the momentum of work.

Looking back, I recall that when I first took up the chairmanship of the Provisional Airport Authority in September 1991, Chek Lap Kok was only a 302-hectare granite outcrop with its tiny neighbour, Lam Chau, nearly 2 km away. The Provisional Airport Authority then had a very modest staff establishment. We have moved a long way forward since then. With the formation of the airport island, the passenger terminal building rising steadily from its foundations and work commencing on the southern runway, the physical progress is there for all to see. At the same time, the Authority is building up its organization and staff for the tasks ahead. The focus increasingly will shift from construction to operational and commercial planning.

It gives me mixed feelings to leave the helm of this major project at this juncture. I am glad that past uncertainties are behind us. Nevertheless, with a project of this size, the Authority will be facing more challenges ahead. I have no doubt that it will meet them admirably and will move full speed ahead to prepare for airport opening in April 1998.



PRESIDENT: Mr Albert CHAN, a short question for elucidation only of the statement.

MR ALBERT CHAN (in Cantonese): *Mr President, I most welcome this report from the Government. It is because, compared with past reports, the present one shows some improvement in terms of transparency. But I wonder whether the Government can let the public have more information, that is to say, in relation to remuneration payable to members of the board of directors. Page 62 of this document sets out the number of members in order of ranking and income. But it makes no mention of other allowances, such as housing allowance and other fringe benefits, enjoyed by these members. The public is thus unable to get a full picture of their actual remuneration. Could the Government let us know more of the actual remuneration and fringe benefits of these people ?*

PRESIDENT: The question goes simply to elucidation of the statement, Mr Albert CHAN. You are asking for elucidation of the report.

### **Report of the Subcommittee on Proposed Legislation on Wong Wai Tsak Tong Legislative Council Panel on Planning, Lands and Works March 1995**

MR ANDREW WONG (in Cantonese): Mr President, when I moved at the Legislative Council Sitting on 5 July 1995 that the Block Crown Lease (Cheung Chau) Bill be read the second time, I indicated and gave notice that I would table today, 12 July 1995, the Report of the Subcommittee on Proposed Legislation on Wong Wai Tsak Tong appointed by the Legislative Council Panel on Planning, Lands and Works. With your consent, Mr President, I now table the Report.

The Subcommittee was established in accordance with a decision of the Legislative Council Panel at its meeting held on 15 November 1994. During the meeting, the Legislative Council Members were briefed on the Government's legislative proposals to resolve the long-standing dispute between Wong Wai Tsak Tong and its sub-lessees. In view of the very long and complex history of the case, and its implications on the private land titles on Cheung Chau, the Panel decided to form a Subcommittee to monitor the progress of the proposed legislation.

The Subcommittee's terms of reference was to monitor the progress of the proposed legislation to regulate the relationship between Wong Wai Task Tong and its sublessees.

The membership of the Subcommittee was as follows:

Dr Honourable TANG Siu-tong, JP	as Chairman
Honourable Albert CHAN Wai-yip	as Deputy Chairman
Honourable CHIM Pui-chung	as Member
Honourable Alfred TSO Shiu-wai	as Member

Three non-panel members, namely Honourable TAM Yiu-chung, Honourable Andrew WONG, OBE, JP and Honourable Wing-tat, also participated in the work of the Subcommittee.

The Subcommittee conducted a total of five meetings between 9 December 1994 and 8 February 1995 to collect relevant information from government officials, representatives of the Cheung Chau Rural Committee, the Union of Cheung Chau Residents and Owners, and Wong Wai Tsak Tong. Its findings and recommendations are presented in Chapter VIII of this Report. The Report was finalized by the Subcommittee on 28 February 1995 and was made public and submitted to the Legislative Council Panel on Planning, Lands and Works and the House Committee for approval in March. It is now tabled at this Council.

Thank you, Mr President.

## ORAL ANSWERS TO QUESTIONS

### Localization Programme of Mass Transit Railway Corporation

1. DR SAMUEL WONG asked (in Cantonese): *In his reply to a Legislative Council question asked on 10 March 1993, the Secretary for Transport stated that the Mass transit Railway Corporation (MTRC) and the Kowloon Canton Railway Corporation had adopted a policy of localization and that the two corporations had offered training programmes for their staff and drawn up succession plans to ensure that local talents were trained to meet the objectives of the corporations. The Secretary for Transport further stated that the two corporations would continue with this policy. In this connection, will the Government inform this Council whether it is aware of the progress which the MTRC has made in localizing its senior management, particularly the salaried directors apart from its Chairman?*

SECRETARY FOR TRANSPORT: Mr President, apart from the Chairman of the Mass Transit Railway Corporation (MTRC), who is appointed by the Governor under section 4 of the MTRC Ordinance, all other appointments are a matter for the Corporation itself to determine. In this respect, the Corporation now has a clear-cut policy of appointing suitably-qualified local candidates for vacancies which may arise. The Corporation will only resort to overseas

recruitment when local candidates are not available. Indeed, in keeping with the principle of this policy, the MTRC has, since December 1993 offered totally equal terms to new employees, regardless of whether they are recruited locally or from overseas.

As regards progress in localizing its top management, the most significant step taken is that, as Honourable Members know, in April this year a local candidate was recruited and appointed to fill the position of Chairman of the Corporation. Apart from the Chairman, it is a fact that at present only one of the seven Executive Directors is a local appointee.

It should be noted that all the Executive Directors and by far the majority of the employees in managerial and professional posts have been engaged on permanent terms of service. Under the Corporation's localization policy, expatriates who leave the service on retirement or for other reasons will be replaced as far as possible by locals who have the necessary qualifications and experience. In this respect, one of the expatriate Directors will be retiring in the middle of next year, and the Corporation's firm intention is to appoint a local replacement.

DR SAMUEL WONG (in Cantonese): *Mr President, the MTRC has been in operation for nearly 20 years. But it will not be until mid next year that a second local salaried director will be appointed. This sufficiently reflects that the MTRC has been saying one thing but doing another in relation to the training of local talents and technology transfer. At present, among the second echelon, particularly in the engineering department, over 70% of the posts are filled by expatriates. Could I ask the Secretary for Transport, who sits on the Board of Directors, what measure has he in mind to deal with this situation?*

SECRETARY FOR TRANSPORT: Mr President, I think it has to be recognized that the MTRC is a hands-on and a very dynamic organization. And I think Members will agree and accept that it is reputedly one of the most successful railway systems in the world and indeed much credit for this goes to the Chairman, both past and present, and to the Directorate team. Now I think all the Executive Directors have extensive knowledge in their respective fields. The MTRC must continue to draw on their knowledge. We have got the Airport Railway which is being planned and built and we have got the Tseung Kwan O extension which is part of our Railway Development Strategy.

As I have explained in my main reply, the Executive Directors have been engaged on permanent terms of conditions of service and I believe it would, firstly, be wrong to prematurely terminate their services simply for the sake of localization but more importantly, secondly, it is the interests of the railway system in Hong Kong and the MTRC that we have got to bear in mind. They have done a good job. The Corporation's policy has been very clearly stated and insofar as the Board is concerned, there is a special panel headed by one of

the Board members which does look at localization policy and certainly future appointments to senior positions will be considered by this Board.

MR ALBERT CHAN (in Cantonese): *Mr President, it is believed that the civil service localization policy will be fully implemented next year. But it could be said that the localization plans for the MTRC and the Kowloon-Canton Railway Corporation, two of the largest corporations, are far from being realized. I feel that this is a total failure and an affront to locally trained professionals. Could I ask the Government if it has formulated any specific plans or policies as to when these two large corporations will fully implement their localization plans? And will there be a basic lower limit to the effect that at a certain point in time no less than a certain percentage of senior staff must be local appointees?*

SECRETARY FOR TRANSPORT Mr President, as I have explained, apart from the position of the Chairman, the Corporation determines its own appointments. In this respect I do not think it is helpful to artificially impose a time limit on when and what percentage of senior posts should be localized. Insofar as the senior establishment is concerned, of the 593 managers and professional members, including the Directorate staff, 125 are expatriates. Although, of course, six of the seven Directorate appointees are expatriate officers at first, there is a clear-cut policy, as I have explained, that as and when vacancies arise, preference will be given to local candidates, but subject to the condition that they are fully qualified.

Indeed in recent recruitment exercises, in building up the establishment for the Airport Railway, an attempt, a very conscious attempt was made to recruit more local officers but it was found that there were insufficient qualified candidates who came forward and could be appointed. Mr President, I want to assure Honourable Members that the Corporation does realize the need to localize, but I think this has got to be taken in steps.

MRS MIRIAM LAU: *Mr President, in paragraph three of the main answers, it was pointed out that expatriates who leave the service on retirement will be replaced by locals who have the necessary qualifications and experience. The running of railways is a very specialized field and qualifications and experience do not come by overnight. In this regard, is there a particular programme by the Corporation whereby potential successors are identified and actually put in the learner driver's seat to learn to drive? Is there a programme in which such training is being carried out?*

SECRETARY FOR TRANSPORT: Mr President, in 1992 a special section has been established in the Human Resources Division of the MTRC to undertake succession planning and training and certainly one of the priorities is to develop

local senior managers to give them the requisite experience and they are given hands-on experience.

### **Industrial Protective Equipment**

2. MF FRED LI asked (in Cantonese): *At present, workers can easily purchase industrial protective equipment such as dust masks, goggles, helmets and other items in the open market. However, the quality of such protective equipment is of uneven standard, and some of these items cannot even meet the required safety standards. In view of this, will the Government inform this Council:*

- (a) *whether it has conducted regular tests on the quality of various items of industrial protective equipment available in the open market to check if they meet the required safety standard; if so, what the details are; if not, why not;*
- (b) *what specific measures the Government has put in place to educate factory owners, site contractors and workers on how to choose and use protective equipment which meets the required safety standard; and*
- (c) *what interim and long-term measures does the Government have to monitor both the manufacturers and the retailers, so as to curb the indiscriminate selling of protective equipment which does not meet the required safety standard?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President,

- (a) The Occupational Safety and Health Council (OSHC) commissions tests on industrial protective equipment to see if they meet specified safety standards. Recent examples of such tests are those on goggles, spectacles and face shields. The OSHC also has plans to conduct more tests on personal protective equipment.
- (b) The Labour Department promulgates approved personal protective equipment to protect the health and safety of workers and provides information and advice to factory proprietors, contractors and workers on approved and suitable equipment.

Under the Factories and Industrial Undertakings Ordinance, it is the duty of every factory proprietor and contractor to procure approved or suitable types of protective equipment for his employees and to provide information, training and supervision to them on the proper use of these equipment. The Labour

Department has published a large number of pamphlets, leaflets, brochures and posters on the need, selection and use of such equipment.

The Labour Department's Industrial Safety Training Centre organizes safety training courses on various aspects of industrial safety including the proper use of protective equipment. The OSHC also organizes training courses on personal protective equipment.

The Information Services Department, the Labour Department and the OSHC run annual series of promotion and publicity activities on industrial safety. The proper use of personal protective equipment is always an important feature of these activities.

- (c) The Labour Department at present controls the purchase and use of sub-standard protective equipment at the user's end through enforcement of the Factories and Industrial Undertakings Ordinance. When a sub-standard personal protective equipment is found in use in an industrial undertaking or on a construction site, the proprietor or contractor concerned will be given appropriate advice and suitable warning and, if necessary, prosecuted for contravening the relevant regulations.

In the longer term, the vigorous enforcement of the Factories and Industrial Undertakings Ordinance, together with sustained promotion and publicity campaigns on the use of proper protective equipment, should eliminate from the market those items of equipment which fall below required industrial safety standards.

MR FRED LI (in Cantonese): *Mr President, in paragraph (c) of the main reply, the Secretary clearly stated that the purchase and use of substandard protective equipment at the user's end are controlled through enforcement of the Factory and Industrial Undertakings Ordinance. But I have read some of the provisions in the said Ordinance and found that they only require proprietors to provide suitable protective equipment without explaining what "suitable" really means. Take, for instance, the dust mask which is used by many workers in the course of road construction or other works. It can be readily purchased at any metalware shop. But that kind of dust mask is ineffective. Tests conducted by us have proved that it is ineffective. This kind of dust mask that I have before me, however, is effective. I have also tried it on myself. This is the sort of mask that is suitable. In other words, only tested masks found to be effective can be said to be suitable. The problem is that masks purchased at random by workers at any street shop are basically of little help to them. Can such masks be said to be suitable? The said Ordinance does not define what is meant by "suitable". Could I therefore ask the Secretary if he would review the question of the so-called suitable protective equipment as referred to in the said Ordinance and specify which sort of equipment would meet the required*

*standard so as to provide genuine protection to workers and lessen the chance of their contracting occupational diseases?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, let me perhaps explain the provisions of the existing regulations. Currently, the Labour Department has promulgated 12 sets of detailed regulations specifying the safety standards of personal protective equipment. Of these sets of regulations, five specify that users must only use equipment approved by the Commissioner for Labour. The other seven sets specify the sort of equipment that can only be used under appropriate circumstances. These regulations, however, are rather flexible. The reason is that, in certain circumstances, we need to have particularly clear and unequivocal provisions in relation to, for instance, face shields to protect workers from inhaling asbestos dust which must be approved by the Commissioner for Labour. This is also the case with goggles, spectacles, face shields and ear plugs which must likewise be subject to clearly spelt out requirements. But, in relation to safety helmets, safety belts and ordinary dust masks, the applicable regulations import a certain degree of flexibility because we want manufacturers to design equipment that meets international standards for sale in the market place.

Of course, we must understand that if every matter need to be personally approved by the Commissioner for Labour, it would be a waste of time and public money. Therefore, I think there is no such need. But if the need should arise, we would of course consider giving more specific instructions having regard to individual cases. If, in certain circumstances, the need for approval arises, we will surely consider reviewing the matter.

DR LEONG CHE-HUNG: *Mr President, we are being told that the Labour Department is empowered by the Factories and Industrial Undertakings Ordinance to ensure that these industrial protective equipment are up to standard. I wonder if the Administration can inform this Council whether they have machinery for spot-checking these industrial protective equipment and if so, how many or what is the usual ratio that we see substandard equipment in use?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I think the powers under the Factories and Industrial Undertakings Ordinance provided to the Commissioner for Labour have been quite adequate to safeguard the enforcement of such equipment. Apart from laying down the requirements for the equipment concerned, as I mentioned earlier, in some cases these equipment require the approval of the Commissioner. In all cases, the Labour Department staff will of course inspect the factories and industrial undertakings concerned and do spot-checking from time to time to ensure that such equipment is used to satisfy the safety standards.

Again, in the longer term, we intend also to look at the need to better liaise with the manufacturers concerned and this is in the context of the protection of consumers in Hong Kong. Later this year, there will be a new law in place in the Consumer Goods Safety Ordinance which covers, among other things, the safety standards of such equipment. I am sure that we will work closely with the Customs and Excise Department to ensure that such cases are spotted and prosecutions taken whenever necessary.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, paragraph (a) of the Government's reply states that there are plans to conduct more tests on personal protective equipment. At present, the authorities in the United Kingdom, United States, China or Japan, after conducting tests on personal protective equipment, will affix a label on the equipment to let workers know that it meets Government's standards. Will the Government consider adopting this method of affixing labels to make it easier for members of the public to distinguish good from substandard equipment?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): *Mr President, I already mentioned a while ago that the OSHC had conducted tests on some of the safety equipment, such as goggles, spectacles and face shields. I believe the OSHC will consider this useful suggestion. We shall study the matter to see if labels need to be affixed so that users will set their mind at ease when using the equipment.*

MR MICHAEL HO (in Cantonese): *Mr President, I would like to follow up on the supplementary question asked by the Honourable Fred LI. A while ago the Secretary said that the existing Ordinance imported a considerable degree of flexibility. To my way of thinking, the degree of flexibility is too great. At present, apart from some approved equipment, most of the so-called suitable equipment is not clearly defined at all. It is precisely because of a lack of clear definition that the so-called suitable equipment often fails to protect the health of workers. Mr President, could I ask the Secretary whether, as a matter of policy, the Government will instruct the department concerned to give clear definitions and set clear standards as soon as possible in respect of these categories of so-called suitable equipment in order to enable workers to buy the right equipment that can protect their health?*



SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, many items of personal protective equipment, such as aprons, gloves and boots, need not be subject to specific safety requirements. These items can be dealt with flexibly and the public can buy various brands of them. There is no need for us to give specific definitions in respect of these. However, in certain circumstances, we need specific definitions, for instance, in respect of masks to prevent the inhalation of asbestos dust which must be subject to compulsory and more specific requirements. All this will depend on circumstances. If the specifications of every item were listed out, the printed pages may come to a thickness of one foot. This would not be practicable. Therefore, our target is that the Government will ensure that the equipment meets international standards. The Government has a complete name list of suppliers for reference by factory proprietors and contractors. They can follow the name list and buy the equipment they consider to be suitable and conforming to specifications. I think this already constitutes very clear instructions.

MR PETER WONG: *Mr President, for workers who must work on our busy and highly polluted roads, how effective are these dust masks or face shields against environmental pollution ?*

SECRETARY FOR EDUCATION AND MANPOWER: *Mr President, I am sure Mr WONG would know better than I do the effectiveness of such masks on protection against dust. I would certainly welcome a particular test on such equipment, if this has not been done, and I look forward to the results of such tests to see whether this is acceptable and if not, how to improve that.*

### **Sea Dredging Works**

3. REV FUNG CHI-WOOD asked (in Cantonese): *In order to cope with the new airport project and other reclamation works, the Government has carried out large-scale dredging of sea sand in Hong Kong waters, and plans to continue with such operations. As such dredging works will cause tremendous damage to marine ecology, will the Government inform this Council:*

- (a) *of the volume of sea sand obtained from dredging since 1991 and the volume expected to be dredged in the coming few years; whether an assessment has been made on the damage caused by such operation to the marine ecology of Hong Kong; If so, what the results are;*
- (b) *of the details of purchasing sand from China at present, the progress made so far in dredging sea sand in Chinese territorial waters, and the cost of such sand in comparison with that dredged in Hong Kong waters;*

- (c) *whether consideration will be given to using construction wastes or earth excavated from the hillside as the filling material for reclamations; and*
- (d) *why such reclamation works rely on sea sand dredged in local waters and not on other filling materials supplied locally or abroad?*

SECRETARY FOR WORKS: Mr President, I would like to point out, first of all, that dredging of marine sand does not cause tremendous damage to the marine ecology, as alleged in the question. So far, we have dredged less than 2.5% of Hong Kong's seabed area, and there has generally been little overall effect on the marine ecosystem of Hong Kong. I will answer the four-part question as follows.

- (a) The estimated volume of marine sand dredged between 1992 and end 1995 is about 251 million cum. Figures for 1991 are unavailable. This is approximately equivalent to the material available from 14 quarries each the size of Anderson Road Quarry, scarring our visible hillsides. It is estimated that a total of 216 million cum of marine sand will be required up to 2000. We plan to meet this future need by supply from Hong Kong and China.

The area of seabed that has been subjected to the impact of dredging and mud disposal, represents approximately less than 2.5% and 1.5% respectively of the total area of seabed within the borders of Hong Kong. All marine borrowing and disposal activities are subject to Environmental Impact Assessments and strict controls. Seabed surveys have established that apart from the limited areas directly involved, the seabed ecosystem is essentially unaffected. For the areas actually subjected to dredging, these are restored to original seabed level by controlled mud dumping. Recolonization starts almost straight away, and the newly deposited seabed mud supports an early stage ecosystem after a few months.

- (b) In the past two years, some 12 million cu m of marine fill materials were obtained by contractors from sources outside Hong Kong. On 7 July 1995, Members approved funds for the commencement of the Fill Management Study phase VI. One of the key elements of this study will be to continue the investigation of potential fill sources outside Hong Kong, and available for import into Hong Kong. Contractors importing marine sand from China are subject to licence conditions, as well as needing to enter into commercial arrangements, involving suppliers and the Chinese authorities. The cost will vary with transportation distance, site conditions, operational constraints and market price fluctuations. The fact that imported fill is being increasingly used by contractors demonstrates

that cost can be comparable or perhaps lower than equivalent sourcing from Hong Kong.

- (c) Suitable construction waste and land-based fill is used for our reclamations. For example, the reclamations at Aldrich Bay and Tseung Kwan O in part are currently being formed using material deposited by controlled public dumping. 40% of the platform for the new airport at Chek Lap Kok was formed from marine sand, and the balance from land excavation.

Land borrow activities on balance are environmentally much more stressful and visually intrusive to the community than marine borrow activities. Land borrow activities invariably involve blasting, and despite site controls the noise and dust pollution factors can be substantial. Marine transport by single vessels carrying 8000 cu m of fill each trip, with minimal noise pollution, is much more preferable to transportation on land, which would require 1100 dump trucks impacting on our roads to transport the same volume.

Land sourcing of fill nevertheless is possible, with appropriate environmental pollution mitigation measures in place, as example by the success at Chek Lap Kok and elsewhere. We will continue to obtain land fill, subject to appropriate environmental controls and economic considerations.

- (d) In summary, Mr President, the controlled use of our sea-bed for mud-disposal and to provide filling material for reclamation, is on balance an appropriate means of minimizing environmental impact on the community at large. Economically it is also justified. I agree that we must not rely only on local waters, and we actively allow the use of imported filling material for any of our reclamation contracts. Land sourced fill can be imported or obtained locally, subject of course to strict environmental and quality controls.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, I am surprised that the Government does not have the figures for the volume of sand dredged in 1991. The Secretary states in his reply that the area of seabed that has been subjected to the impact of dredging and mud disposal represents approximately less than 2.5% and 1.5% respectively. This will add up to 4% of the territory's seabed. The actual area subjected to impact is, of course, large than this. It is estimated that in the year 2000 an extra 200 million cubic metres of sea sand will be needed. If most of this sand is to come from Hong Kong's seabed, the area subjected to impact will be twice as large as it is at present, that is to say, about 10% of the seabed. Could I ask if that will mean a small area? Will our marine ecology be seriously affected then? The Secretary says in his reply that*

*recolonization will start early. But many environmentalists have pointed out that it will take 10 to 20 years for the marine ecosystem to be restored to its original condition. Why does the Government not conduct a more comprehensive review to estimate early the maximum volume of sand that can be dredged from the sea and carry out a full assessment of the impact on marine ecology?*

SECRETARY FOR WORKS: Mr President, looking to the future, I am quite sure that we will see increasing amounts of sand being imported into Hong Kong. The success of recent contractors in sourcing imported marine fill shows that it is possible. And as I indicated in my reply, I believe that the economics will be in favour and that is exactly the reason, Mr President, why the fill management study which we have started this year again is looking actively at this area; we have identified areas. So in the future, it may be that most of our fill requirements can be satisfied by imported material but nevertheless, it is necessary for us to back up this source of supply with an adequate source of supply in Hong Kong waters. We will always determine a balance that minimizes the impact on our waters.

As far as the recolonization of the ecosystem is concerned, I believe that the surveys which have been carried out and also visual reports show that there is an early recolonization as I stated in my answer.

MR PETER WONG: *Mr President, can the Secretary elucidate what he means by "does not cause tremendous damage to the marine ecology"? I am sure that he will not give me a "Yes, Minister" answer.*

SECRETARY FOR WORKS: Mr President, what we mean is that within the areas subject to dredging or subject to controlled mud dumping, obviously those areas do cause disruption of the marine ecology. But in the surrounding areas, outside of the licensed areas which are used for dredging or for controlled dumping — areas which are subject to strict licence conditions, we believe the marine ecology is not significantly damaged.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, as a matter of fact, the Government has all along failed to make full use of construction waste as filling material for reclamation. Could I ask the Secretary what the total volume of construction waste is in each of the recent years; how much of this can be used for reclamation purpose after simple sorting, and how much is actually used each year for reclamation purpose?*

SECRETARY FOR WORKS: Mr President, I do not have the figures for the volumes of construction waste. I can of course supply these. I would make the point that wherever possible, construction waste is placed into controlled landfill for reclamation purposes. I have mentioned two examples of this and we are searching for other areas which are accessible by marine transport which can be used for the disposal of construction waste. But I would point out that it must be suitable construction waste. Much of our construction waste comes from demolition of buildings or the renovation of interiors. That type of material, which combines wood, paper, cardboard and the like, is not suitable for reclamation purposes.

REV FUNG CHI-WOOD (in Cantonese): *Might I ask if the Secretary for Works could give a written answer to my question?*

SECRETARY FOR WORKS: I will certainly do that, Mr President. (Annex)

### **Old Age Allowance**

4. MR ANDREW WONG asked (in Cantonese): *At present, old age allowance applicants must have resided in the territory for at least five years within the period starting from five years immediately before the attainment of the qualifying age to the date of application, and absence from the territory during the five-year period immediately before application must not exceed 280 days. According to cases handled by me, there have been some cases in which applications for the old age allowance made by senior citizens who have resided in the territory for decades were rejected simply because the applicants were intermittently absent from the territory for slightly more than 280 days during the five-year period immediately prior to the date of application. In view of this, will the Government inform this Council:*

- (a) *of the total number of applications which were rejected by the Social Welfare Department in the past five years on the grounds that the residence requirement was not met;*
- (b) *of the reasons for using 280 days as the benchmark for residence calculation; and*
- (c) *whether the existing practice which lacks flexibility will be reviewed with a view to relaxing the 280-day limit for absence from the territory or changing the residency requirement to one which requires an applicant "to be an ordinary resident in Hong Kong" for five years prior to the date of application, so that each case can be dealt with on its own merits?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Old Age Allowance (OAA) is a non-means-tested and non-contributory payment to elderly persons aged 65 and above. To be eligible for it, applicants must have resided in Hong Kong for at least five years (1825 days) between the age of 60 and the date of application.

The 280-day absence rule referred to in the question works in practice as follows. If an application is made at 65 years of age, the applicant will be permitted to have been out of Hong Kong for a maximum of 280 days in the immediately preceding five-year period (in other words, to have a total residence of no less than 1545 days rather than the full 1825 days). In practice, for first applications made after 65 years of age, for example, at 70 years of age, the applicant has to demonstrate that he or she has been resident in Hong Kong for a total of 1545 days since reaching the age of 60 years.

Prior to April 1994, records of applications for OAA were kept manually and it would be very difficult and time-consuming to identify those applications which were rejected for not meeting the residence requirement. Since April 1994, records of applications have been kept in the computerized Social Security Payment System. According to computerized records, 1238 applications were rejected in 1994-95 on the grounds that the residence requirement had not been met. This represents about 2% of the total number of the applications made.

The reason for selecting a clear benchmark for the absence rule, measured in days rather than a more subjective test of, for example, "ordinary residence", is clear. The determination of ordinary residence is a matter of fact and degree which must be tested in each individual case. This would require the exercise of judgment and discretion by the staff of the Social Welfare Department in each individual case, which could lead to inconsistent standards and unfairness.

Having then accepted the need for a clear benchmark, it is, nevertheless, not possible to set the number of days involved in any logical or scientific way. The 280 days selected and now in force would allow a person to be out of Hong Kong for as long as eight weeks every year for each of the five years concerned. It would seem excessive for an elderly person, unlikely to have any business commitments overseas, to be regularly away from Hong Kong for longer than this. Indeed, evidence shows that very few elderly people need to be away from Hong Kong for more than this as can be demonstrated by the fact that only 2% of applicants in 1994-95 failed to meet this test.

The test is there to ensure that those benefitting from this non-means-tested and non-contributory allowance are genuine elderly citizens of Hong Kong — not persons visiting Hong Kong simply to take advantage of this allowance. Our residence requirements are already generous by international standards. For example, in Australia, Canada and New Zealand, the residence requirement for old age pensions is 10 years.

In view of these considerations, I can see no case for relaxing or reviewing the existing residential eligibility criteria for the Old Age Allowance.

MR ANDREW WONG (in Cantonese): *Mr President, I am most dissatisfied with the Secretary's reply. She says she can see no case for reviewing the eligibility criteria. Let us imagine this. At present, 2% of the applicants are being rejected. But it is specified in the application form that an applicant will not be eligible if he or she has been away from Hong Kong for more than 280 days during the five-year period immediately preceding the application. Therefore, many people probably would not apply. But the Government ought to pay them the allowance. Let me cite an example. A 60-year-old person is out of job. A factory has relocated to mainland China and the proprietor wants to send someone to the Mainland to look after the factory. So that person goes to Dongguan to look after the factory for five years. When he returns to Hong Kong at the age of 65, he will not be eligible to apply for the OAA. If he works in the Mainland for six years, according to the present rule, he will not be eligible to apply for the allowance even when he reaches 70. Therefore, I hope the Government will address this problem. Before the eligibility criteria are reviewed or changed, what avenues of appeal or review are available? If there are such avenues, will the concept of "ordinary residence" be considered?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, under our current arrangements, if a person requires to be absent from Hong Kong in excess of 180 days, which is the absence rule once they have been eligible for OAA for reasons of work, for example working away from Hong Kong, the Director of Social Welfare has the discretion not to count this as absence.

Another discretion which he has is in respect of elderly persons who have to go away for medical treatment. If a person is unhappy about the fact that his or her application has been refused, there is of course the avenue of appeal to the Appeal Board, and in the past this has been done in some cases.

MR ANDREW WONG (in Cantonese): *Mr President, the Secretary has failed to answer my question. I was not talking about the 180-day absence from Hong Kong by a person already in receipt of the OAA. I was talking about absence from Hong Kong during the five-year period immediately preceding the application. If a person was away from Hong Kong for more than 280 days for the purpose of work or treatment of an illness, would the Government consider his or her application?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the 280-day absence rule prior to the application is a very generous rule which actually, if you calculate this, would amount to an absence of about eight weeks a year in the previous five years in respect of someone who is aged 65. Now, if that person is aged 70 years of age, then that rule is even more generous because he needs only be resident in Hong Kong for a total of 1545 days in the 10 years from the age of 60.

MR LEE CHEUK-YAN (in Cantonese): *Mr President, the way the Secretary answered the question just now precisely reflects the bureaucratic ambivalence of "officials having two mouths", which is the impression the public has of the bureaucracy. On the one hand, the bureaucracy says "the number of years during which one ordinarily resides in Hong Kong" which is a subjective vetting criterion; on the other hand, it subjectively draws a line at 280 days. On the one hand, the bureaucracy says it does not want the Social Welfare Department to exercise its judgment and discretion; on the other hand, it says discretion is to be exercised in respect of applicants who return to the Mainland to work or have their illnesses treated. I personally feel that in fact the ultimate test is to ensure that the applicant is a genuine elderly citizen of Hong Kong as mentioned in the main reply. That being the case, could the Secretary tell us whether the test benchmark of 280-day absence will be reviewed? It is because the test is too subjective and cannot satisfy the test referred to by the Secretary of ensuring that the beneficiaries are "genuine elderly citizens of Hong Kong". As a matter of fact, if a greater measure of flexibility is adopted, it can better ensure that the beneficiaries are "genuine elderly citizens of Hong Kong".*

SECRETARY FOR HEALTH AND WELFARE: Mr President, whether the 280-day absence rule is an appropriate level is of course a matter of judgment. However, this rule has been in force for a long time and it has been satisfactory as far as applicants are concerned. The fact that only 2% of our applicants have failed to meet this test in 1994 demonstrates that this is already a very generous rule. Certainly, it is always possible to look at the total number of days for the absence rule again. However, I must add that in addition to this 280-day limit, there is discretion for granting people who need to work outside Hong Kong or who need to receive medical treatment outside Hong Kong, absence in excess of 180 days.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, I am very much dissatisfied with the Secretary's answer. In her main reply, the Secretary said that prior to application an elderly person can be away from Hong Kong for as long as eight weeks annually for each of the five years concerned. She went on to say that an elderly person is unlikely to have any business commitments overseas and thus any relaxation of this criterion will not be considered. The actual situation is that elderly persons return to mainland China for family reunion or to live there in order to cut back on living expenses. This is the*



*prevailing situation. Most of them are thus unable to get the OAA. Mr President, I hope the Government will review the criteria. The Government now appears to think that all is well and the public is satisfied with the arrangements. I hope the Government will consider that this is at variance with facts.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am sorry, I did not get the question.

PRESIDENT: The question was in the middle, Mr TAM, would you repeat the question please?

MR TAM YIU-CHUNG (in Cantonese): *Mr President, my question arises from the Government's reply the contents of which I query. It says elderly persons are unlikely to have business commitments overseas. But, as a matter of fact, many elderly persons need to live in mainland China. Therefore I question the Government's rationale.*

PRESIDENT: Yes, I think the Secretary is right. That is more of a comment than a question, Mr TAM. Is there a question?

MR TAM YIU-CHUNG (in Cantonese): *Mr President, will the Government carry out a review having regard to the views expressed by Members today?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I think I have explained why we have used the absence rule and the further discretion by the Director of Social Welfare to discount absence from Hong Kong for reasons of work and for reasons of medical treatment. There is no limit to the amount of time that a person is absent from Hong Kong for legitimate business, work and medical treatment. I think I have explained that in my original reply.

### **Fixed Penalty Tickets**

5. MR WONG WAI-YIN asked (in Cantonese): *The Police have adopted for some time the measure of issuing Fixed Penalty Tickets without prior warning to the drivers of vehicles illegally parked and waiting in the Central and Tsim Sha Tsui districts. In this regard, will the Government inform this Council:*

- (a) *of the breakdown by month of the number of Fixed Penalty Tickets issued since the adoption of such a measure, together with the total number of motor vehicles which have been issued with more than one Fixed Penalty Ticket and the highest number of Fixed Penalty Tickets issued to the same vehicle; and*
- (b) *whether such a measure has achieved the result expected; if not, what further measures the Government will take to deter drivers from illegal parking and waiting?*

SECRETARY FOR TRANSPORT: Mr President, the issue of Fixed Penalty Tickets for traffic offences is, understandably, a controversial subject. No one likes to receive such a ticket. The police on the beat and traffic wardens have a very difficult job. But tough enforcement action is essential in busy districts. The instruction to the officers concerned is that they should take immediate action to issue Fixed Penalty Tickets to the drivers of vehicles which are illegally parked or are waiting in areas where this is likely to cause serious disruption to traffic. This includes Central and Tsim Sha Tsui. This practice has been followed since August 1993. On the other hand, for minor traffic offences committed in less busy areas, a more lenient approach is adopted with the drivers often first being given warnings.

Statistics on the total number of Fixed Penalty Tickets issued for parking offences in Central and Tsim Sha Tsui have been provided to Members in the annex to the written version of my reply. The police have not kept separate statistics on the numbers of Fixed Penalty Tickets issued to the same vehicle, since such information is not required for operational reasons nor would such information be of any particular use.

The likelihood of receiving a Fixed Penalty Ticket does act as a deterrent to the majority of motorists and the police are satisfied that the practice of issuing tickets without prior warning has been effective in helping to keep the traffic moving in the busiest and most congested districts.

Honourable Members may wish to note that we intend to review the level of fixed penalty fines later this year, to determine whether they are sufficient to maintain the deterrent effect. In addition, we are now considering the extension of no-stopping restrictions, including banning goods vehicles from loading and unloading during the daytime in busy areas, as further measures aimed at maximizing road capacity and maintaining a free flow of traffic.

## Annex

Fixed Penalty Tickets Issued for Parking Offences  
in Central and Tsim Sha Tsui from August 1993 to May 1995

		<i>Central</i>	<i>Tsim Sha Tsui</i>
1993	August	8024	9499
	September	7991	9037
	October	8934	9367
	November	9128	8516
	December	8250	8465
1994	January	9244	8088
	February	6720	6094
	March	8233	8886
	April	9196	8094
	May	9175	10738
	June	7793	8069
	July	7126	8418
	August	8205	8795
	September	8322	8801
	October	8495	9907
	November	8642	10050
	December	8222	10607
1995	January	8326	11810
	February	7309	9638
	March	8269	11564
	April	6551	11603
	May	7654	7511

MR WONG WAI-YIN (in Cantonese): *Mr President, this measure has been implemented for a long time. I have heard, and indeed received complaints, that it has not been too effective. It is because most of these vehicles parked in busy streets are company private cars waiting for their bosses. If they get "issued a ticket," the penalty will be paid out of the company accounts. Therefore, it will have little deterrent effect. Even if the fixed penalty is raised, it will not deter these vehicles from parking in the streets at busy hours to wait for their bosses. As a matter of fact, according to the relevant statistics, since 1993 there have been on average 9000 tickets issued each month in each of the two districts, namely, Central and Tsim Sha Tsui, that is to say, 300 tickets issued each day. This figure has not varied much since, which re measure has not been as effective as expected and each day there are still several hundred vehicles waiting at the aforesaid locations at busy hours to pick up passengers. Could I ask the Secretary for Transport what other ways there are to deter the people concerned from parking their vehicles in the said districts to*

*wait to pick up others so as not to obstruct traffic? If a fixed penalty has no deterrent effect on them, will the authorities consider issuing summonses to require their attendance in court so that they will find it troublesome?*

SECRETARY FOR TRANSPORT: Mr President, I do not agree with the Honourable Member's opinion that the issue of Fixed Penalty Tickets does not act as a deterrent to company cars or the drivers involved. I think even if one is the driver of a company, if he collects too many Fixed Penalty Tickets, I am sure his boss would question him.

Insofar as Fixed Penalty Tickets are concerned and regarding whether or not they are effective, the police of course have a policy of duplicate tickets where it may be justified. In this respect, where vehicles are found to be causing serious obstruction to vehicular or pedestrian traffic, more than one ticket can be given. And the policy on this is that a maximum of two tickets are issued within the first two-hour period, and one every two hours thereafter, subject to a maximum of four in any one period.

As regards the Honourable Member's comment that the number of tickets issued in Tsim Sha Tsui and Central are fairly constant, I think rather than interpreting this as not being significant, I think it demonstrates that the police are concentrating on these areas, given their limited resources, and in fact are maintaining their vigilance. As for further measures, of course we could totally ban the stopping of private cars or other vehicles in busy downtown districts, but I think one has to balance this between the need to provide reasonable areas where people can embark and disembark.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, according to professional drivers and taxi drivers, not only has the Government been issuing fixed penalty tickets without prior warning to drivers who illegally park their vehicles in Central and Tsim Sha Tsui, similar enforcement action has been stepped up in districts other than Central and Tsim Sha Tsui. Could I ask the Secretary if this is really the case, that is to say, if the Government has indeed instructed the police to step up prosecution action? Are there cases where professional drivers and taxi drivers feel they are being dealt with too harshly?*

SECRETARY FOR TRANSPORT: Mr President, the Honourable Member is quite correct, in fact it is not only in Central and Tsim Sha Tsui where strict enforcement action is taken. In other districts such as Wan Chai, Eastern, Mong Kok and Sham Shui Po, the same policy applies in the busy areas in those districts. Insofar as police deployment is concerned, this must be left to the police commandants because they are the best to determine how police resources can best be deployed.

MR ROGER LUK (in Cantonese): *In the last paragraph of the main reply, the Secretary indicated that the authorities are now considering the extension of no-stopping restrictions, including banning goods vehicles from loading and unloading during the daytime in busy areas. Could I ask the Secretary if it is the policy of the Government to require that redeveloped buildings in busy urban areas must have loading and unloading bays and a fixed number of car-parking spaces?*

SECRETARY FOR TRANSPORT: Mr President, in certain districts and in certain streets, there are special loading and unloading bays, but along some of the major thoroughfares, for example, along Queen's Road East or along Nathan Road, obviously such bays cannot be provided. When I referred to the possibility of extending restrictions in these busy areas, we will of course have to consult the district boards and we hope that we will gain their support so that we can introduce more stringent traffic control measures.

MISS EMILY LAU (in Cantonese): *Mr President, in order to solve thoroughly the problem of illegal parking, stopping and waiting, will the Government consider requiring all new buildings, particularly new buildings in Central and Tsim Sha Tsui, to have multi-storey car-parks to provide parking spaces to vehicles?*

SECRETARY FOR TRANSPORT: Mr President, I do believe that when plans are submitted for new buildings or the redevelopment of old buildings, the number of parking spaces is one particular aspect which is given very careful consideration by both the Transport Department and the Planning Department. But certainly, I shall follow up the Honourable Member's suggestion and make sure that this is given more emphasis.

MRS PEGGY LAM (in Cantonese): *Mr President, in many foreign countries, "double-parking" facilities are available. Could I ask the Hong Kong Government if it will encourage local businessmen to introduce such facilities into Hong Kong so as to provide more parking spaces?*

SECRETARY FOR TRANSPORT: Mr President, I understand that such double-parking within car parks is in fact already practised, for example in Pacific Place, and certainly several businessmen have approached the Transport Department with such proposals. These are being examined.

**WRITTEN ANSWERS TO QUESTIONS****Licensing Examination for Medical Graduates**

6. DR CONRAD LAM asked (in Chinese): *Regarding the Medical Council's proposal that medical graduates from the local universities have to sit and pass a Universal Licensing Examination after 1997 before they can practise medicine in the territory, will the Government inform this Council:*

- (a) *whether it is aware of the reasons and background of the Medical Council's proposals;*
- (b) *of the merits and demerits of the proposal; and*
- (c) *whether it knows if adequate consultation has been conducted by the Medical Council before proposing the change; if so, will the Government ask the Medical Council to provide details of the consultation process and its outcome; if not, why not?*

SECRETARY FOR HEALTH AND WELFARE: Mr President,

- (a) The Chairman of the Medical Council has briefed the Government on the reasons and background of the Medical Council's proposal, which is that medical graduates of the two local universities should be given a grace period of five years, after which they would be required to sit for and pass the Licensing Examination before they could practise in Hong Kong.
- (b) The merits of requiring local graduates to sit for the Licensing Examination are:
  - (i) it would provide fair and equitable treatment for all medical graduates, irrespective of where they are trained; and
  - (ii) it would enable an assessment be made on the professional standard and competence of an individual rather than the institution from which the individual graduated.

The demerits of the proposal are:

- (i) in conducting the Licensing Examination, local universities' expertise inevitably will be required. There would be a duplication of efforts and resources in organizing both the Licensing Examination and the universities' own graduate examinations; and
  - (ii) it may be undesirable to require local medical graduates to sit for two examinations of comparable standard and to be assessed by the same group of examiners at the same time.
- (c) The two universities as well as the Medical Council have put forward their views in written submissions and in person to the Bills Committee to study the Medical Registration (Amendment) Bill 1995. The written submissions were dated 16 June 1995 (the Medical Council), 26 June 1995 (the University of Hong Kong) and 30 June 1995 (the Chinese University of Hong Kong). The Bills Committee met representatives of the two universities on 3 July 1995 and the Chairman of the Medical Council on 6 July 1995.

### **Unemployment and Job Vacancy Figures**

7. MR MARTIN BARROW asked: *Will the Government inform this Council:*

- (a) *why the job vacancy figures are published three months after the unemployment figures ; and*
- (b) *whether it will take steps to produce the two sets of figures at the same time so that there is a better chance of reducing the mismatch?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) Job vacancy statistics as at the end of a quarter are released about three and a half months after the reference date. As for unemployment statistics, the provisional estimate of the overall unemployment rate for a three-month period is released about two weeks after the end of the period. However, compilation of the final estimates of unemployment together with more detailed breakdowns requires longer time, usually around three months after the period concerned.

Statistics on job vacancies and on unemployment are obtained from two different surveys. As such, the speeds at which statistics can be produced are bound to be different, depending on the specific survey mechanism involved and, more importantly, on whether respondents can promptly report their situation. For job vacancies, statistics are collected from business establishments through the Quarterly Survey of Employment and Vacancies (SEV). As the reference date is end of quarter, actual field work on the SEV cannot start before the end of that reference quarter. In addition, if the business establishments concerned fail to report their position by postal return, staff of the Census and Statistics Department will have to follow up through computer-assisted telephone interviewing, and if this is again unsuccessful, by field visits. This is no doubt a time and resource consuming process, considering that the sample for the SEV covers as many as 70000 establishments in each quarter. The entire data collection process for the SEV takes about nine weeks to complete.

On the other hand, statistics on unemployment are currently collected from 13500 households each quarter through the General Household Survey. As the enquiry is made by personal interviews on a continuous basis, the time required for data collection is generally much shorter.

- (b) The Census and Statistics Department always strives to shorten the time required for the production of statistics, as part of its ongoing programme of improvement to the Department's statistical systems. For job vacancy statistics in particular, currently the Department is examining the possibility of streamlining the procedures on data editing and data processing. But even with this streamlining, the shortening of time is unlikely to be very significant. Prompt and accurate response from the business establishments surveyed is the crucial factor in this regard. In future surveys, the Department will continue to stress this need to all business establishments involved.



**ICAC Staff Wastage**

8. MR CHEUNG MAN-KWONG asked (in Chinese): *Regarding the staff wastage in the Independent Commission Against Corruption, will the Government inform this Council of:*

- (a) *a breakdown of the wastage position in each rank by number, percentage and reasons for leaving in each of the past three years;*
- (b) *the forecast of staff wastage for next year; and*
- (c) *the measure adopted by the Commission, which is an extremely sensitive and important agency, to prevent its operation from being affected by staff wastage?*

CHEIF SECRETARY: Mr President,

- (a) A breakdown of the staff wastage in each rank by number, percentage and reasons for leaving in 1992-1994 is attached at Annexures A - C.
- (b) The forecast of staff wastage for 1995 and 1996 is at Annexures D and E.
- (c) Almost all Independent Commission Against Corruption (ICAC) staff (93%) are on contract terms. The Commission has therefore always had a steady turnover of staff. However, 51% of all grades have served the Commission for more than 10 years; and 11% have served for more than 20 years. There is at present no difficulty in recruiting. Staff morale generally is high. The Commission will continue to ensure that terms and conditions of service remain attractive.

Career development programmes and succession planning ensure that supervisory vacancies can be filled by promotion from within. Direct recruitment to supervisory ranks has only been a limited feature of ICAC recruitment policy in past years. However, if factors beyond the Commission's control were to cause staff to leave in greater numbers than could be replaced from within, direct recruitment at appropriate levels would be increased.

**Staff Wastage Statistics 1992**

Rank	Strength as at 31.12.92 (a)	No. of Departure (b)	%	Reasons for Departure					
				Emigration	Further Education	Employment Elsewhere	Others (Personal Reasons)	Retirement	Termination/Dismissal
Directorate	14	3	21.4%				2	1	
SCAO	38	1	2.6%					1	
CACO(U)	103	8	7.8%	3	1	2		1	1
CACO(M/L)	329	31	9.4%	5	6	9	9		2
ACAO	205	15	7.3%	1	2	5	6	1	
Surveillance Grades	109	6	5.5%		2		4		
General & Support Grades	291	51	17.5%	5	3	17	21	2	3
Total	1089	115	10.6%	14	14	33	42	6	6

Note : SCAO = Senior Commission Against Corruption Officer  
CACO(U) = Commission Against Corruption Officer (Upper)  
CACO(M/L) = Commission Against Corruption Officer (Middle/Lower)  
ACAO = Assistant Commission Against Corruption Officer

Staff Wastage Statistics 1993

Rank	Strength as at 31.12.93 (a)	No. of Departure (b)	% (b)/(a)	Reasons for Departure					
				Emigration	Further Education	Employment Elsewhere	Others (Personal Reasons)	Retirement	Termination/ Dismissal
Directorate	15	3	20.0%			2		1	
SCAO	37	2	5.4%			1	1		
CACO(U)	102	5	4.9%	2		1	1	1	
CACO(M/L)	342	19	5.6%	3	2	7	4	1	2
ACAO	231	14	6.1%	2	1	3	7	1	
Surveillance Grades	104	6	5.8%	2	1	1	2		
General & Support Grades	284	28	9.9%	4		7	12	5	
Total	1115	77	6.9%	13	4	22	27	9	2

Note : SCAO = Senior Commission Against Corruption Officer  
CACO(U) = Commission Against Corruption Officer (Upper)  
CACO(M/L) = Commission Against Corruption Officer (Middle/Lower)  
ACAO = Assistant Commission Against Corruption Officer

**Staff Departure Statistics 1994**

Rank	Strength as at 31.12.94 (a)	No. of Departure (b)	% (b)/(a)	Reasons for Departure					
				Emigration	Further Education	Employment Elsewhere	Others (Personal Reasons)	Retirement	Termination/Dismissal
Directorate	15	1	6.7%						1
SCACO	37	4	10.8%	1		2		1	
CACO(U)	103	10	9.7%	5		1	1	3	
CACO(M/L)	349	13	3.7%	3	1	3	4	2	
ACACO	251	24	9.6%	1	2	6	14		1
Surveillance Grades	107	1	0.9%				1		
General & Support Grades	296	27	9.1%	3		9	14	1	
Total	1158	80	6.9%	13	3	21	34	7	2

**Note :** SCACO = Senior Commission Against Corruption Officer  
CACO(U) = Commission Against Corruption Officer (Upper)  
CACO(M/L) = Commission Against Corruption Officer (Middle/Lower)  
ACACO = Assistant Commission Against Corruption Officer

## Annex D

## Forecast departures for 1995

<i>Rank</i>	<i>No. of departures (position 30 June 1995)</i>	<i>No. of known anticipated departures</i>	<i>Total</i>
Directorate	-	2	2
SCACO	1	2	3
CACO (U)	0	7	7
CACO (M/L)	5	9	14
ACACO	9	3	12
Surveillance grades	0	2	2
General and support grades	8	9	17
	----		----
	23	34	57
	==		==

*Note:*

SCACO = Senior Commission Against Corruption Officer

CACO (U) = Commission Against Corruption Officer (Upper)

CACO (M/L) = Commission Against Corruption Officer (Middle/Lower)

ACACO = Assistant Commission Against Corruption Officer

## Forecast departures for 1996

<i>Rank</i>	<i>No. of known anticipated departures</i>
Directorate	5
SCACO	2
CACO(U)	4
CACO (M/L)	6
ACACO	-
Surveillance grades	-
General and support grades	4
	----
	21
	==

Note:

SCACO = Senior Commission Against Corruption Officer

CACO (U) = Commission Against Corruption Officer (Upper)

CACO (M/L) = Commission Against Corruption Officer (Middle/Lower)

ACACO = Assistant Commission Against Corruption Officer

### **Extra-curricular Activity Co-ordinators**

9. MR ERIC LI asked (in Chinese): *A recent survey indicates that over 40% of the extra-curricular activity coordinators (ECACs) in secondary schools feel they are under heavy work pressure. Will the Government inform this Council whether:*

- (a) *consideration will be given to reducing the number of teaching periods per cycle for the ECACs and increasing the number of clerical staff in these schools to help the ECACs with clerical work, so as to alleviate their heavy work pressure, if so, what the details are and when will such measures be implemented; and*

- (b) *the Government will adopt other improvement measures; if so, what those measures are and when will they be implemented?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) Schools are given adequate staffing provision in accordance with the number of operating classes. The post of extra-curricular activities co-ordinator (ECAC) is a functional post similar to other functional posts such as subject panel chairmen. These functional posts carry a higher salary than normal teaching posts because the post holders are expected to carry higher responsibilities and heavier workload. School principals can deploy their own staff in the light of their own circumstances and requirements, for example, to reduce the number of teaching periods per cycle for the ECACs as necessary or to redeploy their clerical staff to assist the ECACs.
- (b) We consider the present staffing provision in schools to be generally adequate, and that the flexibility now given to school heads to deploy their staff is working effectively.

### **Inflation Rate**

10. MR MARTIN BARROW asked: *Regarding the Government's announcement that the inflation rate in 1995 will be 0.5% higher than originally forecast, will the Government inform this Council.*

- (a) *of the average and year-on-year actual/forecast inflation rates in 1994 and 1995 in respect of the following categories:*

<i>Average</i>		<i>Year-on-Year</i>	
<i>1994</i>	<i>1995</i>	<i>1994</i>	<i>1995</i>
<i>Actual</i>	<i>Forecast</i>	<i>Actual</i>	<i>Forecast</i>

*CPI "A "*

*CPI "B"*

*Composite CPI*

- (b) *of the reasons for the differences between the average and year-on-year figures in each category, and*
- (c) *whether the indices and the weightings being used can correctly measure current consumption habits and whether the Government will carry out a review of the methodology?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) Currently, the Government produces a forecast on the Consumer Price Index (A) only. The actual average increase in the CPI(A), CPI(B) and Composite CPI in 1994, together with the forecast average increase in the CPI(A) in 1995, are given below:

	<i>Forecast average increase in 1995</i>	<i>Actual average increase in 1994</i>
CPI(A)	9.0%	8.1%
CPI(B)	-	8.6%
Composite CPI	-	8.8%

The increases in the CPIs on an annual average basis are basically the same as their year-on-year increases averaged over the respective 12 months.

- (b) The differential movements in the CPIs were mainly due to differences in the consumption patterns of the household expenditure groups and in the price movements of the respective components covered by the three indices. In 1994, consumers in the CPI(A) expenditure group benefited more from the slower increase in the prices of basic foodstuffs and other consumer goods imported from China, while consumers in the CPI(B) expenditure group were affected more by the accelerated increases in the prices of clothing and footwear and in housing rentals. As a result, both the CPI(B) and the Composite CPI showed faster increases than the CPI(A) in 1994.
- (c) The CPIs are compiled based on the average expenditure patterns of households ascertained from the 1989-90 Household Expenditure Survey (HES). Past experience shows that average household expenditure patterns change only gradually over time. So as at present they are not reckoned to be significantly out-dated for the purpose of CPI compilation.

Under the current practice, the household expenditure patterns and hence the weights for the CPIs are updated once every five years based on the results of a new round of HES. This practice is in line with the standards adopted in statistically advanced countries/territories.



The current round of the HES, which is the 1994-95 HES, has already been conducted for some months and is now proceeding to an advanced stage. It covers the expenditure patterns of households over the period from October 1994 to September 1995. When the summary results of this survey become available, the weights of the CPIs will be updated accordingly. The Government's plan is to publish a new series of CPIs with updated expenditure weights in April 1996.

### **Landfill Opening Hours**

11. MR TAM YIU-CHUNG asked (in Chinese): *Will the Government inform this Council whether it will, in response to the request of private waste collectors, postpone the closing time of the South East New Territories landfill from 10 pm to 2 am and designate an area near the landfill as a temporary parking place for refuse collection vehicles, so as to improve the environment?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the South East New Territories (SENT) landfill is open for 15 hours a day, from 8 am to 11 pm. Of the 1500 waste collection vehicles that visit the SENT landfill daily, only 6% arrive between 9 pm to 11 pm. These operational characteristics do not indicate a need, at present, to extend the opening hours to 2 am.

Apart from the level of demand, there are other issues which need to be considered before extending the operational hours of landfills, for example, the environmental impact of refuse collection vehicles travelling through populated areas after midnight, additional traffic noise and other nuisances to local residents.

Parking spaces for vehicles in the Tseung Kwan O area are already reasonably well provided for by the existing eight lots under short-term tenancy (STT) for mixed vehicle parking. Another lot will be available by the end of 1995, thereby bringing the total amount of parking space to over 90000 sq m. At present, there are no other areas near the SENT landfill which can be used as a temporary parking place for refuse collection vehicles. However the Administration will continue to consider the need for, and provision of, additional STT space for vehicle parking if suitable land in the area becomes available.

### Waiting Time at Specialist Clinics

12. DR HUANG CHEN-YA asked (in Chinese): *Will the Government inform this Council:*

- (a) *what is the longest waiting time for a new patient to have his first consultation at each of the ear-nose-throat, dermatological and eye clinics under the management of the Hospital Authority (HA); and*
- (b) *what plans have been drawn up by the HA to improve the provision of such services?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, while ear-nose-throat clinics and eye clinics are managed by the Hospital Authority, dermatological clinics are operated by the Department of Health. The waiting time for first appointment at these clinics is provided below:

	<i>Longest waiting time for first appointment (Weeks)</i>	<i>Average waiting time for first appointment (Weeks)</i>
Ear-nose-throat clinics	12	4
Eye clinics	24	14.5
Dermatological clinics	12	8

The above statistics should be interpreted against the growing public demand for specialist medical treatment and an increased number of total attendance in the past few years. Reduction in waiting time has been achieved through immediate assessment to accord urgent cases with priority, introduction of a central telephone booking system to facilitate access by patients, offering patients the choice of obtaining earlier treatment in other less busy clinics, as well as planning and construction of new facilities to strengthen existing services.

### Drug Trafficking (Recovery of Proceeds) Ordinance

13. MR ERIC LI asked (in Chinese): *Under section 20 of the Drug Trafficking (Recovery of Proceeds) Ordinance, an authorized officer may, for the purpose of an investigation into drug trafficking, apply to the court for an order to require the Inland Revenue Department (IRD) to provide information on persons suspected of having benefited from drug trafficking. Will the Government inform this Council of the numbers of applications made to the*

*court for the issue of court orders requiring IRD to provide information on persons suspected of drug trafficking and persons suspected of having benefited from drug trafficking respectively, as well as the number of prosecutions instituted on the basis of such information, in the last two years?*

SECRETARY FOR SECURITY: Mr President, during the two-year period from 1 July 1993 to 30 June 1995, the police and the Customs and Excise Department made 107 applications to the court to obtain information from the Inland Revenue Department. It is impossible to break down this number into applications for court orders requiring the Department to provide information concerning persons suspected of drug trafficking on the one hand, and persons suspected of having benefited from drug trafficking on the other, because many of the applications were made for both purposes.

One prosecution for a money laundering offence was instituted during the same period with the assistance of information provided by the Inland Revenue Department. In addition, 11 successful confiscation applications were made as a result of this information.

### **Reservations in ICCPR and ICESCR**

14. MR LEE CHEUK-YAN asked (in Chinese): *The International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are extended to Hong Kong with certain reservations such as reservations of the right not to require the establishment of an elected Executive or Legislative Council in Hong Kong and to postpone the application of the provision concerning equal pay for equal work for men and women in the private sector, as well as the provisions which lay down the right of trade unions to set up national federations or confederations and to form or join international trade-union organizations. In this regard, will the Government inform this Council:*

- (a) *whether the Government intends to remove all such reservations in the two covenants mentioned above;*
- (b) *if the answer to (a) is the affirmative, whether the Government has any plan to hold discussions with the British and Chinese Governments on the removal of all such reservations applicable to Hong Kong; and*
- (c) *if the answer to (a) is the negative, what the reasons are?*

SECRETARY FOR HOME AFFAIRS: Mr President, in Part XIII of Annex I to the Joint Declaration, it is clearly stated that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as applied to Hong Kong shall remain in force. In our view, this envisages that reservations extant on 30 June 1997 will continue to apply. However, the continuation of our international rights and obligations arising under international agreements, including the nature of the reservations which will be applicable, are matters for discussion in the International Rights and Obligations Sub-group of the Joint Liaison Group.

There are no plans at present to remove reservations under the two Covenants. Most of these are designed either to safeguard law and order and the economic interests of Hong Kong people, or reflect our present and future constitutional position.

### **Site Selection for Schools**

15. MISS EMILY LAU asked (in Chinese): *Many of the sites proposed by the Government for the construction of primary and secondary schools are located in areas which have serious noise problems. This has often resulted in the need to provide noise insulation in the schools concerned, thus increasing the costs as well as casting doubts whether the schools erected on these sites can provide a quiet learning environment for students. In this regard, will the Government inform this Council:*

- (a) *of the criteria for determining sites for the construction of schools in land use planning;*
- (b) *what factors will be considered in selecting suitable school sites and whether the existence of noise problems in the vicinity of a site is a decisive one; and*
- (c) *if the answer to the latter part of (b) is in the affirmative, why there are still schools built on sites in areas with noise problems?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) Sites for schools are identified according to the location guidelines set out in the Hong Kong Planning Standards and Guidelines. These guidelines provide for, among other things, school buildings to be located away from areas affected by significant noise sources, and if this is unavoidable, then appropriate noise abatement measures should be considered.

- (b) Factors to determine which sites are suitable for the building of schools include the demand for school places in the catchment area, its size, accessibility, compatibility with neighbouring institutions, cost of site formation, availability of public transport, noise problems, air pollution and the presence if any of hazardous installations. The weight to be given to the noise factor depends on its severity relative to other factors.
- (c) An environmental review is conducted before any new school project is finalized. If the Education Department, on balancing all the factors mentioned in (a) and (b) above, decides to accept a site affected by noise problems, effort will be made to mitigate the noise impact by design, layout, double-glazing and other related measures.

### Recycling of Vehicle Parts

16. DR SAMUEL WONG asked: *Will the Government inform this Council of:*

- (a) *the respective numbers of private cars, taxis, vans and minibuses which were taken to vehicle scrapping yards in each of the past three years; and*
- (b) *the respective percentages, by weight, of the vehicles which were recycled in the stripping process and those which were subsequently discarded in the Government's landfills?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) The Transport Department has a contract with a scrap dealer for him to purchase vehicles from the two Government Vehicle Surrender Centres and the police pounds, as well as those abandoned on Crown land. The contractor collected 2517 such vehicles in the year ending 30 June 1993, 2099 in 1994 and 1983 in 1995. Details are annexed. We have no information on the numbers of vehicles that are taken direct to private scrap dealers. However, 33700 vehicles were deregistered in the year ended 30 June 1993, 32400 in 1994 and 38200 in 1995. A large proportion of these vehicles will have been scrapped.
- (b) No information is available on the percentage by weight of old motor vehicles recycled or disposed of in government landfills. However, there is a commercial incentive for scrap dealers to maximize recycling and to minimize the amount of material that has to be taken to the landfills.

## No. of Vehicles Collected by Government Contractor

<i>Category</i>	<i>Year ended 30 June 1993</i>	<i>Year ended 30 June 1994</i>	<i>Year ended 30 June 1995</i>
Privater car	1530	1262	1189
Goods vehicle	400	296	254
Public light bus	10	6	5
Bus	3	2	6
Motorcycle	545	511	498
Vehicle body (without engine)	26	9	9
Trailer	2	11	22
Special purpose vehicle	1	2	0
	-----	-----	-----
Total	2517	2099	1983
	===	===	===

**Waiting List for Public Housing**

17. MR FUNG KIN-KEE asked (in Chinese): *Regarding the households on the waiting list for public housing, will the Government inform this Council:*

- (a) *of the number of households on the waiting list for public housing for two years or more;*
- (b) *of the breakdown of such households by number of family members ranging from singleton household to those with more than ten family members; and*
- (c) *whether it will consider providing such households with rent allowance in view of the fact that these households are not given any other housing assistance whilst awaiting allocation of public housing units; if so, whether any timetable has been set for the implementation of such an arrangement; if not, why not?*

SECRETARY FOR HOUSING: Mr President, at the end of May 1995, there were 148837 households on the General Waiting List for public rental housing. Of these, 108528 were registered for two years or more. The breakdown by household size is given below:

<i>Household size (Number of persons)</i>	<i>Number of households</i>
1	14208
2	23820
3	27985
4	27543
5	10825
6	3079
7	755
8	225
9	59
10 or more	29
	-----
Total	108528

About 25% of these households are already living in subsidized public housing, while another 7% are accommodated in temporary housing areas.

The Government does not consider it appropriate to provide rent allowances to households on the General Waiting List. To do so would not only conflict with government social policy in other areas such as social welfare, but would also be inconsistent with the main objectives of our housing policy, where our priorities are geared towards increasing flat supply and encouraging home ownership, with assistance being provided through various subsidized schemes. This policy has the effect of making more public rental housing flats available for allocation to eligible families on the General Waiting List, and therefore represents a more efficient use of resources than providing rent allowances. Moreover, such allowances would have very substantial recurrent financial implications of possibly about \$4 billion a year and other practical difficulties in implementation.

If a person on the General Waiting List is financially vulnerable, he should apply for financial assistance under the Comprehensive Social Security Assistance Scheme. If eligible, he will be paid both a standard rate to cover ordinary household expenditure and a special grant to cover rent. In granting public financial support to those in need, it would be inequitable to distinguish between those who may or may not be on the General Waiting List.

### **Investigations into Korean Killed in Shoot-out**

18. DR CONRAD LAM asked (in Chinese): *Regarding the jury's return of a verdict of death by misadventure of a Korean hostage killed by a police officer in the shootout between the police and a gunman at Shum Wan, will the Government inform this Council:-*

- (a) *whether the police officers concerned had followed the normal procedure in the handling of the above-mentioned incident; if so, why the hostage was shot dead by the police; if not, what was the cause of the error;*
- (b) *why the police was unable to identify the person who handcuffed the two persons killed in the incident; and whether the police will pursue the matter further; if not, why not; and*
- (c) *what measures the police will adopt to prevent the recurrence of similar mishaps?*

SECRETARY FOR SECURITY: Mr President, as regards part (a) of the question, internal investigations are underway in relation to the actions of the police officers involved in this case. The evidence presented at the recent Death Inquest will be taken into consideration by the investigating officers. It is too early to say whether any police officers are at fault or have breached police procedures.

As regards part (b) of the question, the purpose of the Death Inquest was to inquire into the cause and circumstances surrounding the death of the gunman and the Korean hostage; but not to investigate each and every detail of the incident. The question as to who handcuffed the two persons killed will be considered in any legal or disciplinary proceedings which might take place.

As regards part (c) of the question, the police have pledged to conduct a full review of police policy and procedures and to address the recommendations made in connection with the Death Inquest. These recommendations include:

- (i) better and broader firearms training;
- (ii) tactical training for officers to deal with armed offender incidents;
- (iii) better training in radio communication; and
- (iv) possible use of certain chemical spray to temporarily disable or incapacitate a violent offender.

The police hope to complete this review as soon as possible.



### Purchase of Electricity from Daya Bay Nuclear Plant

19. MISS CHRISTINE LOH asked: *According to the Secretary for Economic Services' reply to a question asked on 24 May 1995, about 64% of the electricity purchased by China Light and Power customers from the Guangdong Nuclear Power Station (GNPS) at Daya Bay is subject to a price cap. In this connection, will the Administration inform this Council:*

- (a) *how the price of the remaining 36% of electricity purchased from GNPS is fixed;*
- (b) *whether in the event of an unexpected shortfall of electricity produced at Daya Bay, the Guangdong Nuclear Power Joint Venture Company (GNPJVC) is allowed to set the price of these unprotected units of electricity at a rate which will allow the GNPJVC to recoup a minimum annual rate of return regardless of the price of these units as compared to the cost of electricity generated by coal-fire; and*
- (c) *how the public can be assured that all electricity purchased from GNPS is at a price below or comparable to the cost of producing electricity from spare capacity in Hong Kong?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, under the terms of the joint venture contract, the Hong Kong Nuclear Investment Company Limited (HKNIC) is committed to purchasing 70% of the total output of the Guangdong Nuclear Power Station (GNPS) at Daya Bay. The nuclear electricity purchased by HKNIC is resold, without any mark-up, to its holding company, the China Light and Power Company Limited (CLP) for distribution to CLP customers. 30% of the total output is earmarked for China.

64% of the electricity purchased by HKNIC (the "resale" quantity) is subject to a unit price not exceeding the notional cost of a unit of electricity generated by a coal-fired station construction in Hong Kong and commissioned in 1991 (the coal-fired electricity price formula). There is no price cap for the remaining 36% (the "offtake" quantity) and this is charged at the actual unit price.

With this background, the answers to the specific questions are as follows:

- (a) irrespective of the buyer, the actual unit price of nuclear electricity purchased from the GNPS is determined by dividing the total cost of generation plus permitted profit by the number of units sold.

Generation cost is defined in the joint venture contract. It includes all expenses relating to the production and operation of the nuclear power station.

Profit is also defined in the joint venture contract. It is expressed as percentage return on average investors' funds and is performance related.

- (b) the Guangdong Nuclear Power Joint Venture Company (GNPJVC), which owns and operates the GNPS, cannot charge more for the "offtake" quantity than the actual unit price determined in accordance with the formula specified in the joint venture contract. In other words, the Company cannot recoup a minimum annual rate of return by increasing the offtake price. It should be noted that, in the event of lower than expected levels of production, both depreciation charges and profit (which are based on plant performance) will decrease, thereby lowering the unit price.
- (c) The coal-fired electricity price cap applies only to the 64% "resale" quantity.

### **Helicopter Crashes**

20. MR WONG WAI-YIN asked (in Chinese): *With regard to the two helicopter crashes which occurred within a short span of time recently, will the Government inform this Council:*

- (a) *of the total number of helicopter crashes which occurred in the territory over the past three years together with details about the dates, times, locations and causes of the crashes, as well as the helicopter models and the names of the manufacturers concerned;*
- (b) *of the existing legislation to monitor helicopter flights and their safety; and*
- (c) *what measures the Government has adopted to prevent the occurrence of such accidents, and whether the Government has taken action to step up those measures in order to ensure the safety of the public?*

SECRETARY FOR ECONOMIC SERVICES: Mr President,

- (a) There were three helicopter accidents in the territory during the past three years. Details of the incidents are as follows:

- (1) Date : 21 May 1992  
Time : 1420 L  
Location : Near Siu Lang Shui, Castle Peak,  
Hong Kong  
Mode : SA315B  
Manufacturer : Aerospatiale  
Causes : The prime cause of the accident was the snagging of the underslung load on a bush. Contributing factors were the operation of the helicopter close to or slightly above the maximum permitted weight limit as well as the transition from the hover to forward flight in a downwind direction.
- (2) Date : 9 June 1995  
Time : 1130 L  
Location : Approximately 7 km west south west of  
Sek Kong Airfield (Near Yuen Long)  
Model : SA315B  
Manufacturer : Aerospatiale  
Causes : The Inspector's investigation is currently  
in progress.
- (3) Date : 29 June 1995  
Time : 0910 L  
Location : Approximately 8 km west of Sek Kong  
Airfield (Near Yuen Long)  
Model : SA315B  
Manufacture : Aerospatiale  
Causes : The Inspector's investigation is currently  
in progress.

- (b) The Air Navigation (Overseas Territories) Order 1977 provides the regulatory framework and standards governing the safe operation of aerodromes, aircraft, air traffic control, aircrew and other aspects of aerial work and public air transport. This includes legislative requirements pertaining to helicopter operations. Part II of this Order relates to the issue of Air Operator's Certificates and Part V to the operation of aircraft, including helicopters.

Surveillance of helicopter operations is effected by requiring the operator to establish operating procedures in an operations manual. The Director of Civil Aviation is responsible for monitoring compliance with these procedures.

- (c) The three accidents are subject to investigation under the Hong Kong Civil Aviation (Investigation of Accidents) Regulations 1983. The purpose of these investigations is to establish the cause or causes of the accident, so as to avoid a recurrence of such incidents in the future. As a result of these investigations, safety recommendations are made and implemented.

In view of the two accidents which occurred recently, the Director of Civil Aviation has provisionally suspended the Air Operator's Certificate of the company responsible for the helicopter operations, pending due inquiry, with a view to ensuring that procedures are in place to prevent a recurrence.

## STATEMENT

### Visit to China

CHIEF SECRETARY: Mr President, with your permission, I would like to make a statement on my recent visit to Beijing.

The Governor and I have indicated on many previous occasions in the past our wish to discuss with Director LU Ping issues relating to the transition of Hong Kong. Indeed, during his Question and Answer session on 27 April, the Governor informed this Council that he had extended an invitation to Director LU to meet either him or, if that was not possible, the Chief Secretary during his visit to Hong Kong in May. Following that, I received an invitation from Director LU to meet him over lunch in Zhuhai on 28 May. Unfortunately I was unable to accept that invitation because I was already committed to visit London. As Members are aware, I then made it clear in a public response that I welcomed the Director's invitation to meet him in China and that I had written to Director LU stating that I looked forward to doing so when I returned from leave in July. These are all matters of public record.

It was whilst I was on leave last month that I received an invitation from the Hong Kong and Macau Affairs Office to visit Peking from 30 June to 3 July. I immediately informed the Governor, who approved the visit. While I was in Peking, I was able to meet with not only Director LU Ping and his two deputy directors but also Vice-Premier QIAN Qichen. I had a 90-minute discussion with Director LU and met Vice-Premier QIAN for about 50 minutes. These discussions took place in a positive and friendly atmosphere. We exchanged views on a wide range of issues relating to the transition, including the economy, the Civil Service and co-operation with the Preparatory Committee and the Chief Executive (Designate) and his team.

I took the opportunity to outline civil servants' concerns and to stress the need for the continuity in the Civil Service to ensure a smooth transition. Both Vice-Premier QIAN and Director LU were at pains to reassure me about the importance they attached to the Civil Service; their desire to see continuity within the Civil Service; and their wish for the majority of the civil servants to continue in office after 1997, subject of course to the provisions in the Joint Declaration and the Basic Law as regards the selection of the Chief Executive (Designate) and his responsibility for nominating principal officials. I very much welcomed these reassurances. I noted in particular that all my colleagues were committed to serving Hong Kong. I had a competent team in place and all Policy Secretaries were qualified to stay on after 1997. I also indicated my wish to continue to serve the people of Hong Kong after 1997.

Both Vice-Premier QIAN and Director LU were interested in the Hong Kong economy and we discussed various aspects of the economy and prospects for the immediate future.

On transitional matters, we discussed briefly the establishment of the Preparatory Committee and the selection of the Chief Executive (Designate) who would nominate the principal officials. I referred to the commitment we had already made to co-operate fully with both the Preparatory Committee and with the Chief Executive (Designate) and his team once they were appointed. We agreed that there should be co-operation between the two sides on these transitional issues, although the form of co-operation will need to be discussed in detail.

I reaffirmed our readiness to continue to work closely with the Chinese side to complete all outstanding preparations to secure the full and faithful implementation of the Joint Declaration and the Basic Law. And both Vice-Premier QIAN and Director LU assured me that the Chinese Government would do everything possible to ensure a smooth transition, and maintain confidence in Hong Kong.

At the end of the discussions, we agreed that there should be more contact between senior officials of both sides. Indeed, Director LU and I agreed that we ourselves should be in regular contact. I came away from these meetings very encouraged about the prospects for more positive co-operation between the two sides. I see the visit as an important first step in enhancing mutual understanding and co-operation in the run-up to 1997. I hope that on the basis of this visit, it will be possible for us to establish a more trusting relationship which will be conducive to resolving issues of mutual concern.

I understand that some Members have expressed reservations that the visit was not announced in advance; and that this might generate misunderstandings on the part of the community. Let me assure Members that my meetings with Vice-Premier QIAN and Director LU were not negotiating sessions. The sole purpose of this visit was to provide an opportunity for us to get to know each other better and to open up a channel of communication to enhance contact between the two sides. There were no secret deals; no open deals; in short, no deals at all. Such contact is in fact long overdue. I believe the community feels that very strongly. Both the Governor and I are delighted that the visit has taken place. As I have already said, we hope that the visit will help in the process of greater co-operation between the two sides in the best interests of the people of Hong Kong.

The day after I returned from Peking, I briefed Members of the Executive Council and then gave details of the visit to the public through the media. I believe the most important thing is that the visit took place, and that it has achieved the purpose of opening up a channel of communication between the two sides. The visit has been warmly welcomed by the public and in particular by the Civil Service. Now that the ice has been broken, I certainly hope that there will be more visits to China, both at my level and at the level of Policy Secretaries and other senior officials and that such visits in future will be announced in the usual way.

PRESIDENT: Miss Emily LAU, a short question for the purpose of elucidation only.

MISS EMILY LAU asked (in Cantonese): *Mr President, I would like to ask the Chief Secretary that in her discussion with the Chinese Government in Beijing on the question of a designate team and the civil service, did she mention to the Chinese Government Article 100 of the Basic Law, which stipulates that when the Hong Kong Special Administrative Region is set up, various levels of the Hong Kong civil service, that is to say, civil servants who are currently serving, will all be retained? Can the Chief Secretary inform us whether or not this provision was mentioned to him, that is to say under Article 100 of the Basic Law, all the people should be retained, and therefore there is really not much room for the Chief Executive if he is to choose his own designate team and other people?*

CHIEF SECRETARY: Mr President, we discussed in general the establishment of the Preparatory Committee, the selection of the Chief Executive (Designate) and his responsibility for nominating principal officials. We did not go into details, except to the extent that I have already stated in my statement.

DR CONRAD LAM asked (in Cantonese): *Mr President, I am glad that the Chief Secretary can enhance her communication with China and I believe all the people in Hong Kong welcome this. Just now the Chief Secretary mentioned that Mr LU Ping told her that every effort would be made to ensure a smooth transition. In this connection, did the Chief Secretary "take advantage by the tide" and asked him whether the setting up of the provisional legislature would undermine the transition? In the statement made by the Chief Secretary just now, the Legislative Council seemed to have vanished in thin air, there was no mention of it at all.*

PRESIDENT: I do not think I will allow that within the terms of Standing Order 20.

MR FREDERICK FUNG asked (in Cantonese): *Mr President, just now when the Chief Secretary spoke about the meeting with Director LU Ping or Vice-Premier QIAN Qichen, she mentioned the Preparatory Committee for the Hong Kong Special Administrative Region Government, and she said that there was the possibility to co-operate with the Committee. Can the Chief Secretary spell it out whether or not civil servants may take part in the Preparatory Committee? And what about the question of co-operation ?*

CHIEF SECRETARY: Mr President, both sides agreed on the need for co-operation with the Preparatory Committee. As to the specific form of co-operation, these are of course matters which will have to be discussed in detail at a later stage through the proper forum.

MR FRED LI asked (in Cantonese): *Mr President, we welcome the fact that the Chief Secretary had the opportunity to communicate with Chinese officials. However, does Mrs Anson CHAN think it would be much better if she had announced to the public about this visit before she went to Beijing, than to make this statement now?*

PRESIDENT: That does not really arise under Standing Order 20. Any more questions?

MISS EMILY LAU asked (in Cantonese): *Can the Chief Secretary inform us whether this secret visit was proposed by the Hong Kong Government and herself, or whether the Chinese Government had made secrecy a condition for her visit?*

PRESIDENT: I will not allow that under Standing Order 20. Any more questions?

MR ERIC LI asked (in Cantonese): *Mr President, the Chief Secretary mentioned that it would be better had it been announced to the public earlier, but she then also mentioned that regular contacts with the Chinese side would be made in the future. I wonder if the Chief Secretary had mentioned it to Mr LU Ping in what form would such regular contacts be made?*

CHIEF SECRETARY: Mr President, we did not discuss in detail the form that such regular contacts might take, but it was agreed by both sides that senior officials, particularly at Policy Secretary levels, when they visit Beijing as part of the sponsored visitors programme or indeed on other duties, that they should make a point of calling on Mr LU Ping and his deputies.

MR FREDERICK FUNG asked (in Cantonese): *I would like to ask whether the Governor is counted as a senior civil servant, since the Memorandum of Understanding concerning the Construction of the New Airport stipulates that they should meet once every six months?*

PRESIDENT: Bills. Second Reading.



**BILLS****Second Reading of Bills****WILLS (AMENDMENT) BILL 1994****Resumption of debate on Second Reading which was moved on 6 July 1994**

*Question on Second Reading proposed.*

DR PHILIP WONG: Mr President, the three Bills before us seek to implement most of the recommendations of the Law Reform Commission contained in its report on the law of inheritance in Hong Kong. As Members may be aware, the Bills Committee has spent nearly a year going into the details of every proposal under the three Bills. I shall highlight some major proposals in each of the Bills which are of particular concern to the Bills Committee.

Let me first go to the Wills (Amendment) Bill 1994. The Bills Committee has had considerable discussion on the proposal to repeal the existing provision in the principal Ordinance under which any will of a Chinese testator written wholly or substantially in Chinese shall be valid and duly executed although not executed in accordance with the required formalities. The Bill proposes to replace this provision by a new one with the effect that if the court is satisfied beyond reasonable doubt that the document embodied the testamentary intentions of the deceased persons they may be deemed to have been duly executed, notwithstanding that they have not been executed in accordance with the formalities.

Members are concerned whether the proposed standard for approving for admission of the validity of the will is too high. The Administration has explained that the proposed repeal aims to prevent abuse of the existing provision which lacks a formal check on authenticity of wills. The current provision is also discriminatory as it applies only to Chinese testators. The Administration considers it necessary to strike a balance between setting too high a standard for approving the validity of wills and the creation of an unacceptable risk of forged wills being admitted to probate. In the Administration's view, the new provision will provide flexibility for the admission of a will not executed in accordance with the stipulated requirements and will, at the same time, ensure a reasonable degree of certainty regarding its authenticity.

The Bills Committee has explored an alternative approach of simply lifting the requirement of being a Chinese testator under the existing provision. However, Members have noted that this approach would not pass the Bill of Rights test, and will even widen the scope for abuse as it would apply to any Chinese will, irrespective of the race of the testator. Having taken into account the fact that the validity of the existing will will be preserved in any event under the Bill, Members accept the Administration's proposal.

Another area of concern of the Bills Committee is on the proposed power of the court to correct a will which fails to carry out the testator's intentions because of either a clerical error or a failure to understand his instructions. Members have expressed worries on the circumstances under which a court may rectify the will. After being assured that rectification will only be allowed under the specified circumstances and that it will not be permissible when a draughtsman deliberately omits words or when the testator fails to appreciate the legal effect of the wording used in the will. The Bills Committee agrees that the proposal will allow the court to apply equitable principle of remedy and therefore lends its support to the proposed provision.

I would like to draw Members' attention to a proposal which aims to give legal effect in Hong Kong to the relevant provisions of the 1973 Convention on International Wills. The Administration has advised that since the law on international wills in the United Kingdom has not yet been brought into operation, in order to be in line with the United Kingdom position the Administration proposes, and Members accept, that the proposed section 23D under clause 9 should not commence until the Convention is applied to Hong Kong.

I shall now mm to the Intestates' Estates (Amendment) Bill 1994. The major proposals in this Bill are to improve the inheritance position of a surviving spouse of an intestate. The proposed improvements include, inter alia, providing for the surviving spouse to take the personal chattels absolutely and increasing the statutory legacy from \$50,000 to \$500,000 where there are surviving children. Where there are no surviving children, the entitlement of the surviving spouse is set at \$1 million instead of the \$200,000 as at present.

Members of the Bills Committee generally agree that the proposed increase falls short of the current value of an average small apartment. The surviving spouse has a perceived need to live on the statutory legacy whether the intestate dies with or without issue. The Administration has expounded that the average size of the deceased estate in Hong Kong is roughly estimated at \$1 million and the estate may be consumed wholly by the surviving spouse if the amount is increased to \$1 million or above. The proposed figures are not connected absolutely to the need to acquire a matrimonial home which varies from situation to situation. With the Administration's assurance that the amount of statutory legacy will be reviewed regularly, Members accept the proposed changes.

I should like to mention another proposal under the Intestates' Estates (Amendment) Bill 1994. This proposal intends to change the legal presumption of a concubinage under which the female partner of a union of concubinage entered into before 7 October 1971 will be accepted as such by the male partner's wife and family unless the contrary is proved. The reason for the proposed change, as explained by the Administration, is that it will be very difficult for a concubine to prove that she has been so recognized if she is faced by a hostile wife and family who claim otherwise. Members consider the argument not unreasonable.

As regards the Inheritance (Provision for Family and Dependents) Bill, which is to replace the Deceased's Family Maintenance Ordinance, the Bills Committee has had lengthy discussion on the proposals to widen the scope of persons eligible to apply for financial provision from the deceased's estate and to remove the prior dependency requirement on certain classes of persons. Members accept the Administration's explanation that the law should enforce the moral obligation of maintenance assumed by the deceased during his or her lifetime, and the Bill will provide a safety net for deserving persons who may have been overlooked in the will. However, Members consider it necessary that a prior dependency requirement should be imposed on certain classes of persons. It does not sound convincing that close relatives of the deceased who have not been dependent on the deceased prior to his death should be eligible to apply for financial provision after the deceased's death. The Bills Committee unanimously agreed that the prior dependency requirement should be added to certain classes of persons. To this effect, the Bills Committee has proposed amendments to clause 3, and the Administration has agreed to them. On behalf of the Bills Committee, I shall move Committee stage amendments to clause 3 and will elaborate on the details then.

At Members' suggestion, the Administration has agreed to amend clause 11 concerning property held on joint tenancy. Under the Bill, such property will be treated as part of the deceased's net estate. In order not to upset the current general expectation that the survivor will take the whole of such property upon the death of the other party, the proposed provision will be revised to apply only to joint tenancies created after the commencement of the Bill. The Secretary will move an amendment to clause 11 to this effect.

Finally, on behalf of the Bills Committee, I should like to thank the Administration for its sincerity in trying to reach a consensus with Members on many of the issues raised in the course of the deliberations. I must mention in particular the efforts and the time put in by my colleague, the Honourable Ronald ARCULLI, in chairing 15 subcommittee meetings. Under his stewardship, both the policy and the technical issues involved in the three Bills have thoroughly been examined.

With these remarks, Mr President, and subject to the amendments to be moved by the Secretary and myself, I commend the three Bills to this Council.

SECRETARY FOR HOME AFFAIRS: Mr President, with your permission, I would also like to deal with the three Bills in one speech. I would like to thank Dr the Honourable Philip WONG, Chairman of the Bills Committee to study the Wills (Amendment) Bill 1994, Intestate's Estates (Amendment) Bill 1994 and Inheritance (Provision for Family and Dependants) Bill and the other Members of the Bills Committee for their work in scrutinizing the three Bills. The dedicated efforts of the technical subcommittee of the Bills Committee under the chairmanship of the Honourable Ronald ARCULLI deserve particular mention. The meticulous work of the Subcommittee and the Committee stage amendments that have arisen from that work will ensure that the legislation is suitably adapted to Hong Kong's needs.

While society in Hong Kong has developed considerably during the last 20 years, our law of inheritance has remained largely unchanged. It was against this background that the Law Reform Commission in its report on the "Law of Wills, Intestate Succession and Provision for Deceased Persons' Families and Dependants" recommended changes to the law of inheritance. The changes recommended by the Law Reform Commission aim both to bring our inheritance law into line with current day community needs and expectations and to remove various anomalies that had come to light during its implementation. The three Bills that I am going to recommend to Members today, namely, the Wills (Amendment) Bill 1994, the Intestates' Estates (Amendment) Bill 1994 and the Inheritance (Provision for Family and Dependants) Bill, seek to implement the majority of the recommendations of the Law Reform Commission.

The first of the three Bills is the Wills (Amendment) Bill 1994. As I mentioned when I introduced this Bill into this Council, its main aims are to relax the formalities for making wills and to give the court new powers to validate, interpret and rectify wills.

Members of the Bills Committee expressed concern over the proposed repeal of the provision of the Wills Ordinance that gives special treatment to a will of a Chinese testator written in Chinese. Currently, such wills are valid even if they are not executed in accordance with the formalities. Let me take this opportunity to reiterate that the proposed repeal aims to prevent abuse of the existing provision, which lacks a formal check on the authenticity of such wills. It is to be replaced by a general power of the court to admit to probate wills not executed in accordance with the formalities but which the court is nevertheless satisfied embody the testamentary intentions of the deceased. It should also be noted that the application provisions of the Bill provide for the validity of wills made before its commencement, including wills in Chinese of Chinese testators, to be unaffected by its enactment.

The Bill also gives effect in Hong Kong to relevant provisions of the Convention on International Wills. Pending ratification of this Convention by the United Kingdom, we have proposed and the Members of the Bills Committee agree that it is appropriate for Hong Kong to follow the United Kingdom in delaying commencement of the relevant provisions.

Mr President, the main effect of the Intestates' Estates (Amendment) Bill 1994 is to improve the inheritance position of a surviving spouse of someone who has died intestate. For example, it provides for a surviving spouse to take the personal chattels absolutely, instead of the current right to require them to be appropriated in or towards satisfaction of the statutory sum to which he or she is entitled. The Bill also gives a surviving spouse the right to appropriate the intestate's interest in the matrimonial home in or towards satisfaction of his or her entitlement in the estate. In addition, the Bill increases substantially the amounts of the statutory legacies payable to a surviving spouse from the deceased's estate: from \$50,000 to \$500,000, where there is surviving issue; and from \$200,000 to \$1 million, where there are other surviving relatives but no issue. These figures were last revised in 1983 and have been considerably eroded by inflation since then.

When considering the Bill, Members of the Bills Committee suggested that the levels of the statutory legacies should be reviewed at regular intervals. We agree with this suggestion and propose to review the levels of the statutory legacies at intervals of no less than two years.

The Inheritance (Provision for Family and Dependants) Bill is the last of the three Bills aimed at effecting a general reform of the law of inheritance based on recommendations of the Law Reform Commission. It is a stand alone Bill to replace the Deceased's Family Maintenance Ordinance. The Bill provides for the court to order reasonable financial provision from the estate of a deceased for certain classes of person on application. In effect, it provides a safety net for deserving persons who have not been properly provided for either in a will or under the law of intestacy.

The main effects of the Bill are to widen the scope of persons eligible to apply for financial provisions from a deceased's estate and to give the court greater powers in making orders for such financial provision. As regards the scope of persons eligible to apply to the court for financial provision from a deceased's estate, the main change compared with the Deceased's Family Maintenance Ordinance is the inclusion of a new class of persons who, although they are not close relatives of the deceased, were dependent either wholly or partly on him or her.

In considering the Bill, Members of the Bills Committee were concerned that the greatly increased scope of potential applicants coupled with the extended powers of the court could create undue difficulties in the settlement of estates. To meet this concern, Members proposed that certain categories of eligible applicants should be subject to a requirement of having been wholly or substantially maintained by the deceased prior to his or her death. The proposed requirement would apply to a former spouse, parents, an adult child other than one with a physical or mental disability, a brother or sister and any other person. Dr the Honourable Philip WONG, the Chairman of the Bills Committee, will move an amendment during the Committee stage of this Bill to give effect to this proposal, which we have accepted.

With these remarks, Mr President, I recommend the Bill to Members.

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

Bill read the Second time.

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

#### **INTESTATES' ESTATES (AMENDMENT) BILL 1994**

#### **Resumption of debate on Second Reading which was moved on 6 July 1994**

*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).*

**INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) BILL****Resumption of debate on Second Reading which was moved on 6 July 1994**

*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).*

**MERCHANT SHIPPING (LINER CONFERENCES) BILL****Resumption of debate on Second Reading which was moved on 15 February 1995**

*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).*

**ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) BILL 1995****Resumption of debate on Second Reading which was moved on 7 June 1995**

*Question on Second Reading proposed.*

MR ANDREW WONG (in Cantonese): Mr President, I shall be proposing two amendments during the Committee stage later on. The proposed amendments will seek to lower from 10 years to 180 days, that is, half a year, the duration a candidate must have resided in Hong Kong before he can qualify to stand. The Administration is proposing to reduce it to three years. I am of the view that this does not go far enough. The proposal to lower it to 180 days was originally contained in a Private Member's Bill scheduled for resumption of Second Reading debate and Committee Stage deliberations on 26 July.

Mr President, with these remarks, I support the Second Reading of the Electoral Provisions (Miscellaneous Amendments) Bill 1995.

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

Bill read the Second time.

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

### **SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1995**

#### **Resumption of debate on Second Reading which was moved on 26 April 1995**

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

Bill read the Second time.

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

### **SECURITIES (CLEARING HOUSE) (AMENDMENT) BILL 1995**

#### **Resumption of debate on Second Reading which was moved on 21 June 1995**

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

Bill read the Second time.

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



**SECURITIES (AMENDMENT) BILL 1995****Resumption of debate on Second Reading which was moved on 21 June 1995**

*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.

**WILLS (AMENDMENT) BILL 1994**

Clauses 1, 2, 3 and 5 to 12 were agreed to.

Clause 4

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 4 be amended as set out in the paper circulated to Members.

Clause 4 provides for the repeal of sections 8, 11 and 12 of the Wills Ordinance on the grounds that they have become redundant as they are now part of the general law. Members of the Bills Committee however proposed to retain them because the relevant general law could change in the future, making it necessary to re-enact the sections concerned. It is therefore proposed that clause 4 be deleted.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 4**

That clause 4 be amended, by deleting the clause.

*Question on the amendment proposed, put and agreed to.*

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

Schedule was agreed to.

**INTESTATES' ESTATES (AMENDMENT) BILL 1994**

Clauses 1 to 4, 6, 8, 9, 12, 13 and 16 were agreed to.

Clauses 5, 7, 10, 11, 14 and 15

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendment to clause 5 explicitly provides that "the net sum payable" under clause 6 of the Bill refers to the "statutory legacies" payable to a surviving spouse under clauses 4(3) and 4(4).

The change of wording to clause 7 is to ensure consistency of treatment between a surviving spouse and other beneficiaries in offsetting an interest in an intestate's estate required in the jurisdiction against an interest acquired in Hong Kong.

The amendments to clauses 10 and 11 provide for changes in Chinese versions of the words "representation" and "personal representatives".

The changes to clauses 14 and 15 aim to replace English paragraphs in the Chinese version of the Bill arising from the subsequent promulgation of the authentic Chinese versions of the Legitimacy Ordinance and Adoption Ordinance, which are referred to in the clauses concerned.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 5**

That clause 5 be amended, in the proposed section 6(a), by adding "under section 4(3) or (4)" after "payable".

**Clause 7**

That clause 7 be amended, in the proposed section 8A(3), by deleting "may be" and substituting "is".

**Clause 10**

That clause 10(c) be amended, by deleting "承辦權" wherever it appears and substituting "承辦".

That clause 10(j) be amended, in the proposed paragraph 5(4)(a), by deleting "承辦權" and substituting "承辦".

**Clause 11**

That clause 11 be amended, in the proposed Schedule 2 —

- (a) in paragraph 1(1)(b), by deleting "遺囑代理人" and substituting "遺產代理人";
- (b) in paragraph 3(1)(a) and (3), by deleting "承辦權" and substituting "承辦".

**Clause 14**

That clause 14 be amended, by deleting the clause and substituting —

**"14. 為免生疑問而訂定的條文**

《婚生地位條例》(第 184 章) 第 14 條現予修訂 —

- (a) 在第(2)款中，廢除“《婚姻制度改革條例》(第 178 章)所規定的指定日期”而代以“1971 年 10 月 7 日”；
- (b) 加入 —

“(3) 凡在任何法律程序中證明任何夫妻關係是男方與女方在 1971 年 10 月 7 日前締結的，即須推定女方於男方在生時已被男方的妻子接納為其夫之妾，而男方家人亦普遍承認如此，直至相反證明成立為止。”。

**Clause 15**

That clause 15 be amended, by deleting the clause and substituting —

**"15. 領養根據本條例而作出**

《領養條例》(第 290 章)第 25(2)條現予修訂，廢除“1972 年 12 月 31 日”而代以“1973 年 1 月 1 日”。

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 5, 7, 10, 11, 14 and 15, as amended, proposed, put and agreed to.*

Heading before New clause 15A	New Territories Land (Exemption) Ordinance
New clause 15A	Provision relating to the Probate and Administration Ordinance (Cap.10)
New clause 15B	Provision relating to the Intestates' Estates Ordinance (Cap.73)

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 15A, new clauses 15A and 15B as set out in the paper circulated to Members be read the second time.

These additions are consequential upon the repeal of section 11 of the Intestates' Estates Ordinance and sections 75(1)(a) and 75(3) of the Probate and Administration Ordinance. Explicit references to these sections made in the New Territories Land (Exemption) Ordinance are removed to avoid referring to sections that have been repealed.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 15A, new clauses 15A and 15B be added to the Bill.

*Proposed additions*

**Heading before new clause 15A, new clauses 15A and 15B**

That the Bill be amended, by adding —

**"New Territories Land (Exemption) Ordinance**

**15A. Provision relating to the Probate and Administration Ordinance (Cap.10)**

Section 7 of the New Territories Land (Exemption) Ordinance (Cap.452) is amended by repealing "of section 75".

**15B. Provision relating to the Intestates' Estates Ordinance (Cap.73)**

Section 8 is amended by repealing "of section 11".

*Question on the addition of the Heading before new clause 15A, new clauses 15A and 15B proposed, put and agreed to.*

**INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) BILL**

Clauses 1, 2, 4, 7, 8, 9, 12, 13, 15, 17 to 21, 23, 24, 25 and 27 to 30 were agreed to.

Clause 3

DR PHILIP WONG: Mr Chairman, I move that clause 3 of the Bill be amended as set out in the paper circulated to Members.

Clause 3 of the Bill defines the scope of persons eligible to apply to the court for financial provision from a deceased's estate. Compared with the Deceased's Family Maintenance Ordinance which the Bill seeks to replace, clause 3 includes a new class of persons who were dependent, either wholly or partially, on the deceased immediately prior to his death or her death. The clause also removes the prior dependency requirements on parents of the deceased in order to be eligible to apply for financial provision.

The Bills Committee has thoroughly examined the implications of the proposal to enlarge the scope of eligible persons against the other provisions in the Bill. Whilst Members accept the Administration's argument that the law should enforce the moral obligation of maintenance assumed by deceased person during his or her lifetime, this obligation, however, should be confined to those persons who were financially dependent on the deceased prior to his or her death. There is no reason why a family member of the deceased who was not used to being maintained by the deceased should be allowed to apply for financial provision from the deceased's estate after his or her death. The prior dependency requirement is of particular relevance if we take into account the extent of the power of the court to make orders for financial provisions under the Bill. The Bills Committee therefore proposes to amend clause 3 to the effect that a former spouse, a parent, an adult child, a sibling and any other person will be eligible to apply for financial provision if they were maintained by the deceased, either wholly or substantially, before death. In the case of a surviving spouse, a tsip or male partner to a recognized union of concubinage, no prior dependency requirement is necessary. Such a requirement also will not apply to an infant child of the deceased or a child of the deceased who is, by reason of some mental or physical disability, incapable of maintaining himself. With these amendments, the powers of the court under the Bill will be put in perspective.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 3**

That clause 3(1)(ii) be amended, by adding "and was being maintained, either wholly or substantially, by the deceased immediately before his death" after "remarried".

That clause 3(1)(iv) be amended, by adding "who immediately before the death of the deceased was being maintained, either wholly or substantially, by the deceased" after "deceased".

That clause 3(1) be amended, by deleting paragraph (v) and substituting —

- "(v) an infant child of the deceased, or a child of the deceased who is, by reason of some mental or physical disability, incapable of maintaining himself;
- (va) an adult child of the deceased who immediately before the death of the deceased was being maintained, either wholly or substantially, by the deceased;"

That clause 3(1)(vi) be amended, by adding "and was being maintained, either wholly or substantially, by the deceased immediately before his death" after "that marriage".

That clause 3(1)(vii) be amended, by deleting "partly" and substituting "substantially".

That clause 3(1)(viii) be amended, by deleting "partly" and substituting "substantially".

That clause 3(3) be amended, by deleting "(1)(vii) and (viii), a person shall be treated as being maintained by the deceased, either wholly or partly" and substituting "(1)(ii), (iv), (v), (va), (vi), (vii) and (viii), a person shall be treated as being maintained by the deceased, either wholly or substantially".

*Question on the amendment proposed, put and agreed to.*

*Question on clause 3, as amended, proposed, put and agreed to.*

Clauses 5, 6, 10, 11, 14, 16, 22 and 26

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

The amendments to clause 5 provide for the changes to clauses 5(4) and 5(5). The change to clause 5(4) is proposed further to the amendment to clause 3 of the Bill already passed by this Council. The change to clause 5(5) is a technical amendment, which replaces "and" with "or" when it first appears.

The amendments to clause 10 allow the court to take into account all the circumstances of a case in treating a death bed gift as part of the net estate of a deceased following an application under the Ordinance. For example, the court would be able to take account of any diminution in the value of gift following the death of the deceased.

The amendment to clause 11 provides for a new subsection (5) which provides that the clause should only apply to those joint tenancies entered into after the commencement of the Bill. Under the general law, property under a joint tenancy automatically becomes the property of the other person on the death of one of the joint tenants. In other words, it is not normally part of the deceased's estate. Clause 11 provides for such property to be treated as part of the deceased's net estate for the purpose of the Ordinance. Members of the Bills Committee proposed that this should only apply to joint tenancies created after the commencement of the Bill as joint tenancies already in existence have not been made in the expectation that the property concerned would be so treated.

Clause 16 is amended at the suggestion of the Bills Committee to remove the time limit for an application under clause 3 of the Bill made by a former spouse of the deceased. This is proposed as under Hong Kong's circumstances it would not normally be possible to comply with the specified time limit.

The amendment to clause 14 deletes a redundant phrase from the Chinese version of the Bill.

The amendments to clauses 6, 11(1), 22 and 26 provide for changes in the Chinese versions of the words "representation" and "property".

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 5**

That clause 5(4) be amended, by adding ", (va)" after "section 3(1)(v)".

That clause 5(5) be amended, by deleting "and" where it first appears and substituting "or".

**Clause 6**

That clause 6 be amended, by deleting "權".

**Clause 10**

That clause 10 be amended, by deleting "be treated for the purposes of this Ordinance as part of the net estate of the deceased; but this subsection" and substituting ", to such extent as appears to the court to be just in all the circumstances of the case, be treated for the purposes of this Ordinance as part of the net estate of the deceased, but this section".

**Clause 11**

That clause 11 be amended —

- (a) in subclause (1), by deleting "物業" where it twice appears and substituting "財產".
- (b) by adding -



"(5) This section does not apply to a joint tenancy of any property created before the commencement of this Ordinance."

#### **Clause 14**

That clause 14(1) be amended, by deleting "在衡量各項可能性後".

#### **Clause 16**

That clause 16(1) be amended, by deleting ", within 12 months from" and substituting "after".

#### **Clause 22**

That clause 22(1) be amended, by deleting "承辦權" and substituting "承辦".

That clause 22(3) be amended, by deleting "承辦權" and substituting "承辦".

#### **Clause 26**

That clause 26 be amended —

- (a) in the heading, by deleting "權".
- (b) by deleting "承辦權" wherever it appears and substituting "承辦".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 5, 6, 10, 11, 14, 16, 22 and 26, as amended, proposed, put and agreed to.*

Heading before New clause 27A	New Territories Ordinance
New clause 27A	High Court or the District Court may enforce Chinese customs

Heading before New clause 28A	New Territories Land (Exemption) Ordinance
New clause 28A	Savings for customary land trusts
New clause 28B	Provision relating to section 2 of the Inheritance (Provision) for Family and Dependents) Ordinance

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the heading before new clause 27A, new clause 27A, the Heading before new clause 28A, new clauses 28A and 28B as set out in the paper circulated to Members be read the Second time.

These new clauses are consequential on the repeal of the Deceased's Family Maintenance Ordinance. They change references to the Deceased's Family Maintenance Ordinance in other Ordinances to the Inheritance (Provision for Family and Dependents) Ordinance.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading before new clause 27A, new clause 27A, the Heading before new clause 28A, new clauses 28A and 28B be added to the Bill.

*Proposed additions*

**Heading before new clause 27A, new clause 27A**

That the Bill be amended, by adding before clause 27 —

**"New Territories Ordinance****27A. High Court or the District Court may enforce Chinese customs**

Section 13(2) of the New Territories Ordinance (Cap.97) is amended by repealing "Deceased's Family Maintenance Ordinance (Cap.129)" and substituting "Inheritance (Provision for Family and Dependants) Ordinance ( of 1995)".

**Heading before new clause 28A, new clauses 28A and 28B**

That the Bill be amended, by adding —

**"New Territories Land (Exemption) Ordinance****28A. Savings for customary land trusts**

Section 5(2) of the New Territories Land (Exemption) Ordinance (Cap.452) is amended by repealing "Deceased's Family Maintenance Ordinance (Cap.129)" and substituting "Inheritance (Provision for Family and Dependants) Ordinance ( of 1995)".

**28B. Provision relating to section 2 of the Inheritance (Provision for Family and Dependants) Ordinance ( of 1995)**

Section 9 is amended by repealing "Deceased's Family Maintenance Ordinance (Cap.129)" and substituting "Inheritance (Provision for Family and Dependants) Ordinance ( of 1995)".

*Question on the addition of the Heading before new clause 27A, new clause 27A, the Heading before new clause 28A, new clauses 28A and 28B proposed, put and agreed to.*

**MERCHANT SHIPPING (LINER CONFERENCES) BILL**

Clauses 1, 3, 4, 5, 9 and 12 to 17 were agreed to.

Clauses 2, 6, 7, 8, 10 and 11

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Members will recall that the Merchant Shipping (Liner Conferences) Bill is part of our ongoing exercise to localize United Kingdom legislation applying to Hong Kong so that the existing system of laws will continue after 1997. The Bill will implement in Hong Kong legislation the Convention on the Code of Conduct for Liner Conferences. The Code establishes rules designed to ensure a balance of interests between suppliers and users of liner shipping services; to avoid discrimination against shipowners and shippers of the foreign trade of any country; and to ensure transparency of information to interested parties.

All the proposed amendments are changes to the Chinese text to remove possible discrepancies in meaning between the two texts of the Bill.

Mr Chairman, the Merchant Shipping (Liner Conferences) Bill is the last major localization exercise in respect of merchant shipping legislation. Subject to Members' approval today, we will have substantially completed the localization of the whole body of maritime law, barring some minor tidying up and adaptation work. This is a most significant achievement for shipping is crucial to Hong Kong's economy. We are the world's eighth largest trading economy: some 90% of that trade is handled through the port. We must ensure the present successful system of shipping regulation can continue beyond 1997, as enshrined in the Joint Declaration. This exercise will help achieve this.

It has been five years since the enactment of the first item of localized shipping legislation. Looking back, the process has been painstaking and at times arduous. I would like to take this opportunity to thank Members for their contribution to the completion of this programme.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 2**

That clause 2(1) be amended, in the definition of "判決", by deleting "裁決" and substituting "裁斷".

**Clause 6**

That clause 6 be amended, in the Chinese text, by deleting subclause (5) and substituting —

"(5) 凡在《守則》所引起的程序中 —"

- (a) 某公會會員就引致任何人蒙受損害或損失被判敗訴；且
- (b) 該成員所負法律責任的程度並非依據第(1)至(3)款決定，

則如尋求在香港強制執行該判決，該會員就有關損害或損失所承擔的賠償責任，不得較假若依據該等條款決定法律責任的程度時所須承擔的賠償責任為大。".

**Clause 7**

That clause 7(3) be amended, by adding "（以其名義）" after "對它".

**Clause 8**

That clause 8(6) be amended, by deleting "訴訟各方提交" and substituting "將訴訟各方轉介".

**Clause 10**

That clause 10 be amended, in subclauses (4), (5), (6) and (7), by deleting "裁決" wherever it appears and substituting "裁斷".

**Clause 11**

That clause 11(2)(a) be amended, by deleting "為履行總督或任何獲授權人" and substituting "總督或任何獲授權人為履行其".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 2, 6, 7, 8, 10 and 11, as amended, proposed, put and agreed to.*

Schedules 1, 2 and 3 were agreed to.

**ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) BILL 1995**

Clauses 1 to 7, 9 to 15 and 17 to 22 were agreed to.

Clauses 8 and 16

MR ANDREW WONG (in Cantonese): Mr President, I move that clauses 8 and 16 of the Bill be amended. The amendments are meant to further relax the requirements of a candidate relating to ordinary residence in Hong Kong for 10 years.

I do not think the Government's proposal to reduce the existing requirements to three years is good enough. I think a further reduction to 180 days is necessary. I move my motion after some research and deliberations, rather than hastily.

Members may recall that Justice CHEUNG in the *obiter dictum* to the judgment given in the case *In R v Apollonia LIU, ex pane LAU San-ching* (Ref No. HCMP 3215 of 1994) indicated that there is strong evidence showing that the 10-year qualifying residence period is inconsistent with Article 21 of the Bill of Rights regarding "reasonable restrictions". He suggested that the relevant provisions in the electoral law be amended as soon as possible. I am sure all Members will agree that the existing law should be amended quickly to bring it in line with the Bill of Rights.

Mr President, I hold the principle that an electoral system and laws relating thereto must not be so "paternalistic" as to unreasonably limit choices available or to unduly influence electors' choices. Nor should the right to candidature be unreasonably restricted.

In most common law jurisdictions, residential requirements are loose. For example, in the Australian Commonwealth, the legal residential requirement is six months. In Canada, the legal residential requirement is six months in seven of the provinces, and 12 in the remaining three. In the United Kingdom, to qualify for an election a candidate needs only to be resident in his or her constituency at a specified "qualifying date", rather than having to be resident there for any period. My proposal amendments on the whole follow the general trend. They are therefore not too loose.

Mr President, Honourable Members, we must not forget that direct elections in Hong Kong have a history of more than 100 years. The first direct election took place in 1888. At that time, there was a direct election for the Sanitary Board, now the Urban Council. There were a lot of restrictions then for electors' qualifications. Even real popular and fair direct elections have a history of more than 10 years, dating back to 1982. Our electors are now

politically mature to decide who can be their representatives. Therefore, we must relax those requirements that are out-dated and unreasonable in the electoral law.

I sincerely hope that everybody will vote in favour of my amendments.

Mr President, I beg to move.

*Proposed amendments*

**Clause 8**

That clause 8 be amended, by deleting "3 years" and substituting "180 days".

**Clause 16**

That clause 16 be amended, by deleting "3 years" and substituting "180 days".

*Question on the amendments proposed.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): I would like to take this opportunity to restate our position, Mr President, as regards our proposal to reduce the qualifying residential period for election candidates from ten years preceding nomination to three years.

The rationale for imposing some form of residential requirement on election candidates is to ensure that candidates will have good knowledge of Hong Kong. The qualifying period should be sufficiently short to meet the requirement under the Bill of Rights, but sufficiently long to ensure that candidates have adequate first-hand and up-to-date knowledge of local conditions. We believe that a qualifying period of three years immediately preceding the date of nomination strikes the right balance.

We have great reservation on proposals to further reduce the qualifying period to less than three years, for example, to 180 days as proposed by Mr Andrew Wong. Such proposals would create prospects for people who have only resided in Hong Kong for an extremely short period of time to become candidates and, if elected, to sit on our representative institutions. Obviously, it is highly questionable whether a person who has resided in Hong Kong for only 180 days, or even a year, will have acquired a thorough understanding of the community's needs and aspirations, as well as the many and varied complex issues it faces. Thorough enough, that is, to be able to represent the interests of his constituents, and to make important decisions affecting the long-term interests of Hong Kong.

And we must remember that Hong Kong is a dynamic, sophisticated metropolitan which is rapidly changing and evolving. Some people would say that if the electors want someone who has been in Hong Kong for only a few months to represent them, then so be it. Mr President, I beg to differ. Electors will, of course, have the final say on who their representatives are; this is what open and fair elections are all about. But any responsible governments anywhere are duty bound to prescribe some minimum qualifications for candidature, so as to protect the integrity of the electoral process and the overall interests of the community. In our present case, a qualifying residential period of three years precisely serves this purpose. It is, of course, the case that the qualifying residential period for candidature vary from one jurisdiction to another. But we must be extremely careful in drawing any direct comparison between our own requirement, and those overseas. Circumstances differ from one jurisdiction to another, and these must be taken into account when deciding on the appropriate qualifying period.

Mr President, for the reasons I set out earlier, the three ex-officio Members will vote against Mr Andrew WONG's amendment to further reduce the qualifying residential period.

MR ANDREW WONG (in Cantonese): Mr Chairman, what the Secretary for Constitutional Affairs said a moment ago was misleading. I teach political studies and am comparatively more familiar with history. Before 1982, the electoral law of Hong Kong only required a person to have ordinarily resided in Hong Kong for three years in order to qualify for registration as a voter. And any registered voter could qualify to stand as a candidate without any other added conditions. Therefore, it would be entirely incorrect to say that any person who has resided in Hong Kong for a brief period, say, half a year, is apparently being allowed to stand as a candidate. A candidate must first be registered as a voter. Now we have tightened up the requirement so that only those who have resided in Hong Kong for seven years or who are local people, that is, British Dependent Territories Citizen holders, can qualify. Therefore, the present position in Hong Kong is that the rule was tightened up after 1982, not relaxed. At that time, the rule was tightened up not just to require a candidate to be a registered voter but also to impose an added condition that a candidate must have resided in Hong Kong for 10 years. In respect of elections to the Legislative Council, Members may say that there are certain reasons to justify the requirement or that the requirement is reasonable. But, as a matter of fact, High Court Judge Mr Justice Peter CHEUNG has ruled it to be unreasonable. What about the Urban Council? What about the district boards? The 10-year residence requirement prescribed in Chapter 367 of the Laws of Hong Kong applies across the board to the three-tiered boards and councils.



I hope Members will understand the background of the matter. A candidate must be a registered voter before he can qualify to stand. With regard to how long he should have resided in Hong Kong before he can qualify to stand, I think the shorter the period the better.

Thank you, Mr Chairman.

*Question on the amendments put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

MR ANDREW WONG: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Members may recall that the division bell will sound for only a minute as from today, pursuant to last week's motion.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendments.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendments.

Mr PANG Chun-hoi abstained.

THE CHAIRMAN announced that there were 19 votes in favour of the amendments and 27 votes against them. He therefore declared that the amendments were negatived.

*Question on clauses 8 and 16 standing part of the Bill proposed, put and agreed to.*

### **SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1995**

Clauses 1 to 8 and 10 to 14 were agreed to.

Clause 9

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clause 9 be amended as set out in the paper circulated to Members.

I propose that clause 9 be amended so that persons who by their own acts or omissions caused or brought about the Tribunal to inquire into their conduct subsequent to the institution of an inquiry or during the course of that inquiry will not be entitled to an award of costs by the Insider Dealing Tribunal. This is an extension of the provision already in the Bill which denies the award of costs to any person who by his acts or omissions caused or brought about the institution of the inquiry in the first place.

Mr Chairman, I beg to move.

*Proposed amendment*

#### **Clause 9**

That clause 9 be amended, in the proposed section 26A(5) —

(a) in paragraph (b) by deleting "or" at the end;

(b) by adding -

"(ba) a person who and in respect of whom it appears to the Tribunal has by his own acts or omissions caused or brought about (whether wholly or in part) the Tribunal to inquire into his conduct subsequent to the institution

of the inquiry under section 16 or during the course of that inquiry; or";

(c) in paragraph (c) by adding "who and" after "person".

*Question on the amendment proposed, put and agreed to.*

*Question on clause 9, as amended, proposed, put and agreed to.*

New clause 2A "Connected with a corporation"

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clause 2A as set out in the paper circulated to Members be read the Second time.

This is a minor editorial amendment to the Chinese text of section 4(1)(c) of the Ordinance which seeks to bring the Chinese text into line with the corresponding English text.

Mr Chairman, I beg to move.

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

Clause read the Second time.

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clause 2A be added to the Bill.

*Proposed addition*

**New clause 2A**

That the Bill be amended, by adding —

**"2A. "Connected with a corporation"**

Section 4(1)(c) is amended by repealing "在該機構".

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

**SECURITIES (CLEARING HOUSE) (AMENDMENT) BILL 1995**

Clauses 1 to 12 were agreed to.

Schedule was agreed to.

**SECURITIES (AMENDMENT) BILL 1995**

Clauses 1 and 2 were agreed to.

Council then resumed.

**Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

**WILLS (AMENDMENT) BILL 1994****INTESTATES'ESTATES (AMENDMENT) BILL 1994****INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) BILL****MERCHANT SHIPPING (LINER CONFERENCES) BILL and****SECURITIES (INSIDER DEALING) (AMENDMENT) BILL 1995**

had passed through Committee with amendments and the

**ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) BILL 1995****SECURITIES (CLEARING HOUSE) (AMENDMENT) BILL 1995 and**

**SECURITIES (AMENDMENT) BILL 1995**

had passed through Committee without amendment. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

**PRIVATE MEMBER'S MOTION**

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debate and Members were informed by circular on 10 July. The mover of the motion will have 15 minutes for his speech including his reply and another five minutes to reply to the proposed amendment. Other Members, including the mover of the amendment, will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

**VOTE OF NO CONFIDENCE IN THE GOVERNOR OF HONG KONG**

MR CHEUNG MAN-KWONG moved the following motion:

"That as the British Administration in Hong Kong has seriously damaged the future rule of law in Hong Kong, this Council expresses no confidence in Mr Christopher PATTEN, the Governor of Hong Kong."

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Firstly, I would like to explain the reasons for my moving the motion on behalf of the Democratic Party to express no confidence in the Governor of Hong Kong.

What "no confidence" refers to is that Mr PATTEN's way of handling some issues of significance has made the public query his integrity and thus has failed to win their trust. As the representative of the British colonial government in Hong Kong, Mr PATTEN has demonstrated not only capriciousness in his stand but also betrayal and broken promises in relation to the Sino-British Agreement on the Court of Final Appeal (CFA). The Democratic Party therefore has decided to move this motion.

We understand that the Governor enjoys supreme power under the colonial constitutional framework. Even if today's motion gets the blessing of

this Council, he is still secure in his office, and can turn a deaf ear to Councillors' condemnation and distrust.

Yet, I would like Members to know that despite objective constraints, we should still condemn the Governor on moral grounds, and move this vote of no confidence, after all, this is all the power we have in our hands. I consider carriage of a no-confidence vote in the legislature against the head of government or expression of distrust in him by the majority of elected Members to be, having regard to what can possibly be done, the greatest punishment for him even if he has the thick skin to remain in office until 1997. Moreover, our concern lies in the future rule of law in Hong Kong. The rule of law is the bedrock of Hong Kong's many successes in the past and continuance of prosperity in the future. A shaky bedrock produced by the damage to the rule of law will strike a bitter blow to the future of Hong Kong. In the light of this, the Democratic Party are determined to make the fiercest outcry with utmost strength, use the vote of no confidence in Mr PATTEN to arouse the awareness of the people of Hong Kong and strive to safeguard the rule of law in Hong Kong.

I would like to cite specific examples in relation to the "integrity" of the Government under the leadership of Mr PATTEN, the Governor of Hong Kong:

1. *The schedule for setting up the CFA*

The Chinese and British Governments reached a secret CFA agreement in 1991. In breach of the Joint Declaration and the Basic Law, the agreement limits the number of judges from overseas common law jurisdictions to a maximum of one. At that time, the Hong Kong Government made repeated stresses on the importance of an early establishment and operation of the CFA, even at the expense of a few sacrifices.

On 4 December 1991 when this Council was debating the motion moved by Mr Simon IP Sik-on, Mr Michael SZE Cho-cheung, Secretary for Constitutional Affairs said in response, "It is for the sake of certainty and continuity of our judicial system that some moderation of our aspirations for 'greater flexibility' becomes necessary."

On 16 March 1994, warning against delaying the establishment of the CFA, Mr R J F HOARE, Director of Administration said, "At present, it takes one year for Hong Kong cases to receive the final adjudication hearing of the Privy Council in Britain. Owing to the transfer of sovereignty, Hong Kong has to stop submitting cases to the Privy Council one year before the countdown, that is, the CFA has to be set up in Hong Kong in 1996 to begin hearing cases within the territory."

At that time, the Government has sacrificed flexibility in exchange for the establishment of the CFA before 1997 and with this, it lobbied Members of this Council to accept the Sino-British deal. What have we got in return? Please take a look at today's agreement. The CFA will not come into operation until 1 July 1997. The hope for judicial continuity and the building up of precedents will not be realized. Therefore, the sacrifice we have made regarding the invitation of overseas judges, after all, appears to be meaningless, striking a blow to the independence and quality of the CFA. What has come in return is nothing but grave injury to the rule of law.

2. *The "acts of state" provision*

Mr President, let us see how Mr PATTEN looked at "acts of state" before the signing of the CFA agreement:

On 20 May, Mr PATTEN said, "We have a CFA at the moment in Hong Kong. It is called the Judiciary Committee of the Privy Council and it applies the Common Law and under the Common Law what constitutes acts of state is absolutely clear. Hong Kong is guaranteed the continuance of the Common Law for 50 years after 1997 ....."

On 24 May, Mr PATTEN, again speaking to the press, remarked, "If there are problems that people have in reconciling the Common Law and Basic Law, then those are problems for the Chinese side to solve."

Mr Hugh DAVIES, British Senior Representative to the Joint Liaison Group opined, "The CFA Bill stipulates that the court shall have no jurisdiction over "acts of state". The British side believes that it is not necessary to define "acts of state" before 1997. After 1997, the CFA can, on the basis of the relationship between the Common Law precedents and the Basic Law, define what constitutes "acts of state" in collaboration of the Special Administrative Region Government."

Yet, once the British and the Chinese sides came to the new CFA agreement, the previous principles, promises and dialogues were all cast out of their mind, like a gust of wind vanishing without a trace.

Now, Mr PATTEN, to our surprise, agrees to the inclusion to the CFA Bill the "acts of state" provision, subjecting the clause to the interpretation of the Standing Committee of the National People's Congress (NPC). This is tantamount to creating a hole to make it possible for the Standing Committee of the NPC to interfere in the legal system of Hong Kong and to introduce the socialist legal concepts into the Common Law system by way of interpreting acts of state. The Legislative Council in 1995 becomes the institution that slaughters the rule of law. By making use of the Legislative Council of Hong Kong to bury the Common Law system, Mr PATTEN took a section from the Bible, trying to do what was done by

Pontius PILATE, the Roman procurator, who made use of the masses of people to crucify the innocent Jesus Christ, shifted the blame afterwards and "washed his hands of the incident".

3. *The eight suggestions published by the Political Affairs Subgroup of the Preliminary Working Committee*

Mr President, in Hong Kong, even those people showing the least interest in politics know that Mr PATTEN was furious at the illegitimate status of the Preliminary Working Committee (PWC). After the publication of the eight suggestions in relation to the CFA by the Political Affairs Subgroup of the PWC, Mr R J F HOARE, on behalf of the Government, said in response that the two points, namely, the Chief Executive was to chair the independent commission to select the Chief Justice and the term of office of the CFA judges was to be recommended by the Chief Justice, violated the Joint Declaration and the Basic Law and were therefore unacceptable. The Governor even openly queried why the PWC had come up with another option for the CFA.

Mr PATTEN's query is still reverberating in our ears. Everything is in black and white and the ink is yet to dry. However, when we turn to the first clause of the CFA agreement, we will find, to our consternation, that the British side agrees to amend the CFA Bill on the basis of the eight suggestions published by the PWC. How come the suggestions once denounced as breaching the Joint Declaration have made a U-turn and become the basis for amending the Bill and the blueprint for the establishment of the CFA?

We have not contracted mass amnesia, an epidemic of recent years, so we still remember what Mr PATTEN said in March, this year. He said, "If we turn a blind eye to the acts that gradually erode freedom and the rule of law, these thousands of acts of erosion, damage and betrayal will eventually culminate in a disastrous tragedy."

These resounding words of Mr PATTEN have unexpectedly become the best footnote to his undermining his own credibility. The general public have seen for themselves that Mr PATTEN has played a part in the betrayal and erosion which will lead to the ultimate collapse of the palace of the rule of law. In this connection, today we cannot sit and do nothing about what we have seen. Mr PATTEN has to be held accountable for breaking his promises made to the public. We will neither keep our silence and do nothing nor let him wash his hands of what he has done. We must cast a vote of no confidence on him.



Mr President, it is said that the citizens accept the Sino-British CFA agreement. By not accepting this agreement, the Democratic Party in fact goes against the wishes of the public. Mr President, are Hong Kong people given a choice over the CFA question? Regarding the 1991 agreement and the 1995 agreement, we were kept in the dark, waiting for agreements that cannot be overturned. Even for the Legislative Council, whilst it can scrutinize the CFA Bill in name, it can make no changes to any of the clauses of the Sino-British agreement in reality. Therefore, left with no choice, the people of Hong Kong cannot help but accept what has been arranged for us by the two sides. Moreover, faced with a tyrannical regime, the people of Hong Kong have suffered enough and have taken enough "sedatives that calm our fears". When an agreement suddenly comes up, they dare not welcome it or denounce it as nobody is sure if something even worse is on its way. To uphold principles under a tyrannical regime is no easy task. Whilst some people fail to uphold principles, they should never attempt to assist in the wrongs. This is the moral baseline expected of a Legislative Member. It is because of this that between the rule of law and the Sino-British agreement, we have expressly chosen the former. History will prove that an agreement basing on no principles is a mistake.

In this connection, other Members of the Democratic Party will elaborate further on how the CFA agreement snatches away the rule of law in Hong Kong.

I now turn to respond to the amendments moved by the Honourable Miss Emily LAU.

The Democratic Party thinks that Miss Emily LAU's amendments revealed another fact about the CFA agreement — the Chinese and British sides have jointly orchestrated the violations of the Joint Declaration. This is actually a fact known to all. Last year when the Honourable Martin LEE, the Chairman of the Democratic Party moved a motion in this Council to condemn the breach of the Joint Declaration by the Chinese and the British Governments, he already touched on the CFA issue.

The focus of this motion is to denounce the British-Hong Kong colonial government under the leadership of Mr PATTEN for its treacherous acts and broken promises. There exist various kinds of governments in the world, each having its own style. Some governments choose to show their true colours as villains, playing naked tyranny. Some choose to be hypocrites, betraying principles and justice amid conversations and laughters. In fact, villains are not any better than hypocrites. However, while the true colours of villains are known to all, the general public may not be able to recognize those of hypocrites. Although we share Miss Emily LAU's views, we will not support her amendments having regard to the need to maintain the spirit and the very primary intentions of the Democratic Party's motion. We indeed agree to the point highlighted by Miss LAU, that is, we have no confidence in both the

Chinese and the British Governments. Therefore, we will not reject her amendments but will abstain from voting.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

PRESIDENT: Miss Emily LAU has given notice to move an amendment to the motion. Her amendment has been printed in the Order Paper and circulated to Members. I propose to call on her to speak and to move her amendment now so that Members may debate the motion and the amendment together.

MISS EMILY LAU moved the following amendment to Mr CHEUNG Man-kwong's motion:

"To delete "Administration in Hong Kong has" and substitute with "and Chinese Governments have"; and to delete "Mr Christopher PATTEN, the Governor of Hong Kong" and substitute with "them"."

MISS EMILY LAU (in Cantonese): Mr President, I move that the motion proposed by the Honourable CHEUNG Man-kwong be amended as set out under my name in the Order Paper.

Mr President, I very much agree with most of what Mr CHEUNG Man- kwong has just said in his speech, especially his criticisms on the Court of Final Appeal (CFA) and the Preliminary Working Committee (PWC). However, I am moving this amendment today because I consider it a very serious matter to denounce the Government, or even worse, to cast a vote of no confidence in it. It is a matter that involves fundamental principles, too. As you know, Mr President, the amendment which I originally intended to move was to the effect of casting a vote of no confidence in the Chinese and British Governments for breaching the Joint Declaration, but I did not have your endorsement to move such an amendment. All you would allow me to do is to cast a vote of no confidence in them for damaging the rule of law. Just now Mr CHEUNG Man- kwong mentioned that the leader of the Democratic Party, the Honourable Martin LEE, had in fact raised the same thing last May, yet no one rose to oppose it then. Why? Because the purpose then was not to cast a vote of no confidence in the Chinese and British Governments for having breached and violated the Joint Declaration, but rather to urge them to act in accordance with the Joint Declaration in view of their numerous wrongdoings. Why would any Member oppose that since we were only requesting the two Governments to abide by the Joint Declaration? I actually intended to move today's amendment at that time, but as you may recall, Mr President, I was not able to do so because I was late by one day. However, it is better late than never, hence I am moving this amendment today.

I hold that it is the violation of the Joint Declaration on the whole for which we should denounce the Chinese and British Governments, but this is quite impossible now. Yet if we are only to talk about the damage done to the rule of law, I maintain that the blame should still go to the two Governments. No matter how close his relation is with the British Prime Minister, Mr PATTEN is only one sent here to execute the policies of Britain. If we think the British policies, or the policies of both China and Britain, are wrong, the vote of no confidence should be casted in the two Governments rather than in someone sent here. I am not saying that he is of a very low rank, yet what is the place of the Governor of Hong Kong in the British Government? We do not want to give the general public an illusion that the Governor wields full power in deciding the future of all Hong Kong people, which is absolutely impossible. Therefore, if the rule of law is damaged, the Chinese and British Governments should be held responsible.

Mr President, I am not going to repeat on the parts concerning the CFA and the PWC which Mr CHEUNG Man-kwong has just talked about, but I do want to say a few more words on that. I have no idea whether any Members will support the amendment I move today, but despite the fact that I am in the minority in the Council, I believe I am among the majority outside. During the past 16 years that followed former Governor of Hong Kong Sir Murray MacLEHOSE's visit to China in 1979, secret talks were held between the Chinese and British Governments, and many decisions were made, yet we were not consulted on a lot of issues discussed. While some of the decisions made might have had our support, most of them might not. Therefore, I firmly believe that my proposal to cast a vote of no confidence in the Chinese and British Governments will win the support, and applause of many members of the community.

Mr President, as I am not going to talk about the CFA and the PWC, I would like to turn to several matters relating to the rule of law. The Chinese and British Governments should be held responsible for not doing well, and so we have to cast a vote of no confidence in them. Just now when the Chief Secretary was making a statement, I asked her about the composition of the future administration and whether she had discussed with the Chinese Government Article 100 of the Basic Law, which specifies clearly that the civil servants currently serving Hong Kong may all remain in office. While Article 93 of the Basic Law specifies that all serving judges and other members of the judiciary may also remain in office, the Chinese Government has on many occasions talked about the need to screen these people, and the need for even judges to undergo a selection process before they can remain in office. I believe that our policy secretaries are deeply worried, not knowing whether they can remain in office in the future. What is the use of Articles 93 and 100 of the Basic Law then? In fact, Articles 93 and 100 of the Basic Law is a reflection of Articles 17 and 72 of the Joint Declaration. If there is no need to abide by the Joint Declaration and the Basic Law, how can the rule of law survive in Hong Kong?

Mr President, we all know that the work of the Sino-British Joint Liaison Group is in part closely related to the rule of law, in particular, the localization and adaptation of legislation. To date, many pieces of legislation are yet to be discussed, and we have heard from the Government that there may be a legal or judicial vacuum after 1997. If this does happen, who is to be held responsible? I would like to ask the Democratic Party, is it the guilt of Mr PATTEN alone?

Mr President, I hope that Members who feel after listening to my address that what I have said can truly speak the minds of the Hong Kong people will vote in support of my amendment with courage. Some Members told me in private, "It does not matter, I think your amendment is correct, but we will not give you our support as we cannot "cut our throats" by opposing the Chinese Government in the open. We are bold enough to beat the defeated, but we definitely dare not cast a vote of no confidence in the Chinese Government." I do hope that Members will overcome their fear and vote according to their conscience.

Some people allege that I am shielding the Governor, but I hope they will understand me after what I just said. Such an allegation is very ridiculous. I, Emily LAU, believe that I am the harshest critic of Mr PATTEN after the Chinese Government (I am certainly not as good as the Chinese Government at criticizing Mr PATTEN). No one in this Council can compare with me in this respect. I can say for sure I am not his shield, I just feel that we should target against the right person.

Finally, as Members from the Democratic Party have told me they cannot back up my amendment though they support its spirit and intention, I would like to say something about this. May I remind them, in this year alone, they have already given support to amendments moved by other Members in four motion debates. During debates on the motion on Wong Wai Tsak Tong moved by the Honourable LEE Wing-tat, the motion on health care plan for the elderly moved by the Honourable Fred LI and the motion on unemployment problem by Mr Fred LI also, amendments moved by the Honourable TAM Yiu-chung were all supported by Members of the Democratic Party. Mr TAM is indeed more fortunate than I. Whereas for the motion on special education moved by the Honourable TIK Chi-yuen, they gave their support to the amendment moved by the Honourable Henry TANG. Therefore, I hope that Members of the Democratic Party will give me their support if they find it right, for it is our wish to speak the minds of the Hong Kong people.

With these remarks, I move the amendment.

*Question on the amendment proposed.*

CHIEF SECRETARY: Mr President, I should like to make it plain from the outset that I have the strongest objections to this motion, both personally and on behalf of the Administration. Let me also make it clear that the proposed amendment is unacceptable. I appreciate the courtesy of the Honourable Member in seeking to depersonalize the original motion. However, I must totally reject the allegation that we have acted in breach of the Joint Declaration. On the contrary, it has been among our highest priorities to promote Hong Kong's well-being through the faithful implementation of the Joint Declaration.

Let me turn now to the original motion. This motion is not really about confidence in the Administration and the Governor. Nor is it part of the normal dialogue of goodwill and common sense between the Administration and the Legislative Council which the community is entitled to expect. This motion is an attack on all the efforts that this Council, the Civil Service and the community have made over the last three years to create a secure future for our people through safeguarding the rule of law.

We should begin by looking at the principles involved. For the Government of Hong Kong, the rule of law is not a textbook phrase or a debating slogan. The rule of law is a core policy, which is at the heart of so much of our work. The Administration's dedication to the rule of law was spelled out in the clearest terms when the Governor addressed this Council on 5 October last year. I cannot hope to improve on the words he used on that occasion; let me quote these words:

"The rule of law is essential for Hong Kong's future. It begins with individuals and their right to seek the protection of the courts, in which justice is administered by impartial judges. It protects the freedom of individuals to manage their affairs without fear of arbitrary interference by the Government or the improper influence of the rich and powerful. Its starting point is the individual but it encompasses the whole of society. For the business community in particular, the rule of law is crucial. Without it, there is no protection against corruption, nepotism or expropriation. Only under the rule of law are businessmen guaranteed the level playing field and the competitive environment which they need."

I believe that these views are shared by this Council and by the entire community. Certainly, I can speak for the Civil Service in declaring that we regard the rule of law as the bedrock of our Hong Kong way of life.

How have we implemented this policy in practice? Let me start with this Council. In September this year, Hong Kong will have its first, fully-elected legislature. We can take considerable satisfaction in how far we have come since the 1991 elections in safeguarding the rule of law through ensuring a legislature which can command the respect of our community and the confidence of the outside world. Members need no reminder that this constitutional milestone has been reached only after major efforts both on the part of the Council and of the Administration.

- Thanks to the Council's co-operation last year, we have completed a heavy legislative programme to replace the appointed and Official Members and to establish a broader and more transparent system of elections.
- Thanks to our voter registration campaigns, we now have 2.5 million registered voters. In the functional constituencies, the number of voters has increased 15 times compared with 1991.

After putting in place the constitutional building blocks, the Administration has returned to this Council with an ambitious legislative programme to protect individuals against unfair treatment. Altogether some 40 items of legislation have been introduced during the last three Sessions, whose purpose is to enhance the protection of individual rights. For example, with the Council's co-operation,

- we are working together to outlaw discrimination on grounds of sex or disability;
- we are providing additional resources to make justice more accessible to the community at large, both through increasing the scope of legal aid and through reducing waiting times for the law courts;
- we are working together to safeguard the individual's right to privacy of personal data;
- we have brought forward proposals to remove legal restrictions on press freedom;
- we have introduced a Bill establishing a Court of Final Appeal to ensure that in 1997, we have credible and effective arrangement to replace the Privy Council. A great deal has been said about this matter already and there will be a further opportunity to debate the proposals when the Second Reading of the Bill is resumed later in this Session; and

- furthermore, we have reviewed comprehensively the Laws of Hong Kong in the light of the Bill of Rights. We are committed to ensuring that our laws meet international standards of human rights in accordance with the International Covenant on Civil and Political Rights.

Members of this Council have had their own views on the best way to take these issues forward. We have had vigorous and protracted debate to try and reach consensus but we have not always been able to accept Members' views. Despite the often serious divisions of opinion, I believe that, over these many months, Honourable Members and officials alike have shared the same conviction. We all believe that respect for the rule of law must include respect for the individual rights of everyone, particularly the vulnerable and disadvantaged members of our community. Where we have differed has been over the most realistic ways in which to reach our common goal.

But the Administration's commitment to the rule of law has not been confined to constitutional and legislative proposals brought before this Council. We see the rule of law and its application in a much wider context. For the Administration, our starting point is the belief that the rule of law flourishes best where the community knows its rights when dealing with government departments. Since 1992, the Administration has applied this rule to its own performance, as we have invested heavily in providing more professional, accountable and responsive government. For example,

- We have drawn up Performance Pledges for every government department serving the public directly, defining the standards which the public can expect and explaining how to complain when these are not met.
- We have published Policy Commitments which set out goals, outline current programmes and present new initiatives for the entire range of government activities.
- We have published an annual Progress Report which describes candidly the shortcomings, as well as the successes, of the more than 500 initiatives and undertakings introduced in the last three policy addresses.
- We have introduced a Code on Access to Information, to set a new benchmark for government accountability.
- We have increased the powers of the Commissioner for Administrative Complaints so that the public's grievances are independently investigated.

The reforms introduced since 1992 represent a comprehensive legal and administrative programme, which demonstrates in a very concrete way Hong Kong's determination to protect its way of life and to meet the challenges of the future. In managing this reform programme, the Administration has relied on a successful partnership which brings together the community, the Civil Service and this Council.

- First, our community has demonstrated a clear sense of the importance of the rule of law and displayed consistent support for our proposals.
- Secondly, the Civil Service has been willing to rise to the challenges created by the reforms and to improve the quality of its own performance.
- Thirdly, this Council has worked conscientiously with the Administration in debating our reform proposals and enacting laws which will meet our people's aspirations under the unique circumstances which govern both our constitutional development and our political future.

In all these, Members of this Council have made a special contribution. And I have been robust, both locally and abroad, in my defence of the Council and of the way in which it has performed since 1991. Its Members play a vital role in our Hong Kong system. You oversee our spending programmes and amend our legislative proposal. You monitor the Administration's activities and criticize our lapses. Without this contribution from Members, our standards of government would not be so high and the quality of our public services would not meet the requirements of our First-World community. In short, the co-operation of Members with the Administration has been a key factor in the successful Hong Kong partnership.

Because this partnership has worked so well, Hong Kong has been able to allay much of the inevitable doubt and worry about the change in sovereignty and our ability to maintain Hong Kong's separate systems after 1997. The people of Hong Kong have shown considerable faith in their ability to cope with the challenges of 1997. They have continued to set their sights on the prospects for a better Hong Kong,

- better education and career opportunities for their children,
- better homes and living standards for their families, and
- better public services for all who need them.



The business community has shown its faith in Hong Kong's ability to provide the most attractive business environment in this part of the world, an environment in which honest government and an impartial judiciary are key ingredients. And this confidence has brought its own substantial rewards both before and since 1992.

- In particular, we have been able to take the fullest advantage of the Chinese economy's growth, allowing our GDP to increase by 5% a year in real terms.
- We have also enjoyed buoyant government revenue, enabling us to improve our social services, invest heavily in the infrastructure, cut taxes and boost our fiscal reserves.

Given this background, the motion now under debate rejects the sort of partnership to which I have referred.

- It presents a grossly distorted view of the Administration and its relationship with this Council.

MR JAMES TO: A point of order, Mr President.

PRESIDENT: On a point of order, I think you have to yield to it, Chief Secretary. What is your point of order, Mr TO?

MR JAMES TO: I want to seek a clarification and ruling from you as to whether the Chief Secretary's speech, up to this part, is relevant to the motion, that is, the rule of law. So far, the Chief Secretary seems to be talking about the economic prosperity and what the Government has done. Well, we are not denying this. But are we sticking to our motion debate according to the procedure laid down?

PRESIDENT: It is a question of relevance and nothing I have heard so far is irrelevant, Mr TO. Please sit down.

CHIEF SECRETARY:

- It devalues the efforts, both of the Civil Service and of Council Members over the last three years to secure our future based on the rule of law, and

- finally, it calls into question the very basis of business as well as political confidence in our future.

I must also draw Members' attention to the wider audience which the motion addresses, the audience overseas. In particular,

- The motion invites the outside world to believe that the Administration of Hong Kong has reneged on its obligations, thereby forfeiting the confidence of this Council.
- Consequently, the motion encourages the international community, our trading and investment partners, to question Hong Kong's future, to doubt whether the rule of law will survive.

I ask all Honourable Members to consider carefully the serious consequences for Hong Kong if the motion succeeds. And I must note that, both from the speech of the Honourable Member moving the motion in the first place and the question raised by another Honourable Member subsequently, raises serious doubts as to whether Members appreciate that the reference to the damage of rule of law cannot be narrowly confined to the Court of Final Appeal. It must be taken in its full sense, that is, in the proper context which I have attempted to outline in this speech so far. If our legislature declares that it has no faith in the Administration's commitment to the rule of law, that this Council has lost confidence in Hong Kong's future,

- can we expect the world's traders to continue to regard Hong Kong as the premier business location in the Asia region?
- can we expect international investors to be comfortable about holding Hong Kong assets?
- can we expect multinational corporations to maintain their regional headquarters here?

And if business is adversely affected, I must point out it is the ordinary men and women of Hong Kong who will suffer.

I want now to take up the reference in the main motion to the Governor. Throughout the entire process of reform, the Administration's efforts have been directed by the Governor. It is under his leadership that the civil service has worked to introduce and to implement the extensive programmes which I have described. In addition, the Governor has made a very personal contribution to the authority of this Council.

- He was the first Governor in our history to step down from the Presidency of this legislature and allow Honourable Members to select their own President.
- He is the only Governor to accept a duty to appear before this Council regularly and to answer directly the questions of Honourable Members.
- No less important, he has found new ways to discharge the Administration's duty of frankness, both to this Council and to the community.

Early in my speech today, I quoted his description of the rule of law as a core policy for the Administration. I have described our efforts to implement that policy through a partnership involving this Council, the civil service and the community. The Governor has promoted that partnership in two vital ways: first, through his personal commitment to the rule of law and, second, through the respect which he has shown for this Council and its work.

Let me sum up in plain terms, the overwhelming case against this motion.

- It undermines the partnership between this Council, the civil service and the community as a whole, which has achieved so much over the last three years.
- It casts aside all the efforts that Hong Kong has made, especially over the last three years, to secure our future on the firm foundations of the rule of law.
- It encourages needless anxiety and apprehension among our overseas business partners and thus threatens our future economic prosperity.

I urge Honourable Members strongly to reject both this motion and the proposed amendment. I can see no possible benefit to the people of Hong Kong from voting in their favour. On the contrary, I can foresee very real damage to the best interests of Hong Kong if the motion — or the proposed amendment — were supported by this Council.

MR ALLEN LEE (in Cantonese): Mr President, moments ago, the Honourable Miss Emily LAU said a Member of this Council had told her he agreed with her amendment motion but he could not support her motion because he feared China and did not trust China. Miss LAU has always been an ardent advocate of openness, fairness and justice. I hope she will tell us who that Member is. How can such a hypocritical person face the Hong Kong people? I urge her not to hide that Member's name from us. At least would she tell me the name later?

Mr President, the motion and amendment motion before us today respectively urge this Council to either express no-confidence in Governor PATTEN or the two Governments. What indeed is the significance or meaning of the motion and amendment motion? Are Members of this Council being urged to cast a no-confidence vote? A no-confidence vote against the two Governments? Or are the motion and amendment demanding that the Governor step down, return immediately to the United Kingdom and be replaced by another Governor? Will support of the amendment motion constitute a demand that the British Hong Kong Government withdraw from the territory, that Hong Kong be barred from reverting to China and that an independent Hong Kong government be set up? In parliamentary democracies, a no-confidence vote signals a change of government and it is a very serious censuring act with very serious constitutional consequences. The mover is responsible for the impact such a motion will have on society as a whole.

I cannot tell whether, in moving the present motion and amendment motion, the Honourable CHEUNG Man-kwong and Miss Emily LAU want Governor PATTEN and the Chinese and British Governments to step down or they just want to have the motion and amendment couched in shocking terms in order to achieve a grandstanding effect. I believe Members with a sense of responsibility will need to ponder over this to see what impact this motion, which carries serious consequences, will have on Hong Kong. The Legislative Council, which is a solemn assembly, should not be turned into a venue for "political shows".

Mr President, Hong Kong is a democratic and free place. It is precisely because of this that there are different political arguments and views. One who advocates a particular political view may not gain the agreement of other people. This situation exists in every democratic and free society. Only this can inspire people to consider matters from a variety of angles. But if, on finding a certain policy not to one's liking for the time being, one should agitate for a no-confidence vote to be cast against another and for that other person to step down, the Liberal Party would not wish to associate itself with this political mentality of "toppling others in order to elevate oneself".

Mr President, the Chinese and British Governments have been on bad terms for the past several years. The future of Hong Kong has been deadlocked. We are glad to see signs of co-operation between the two Governments. At long last, Chief Secretary Anson CHAN earlier had a dialogue with senior Chinese officials. This is a good start in terms of enhancement of co-operation between China and the United Kingdom. Therefore, I fail to see how a no-confidence vote against the two Governments at the present stage can have any positive effect on Hong Kong's future.

Mr President, since of the arrival of Governor PATTEN in Hong Kong, the Democratic Party has been vigorously supporting him and his political reform package which has no future. After 17 rounds of negotiations, the British side broke off the talks and the Democratic Party was overjoyed. The Chinese and British sides are taking opposite stands and this suits the Democratic Party. The Democratic Party thinks that Chief Secretary Anson CHAN's Beijing visit amounts to "black box operation" hidden entirely from the public eye. Now that the Chinese and British sides have reached this agreement on the Court of Final Appeal, the Democratic Party wants to censure and topple the Governor though they are well aware that the Legco has no power to oust the Governor. They first loved Governor PATTEN but now they turn to hate him. Hong Kong people must see clearly the way the Democratic Party conducts itself. There are less than two years to go before the handover of sovereignty and what Hong Kong needs now is a smooth transition and a dialogue between the Chief Secretary and Chinese officials. We must make up for the time wasted because of the three-year row over the political reform package and strive to solve all unresolved questions in a more positive and practical manner. Only in doing so can we be counted as genuinely serving Hong Kong people.

Mr President, the Liberal Party cannot support any action which is purely politically motivated but without any substantive, positive effect on Hong Kong's future.

With these remarks, I, on behalf of the Liberal Party, oppose the motion and the amendment.

DR LEONG CHE-HUNG: Mr President, the announcement on the agreement reached between the British and Chinese sides on the question of the Court of Final Appeal (CFA) was received by the people of Hong Kong with mixed feelings — not necessarily of jubilation; but definitely of gloom and doom.

It would have been much more palatable for the legislature and the people of Hong Kong if Governor PATTEN were to face the Legislative Council eating his "humble pie" and admitted that the British Government had to concede to China for the second prize for posterity.

It would also be proper for the British Government too to explain to the people of Hong Kong the reasons for the delay of setting up the Court; the downsides of the results of the negotiation; and in particular, the effect of inclusion of the formulation of "acts of state" in Article 19 of the Basic Law.

No! Instead, in his usual air of confidence, the Governor claimed "victory". Things would even be better if the legislators had not "misbehaved" in 1991, so pointed his accusing finger. Legislators "misbehaved" in passing a motion insisting that the composition of the CFA in relation to local/overseas judges should remain flexible in accordance with the Joint Declaration and the Basic Law.

There was also a hinting at the same time, just short of a threat, that if legislators are to object to the CFA Bill and/or make substantial amendments to it, they will have to bear the possible consequences! This goes obviously without saying, for what sort of a man would he be if being the people's representative, he is not accountable to his deeds. It is high time that too legislators should stand up and be counted!

The people of Hong Kong are downright frustrated at the result of the question of the CFA Bill. Yes, both the British and the Chinese Governments claimed "victory". For China, it is a victory of undefined limits, being able to thrash through almost all of its demands. For Britain, it is a victory of ascertaining Sino-British co-operation now and beyond 1997 with substantial economic implications to follow. But, Mr President, for Hong Kong people, it must be a sell-out that is hard to swallow.

Let us look at the bare facts.

The Government has repeatedly hinted that it does not recognize the status of the Preliminary Working Committee (PWC), at the same time stressing the constitutional position and importance of this Council in representing the people of Hong Kong. Yet, ironically, at the "drop of the hat", it "amends the CFA Bill on the basis of the eight suggestions published by the Political Affairs Sub- group", only the Political Affairs Sub- group of the PWC and shelves the stem message expressed in two motion debates of its own legislature.

History showed that as late as May this year, the Administration has openly claimed that some of the eight suggestions are not acceptable. Unfortunately, history may never reveal what accounted for the Government's U-turn in such great haste.

To most people in Hong Kong it is already unbearable to concede to the 4:1 ratio of local and overseas judges, but to make matters worse, we have also lost permanently our chance of having an early set-up of a CFA. It begs the common-sense question of what all these five years of negotiations are for, and what victory can the British Government claim when we in Hong Kong know full well that with or without negotiation a CFA will be set up by the Chinese Government anyway after 30 June 1997?

Some might wonder and question the wisdom of the Government for the need for pushing the CFA Bill through this current Legislative Session, when it is obvious to all, that it will not take effect for some two years. We do not need a crystal ball to give the cat away. The writing is plain for us to see, for without government representatives in the future Legislative Council, without possible support from appointed Members after September 1995, the Government realizes that the chance of having this Bill passed intact is slim — a Bill which sets the framework to establish the CFA where Hong Kong people have nothing to say, nor even have a chance to play a part. For one of the items of the agreement is that "the Chinese and British sides agree that the team designate of the Hong Kong Special Administrative Region shall, with the British side (including relevant Hong Kong government departments) participating in the process and providing its assistance, be responsible for the preparation for the establishment of the CFA Bill ....."

It will, Mr President, take a "very big hand" on the heart for the powers in Whitehall and the Mandarins of Upper Albert Road to refute with all honesty that this is not a complete British sell-out of Hong Kong!

Yet, Mr President, having said all that, what is the point and value of voting no confidence to our Governor who in essence is but a servant of the sovereign power that controls us? What is the point when even if a no confidence vote is passed on him that he will still be sitting in this same Council sharing his wisdom with the same Members who have no confidence in him tomorrow?

In the same sense, whilst I fully agree with the sentiment of the honourable lady's amendment, what value does it bring to Hong Kong when confidence or lack of it will not change the fact that Hong Kong people's fate is in the hands of our sovereign state? We are not master of our own destiny. For like a child born into this world out of scientifically assisted reproduction, he has no say, and his existence at the end is the result of "compromise" between his two parents.

MR MARTIN LEE: Mr President, a Hong Kong Governor who sells Hong Kong short on the rule of law does not deserve to have the confidence of this Council.

*I. No confidence*

Because of colonial constraints, this vote of no confidence is the only means available to the elected representatives of Hong Kong people to make known their legitimate fears about the future of the rule of law and the prospects for Hong Kong's post-1997 future.

Two days ago, in the article published in the South China Morning Post, Governor PATTEN's long-time enemy Sir Percy CRADOCK — whom the Governor attacked before the House of Commons Foreign Affairs Committee — praised the Governor for returning to a "sensible course" — which I suppose means betraying Hong Kong's rule of law in return for an improved British trade relationship with China. In other words, it is PATTEN's rule — *a la* CRADOCK.

Indeed, if Sir Percy now applauds the CFA deal, we know then there must be something terribly wrong with it.

By this motion, the Democratic Party condemns the Governor for undermining the rule of law by reaching the CFA deal, by refusing to set up an independent legal aid scheme, by rejecting the Access to Information Bill, by refusing to establish a Human Rights Commission, by refusing or delaying to get the numerous draconian colonial laws off the statute books, despite his now three-year old pledges to do so, and by totally failing to restore the confidence of the public in the Attorney General and the Legal Department after high profile series of debilitating debacles.

Since his arrival in Hong Kong, Governor PATTEN has repeatedly stressed the importance of the rule of law and he was right to do so. As recently as 23 May, Governor PATTEN said this in relation of the setting up of the Court of Final Appeal before 1997: "I do not make it up when I say that very many people regard the establishment of a CFA [before 1997] taking over exactly the powers of the Judicial Committee of the Privy Council, regard that as a litmus test of the commitment of ourselves and of the Chinese side to the continuation of the rule of law in Hong King."

The Governor was right about one thing: Hong Kong people did regard the early setting up of our highest court as a "litmus test". If one looks at the Governor's track record — measured by the standards he set for himself of preserving the rule of law in Hong Kong — it is clear that he has failed miserably.

Indeed, Governor PATTEN has now retreated from principle to pretence in the name of pragmatism, thereby standing the promises of the Joint Declaration on its head.

## *II. The CFA deal*

The implications of the Sino-British CFA deal for Hong Kong's future autonomy are clear. This agreement breaks the Joint Declaration because it means that the common law, and the common law interpretation of acts of state, may not survive the transfer of sovereignty. Even Sir Percy CRADOCK — no great defender of the rule of law — admitted in his article that the Sino — British agreement on the CFA: "incorporates a dangerously broad definition of "acts of state"."



If even Sir Percy calls it dangerous, then it must be very, very dangerous indeed. But then Sir Percy and the British Government will accept anything — no matter how dangerous — in order to get an agreement with China, particularly when the danger will fall on Hong Kong people and not on himself or the British Government.

The Chinese text of Article 19 of the Basic Law, incorporated into the CFA agreement, says that our highest court shall have "no jurisdiction over acts of state, such as defence and foreign affairs, et cetera". It is what constitutes "et cetera" that is so worrying to Hong Kong people and to this Council. Under the common law, an act of state generally means the exercise by a state of its sovereignty in relation to foreign affairs, such as declaring wars or making treaties. The core principle is that government is never permitted to use an act of state as an excuse to suppress court challenges by its own citizens. But Governor PATTEN won no assurance for Hong Kong people that Beijing accepts or even understands any such limit.

If we are to have a "common law with Chinese characteristics", anyone in a Hong Kong court after 1997 could get the bad news that his case falls into Beijing's new definition of acts of state and therefore will not be entertained by our courts.

A case may involve a monetary claim of US\$20 billion against the Bank of China or the liberty of a citizen detained by the People's Liberation Army stationed in Hong Kong with a view to sending him to Beijing for trial for a political offence. Under the common law, the courts would never rule these cases out as involving acts of state. But the problem is that after 1997, such issues will most likely be decided by the Standing Committee of the National People's Congress under Article 158 of the Basic Law.

Governor PATTEN claims he has "ended the uncertainty over the rule of law in Hong Kong." But under the deal, the only "certainty" now about the rule of law after the transfer of sovereignty to China is that investors will have "certainty" of not knowing whether or not their opponent in the court action will have the clout in Beijing to have their cases thrown out on the ground that the claim is an act of state. No wonder then that the Hong Kong Bar Association, which gave staunch support to Governor PATTEN on electoral reform, should now oppose the CFA deal.

### *III. Business confidence*

Despite the business community's public support for the CFA deal, their actions speak louder than words. Of the 529 listed companies on the Hong Kong Stock Exchange, 301 companies — almost 60% — have over the past decade moved their legal domicile to Bermuda or the Cayman Islands, where access to the Privy Council continues. Of course, this is not the direct result of the CFA deal which only struck recently, but those figures certainly prove that there has

always been a grave concern in the business community about the rule of law generally.

On 28 March 1984, when Mr Simon KESWICK, the head of the Jardine Group, announced that his company was moving out of Hong Kong: "to ensure in future that our holding company is able to operate under English law and to have access to the Privy Council in Britain."

Now, Mr BARROW supports this deal. Now that Jardines is so effusive about the CFA deal, I can only assume that Jardines, which once led the exodus of publicly-listed companies out of Hong Kong, will soon lead the triumphant return of these self-same companies back to Hong Kong.

Mr President, I urge Honourable Members to support our motion if they support the rule of law. Indeed, if our motion is defeated .....

*The buzzer sounded a continuous beep.*

MR PETER WONG: Mr President, this Council makes history today by staging this motion debate on a most inappropriate subject at a most inopportune time.

Eleven days ago on 1 July, Boris YELTSIN's government survived a second vote of no-confidence over the mishandling by the army of killing more than 100 Chechan hostages in Budynonovski. In July 1993, a no-confidence vote in the Japanese Diet was carried against Prime Minister Kiichi MIYAZAWA over his inability to carry out political reforms. In March 1991, the United Kingdom Parliament took a vote of no confidence in Her Majesty's Government in the light of its inability to rectify damages done by the Poll Tax.

I wish to draw Members' attention to the fact that in each and every case, the motion was based on concrete incidents of maladministration rather than pure speculations; on established facts rather than surrealism. The motion today, based on the belief that the recent Sino-British Agreement on the Court of Final Appeal has contravened the Joint Declaration and the Basic Law, claims that Hong Kong's future rule of law has been damaged. The Administration, on the other hand, is convinced that the Agreement is fully in accordance with the two documents and would not therefore in any way undermine the rule of law in Hong Kong. So are we, and should we be debating fruitlessly on the dichotomy of anarchy and the rule of law?

Further, the incidents quoted produced widespread, long-term repercussions on the public at large. One of the main functions of this Council, as stated in the Members' Handbook, is to "debate matters of public concern". Members are well aware that endorsement for the 9 June Agreement has been given by foreign governments, local and international businesses, and the Hong Kong public as indicated by public opinion polls. In the Hong Kong University and Hong Kong TVB survey conducted on 12 and 13 June, 52% of the

respondents favoured to endorse the Agreement rather than to set up a CFA without convergence. Thus, the worry about the damage of Hong Kong's future rule of law is clearly not a matter of overwhelming public concern.

Mr President, if a motion moved in this Chamber is not based on established facts nor public concern, then at least we should ask ourselves what effects the motion seeks to achieve. When the Japanese Diet passes a resolution of no-confidence in the government, the Cabinet may dissolve the House of Representatives and call for an election, or the Cabinet resigns en masse. In our case, if the motion today is carried, it will have no binding power on the British Government, not to mention the Chinese Government. As such, what can be gained from this debate is no more than creating political ripples to the satisfaction of some people with political or electioneering agenda.

In two centuries of American history, the United States Congress has exercised its power of impeachment under the Constitution to remove from office seven federal judges found guilty of grave misconduct. In Japan, only four resolutions of no confidence in the Cabinet have been passed since World War II. I believe that this Council should exercise its prerogative to move a motion of no confidence sparingly, lest it may set a harmful precedent to the future legislatures. At a time when Sino-British relationship is heading towards a more constructive partnership in the best interest of Hong Kong, today's motion promises to do more harm than good. In view of this, Mr President, I shall conclude my submission by extending my congratulations to the Chinese and British Governments for their latest effort made to restore opportunity, hope and confidence to the people of Hong Kong.

With these remarks, Mr President, I oppose the motion as well as the equally misconceived and opportunistic amendment.

MR FREDERICK FUNG (in Cantonese): Mr President, the motion moved by the Honourable CHEUNG Man-kwong today seeks to cast a vote of no-confidence on the Governor of Hong Kong on the grounds that the British Administration has seriously damaged the future rule of law in Hong Kong. When I first looked at the wording of this motion, my view was that should a vote of no-confidence be cast on Mr Christopher PATTEN, the first thing to do was to find out the major problems that he had brought about "single-handedly", or those major problems that he was unable to solve, thereby showing his incompetence; or to prove that what he had said and done had incessantly damaged his own credibility.

To the Association for Democracy and People's Livelihood (ADPL) and myself, the style of administration of Mr PATTEN has truly opened the eyes of the general public ever since he became the Governor of Hong Kong. Nevertheless, over the past three years, I find that in resolving the major problems facing Hong Kong and in formulating the vital policies, Mr PATTEN was either being "helpless" or "has gone back on his promises". The problems

that he stood "helpless" include rising inflation and unemployment and traffic problems, whereas policies which he had "welshed on his promises" include those in respect of old age pension, housing and medical services, etc. The power to decide on these problems and policies lies in the hands of Mr PATTEN, so everything he says be done will be given a green light, and anything that does not meet with his approval will be cast away like a pair of worn-out shoes. Therefore, if we are to cast a vote of no-confidence on Mr PATTEN, I think the very first thing to do is to make sure that whether these policies are vital to the general public, which he has full power to decide on. I consider that the most fundamental ground for casting a vote of no confidence should be those policies that did not bring about any improvement, or that he failed to deliver as he has promised over the years. I had intended to move an amendment to the motion put forward by Mr CHEUNG Man-kwong, yet it was disallowed by Mr President on the grounds that the scope of the motion would be extended too far.

In fact, as regards the choice of candidates and the requirements for the post of the Governor of Hong Kong, the ADPL made a statement on 10 April 1992 before Mr Christopher PATTEN assumed office as the Governor. Part of the statement reads as follows:

"How can a Governor or foreign affairs minister who is loyal to Mr MAJOR and his ruling party be loyal to the people of Hong Kong and take their interests to heart? Furthermore, it is highly probable that whoever being assigned to this important post is chosen out of political considerations of his own self, his affiliated political party or his country, rather than the actual need of the circumstances. Therefore, the ADPL reiterates that in the appointment of the next Governor, the British Government should take into account the interests of the Hong Kong people, and appoint an experienced politician to shoulder this important responsibility, and to handle the relations between China and Hong Kong. More importantly, he should be someone who is capable of dealing with Hong Kong affairs, such that he can tackle the various social, economic and livelihood problems which will arise during the transitional period. This will not only speed up the pace of democratization in Hong Kong in the meantime, but also help to improve our standard of living."

In the above statement, the ADPL emphasizes that whoever chosen as our Governor must have the interests of the people of Hong Kong in mind when formulating various social and livelihood policies, so as to improve the standard of living of the general public. However, at present, the British Administration in Hong Kong does not care much about public sentiments in handling various livelihood problems. Increases in various fees and charges are often the problems, yet the heart of these problems is ignored. As regards the call of the majority of our people, especially the elderly, to set up a retirement protection scheme that covers all the people of Hong Kong, the Government postponed its plan again and again, and eventually it became the so-called Mandatory Provident Fund Scheme, which cannot bring any benefit to the elderly.

Incidents of maladministration such as the case cited above are the reasons for my putting a vote of no confidence on the Governor.

PRESIDENT: We are talking about the rule of law and relevancy is a very flexible thing, but you are way outside the terms of the motion.

MR FREDERICK FUNG (in Cantonese): As regards the wording of this motion, which was put in such a way that a vote of no confidence be cast on the Governor on sole account of the Sino-British Agreement on the Court of Final Appeal (CFA), I cannot agree with it. Apart from the one stated above, there are two other reasons for my disagreement.

Firstly, as regards the Sino-British Agreement on the CFA, both the ADPL and myself consider that further clarification is required, and there are still issues that need to be elaborated and explained by the Chinese and British sides to the people of Hong Kong so that we can have a clear understanding. The ADPL and myself are trying to meet certain Chinese authorities to discuss issues relating to the CFA such as the concern expressed and ambiguities pointed out by some Hong Kong people, as well as the relevant provisions about the ratio of judges and the definition of "acts of state", and so on. Secondly, the CFA is one of the subjects discussed by the Chinese and British sides at a time of dispute. Naturally, when Sino-British relations are better, the discussion will yield better results; however, when their relations are bad, the results will be less than desirable. The negotiation process becomes essentially a display of power and skills. I believe that in respect of relations between two countries, the weaker one will never gain an upper hand in diplomacy. As Mr PATTEN will just have less than two years in office, how can he control the negotiation results according to his will at a time of dispute with the Chinese side with just two more years of colonial rule? If all the blame is to be put on Mr PATTEN, the present motion under debate is somewhat "going too far". Hence, I neither support the original motion nor the amendment motion for they propose to cast a vote of no confidence on Mr PATTEN or the Chinese and British Governments for only one reason.

However, there is something which sounds quite strange to me. At the Finance Committee meeting held on Friday two weeks ago, I was absent for some parts of the proceedings to be interviewed by the press. Yet, when I went back to the Chamber, I was told that members of the Democratic Party had voted for the proposal to increase Mr PATTEN's salary without much query. This is indeed very strange, because if they have no confidence in the Governor, why did they go for an increase in his salary? I hope the Democratic Party will clarify this point when its members rise to speak later on, to explain why there is such a contradiction. If they do not have trust in him, they should not give him a salary increase.

Finally, I hope that the Chinese and British sides can explain in detail to the people of Hong Kong certain specific provisions of the CFA Agreement. Of course, apart from the CFA, the issues that are of most concern to the general public are still those that are closely related to their livelihood. The British Administration in Hong Kong is absolutely responsible for finding ways to resolve and tackle these problems before the transfer of sovereignty. Otherwise, the credibility of the Hong Kong Government will keep on diminishing.

With these remarks, I abstain from voting on the original motion moved by Mr CHEUNG Man-kwong and the amendment motion moved by the Honourable Miss Emily LAU.

MR LEE CHEUK YAN (in Cantonese): Mr President, I received a letter from a group of elderly last week. Since the content of the letter has something to do with the motion before us, I will read out part of it to share it with fellow Members. Those elderly said, "Reading newspapers lately we learnt that many groups are claiming to have no confidence in the Governor. That gave us much satisfaction. In restaurants, ordinary citizens are all overjoyed!"

Mr President, we may wonder how come the elderly are so unhappy with the Governor? From what they have written in the letter, we found that they feel aggrieved that the Governor has deceived the citizens. At first, it was said that there would be "Elderly Pension", and the news was spread all around, but in the end it failed to materialize even though the Legislative Council gave it green light. This is why the elderly distrust the Governor.

Dear Members, the Government under the leadership of Governor PATTEN has aroused much dissatisfaction among the gross-roots citizens over the past few years in many policy matters .....

PRESIDENT: Mr LEE, you know that I have ruled your intended amendment out of order. This is about the future rule of law. That covers a very wide sphere but you are way outside the terms of this motion.

MR LEE CHEUK-YAN: Yes, I am coming to the rule of law.

PRESIDENT: Well, please come to it right away.

MR LEE CHEUK-YAN (in Cantonese): Where their dissatisfaction lies I am not going to talk about here, but the public know what it is all about. On the other hand, the new agreement on the Court of Final Appeal reached by the Sino- British governments seriously hampers the jurisdiction of the future Special Administrative Region courts. Meanwhile, having the Chief Executive participating in the recommendation of judges jeopardizes the principle of judicial independence too. All these sabotages to the foundation of the rule of law of Hong Kong is something that the Sino-British government and Governor Chris PATTEN have to be held accountable!

From a "powerful Governor", Chris PATTEN appeared to be when he first arrived in Hong Kong to "a rat in the street" as he is today whom everybody deplores, this change did not occur because of his political reform package, but the damages his policy caused to the interests of the public in their livelihood and the rule of law. I think the Governor should not have said merely that he would not have any difficulties falling into sleep. I think he should listen seriously to the dissatisfaction and the opposing voices of the public, and that in the coming two years his policy should be responsive to the demands of the citizens.

Mr President, with these remarks, I support the motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, it has been more than three years since the Governor Mr Christopher PATTEN assumed office in Hong Kong on 9 July 1992. The motion moved by the Honourable Mr CHEUNG Man-kwong today has a lot to do with the issue of the Court of Final Appeal (CFA) and I told him well beforehand that if it was about the political reform package debated on 29 June 1994, I would probably support it. Why did I use the word "probably"? The reason is that nothing was agreed upon and my support would only be a possibility but not necessarily given.

The Governor Mr Christopher PATTEN surely occupies a certain position in the political arena, both in the United Kingdom and in the world. With a highly clear-cut image, he is someone from whom knowledge of politics and of being a politician can be acquired. There are times, of course, when he is relatively hypocritical, but this is how politics works and how most politicians behave. It is not his fault but rather, a shortcoming brought about by the very nature of politics. Therefore, after he took office in Hong Kong, we all maintain that he is here to implement the policies of the British Government. The same perspective may also be adopted when we look at the June-fourth Incident. Whilst many people in Hong Kong criticized the Honourable LI Peng, the Premier of China, it must be understood that he was just executing the established policies of the Chinese Government. I am not "licking his boots", nor am I defending him. We can only say that he is not a very competent actor. However, state policies are not something to be decided by individuals.

The sovereignty of Hong Kong will be returned to China in less than two years' time. This is a hard fact from which the public should realize the difficulties they will have to face in future or the responsibilities to be shouldered by them. It is undeniable that party politics has the effect of politicizing quite a number of issues. Yet, the contention between politics and reality is always part of their world. One who served a term of imprisonment also has the chance of becoming a president, as long as he wins the support of the public. This is, again, a reality of politics.

The agreement over the issue of the CFA is, theoretically speaking, a consequence of extensive negotiations between the Chinese and British Governments, as well as the mutual understanding of and concessions made by both parties after taking the actual situation into consideration. The Honourable Miss Emily LAU's amendment to the motion is an open criticism on the two Governments. In this connection, I originally promised her that I would abstain. However, her amendment is just like a slap in the face to both Governments and I find it a bit too arrogant for any Hong Kong people to do so. She is free to express her disagreement but it would be far from reasonable to dress down anybody in such a manner. After all, we are Members of the Legislative Council only. In my opinion, both parties are to blame in certain aspects and I, therefore, have consequently decided to vote against the amendment. I would like to take this opportunity to explain why I, having promised to abstain, am now against the amendment. As players on the political scene, we all have our own stance and position when commenting on every single matter, depending on our views, standpoints and backgrounds. That is why the nature of politics is described as very hypocritical, lying solely on how those involved justify themselves.

Mr President, apart from a slight disagreement with the Governor over the political reform package, I have supported the Government most of the time during my term of office as a Legislative Councillor for almost four years. Why do I adopt such a supportive attitude? I would like to take this opportunity to offer an explanation to those in the sector I represent as well as the general public. It is my opinion that while a government with credibility does, in the process of its administration or in certain cases, commit mistakes or perform less than effectively, the public will definitely not be served well by government with no credibility that at the same time performs badly. In foreign countries, political parties may attack each other, but what we have in Hong Kong is an executive-led administration. There are of course discrepancies, self-defence and technical errors in our executive-led mechanism but does the existing government still have the outmoded colonial mentality and think "I am the government, you are the subjects"? Most officials, Branch Secretaries in particular, have in fact adopted the attitude that they are public servants. They may not really accept this whole-heartedly, but in playing the game of politics, reality is something that cannot be altered.



Mr President, since directly-elected Members joined this Council in 1991, different opinions could undeniably be expressed in full during the past few years. There are times when these Members did so for votes or for achieving certain objectives. With still more than a year to go before the 1997 transition, I hope that all members of our Government, from the Branch Secretaries here to all other civil servants, would stick to their guiding principle that no matter what sort of changes will take place, they would serve Hong Kong people on behalf of the Central Government as long as they remain in office. The public would appreciate their effort and give them support provided that they have tried their best to get their work done.

With regard to the political reform package, Mr Christopher PATTEN maintains his stance after 17 rounds of Sino-British talks. This reflects his political conviction and his obstinacy towards his political beliefs. He may not understand the style of leadership in China and the mentality and feelings of the Chinese people. Yet, facts do speak louder than words. As for the way forward, if the British Government, in particular the authority Mr PATTEN represents, is looking for a glorious withdrawal, hoping to leave Hong Kong in better shape for future development in all aspects such as economic growth and the betterment of people's livelihood, he should regard these tasks as his duties of being the 28th Governor of Hong Kong. In view of this, I do not think it necessary to denounce him or express no confidence in him today solely because of the issue of the CFA.

Mr President, I so submit.

MR MICHAEL HO (in Cantonese): Mr President, I would like to respond to what the Chief Secretary said a while ago. In her speech, the Chief Secretary alleged that our motion meant that the intention to have an amicable dialogue was gone and replaced by an intention to launch a malicious attack. She also mentioned about civil servants being denied due recognition for their painstaking efforts to maintain the rule of law. Her logic seemed to be that if the Democratic Party cast a no-confidence vote against the Governor it would amount to a no-confidence vote against civil servants. We must clarify this. In fact, in terms of logic, a no-confidence vote against the Governor does not mean a no-confidence vote against the civil servants of Hong Kong, nor should civil servants be dragged into this quagmire for that matter. The precise logic in this relates to the decision on the Court of Final Appeal which is a decision made by the Governor and his Executive Council. Civil servants took no part in this decision. Their role is one of executing government policies. Such being the case, it could be said that the decision on the Court of Final Appeal is nothing to do with civil servants. They are only responsible for executing it. Hence, our no-confidence vote against the Governor absolutely does not amount to a no-confidence vote against the civil servants of Hong Kong, nor does it mean that we do not support or do not appreciate the efforts put in by the civil servants of Hong Kong in maintaining the rule of law.

I would like to respond to the Honourable Frederick FUNG's speech in relation to another point. Mr FUNG asked why at the Finance Committee meeting last time we failed to cast our vote against the funding request in respect of the Governor's salary rise. Perhaps Mr FUNG was not present at the meeting then. Or perhaps Mr FUNG is not too familiar with Standing Orders. As a matter of fact, on that day a Member requested that the funding items be voted on separately one by one. But according to Standing Orders, if the Administration does not propose any amendment to a government motion, the Chairman will have no power to direct that the motion be voted on item by item. On that day the Administration refused to have the funding items voted on separately one by one and so the funding proposals as contained in the Finance Committee paper were voted on as a whole. We therefore supported the proposals in the paper. If the Association for Democracy and People's Livelihood (ADPL) and Mr FUNG feel that the whole paper should be voted down, this might perhaps be the ADPL's decision. The Democratic Party was not prepared to do so.

DR YEUNG SUM (in Cantonese): Mr President, the Democratic Party in fact does not "love" nor "hate" the Governor, Mr Christopher PATTEN. We support his political reform programme because a democratic movement striving for a more open political system had already emerged within the Hong Kong community before he came to Hong Kong. Though the programme proposed by the Governor was somewhat more open, it was still a very conservative one. The United Democrats of Hong Kong (UDHK) at that time thus decided to take his programme as the baseline and supported it. It would be better to say that Mr PATTEN's programme could barely meet the demand of the community then, rather than to say that we supported Mr PATTEN's programme. Before Mr PATTEN came to Hong Kong, that is, from the early 70s to the 80s, there were already demands for democracy in Hong Kong.

Why does the Honourable CHEUNG Man-kwong have to move this motion to express no confidence in the Governor today? This is because Mr PATTEN has done many things since he came to Hong Kong. He says that he wants to establish an open political system an open government in Hong Kong. He often advocates that the Government should be accountable and responsible to its people, and the political system should be made gradually more open. He has also stressed many times that we have to maintain the independence of the judiciary and to uphold the system of the rule of law. However, who would expect that the Government be heads has signed such an agreement (certainly the British Government has also a part in it), which adversely affects the rule of law in Hong Kong and undermines the independence and importance of the common law. This goes against what he always advocates, that is, an open and democratic system, an independent judiciary and the rule of law. The Democratic Party only moved this motion after careful deliberation. I would like to emphasize that this motion is only directed against the incident but not the person, because it was his deed that has affected the rule of law in Hong Kong.

I would like to reiterate, the aim for moving the motion this time is not to deny all the efforts that the civil service made in the past but to blot out the expectations we have on them. The Governor can by no means live up to our expectations, and we are so disappointed that we have to move this motion. The Chief Secretary just stressed many times that the Hong Kong Government values the rule of law. This should be the ideal situation. However, why do we think this agreement will adversely affect the rule of law? The rule of law means the protection of rights of the individual, equality before the law, clear and specific legal provisions which cannot be interpreted at one's own will and, above all, the independence of the judiciary. Now, with the inclusion of the "act of the state" in the agreement, the definition of which may then be interpreted by the National People's Congress (NPC) in the future. The NPC is a political organization. If legislation is to be interpreted by a political organization, will our judiciary still remain independent? Certainly, we can say that this will not happen before 1997. If so, why should this be included in the Hong Kong legislation? For what reason should the Legislative Council pass legal provisions which may be interpreted by a political organization? In the future, if the NPC says that certain activities in Hong Kong are related to acts of the state, the future Court of Final Appeal will have no right of adjudication over them. From this point of view, the jurisdiction of the Court of Final Appeal will be severely damaged. If the jurisdiction of the Court of Final Appeal is damaged, will the independence and autonomy of the judiciary also be adversely affected as a result? I think this is very important.

Everyone knows, the Governor and the British Government also know very clearly, that the common law interpretation of "acts of the state" is very different from that under the law of China. Then why have they agreed to include the "acts of the state" in the present agreement which, after endorsement by the Legislative Council will become Hong Kong's legislation? Knowing very well that much grey area exists, why have they agreed to do so? Certainly, the British Government and the Hong Kong Government would say that there is no need to worry, because after the Basic Law comes into effect in the future, China will resume the exercise of sovereignty sooner or later. Alright, this will happen sooner or later. But why can we not wait for that day to come, why should this be passed in advance in the Legislative Council? May be we will amend the Basic Law in the future substantially or this may even be the Chinese Government itself who will introduce the amendment. Why should this be included in an international agreement with the consent of the two Governments, and then by going through legislative procedures become part of the legislation of Hong Kong before 1997? They can hardly absolve themselves from the blame. We cannot say that because this will happen in the future so it would do no harm if we included this in the agreement in advance. I cannot agree to this. We, the people of Hong Kong, should decide our future. The British Government will leave Hong Kong, but we will stay here. The Hong Kong people should decide for themselves how the future will be like. And our future is not to be decided by the two Governments now. They should not include the grey area into the common law of Hong Kong and make it part of the legislation of Hong Kong through legislative procedures. If the damage is

jointly done by the Chinese and British Governments, it will be very difficult for us to amend the legislation in the future. Besides, the Governments of both countries had not consulted the people of Hong Kong when they made the decision. Therefore, I am absolutely against it. They said that it is already written in the Basic Law, and that they are just bringing the matter up, so we should remain silent. I definitely do not agree to this way of doing things. This is not the rule of law but something done by men.

Furthermore, why does it involve the rule of law? It is stated in the part regarding the composition of the judges in the Court of Final Appeal in the Sino-British Joint Declaration and the Basic Law that: (1) The composition of judges is to be decided by the court with reference to specific situations; (2) the number of local and overseas judges is to be decided with reference to the situation then. Nevertheless, the Chinese and British Governments now use an international agreement to fix the ratio at 4:1, that is, four local judges to one overseas judge. In practice, this agreement has abandoned the idea that the Court of Final Appeal can decide the composition of judges in accordance to specific situation and details of a case, and that administrative means have been used to fix the ratio at 4:1. This is in breach of the Joint Declaration and the Basic Law. If this is in breach of the Joint Declaration and the Basic Law, this means the rule of law has also been damaged.

Mrs Anson CHAN has just stressed that rule of law aims at the protection of human rights, individual freedom and equality before the law. In brief, this is a part of the rule of law, but we have to consider whether our judiciary can remain independent, and whether the agreement signed has violated the agreement reached by both parties at that time. If this is in breach of the latter agreement, this is certainly also damaging the rule of law. If the judiciary cannot remain independent, the rule of law will certainly be damaged. It is because the rule of law has been damaged that the Democratic Party is now expressing such a strong condemnation. I agree that the wording of this motion is very strong, however, we have already considered this for a long time. If China and Britain are going to join hands to damage the rule of law in Hong Kong and if we believe that the rule of law is of such great importance to Hong Kong, how can we let this go so easily? How can we say that any agreement reached is better than no agreement at all? If all of us are to be so helpless, what kind of a future of will be in store for the Hong Kong community?

*The buzzer sounded a continuous beep.*

PRESIDENT: Dr YEUNG Sum, you have to stop, I am afraid.

MRS ELSIE TU: Mr President, no one could accuse me of being an ardent supporter of the Governor's political views. I have insisted ever since his first speech in October 1992 that he was leading Hong Kong in a dangerous direction likely to stop the through train and create problems in communication between the two sovereign powers. My fears on that have been well justified. The through train has come to a halt, and the leaders of the two sides are no longer on speaking terms.

But this motion today is wide of the mark. Mr PATTEN was not even in the running for the governorship of Hong Kong when the Joint Liaison Group (JLG) decided on the present interpretation of the Joint Declaration and the Basic Law, concerning the Court of Final Appeal. In 1991 this Council voted by a majority against the proposal and thereby putting it into deep freeze resulting, in this compromise that makes us a little worse off than if we had accepted it in 1991. We were all fully aware at that time that the Basic Law could not be changed before 1997, and that the Basic law is to be interpreted by the People's Republic of China, no matter how much we would like to change it. Realizing that they have backed a loser, the movers of the motion are now trying to put the blame on someone who had no part in the 1991 agreement by the JLG.

This motion today asserts as a fact that the future (I emphasize the word "future") rule of law has been (and I emphasize the past tense "has been") seriously damaged. That is a tricky play on tenses, for how can they prove that something has been damaged by something that has not yet happened? Can we count the damage that has been done by a typhoon before the typhoon has reached our shores? Even if the prophets of gloom and doom are right in prophesying that the rule of law may be damaged, surely it would be our duty to defend the rule of law at that time against the future sovereign power. I claim to have been defending the rule of law against the colonial sovereign for more than 40 years, and I shall not cease doing so if necessary after 1997 when the new sovereign power takes over. But why put fear into the hearts of the Hong Kong people now? Why not put courage into their hearts? Besides, what would China gain from damaging the rule of law in the Hong Kong Special Administrative Region? Surely it is in China's interests not only to preserve Hong Kong's system as promised, but also to learn from us whatever may be good for China too.

Mr President, the words and deeds of the movers of this motion have done far more to undermine the confidence and to damage Hong Kong than this little-used Court of Final Appeal interpretation. Thank you.

MR TAM YIU-CHUNG (in Cantonese): Mr President, the original motion alleges that the Governor damages the future rule of law in Hong Kong and therefore expresses no confidence in the Governor. I myself ceased to have any confidence in the Governor when he proposed his "Three Violations" political package that let us see his perfidious acts. My colleagues in the Democratic Party only came to know him now, it is perhaps a bit too late. In the past three years, the Democratic Party was the faithful supporter of the Governor, now in denouncing the Governor, their about-face greatly puzzles the public. Naturally, if that is the result of their true feelings, it reflects their perplexity. Confucius had a thorough understanding of interpersonal conflict of interests over 2000 years ago. He said, "When you love a man, you wish him to live; when you hate him, you wish him to die. Having wished him to live, you also wish him to die. This is a case of delusion." To explain this love-hate relations, we can compare it to a couple. When they fall in love with each other, they are sweet to each other and cannot be separated. But when their affair fails, all former acts and words became unacceptably lascivious and should not even be mentioned. Nevertheless, some clear-minded people are not ruling out the fake fights between a husband and a wife that are aimed to arouse other people's attention and to enhance each other's reputation. What is the truth, the public will draw their own conclusion.

The wording of today's motion is considerably harsh, otherwise the Chief Secretary would not have been present here with all the policy secretaries. This is extraordinary indeed. However, observation and analysis make me think that, if we base our argument on facts, the agreement on the Court of Final Appeal the Governor reached with the Chinese side is in accordance with the wish of Hong Kong people, and is a good thing for Hong Kong. Since the announcement by both governments of the agreement on the Court of Final Appeal, several opinion polls show that the people supporting the agreement or supporting the resolution of the Court of Final Appeal issue by the Chinese and British governments through discussion clearly outnumber those whose are against. The Democratic Party has all along claimed that it supports democracy, and now in the face of public opinion, I do not understand what reasons they have in opposing this agreement.

I have been supporting the early establishment of the Court of Final Appeal, an issue first discussed by the Chinese and British governments in 1991. The early establishment of the court will signify full co-operation between the two governments on the one hand, and on the other hand will give the court a period of time to gain experience and case law under the Hong Kong Government before it transits into the Court of Final Appeal of the Hong Kong Special Administrative Region. Unfortunately, my point of view was not accepted by my colleagues of this Council.

Mr President, since the announcement of the agreement, many foreign chambers of commerce have voiced their support to the agreement. This shows that the agreement is one that can stabilize the confidence of the international business community as well as that of Hong Kong, and meets the aspiration of the business sector that had originally hoped to have the Court of Final Appeal established as early as possible.

In view of these above reasons, I oppose the motion of the amendment. However, I would like to say a little more. Just now, the Honourable Miss Emily LAU pointed out that the Democratic Party supported my amendments on three occasions, implying that my relations with the Democratic Party was better than Miss LAU's with the Party. But I would like to assure Miss LAU, the reason that the Democratic Party supported my amendments on three occasions was only that my amendments concerned were irresistible.

Thank you, Mr President.

MR HOWARD YOUNG: Mr President, the crux of today's motion in trying to express confidence or otherwise no confidence in the Governor is whether the future rule of law has been damaged. And the argument starts from the recent Agreement on the Court of Final Appeal. I think it is convenient at this time to speak on this rather than leave it to later in the month because there is more time today and it is much too early for dinner!

Since the Agreement on the Court of Final Appeal, I have heard many views ranging from it being a sell-out to being the best thing that could happen today, and also I have heard views from Councillors or even from my own party, I must say, that we should try and amend it.

During these few weeks, I have consulted many people from my constituency on whether they feel that the future rule of law has been damaged or not by the agreement and whether the Agreement on the Court of Final Appeal is acceptable or not, and also whether we should try to change it or veto it. This, to many Councillors, is a dilemma especially for myself who, on the one hand represents a functional constituency, Tourism, and on the other hand, is a member of a political party whose constitution says that we must strive for a more flexible and also an earlier set-up of the Court of Final Appeal.

Yet, on the other hand the same party constitution says that Functional Constituency Members may vote against the party's line if they can show that their functional constituents think otherwise. So, over the last few weeks, I have been asking many people in my trade what they thought about the Court of Final Appeal and what they thought about the future of the rule of law in Hong Kong. This was well before the question of whether or not one has confidence in the Governor came up.

My feedback, I can tell Members today, ranging from the heads of the Board of Airline Representatives and the hotel industry and travel agency umbrella organization in Hong Kong and even small travel agents, has, almost without exception, told me that they think the Court of Final Appeal agreement is acceptable and it should be passed without amendment. I do realize that by saying this I am in some way treading on the toes of some of my party peers in the Liberal Party who say, well, according to our constitution we should put forward some amendment.

These opinions I have solicited from the industry range from: "Thank God there has been an agreement. By the way, what is it?" to: "We are glad that there is no vacuum in the rule of law in Hong Kong and this will enhance international investment in Hong Kong."

So, Mr President, I think today's debate does also provide an opportunity for people to express an opinion and let other Members know the feedback they have had from functional constituents and from voters on whether the rule of law has been damaged or not. And I must say for my part my functional constituents are clearly telling me that the Court of Final Appeal agreement should be passed without major amendments. This could be perhaps, and it might be, the second time I am openly voting against the political grouping in this Council. The last time was when we voted on the airport platform.

Mr President, I hereby rise to say that I am opposed to the original motion and also the amendment.

DR CONRAD LAM (in Cantonese): Mr President, the remarks concerning the Court of Final Appeal (CFA) made lately by both Members of this Council and government officials that came to meet my ears have filled me with enormous dread. What do I dread? Well, the signs that amnesia, about which so many members of the public have expressed their concern, is getting epidemic. Many Members have forgotten the speeches they made previously about the CFA, and I stop short of repeating here.

I would like to, from the perspective of a soccer fan, express some of my opinions about the amendment moved by the Honourable Miss Emily LAU. Both the Chinese and the British Governments are saying that according to the Sino-British Joint Declaration Hong Kong will have a high degree of autonomy and that people of Hong Kong will rule Hong Kong after 1997. It seems as if both teams are vowing to do their best for a democratic political system, but the fact before us is that it is just a "sham game". Both teams are "shamming", and therefore, being a soccer fan, I think in moving this amendment Miss Emily LAU deserves our applause for her sportsmanship.



MR JAMES TO (in Cantonese): Mr President, since Governor PATTEN assumed office in 1992, he has kept stressing on the importance of the rule of law in Hong Kong. Even on 23 May 1995, before the latest agreement on the Court of Final Appeal (CFA) was reached, he still stated, "The establishment of a CFA before 1997 to take over the powers of the Judicial Committee of the Privy Council is a litmus test of the commitment of ourselves and of the Chinese side to the continuation of the rule of law in Hong Kong". The CFA is a litmus test to find out if the rule of law in Hong Kong can still be upheld but, regrettably, I wish to say that if I quote the words of the Governor or his officials, or the British representatives at the Joint Liaison Group, and compare them with the latest agreement reached today, the issue of integrity is bound to surface.

On 4 December 1991, the Honourable Simon IP moved a motion regarding the CFA. The representative of the Government responded by saying, "To those who accuse us of knuckling under Chinese pressure, let them reflect carefully on the prospect of a CFA of unknown quality, established only on July 1997. Will that be better for Hong Kong?"

Second, with regard to the definition of "acts of state" provided in Article 19 of the Basic Law, when the chief representative of the British team at the Joint Liaison Group, Hugh DAVIES, mentioned the issue of the "acts of state" on 18 May 1995 before the signing of the agreement, he said, "The CFA Bill specifies that the CFA shall have no jurisdiction over the cases involving acts of state. Britain believes that there is no need to define "acts of state" before 1997. The CFA can define "acts of state" together with the Government of the Special Administrative Region in accordance with common law cases and the Basic Law".

Third, as to the eight suggestions put forward by the Preliminary Working Committee (PWC) Political Affairs Subgroup, on 25 May 1995, that is, a few days before the agreement was reached, the Director of Administration, Mr RJF HOARE said, "According to the Government, two of the proposals of the PWC Subgroup suggesting that the Chief Executive can chair an independent commission for the selection of the Chief Justice and the term of office of the judges is to be recommended by the Chief Justice, are in breach of the Sino-British Joint Declaration and the Basic Law and are unacceptable." On 24 May 1995, Mr HOARE said, "Though it is provided that judges of the courts of the Special Administrative Region shall be appointed by the Chief Executive in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and eminent persons from other sectors, it can hardly be considered as independent because the commission is chaired by the Chief Executive".

These are the iron-clad facts regarding the integrity of Mr PATTEN and his senior officials. Today let us have a look again at the agreement reached. The agreement is written in black and white and it is still fresh in our mind. I hope that Members and the public can see clearly the sort of things that Governor PATTEN has done.

Just now the Chief Secretary quoted from the Governor that the rule of law was very important because the public have the right to seek protection from the courts. If the courts fail to offer us protection because "acts of state" are not defined according to the common law, then do we still have the rule of law? I hope she will understand this point. Her quotation brings up the very problem. The Chief Secretary also expressed that our motion would damage the partnership among the community, the civil service and the Legislative Council as a whole. I agree that this relationship is important. In most circumstances when people do not share the same view, it is important for us to get together and discuss the matter. This kind of partnership and mutual understanding have already been shown at the meetings of various Bills Committees. However, for any partnership there is a bottom line. This bottom line is not only applied to the relationship between Members of this Council and the Administration, but also to that between Members of this Council and the political parties to which they belong. If the political party to which the Member belong betrays the wish of the public to a certain extent and seriously damages the future system of the rule of law, I think that particular Member, or that member of the party concerned should quit the part. Here we find a bottom line again. If the Administration damages the future system of the rule of law on such a crucial issue, how can the co-operative relationship be maintained? There are absolutely no grounds for us to make any compromise whatsoever.

The Honourable Allen LEE has just said that many Members were putting on a "show", attacking others so as to elevate themselves, and knock down others when a policy is found to be unsatisfactory. I agree that the person concerned should step down if a policy devised by him is found to be unsatisfactory. The Honourable Peter WONG, a member of the Liberal Party, already gave Mr Allen LEE hints by citing various examples. If someone has made a wrong decision on crucial administrative, constitutional and government matters, he should step down. I am glad that Mr Peter WONG cited many significant examples. Today's debate aims at finding out if Mr PATTEN or his government has damaged the rule of law. If instead we discuss the "shows" being put on by the Members, the attitudes adopted by the Members or speculate about other people's attitudes, then who is actually putting on a "show"? The issue we have to discuss is whether the rule of law has been damaged. However, since many Members of the Liberal Party have not yet delivered their speeches, they still have time to "show their loyalty" to the Administration or "remedy the mistakes" made by the Administration and explain why the Administration has not damaged the rule of law, rather than putting labels on other people and speculating about other people's attitudes because this is not a commendable approach.

In his speech, the Honourable CHEUNG Man-kwong presented substantial arguments and cited adequate examples to illustrate how the Governor had damaged the rule of law. If any Members are going to oppose this motion today, they should not simply speculate about other people's attitudes but should think of the ways to refute the specific contents of the motion. The Honourable Mrs Elsie TU wondered how the future rule of law could be damaged now. As this is something that cannot be proved now, the situation is of course to her "advantage". I can explain to you, however, that because the Bill, which will soon be passed by the Legislative Council, will become effective in the future, I have to tell the public today that the future rule of law has already been damaged.

*The buzzer sounded a continuous beep.*

PRESIDENT: You have to stop, Mr TO.

MR MAN SAI-CHEONG: Mr President, the numerous failures of Governor PATTEN to uphold and bolster the future of the rule of law have been detailed by other members of my Party. From his failure to amend or abolish the anachronistic colonial laws to his outright refusal to set up a Human Rights Commission, there can be no question that the Governor has undermined the rule of law and thus our way of life.

It may be that the Governor, through his senior civil servants, will try to claim credit for changing laws dealing with things such as allowing women in the New Territories to vote, amending the subsidiary legislation relating to the Emergency Regulations Ordinance, or the new Equal Opportunities Bill. I do not believe this Council, Hong Kong people and the press will be fooled into believing such rubbish. Since Governor PATTEN has arrived, most reforms have been made in spite of his administration and not because of it. The press and the Hong Kong Journalists Association will certainly not be buying such nonsense about reform of colonial laws. They have been fighting for three years and know how very little progress has been made here.

It is utter hypocrisy for the Governor to claim credit for these things now as legal, constitutional and human rights reforms, and this certainly includes the Governor's most modest electoral reforms. These were forced upon the British and the Hong Kong Governments by public opinion and by elected legislators, many of whom have been fighting for these things for years.

Governor PATTEN is not the Governor of Britain but of Hong Kong. He has sworn allegiance to the people of Hong Kong. We, the Democratic Party, is truly representative of the people of Hong Kong because we hold 13 out of 18 democratically elected seats in this Council. We have no hesitation in supporting Governor PATTEN when he backs Hong Kong people's aspirations for a more democratic and accountable society, but now he has backed away

from his responsibilities. It is our responsibility to call world attention to his abdication of duty.

On 9 March, the Governor said: "To turn a blind eye to the stealthy or blatant chipping away at the architecture of freedom and the rule of law is to connive at its destruction. Great tragedies are invariably the aggregate of a thousand small betrayals." Hong Kong people did not ask Mr PATTEN to travel around the world talking of the importance of democracy, press freedom and the rule of law in Hong Kong, although they no doubt agree with him on these vital matters. His predecessors did not do that, and he should not have done it if he was not prepared to follow through on his promises. Neither should he be surprised if he is now judged harshly by the very standards he publicly set himself.

MR LEE WING-TAT (in Cantonese): Mr President, I shall respond to the speeches made by some of my colleagues and the Chief Secretary. First, the Administration looks rather high-strung today and many policy secretaries are in attendance. I wonder if they are giving Governor PATTEN their spiritual support. It is because, apart from the Governor's question session, no Council sitting would be attended by a full complement of policy secretaries. They are feeling nervous. Is it because they are really worried lest the motion should be passed?

A while ago Mrs Anson CHAN said that the present motion debate will have serious repercussions on the international front. It is because if the international community learns that Hong Kong's Legislative Council is expressing no confidence in the territory's chief executive, the consequence will be very serious. The motion before us is a serious one. We are doing this after mature consideration. It is because we cannot accept the present state of affairs which is as follows. In the two years following assumption of office, the Governor, when he held fast to his principles on the question of constitutional reform, would travel from country to country to tell the international community what an ardent defender of democracy he was; but when he, for one reason or another, yielded on the question of Hong Kong's judicial system or when he reached an agreement with the Chinese side which was unacceptable to us, he would be protected from censure. We will not protect him.

Mrs Anson CHAN spoke at great length on co-operation between government departments and the Legislative Council. I feel that this has no bearing on today's motion debate. The one we are seeking to censure and to express no confidence in is Governor PATTEN. We are satisfied with the work of officials, policy secretaries and indeed every member of the civil service. We are separating the Governor from the members of his administration. It is because, in terms of political reality, the Governor basically occupies a paramount position in the formulation of Hong Kong's principal policies. This is beyond question. Although he takes orders from the British Prime Minister and the Foreign Secretary, yet, when it comes to important questions affecting

Hong Kong, neither the Foreign Secretary nor the Prime Minister can find time to deal with them. The Prime Minister has been very busy these days. His leadership was challenged and he just barely managed to hold on to his premiership. Otherwise, he would have had to be replaced. We feel that the Governor has to bear the foremost responsibility in the matter that has given rise to the present motion. This is the cause of it.

Moreover, what bearing does the co-operation between government departments and the Legislative Council have on the motion we are debating today? In relation to other government policies, we would debate and explain them through a process characterized by mutual respect. Sometimes, we would disagree but what bearing would this have on the subject of today's motion? Therefore, I take issue with Mrs Anson CHAN in relation to her argument which seeks to pin this motion down as being equivalent to an attempt on our part to negate the years of hard effort put in by policy secretaries and government departments. We are not doing this.

Besides, we would like to respond to a number of points raised by the Honourable Allen LEE a moment ago. First, he asked whether through this motion debate we are seeking to topple the Governor from office. In a western parliamentary system, if a no-confidence motion is passed it will amount to a request for the government in power to step down, to dissolve parliament and to hold a general election. The Democratic Party is of the view that in the matter of the Court of Final Appeal (CFA) the Governor acted in a manner unbecoming of his office. If you give me the choice, I will say we need to replace the Governor. He should return home in the United Kingdom to do whatever he wants to do there. He should not stay in Hong Kong to continue to put on an outward show of support for the rule of law and democracy to beguile Hong Kong people. The moving of this motion will have serious consequences. Of course, if we want to change our Governor, or if we cast a no-confidence vote against the Governor, it will be a very serious constitutional move. But shall we refrain from doing so because of this? I feel we shall not. We are of the view that the question of the CFA is more important than other matters. Therefore, we feel we have the responsibility to go about it this way.

Mr Allen LEE said many from the Democratic Party or the liberal camp used to love the Governor but they now hate the Governor. As a matter of fact, this is not a question of loving or hating the Governor. Two years ago, when Mr Chris PATTEN unveiled his constitutional reforms, we expressed our support because we supported the proposed reforms. If the reform package had been proposed by Mr Allen LEE or even by the Chinese Government, the Democratic Party would have supported it all the same. The contents of the reform package are what the Democratic Party and people in support of democracy firmly believe in. It did not matter if the proposer was Chris PATTEN or another. Therefore we will not describe as improper the way we are doing it today. We hope Members will not slight an important matter that has a vital bearing on the rule of law in Hong Kong. If we retreat from our stance on every matter that affects our interests, may I ask Members: where is

our base line? If we retreat from our stance on the CFA, later we will retreat from our stance on the localization of the laws and later we will retreat from our stance on yet another matter. What then will become of the Joint Declaration and the promise of Hong Kong people ruling Hong Kong?

Mr President, we most manifestly and unequivocally put forward this motion to express our lack of confidence in the Governor.

ATTORNEY GENERAL: Mr President, I would like to join with the Chief Secretary and register the Administration's strongest objections to this motion and the amendment. I wish particularly to associate myself with the Chief Secretary's remarks concerning the Governor. He has time and again set out for us a vision for the future in his policy addresses, in his many appearances before this Council and on many other public occasions, a vision in which the rule of law has been paramount. That vision and his leadership have been a source of inspiration to all.

The original motion purports to be founded on some bare assertions put forward in the course of certain Honourable Members' speeches today — assertions which remain wholly unsupported by any evidence. Such extravagant language by certain Honourable Members renders a grave disservice not just to this Council but to the people of Hong Kong and puts at risk the legitimate interests of future generations.

#### *Introduction*

Mr President, much has been said about the rule of law, but let us be clear what we are talking about: we are talking about fundamental principles that shape and underpin the fabric of our society. They are principles which this Government zealously promotes and enhances. Indeed, over the past three years our track record on the reinforcement and preservation of the rule of law has been beyond reproach.

#### *What means the rule of law*

So, what does the rule of law mean? I start by reminding Honourable Members that the common law underpins the principle of the rule of law which govern the way in which power is exercised every single day in this community. The first principle of the rule of law is that no-one exercising power, from the Governor down to the police constable on the beat or clerical assistant, can do anything to affect the individual, his or her home, his or her property, his or her freedom, unless he can point to some specific provision in the law which authorizes his action. If he fails to do that, he can be sued in the courts of Hong Kong and can be compelled to put right what he has done or to pay compensation for the wrong that he has done.

*Judicial and extra judicial review of administrative action*

Acts of the Government are subject to judicial safeguards. Judges have always stood firm against the abuse of power. Nowhere is a principle more graphically illustrated than in the criminal law where the power of arrest and detention before trial are subject to strict limits. The prosecution must prove its case beyond reasonable doubt. The trial must be public so that it can be seen that there is no injustice. Those who prosecute do not strive to secure a conviction; their duty is to see that all the facts are placed fairly before the court so that the verdict will be just — I emphasize that word — not merely expedient.

The exercise by the Government of discretionary powers can be challenged by the people of Hong Kong through judicial review. So decisions made by Immigration Officers refusing entry to Hong Kong, Licensing Tribunals refusing liquor licences and the Building Authority rejecting plans for property development — just to mention a few examples — are all judicially reviewable. In 1993, there were 123 applications for judicial review and in 1994, there were 75 such applications. The ability and the readiness of the community to challenge government decisions, awkward though that may be from time to time for the Government, is a right that we regard as of great importance in buttressing the rule of law. We would not have it any other way.

*Equality before the law*

I turn now to the second principle of the rule of rule which may be summarized as equality before the law. The principle was graphically brought home by arguably the greatest common law judge of this century, Lord DENNING in a major constitutional case when he said "Be you never so high, the law is above you." All persons, high or low, rich or poor, whatever their race, politics or religion, are subject to the law of Hong Kong administered by the courts.

*Independence of the Judiciary*

A third principle of the rule of law, namely, the independence of the judiciary, explains why Hong Kong remains a free, open and well-ordered society. Our courts are independent of the executive. Throughout the years, decisions of the courts to protect the rights of the individual and to check abuse of the powers of the Government have exercised a profound influence — a phenomenon which I would term the judicial education of the public sector. Lawyers, public servants, law draftsmen, Members of this Council and the media all work to preserve the fundamental features of the common law system. And here I would like to pay tribute to the invaluable role played by this Council in preserving the rule of law by questioning the Government on the use of its powers and scrutinizing government Bills so as to limit arbitrariness and executive discretion. Complementing this legislative tendency, laws are in practice drafted and enacted to preserve rather than extinguish individual rights,

to ensure that proper compensation is paid to those whose property is taken away for public purposes, to promote fair dealing rather than peremptory behaviour, and to lay down specific and clear limits to governmental powers rather than to give discretionary or arbitrary powers that could readily be abused.

*Measures taken to strengthen the rule of law*

Mr President, I now turn to set out the record of this Government on the rule of law. The Chief Secretary has already mentioned a number of areas where action has been taken to strengthen the rule of law. I wish to elaborate a little further on this aspect.

*The Bill of Rights*

No one should underestimate the importance of the enactment of the Bill of Rights Ordinance to the protection of the rule of law in Hong Kong. The Ordinance incorporates into the law the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong. It provides the people of Hong Kong with protected rights and freedoms which they can and do assert against the Government if the need arises.

Recently, the Government has introduced several other measures to consolidate and strengthen the impact of the Bill of Rights Ordinance and human rights protection generally. For example, extra resources have been provided to the Judiciary to introduce specialist lists for cases involving the Bill of Rights. Legislation has very recently been enacted, and the necessary resources provided, to enable the Director of Legal Aid to waive the means test in civil claims under the Bill of Rights Ordinance.

Honourable Members will need no reminding from me of the ongoing exercise of reviewing legislation to ensure compliance with the Bill of Rights Ordinance. Since the enactment of the Ordinance four years ago in 1991, there have been 29 amending ordinances or regulations made for the purpose of bringing legislation into line with the Bill of Rights.

Other proposed amendments are currently being scrutinized by the Council, including bills to amend the Public Order Ordinance and the Places of Public Entertainment Ordinance.

Overlapping with the review of legislation in the light of the Bill of Rights Ordinance is the review of legislation that may infringe freedom of expression, in particular, press freedom. As a result of that review, amendments have been made or are about to be made to a wide range of ordinances and regulations including the following:



- the Television Ordinance and Broadcasting Authority Ordinance;
- the Summary Offences Ordinance;
- the Places of Public Entertainment Ordinance;
- the Registration of Local Newspapers Regulations;
- the Judicial Proceedings (Regulation of Reports) Ordinance;
- the Defamation Ordinance; and
- Regulations made under the Emergency Regulations Ordinance.

Plans are being finalized in respect of the Official Secrets Acts and the Crimes Ordinance, among others. A bill is now before this Council providing safeguards in respect of the search and seizure of journalistic material. The bill is a further proof (if such be needed) of the Government's firm commitment to a free and vigorous press in Hong Kong.

*Other human rights measures*

Other measures introduced by the Government to enhance human rights protection in Hong Kong include the following:

- the extension to Hong Kong of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the domestic enactment of the Crimes (Torture) Ordinance;
- increasing the resources for human rights education by creating a dedicated team and allocating \$20 million for their work over three years starting in 1995-96: in this regard it is worth reminding ourselves that last November the United Nations Committee on Economic, Social and Cultural Rights pronounced Hong Kong to have done more than any other country in promoting public education and understanding of human rights;
- enacting legislation against sex discrimination, establishing an Equal Opportunities Commission and seeking to extend the Convention on the Elimination of All Forms of Discrimination Against Women;
- introducing legislation to prohibit discrimination on the ground of disability;

- extending to Hong Kong the Convention on the Rights of the Child; and
- introducing legislation in the area of data protection.

I could go on, Mr President.

All of the measures that the Chief Secretary and I have mentioned indicate in the clearest possible terms that the Hong Kong Government is passionately committed to enhancing and promoting human rights protection ensuring the continuation of the rule of law in Hong Kong.

### *The Court of Final Appeal*

Mr President, I would like now to turn to the Court of Final Appeal, a matter deliberately painted as one of controversy by certain Members today. The suggestion that the agreement reached at the Joint Liaison Group last month was, as some have claimed earlier on before today, a "rotten deal", and that the Court of Final Appeal Bill will undermine the future rule of law in Hong Kong, are bizarre in the extreme. These suggestions are wholly irresponsible having no foundation whatsoever in fact or evidence, are totally misleading and very damaging to confidence in Hong Kong's future.

Since 1988, the Hong Kong and British Governments have been doing their utmost to ensure that a proper Court of Final Appeal will be established in Hong Kong, in such manner as to avoid a judicial vacuum after 1997. The whole purpose of doing this is, of course, to protect the rule of law in Hong Kong and to ensure the continuity of the legal system. The agreement reached last month makes it possible for our aims to be achieved, provided, of course, that this Council passes the Bill that is now before it.

The Council therefore has the power to buttress the future legal system with a Court of Final Appeal that, subject only to the Basic Law, has the same functions and jurisdiction as the Judicial Committee of the Privy Council. And to do so without creating any damaging judicial vacuum.

What are the objections that have been raised to the Bill or to the agreement?

*Composition of the Court*

First, some Members object to the proposed 4+1 composition of the court. It has been argued that the 4+1 formula breaches the Joint Declaration and the Basic Law. This assertion is not correct. I will not repeat the arguments that I deployed for the Council in the debate on 3 May. Our view that the 4+1 composition is consistent with the Joint Declaration and the Basic Law is supported by a number of authoritative independent legal opinions.

Some Members have criticized the Joint Liaison Group (JLG) agreement for providing for the 4+1 composition on the grounds that the Court ought to have granted flexibility to invite more overseas judges if it wishes. We have not the slightest doubt that the 4+1 composition is a perfectly acceptable way of implementing the provisions in the Joint Declaration and the Basic Law that provide for judges from other common law jurisdictions to sit on the Court of Final Appeal. Nor is the rule of law in any way undermined by this composition.

A few Members have referred to the eight proposals put forward by the Political Affairs Sub-group of the Preliminary Working Committee, and criticized the Government in particular for accepting the proposal that the Chief Executive should chair the meeting of the Judicial Officers Recommendation Committee (JORC) at which the recommendation would be made in respect of the first Chief Justice. As the Governor made clear to this Council when he announced the CFA agreement on 9 June, we obtained a clear statement from the Chinese side that the Chief Executive would only conduct this meeting of the JORC and would take no part in making the recommendation. And this would be a one-off transitional arrangement. Once the Chief Justice had been appointed, he would of course chair the Committee. On this basis, we accepted that the proposed arrangement was a practical one and would not breach the Basic Law.

*Delayed commencement*

Another provision in the Bill that has been criticized is that providing for the Court to be established on 1 July 1997. The Administration makes no secret of the fact that it would have preferred to establish the Court earlier than this. However, Honourable Members are fully aware of the reasons why there has been a delay over the establishment of the Court.

The agreement of last month provides for the establishment of the Court on 1 July 1997, in such a way as to avoid a judicial vacuum. In other words, if the Bill is enacted, no harm will be done to the future rule of law.

*Acts of the State*

I turn now to the provisions of the JLG agreement and the Court of Final Appeal Bill in respect of acts of state. A lot of very damaging, and misleading, rhetoric has arisen out of these provisions. Mr President, there are so many red herrings the place is beginning to look like a fish market. Let me set the record straight.

First, neither the JLG agreement nor the Court of Final Appeal Bill in any way alters the jurisdiction of the Court as provided for in the Basic Law. I have not heard a single lawyer deny this proposition. Therefore to say that the JLG agreement or the Bill has created any sort of problem is completely without foundation. To say that they have created a "hole in the common law" is, in my view, totally irresponsible.

Secondly, Article 19 of the Basic Law, which relates to acts of state, can be construed consistently with the common law. A great deal has been made — more heat generated than light shed, I would suggest — of the fact that Article 19 refers to acts of state "such as defence and foreign affairs". Yet, it cannot be doubted that, under the common law, there are acts of the government outside the areas of defence and foreign affairs that cannot be challenged in court. No lawyer has ever denied this proposition. On the contrary, the Honourable Martin LEE himself expressly agreed in 1988 that there were under the common law acts outside the areas of defence and foreign affairs which are non-justiciable. The Government in no way agrees that Article 19 has created any hole in the common law. If anyone else says that it has done so, then it is he, not the Government, that is running up the white flag over this issue.

I repeat, however, that it is the Basic Law, not the JLG agreement, not the Court of Final Appeal Bill that will determine jurisdiction of the courts over acts of state. Nothing that the Hong Kong or British Government has done is in issue here, or has undermined the rule of law in any way.

Before I leave the Court of Final Appeal Bill, I would like, Mr President, to deal with one small further point: one Member pointed out that the Bar Association was opposed to the CFA Bill. But that Member totally failed to mention that the Law Society fully supports the Bill. I cite this as yet another example of the one-sided and tendentious arguments that are being put forward by some Honourable Members during this debate.

*Conclusion*

Mr President, let me end by re-stating the Government's opposition to the motion and the amendment. The rule of law lies at the very heart of our legal system and the legal institutions that have developed here. It plays a crucial role in securing our stability and prosperity, to the extent of rendering Hong Kong's fair and decent society the envy of many the world over. The Hong Kong Government, like the courts, the lawyers and this Council, has been striving to preserve the rule of law enjoyed by members of the public in Hong Kong. People in Hong Kong are justly proud to live in a free, prosperous, open and pluralistic society. However, the rule of law ultimately depends on the will of the courts, lawyers, government, and legislature, as well as the confidence of the community and the institutions. The confidence of the public should not be undermined by bold assertions and accusations based on no justifiable grounds.

Mr President, let me ask what this motion and the amendment can offer the people of Hong Kong. The answer is nothing — simply nothing. Moreover, the motion and the amendment are founded on premises that are wholly wrong. The future of our legal system will be very much the same, if not better, shape as the one in which we now take pride.

A few Members painted a picture of the rule of law being swept away as if by some evil deluge of Biblical proportions at the stroke of midnight on 30 June 1997. Such dire predictions are unbecoming those Honourable Members of this Council and can in no way be justified as responsible behaviour by legislators looked up to as leaders of our community. Is this all that can be offered by certain Members to the people of Hong Kong in this their supposed hour of need? Such a vision is a recipe for despair and offers no sustenance — spiritual or otherwise — for our society.

I for one totally reject such a doomsday scenario. The Government offers hope to the people of Hong Kong — hope through action. Otherwise, the 180000 members of the Civil Service would not have toiled so hard over the past three years to preserve and enhance the rule of law and to make this a better place for all of us in which to live for now and the future. We firmly believe that, through our labours, we have, far from damaging the rule of law, done much to preserve and enhance it. We shall continue to do so, for the benefit of the community and the generations to come. We totally reject the motion and the amendment presented today and urge Honourable Members to do the same.

PRESIDENT: Mr CHEUNG Man-kwong, do you wish to reply to the amendment? You have five minutes for that purpose.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, frankly speaking, I am extremely disappointed at the speeches of many Members and responses of the Administration, many of which have missed the theme of my motion: the reasons for expressing no confidence in Mr Christopher PATTEN, and the Administration under his leadership.

The relevance of the Chief Secretary's lengthy speech has been questioned by the Honourable James TO. Indeed, the Chief Secretary beat about the bush, because in her reply she did not respond to the core of the problem: that Mr PATTEN's words about the Court of Final Appeal (CFA) reflected a change of his position, and that Mr PATTEN bartered away his principles and did not keep his promises to the people. Would the Chief Secretary tell me if she denied those words I quoted from Mr PATTEN's speech? No, you did not! Chief Secretary, do you dare to deny that Mr PATTEN changed his position after the agreement on the CFA was reached? No, you dare not. Since Mr PATTEN indicated his varied position in black and white, we have good grounds to say he changed his position. Hence he did not keep his promises to the people. In the process, he also bartered away his principles. It is under such circumstances that we want to give him a vote of no confidence. Now, the Chief Secretary did not defend the Governor for what he had said; she dared not do so. She admitted that Mr PATTEN had said those words I quoted. She dared not deny that Mr PATTEN's words were inconsistent. She was just beating about the bush. What she said was not relevant, was it?

Secondly, the Chief Secretary elevated the matter to the highest plane of principle. We were just saying the Governor is not trustworthy because his words were inconsistent. The Chief Secretary, however, turned our words into alarmist talk. She said that our words would come as a blow to the 180000 civil servants who do not have any decision-making power. She even threatened people by saying that our words would frighten overseas investors. Everyone should understand that both civil servants and overseas investors need an independent legal system. Once the Administration, led by Mr PATTEN, undermines the rule of law in Hong Kong over the issue of the CFA, Hong Kong residents (civil servants included) and business firms (overseas investors included), will be affected. I feel that it is enough for the Chief Secretary to drag all her Secretaries here to listen to today's debate, there is no need to involve the 180000 civil servants, this has nothing to do with them. What really undermines the partnership between this Council and the civil service is what the Chief Secretary just said, for between the lines in her speech, I could read an intention, or an unintentional attempt, to create bad blood in the partnership. That comes as an unpleasant surprise to me.

Some Members liken today's serious debate on the rule of law and the CFA to a black-and-white love film. A popular view among them is that the Democratic Party's love for Mr PATTEN has changed to hate. You may wish to note that Mr PATTEN is married and so am I. There is no possibility of love, or hate, between us. In politics, we have our own loves and hates about things such as democracy and the rule of law. We have been supporting what is conducive to the promotion of democracy, because we love democracy; we have been opposing what is damaging to the rule of law, because we detest anything that is so.

Just now, the Attorney General asked us not to paint a picture of the rule of law being swept away after 1997. I must say the rule of law is like a river bank. If the Administration does not take any positive move to strengthen it, and instead weaken it, flood water will break through eventually and all residents, including civil servants, businesses and overseas investors, will be drowned. These are my worries and I must pour them out. Such worries are indeed central to today's debate.

Thank you, Mr President.

*Question on the amendment put.*

*Voice vote taken.*

THE PRESIDENT said he thought the "Noes" had it.

MISS EMILY LAU: I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

Dr Conrad LAM, Miss Emily LAU, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr James TIEN voted against the amendment.

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum and Mr WONG Wai-yin abstained.

THE PRESIDENT announced that there were five votes in favour of the amendment and 34 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Mr CHEUNG Man-kwong, you are now entitled to reply and you have one minute 44 seconds out of your original 15 minutes.

MR CHEUNG MAN-KWONG (in Cantonese): Whether Members support or oppose my motion, I do thank them very much for their speeches. I found that a speech is like a mirror, which enables the people of Hong Kong to see and to understand. That is a major objective of having today's motion debate.

Many became nervous on hearing this no-confidence vote. What they care about most is not the contents of the debate, but whether it will be carried or defeated, because from that they may get a faint idea as to whether or not the Governor should step down. This I found have deviated from the major objective of a motion debate. One major objective of our motion debate is to urge the public and this Council to take this agreement of the Court of Final Appeal seriously, to take it seriously that in this matter there is a voice among members of the public and among Members of this Council who see a lot of loopholes in this agreement that have to be plugged through our endeavour. It will be through our endeavour that the buttress for the rule of law be mended, and that even in post-97 era, it will be through our endeavour that the Basic Law be changed so that Hong Kong's system of rule of law be perfected, so that at the end every single citizen living in Hong Kong can be protected and benefited from the rule of law. That is what counts.



I hope Members will recognize that through today's debate, the Democratic Party wants to mark with our voice, our presence in history, and not simply reducing it into a love story, or a power struggle which may result in someone stepping down and going back to England. I feel that this is rather too narrow a view to take.

*Question on the motion put.*

*Voice vote taken.*

THE PRESIDENT said he thought the "Noes" had it.

MISS EMILY LAU: I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man- kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai- cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai- yin and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr PANG Chun-hoi, Mr TAM Yiu- chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui- chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK and Mr James TIEN voted against the motion.

Mr HUI Yin-fat, Mr Frederick FUNG, Miss Christine LOH and Ms Anna WU abstained.

THE PRESIDENT announced that there were 17 votes in favour of the motion and 35 votes against it. He therefore declared that the motion was negatived.

## **PRIVATE MEMBER'S BILLS**

### **Second Reading of Bills**

#### **EMPLOYMENT (AMENDMENT) (NO.2) BILL 1995**

#### **Resumption of debate on Second Reading which was moved on 29 March 1995**

*Question on Second Reading proposed.*

MR HENRY TANG (in Cantonese): Mr President, the time now is not as late as I expected. But I shall speak on the Employment (Amendment) (No.2) and (No.3) Bills in one go in order to save time.

Some people stated that labour-management relations invariably involve two opposing stands. Labour protection and welfare, more often than not, form the focal points of contention between the two sides. But I firmly believe that in a democratic society this sort of tug-of-war should be fair and healthy, just like the tug-of-war between children. Either side is free to send its representatives to take part. A healthy game can be played and concluded with an equal number of participants of comparable strength on either side. The work of the Labour Advisory Board (LAB) is accomplished in more or less the same circumstances, that is to say, the seeking of an ultimate consensus between labour and management amid mutual give and take. And this consensus should be respected by all.

I am glad that the Honourable LEE Cheuk-yan is willing to amend his own Private Member's Bill in deference to the consensus reached in the LAB. Mr LEE understands that striving for better rights for the labour sector is a gradual process and he respects the consensus reached in the LAB. This is commendable. I very much understand that it is imperative that a labour leader should unceasingly fight for the rights and interests of workers. But, as far as the business sector is concerned, I hope Members will be aware that an unbalanced and overhasty enhancement of labour welfare benefits will stifle the urge of the business sector to invest, particularly in respect of small and medium enterprises which will suffer the most severe blow. In our present climate of an economic downturn, a welfare-led society will force many enterprises to cease operation or relocate to China. In such event, there will be no participants at one end of the rope and a healthy game of tug-of-war will not be played and done with.

Many of my company colleagues have longer periods of service than I have and their sense of belonging to the company is comparable to mine. I am of the view that, in terms of welfare and protection, they must be given reasonable and fair treatment. Therefore, in considering the question of improving long service payments, I apply the principle of "stepping into another person's shoes". I hope workers who have served the same employer for long periods will be given reasonable and fair treatment.

As regards maternity leave protection, this goes without saying. It is because my wife is also a working woman. She is a mother of four children. I certainly hope she and other working women will enjoy reasonable maternity leave protection.

With these remarks, I support the motion moved by Mr LEE Cheuk-yan.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, my heart is filled with joy today because it is so early. I hope that the President will allow me to speak on both Bills in order to make us feel happier.

The issue of retirement protection has been a controversy for at least 30 years. Up to the present, the Government still has not firmly established an effective retirement scheme. But, who are going to pay for the price of the Government's procrastination? They are the retired old workers or those who are about to retire soon. The Government has been chopping and changing all along. It proposed the Old Age Pension Scheme but lacked the determination to have it implemented. Instead, it put forward the Mandatory Provident Fund Schemes (MPFS). While refusing to address the pressing need of a retirement protection scheme, the Government forsakes the retired old workers and those who are about to retire.

When one looks at the existing legislation, long service payment is the only retirement protection old workers can rely on. Hence, amending the legislation on long service payment by relaxing the requirement of year of service and retirement age is a matter of utmost urgency. Opposing voices from employers allege that, as the Legislative Council is scrutinizing the principal legislation for the MPFS at the moment and private provident fund is closely related to long service payment, it will be more desirable to have an overall review on the legislation on long service payment after the setting up of the mandatory provident fund schemes, so as to avoid contradictions between the two and adding to the burden of the employers. To put it bluntly, this is, in fact, a "delaying" tactic. The Government advises that, from the time the principal legislation is passed to the time when the various pieces of subsidiary legislation are enacted, it will be at least 1997 when it becomes mandatory for employers and employees to make contribution to fund schemes. What is more, if the mandatory provident fund schemes are to be effective, employees of the middle and lower income groups must make contributions to fund scheme for 30 to 40 years. Unless the Government implements the old age pension scheme

immediately, otherwise, amending the terms of long service payment is one of the emergency measures.

The Legislative Council has debated many times on whether the retirement age should be 60 or 65 and the argument is very clear. By amending his original motion, the Honourable LEE Cheuk-yan, obviously, has been forced to make concessions to employers in order to strive for more benefits for workers. As a matter of fact, the Government does not have a uniform retirement age policy. For instance, civil servants may retire at the age of 55 while teachers at 60. Even the MPFS proposed by the Government allow people who reach the age of 60 to collect their accrued portion of provident fund. The Government should not tolerate discriminatory legislation against employees in the private sector. Thus, the Democratic Party will continue to fight for the relaxing of the retirement age to 60.

Long service payment is the part in the Employment Ordinance which is afflicted with most ills. It was introduced when workers demanded the Government to legislate against unfair dismissal. To ease social pressure, the Government created long service payment, aiming at providing workers with a guaranteed minimum compensation for unreasonable dismissal. On the other hand, to lighten the pressure from employers and deprive young workers of enjoying the right to collect their due compensation in full, the Government has devised a complicated way of calculation so that for those who are under the age of 45 and have worked for the same employer for less than 10 years, they can only collect their compensation at a discount rate in accordance with their ages. Such provisions, which favour employers, give rise to age discrimination in the laws concerned. Nowadays, the awareness of human rights runs high and the yearning for equality is strong. Hence, this kind of discriminatory legislation should not exist any more.

Employment Ordinance has all along been criticized as being afflicted with ills as it treats the head when the head aches, treats the foot when the foot hurts. A comprehensive review of the ordinance is definitely necessary. However, the Democratic Party does not agree to block old workers' opportunity to improve their welfare by means of a comprehensive review. Therefore, with these remarks, I support the amendment of Mr LEE Cheuk-yan.

Furthermore, the proposal to amend maternity leave pay put forward by Mr LEE Cheuk-yan has evoked immediate repercussions from the community. The worries of some female workers are worth noticing. They worry that improving their maternity leave pay will adversely affect women's job opportunities. They are afraid that due to the high unemployment rate recorded recently, employers are getting more and more unwilling to employ women of child-bearing age. Some employers may even speed up the relocation of their business. In addition, some workers are afraid that employers will dismiss pregnant employees. Putting forward such a proposal, Mr LEE Cheuk-yan is criticized by some people as "doing bad things with a good intention".

The worries of the workers are understandable for they prove how heavy the pressure of unemployment is to the workers. At the same time, it reflects the inadequacy of labour laws in providing workers with job protection. Being lack of the sense of security, workers can do nothing but suppress their demands. Is improvement on workers' rights the reason for unemployment? Has it driven away investment?

If we compare the rate of maternity leave pay in Hong Kong to those of our neighbouring Southeastern Asian countries, we will discover that Hong Kong is actually in the third position — counting backwards. If we have a look at the maternity leave pay in countries like mainland China, Indonesia and Malaysia where a large amount of foreign investment has flowed to, we will be shocked that the maternity leave pay in Hong Kong lags far behind almost all countries and is just higher than that of Thailand. May I ask one question: is the level of labour benefits a major consideration when capitalists make their investment?

I believe that the worries of the workers stem from the their employers' attitudes. In fact, some employers' associations suggest that an employee cannot provide service to her employer if she has to leave her job temporarily to give birth to her child. In other words, the employer suffers a loss. Asking the employer to pay maternity leave pay means additional expenses for the employer. Asking the employer to give her full pay is an unreasonable request. The view of employers treats employees as sheer labour energy, that is, they have to work in order to be rewarded. If their productivity decreases due to their health or pregnancy, they should get less wage or even none. Some employers even think that bearing children is women's own choice and it is also the responsibility of the individual as well as the family, so they cannot see why employers have to pay the cost instead. As a matter of fact, even if we do not see child-bearing from the angle of the procreation of the human race, it can still be regarded as reproduction of labour force, which is an important public service. While calculating their cost, employers should not only take direct wages into account, social responsibility and social cost should be included at the same time. The logic and rationale here also explain why employers have to pay effluent charges and profits tax.

The Honourable James TIEN pointed out that in some countries, maternity leave was paid by the Government or social insurance instead of by employers. According to the information provided by the Government, in many Asian countries, in addition to the maternity leave pay as provided for in labour laws, maternity protection in the form of social insurance has also been established. In Taiwan and South Korea, places whose level of economic development measures up to Hong Kong, employers and employees have to contribute towards social security schemes. In Singapore, maternity-related medical and other expenses are subsidized by the central provident fund. In other words, our neighbouring countries have already recognized the financial needs of child-bearing employees. Employers therefore have to pay for maternity leave, hospital fees, post-natal and child-raising expenses for their

employees. And Hong Kong is one of the few places in the world which does not have a social insurance system. Given the economic strength in Hong Kong, it is a shame for employers to haggle over the difference of just one third of the wages on the issue of maternity leave.

Employers' associations think that the needs of employees who have given birth to their children are not only limited to financial ones. They point out that the trend in developed countries is to protect the right of women to return to their work after giving birth to their children. I am very glad to hear that employers are willing to protect the right of married women and working mothers to have their career. The Democratic Party will therefore strive actively for the protection of pregnant women from being dismissed at the whims of their employers, and the elimination of discrimination against women and deprivation of their right to employment arising from their family responsibilities and marital status. Nevertheless, I can assure you that these objectives will not replace our ultimate goal to increase the maternity leave pay.

This amendment, which aims at increasing the rate of maternity leave pay from two-thirds to 80% of the wages, is but a small step forward and it is the result of the concessions made by employees. As for the offering of comprehensive maternity protection to employees, there is still a long way to go. If we have to establish a system which is comparable to that of other Asian countries, we need to fight on until employees' rights are fully protected.

Mr President, with these remarks, I support the amendment of Mr LEE Cheuk-yan.

MR ANDREW WONG: Mr President, I rise to speak on the deliberations of the Bills Committee, of which I am Chairman, to study the Employment (Amendment) (No.2) and (No.3) Bills 1995 introduced by the Honourable LEE Cheuk-yan.

The objects of the Bills are to amend the existing provisions of the Employment Ordinance (Cap.57). The (No.2) Bill is to improve the long service payment (LSP) provisions, in three areas, while the (No.3) Bill is to increase the rate of maternity leave pay from the present level of two-thirds to a female employee's wages to full pay.

The Bills Committee formed on 31 March 1995 has held three meetings, including two with the Administration and one with deputations. Members of the Bills Committee and deputations have divided views on the two Bills. The employer associations unanimously oppose the Bills, whereas the employee unions fully support them. I shall not bore Members with the detailed arguments on both sides. Briefly the employer associations are concerned that too frequent legislative amendments to the Employment Ordinance enhancing employee benefits will add on financial burdens to the employers, particularly

small employers, thereby eroding Hong Kong's competitiveness against its rivals in the region.

The proposals in these Bills might have the consequence of adversely affecting employment opportunities for older workers and female workers of child-bearing age. They also point out that the proposed amendments in the two Bills bypass the tripartite review system through the Labour Advisory Board, which involves representatives from the Government, employers and employees on labour issues in a structured, properly-reached and constructive manner for the benefit of all of Hong Kong. Bills introduced in the Legislative Council without going through the Labour Advisory Board will undermine the credibility of the tripartite consultation mechanism.

On the other side, the employee unions considered the proposals in the Bill reasonable and will enhance labour relations. The Administration is of the view that, since the provisions in the (No.2) and (No.3) Bills are respectively covered by the Mandatory Provident Fund Scheme and a comprehensive review of maternity protection conducted by the Labour Department, it would be more appropriate to consider them in those contexts. Moreover, it would like to consult the Labour Advisory Board and the views of the Bills Committee and deputations.

Let me now turn to the views of the Bills Committee. Although the views of the Bills Committee are diversified and divided, the majority of Members support the Bills. With regard to the three proposals on LSP in the (No.2) Bill, the Bills Committee generally agrees to support them in the order of (a) lowering the entitlement age from 65 to 60 and the qualifying years of service for retirement on the grounds of old age from 10 years to five years; (b) removing percentage reduction in the amount of LSP for employees under 45 years old and with less than 10 years of service; and (c) granting LSP to those employees who resign after 10 years of service.

I am pleased to learn that, perhaps not so pleased, after completion of a study of the Bills by the Bills Committee, the employee unions and the employer associations have reached a consensus. As a result of that, the Honourable LEE Cheuk-yan will move Committee stage amendments to give effect to the following:

1. on the (No.2) Bill the qualifying years of service for retirement on grounds of old age, at 65, should be five years instead of the original proposal of 10 years;
2. on the (No.3) Bill it was agreed that the rate of maternity leave pay should be increased to 80% of a female employee's wages instead of the original proposal of full pay; and

3. the remaining two proposals of (No.2) Bill concerning removing the percentage deduction in the amount of long service payment for employees under 45 years old and with less than 10 years of service, and granting LSP to those employees who resign after 10 years of service will be withdrawn for the moment.

Mr President, with these remarks, I support the Bills.

MR FREDERICK FUNG (in Cantonese): Mr President, with your allowance, I would speak on the Employment (Amendment) (No.2) and (No.3) Bills 1995 in one go.

Mr President, I recall that a Legislative Councillor who represents employers' interests once said that employers are now very worried because, since the introduction of direct elections to the Legislative Council, labour laws have been persistently subjected to amendments most of which are introduced with stunning speed and oriented towards improving the conditions of service of workers. This, observed the Councillor, has exerted considerable psychological pressure on employers. But I hold an entirely opposite view to that held by the said Councillor. It is because workers' conditions of service used to be so backward as to be reminiscent of the Stone Age. I feel that the speed with which improvements are being introduced is just about right and will, within a reasonable period of time, enable Hong Kong to catch up with other countries so that it will move away from the early, exploitative stage of capitalism.

In fact, many labour bodies agree with the amendments first proposed by the Honourable LEE Cheuk-yan to the effect that the qualifying age for long service payments be lowered from 65 to 60 and the qualifying length of service be changed from 10 years to five years. However, for a variety of reasons, the qualifying age as proposed in the present amendment remains 65. I have consulted the views of these labour bodies. They think that, although this falls pretty far short of what they consider to be the ideal qualifying age, yet this is the best deal that the amendment can achieve for now because of practical constraints. They say they will have no alternative but to accept it. I think that, if Members cannot even accept the present amendment which is milder than the original proposal, we, being Hong Kong people, should be ashamed of ourselves.

Employers are of the view that, since the Legislative Council is about to endorse the Mandatory Private Provident Fund (MPF) Scheme as an alternative form of benefit to retirement protection provided by employers, it would not be desirable to make any change to long service payments at the present stage because the MPF will ultimately replace the long service payment scheme. However, I would disagree with this argument. It is because the MPF is still at the stage where no firm decision has yet been arrived at. There is still no knowing whether the MPF can get off to a start. We should not hastily assume the MPF to be a fact and give the public false expectations. On the other hand,



even if the MPF is implemented, it will take 20 to 30 years for the scheme to provide any effective benefits. It will be of no help in solving the present problem. Therefore, I feel that the present amendment still has significance.

Mr President, with regard to the question of maternity, I think that maternity is a God given duty to be fulfilled by women. However, the laws presently in force in Hong Kong import a certain degree of discrimination against women fulfilling this God given duty. The existing Employment Ordinance provides that women on maternity leave cannot draw full pay. Why is there such a provision? I believe that a working woman on maternity leave will inevitably affect the employer in terms of work arrangements and his own interests. To protect the interests of employers, working women on maternity leave will have to be sacrificed and suffer a pay cut. I think the proposed amendment is very rational. It seeks to give full pay to a woman on maternity leave only after she has worked for the employer for 40 weeks. This ensures a satisfactory balance between the interests of the employer and the employee. With the exception of Japan, all Asian countries have laws which provide that women on maternity leave shall draw full pay. I think Hong Kong employers are backward. The Federation of Industries wrote to the Bills Committee on behalf of employers. It argued that members of the public and women were not keen to have this amendment. It arrived at this conclusion without giving any supporting reasons or explanation. I think it was irresponsible of the Federation to so argue. If it had not investigated or failed to tell what sort of survey it had conducted, this conclusion would, to my way of thinking, have amounted to a distortion of the opinion of members of the public and women. Women during maternity have to bear considerable mental pressure. If they are from low income groups they will have to bear the added burden of increased livelihood expenses. Two thirds pay will undoubtedly mean a pay cut in disguise. And maternity will incur extra expenditure. They will find it hard to make both ends meet with increased expenditure on the one hand and reduced income on the other.

Employers are perhaps of the view that the climate for investment is poor nowadays and women on maternity leave drawing full pay will add to Hong Kong's economic burden. However, sometimes I think the employers are saying one thing at one time and quite another thing at other times. For instance, a few years ago Hong Kong was in an economic boom but employers did not of their own accord say to themselves: "The economy is doing fine. Let's give our employees a wage rise or have the labour laws improved." When the economy is doing badly, employers do not want any change; when the economy is doing well, they keep silent. In fact, as far as employers are concerned, it would be best if there were no changes for thousands of years to come. But, society inexorably progresses. I feel that, in value terms, the concept of letting employers reap full benefit to the exclusion of employees is outdated.

I think that improvement of women's conditions of service will serve a dual purpose. On the one hand, it will enable employees to get reasonable pay and, on the other hand, it will give effect to equal treatment between the sexes. Therefore, I support Mr LEE Cheuk-yan's amendment.

I so submit.

MR TAM YIU-CHUNG (in Cantonese): Mr President, as a representative of the labour sector in the Legislative Council. I am in full support of the amendments to the Bill. This, however, does not mean I am satisfied with the amendments, because in the amendment process not all reasonable demands put forward by the labour sector have been accepted.

In fighting for labour rights and interests, the stand I have been taking is this: we work hard for the greatest possible improvements in labour laws and the earliest possible implementation of these improvements. Our efforts in fighting for the former can be readily seen from the contents of the amendments put forward. This does not mean we can get all improvements we want. Hence, on top of our fight for the greatest possible improvements, we need to fight for their earliest implementation as well. As a Western saying goes: A bird in hand is worth two in the bush.

This time, we have only two amendments: the qualifying years of service for retirement on grounds of old age should be five years instead of the original proposal of 10 years, and the rate of maternity leave pay should be increased from two thirds to 80% of wages for female employees. These two amendments are based on a consensus reached within the Labour Advisory Board. It seems all parties have made concessions, acceptable to the other.

These two amendments are extremely important to elderly employees who are going to reach retirement age soon but are without retirement protection, and to female employees who have reached child-bearing age. They need to be put into effect as soon as possible.

Reducing the qualifying years of service for retirement from 10 to five years is very important to workers who are relatively old and who have a relatively low educational standard. In the past, the community did not care much about retirement protection. As a result, there were no compulsory retirement schemes. Given their high mobility, workers need to worry about life at old age as they approach retirement. To require them to have served the same employer for up to 10 years before they are entitled to long service payment may pose great difficulties for them. To reduce the qualifying years of service from 10 to five years is suitable in the Hong Kong context, as the original intention of long service payment is to encourage employees to serve the same employer for long periods of time.

Moreover, increasing the rate of maternity leave pay for female workers from two thirds to 80% of wages would not in fact give unduly great pressures to employees. Most families have only one to two children, because small families attach great importance to family planning. Therefore I really do not see any possibility of causing heavy burdens to employers if the rate is so increased. Furthermore, even after the increase, the maternity leave pay that Hong Kong female employees can get are still relatively low, compared with what their counterparts are getting in neighbouring regions. In the circumstances, I support these two amendments.

As I said at the beginning, my supporting the amendments does not mean that I am totally satisfied with the Ordinance after amendment. In you go through past records, you will find out that when the Employment Ordinance was amended in 1991, a number of Members rose to speak in support of the proposal to lower the retirement age to 60. The Secretary for Education and Manpower also undertook to study the matter further. Regrettably, after three years of "discussion", the proposal remains unresolved. If the Administration thinks that 60 is a suitable retirement age for civil servants, the same should apply to employees in the private sector. There should not be any variance. What positive steps did the Administration take during these three years in lobbying for support from employers?

There is indeed a lot of room for improvement in the labour laws. I do not intend to spend time detailing each and every improvement required. I must, however, reiterate that the Administration should have an overall labour policy and an improvement plan for the Employment Ordinance. The Administration should not behave like a tooth paste tube, that is, it should not "give out something only when squeezed". I hope that after the relevant Bills are passed, further amendments will be made at year-end or in the beginning of next year.

These are my remarks.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party supports the measures to improve long service payments to workers and to introduce full pay maternity leave. Therefore, we support the present two Bills before us.

The amendments to be proposed today will improve the originally unreasonable provisions. The Bills to be passed today will be amended in a few respects during the Committee Stage with the result that the amended Bills will be less able to improve the conditions for workers than the original unamended versions. However, as this represents a consensus between the labour and management sides following sustained contacts, the Democratic Party is willing to support this consensus as well as the amendments. But this does not mean that we are satisfied with today's amendments.

Throughout this legislative process, I am glad to see the labour and management sides sitting down to negotiate, arriving at a consensus in an atmosphere of mutual accommodation, though we are not too happy to find that today's amendments will detract from some of the improvements intended under the original Bills. We very much appreciate the co-ordination effort undertaken by the Honourable LEE Cheuk-yan throughout this process. We also appreciate the concessions given by the employers. However, the person we most appreciate is Commissioner for Labour, Mr Stephen IP, who took the initiative in speedily and efficiently arranging meetings between the labour and management sides, in playing a co-ordinating role, and in helping to ensure today's success. That being the case, the Democratic Party will absolutely not deny civil servants due recognition for the efforts they have put in. Of course, during the process, some employers indicated that they were worried lest a larger number of directly elected Legislative Councillors next year should turn Hong Kong into a welfare society. Some other employers were worried lest Councillors with labour backgrounds should continue to sing to them, "We want to get a bit more from you every day". But, after the smooth co-ordination that has taken place this time, I believe all concerned can set their minds at ease. It is because we in this Council can agree on mutual give and take in a rational manner.

Mr President, I so submit. The Democratic Party will support the two Bills and the amendments to be proposed later during the Committee Stage.

MR JAMES TIEN (in Cantonese): Mr President, the relationship between employers and employees in Hong Kong has been very amicable for many years. During the '60s, factories stood in great numbers. At that time, neither the employers nor the employees were fairing very well. Ironically, as employers were not rich and workers' wages were quite low, there were fewer industrial disputes under such circumstances. However, nowadays, we always come across a phrase, that is, the so-called "unfair dismissal".

As a matter of fact, many sectors in Hong Kong are having a hard time running their business. Take the export industry or manufacturing industry for example, the high inflation rate in Hong Kong over the last 10 years has led to a continuous increase in wages, thus eroding the competitiveness of our products. As a result, many of our customers are turning away from us. Of course, manufacturers cannot say that overseas customers are unfair for not placing orders for our products. Our order books have been dried up by our weakening competitiveness, which in turn has led to a reduced demand in the number of workers in the manufacturing industry and many workers have been laid off. Such action is often labelled as "unfair dismissal". In fact, it is also unfair to the employers.

As regards today's two amendments, one of which concerns whether Long Service Payment (LSP), that is, severance pay, should be given to employees working up to the age of 65. As a matter of fact, we are not talking about the dismissal of an employee by an employer. In case of a dismissal, all employees are entitled to severance payment if they have a service of more than five years. What we are talking about here is how to deal with a situation where an employee resigns or an employer is "dismissed" by an employee. The qualifying years of service for LSP used to be 10 years. From an employer's point of view, if we employ an employee when he is 20, 10 years later, he will only be 30. During his 10 years of service with the company, he might have made a lot of contribution to the company, but on the other hand, the employer would also have given him a lot of training. If he resigns at the age of 30 when he is most productive, under the existing law, he is not entitled to any compensation; this, in my opinion, is more reasonable. If everyone is entitled to long service payment after serving the same employer for 10 years or above, the purpose and meaning of LSP will be defeated.

As regards the present proposal to change the criterion for long service payment from 65 years old to five-year service, it was suggested initially by the business sector that, given that the life expectancy of most Hong Kong people reaching 78 to 80 with the progress in medicine, not all people need to retire when they reach the age of 65. In fact, many people over the age of 65 in Hong Kong are working as watchmen. The job is not so physically demanding for most of the working hours. However, if the qualifying years of service for LSP is amended to five years, it is possible that many employers will dismiss their employees when they reach, say 66 or 67, making them unemployed. Of course, this is not something we would like to see.

From an employers' point of view, as far as the provision of "equal pay for equal work" in the laws governing equality of employment opportunity is concerned, if employers must offer equal pay to both male and female employees for doing the same job, then in the case of the 10-week maternity leave given to pregnant female employees, should employers bear the entire financial cost? Or should the Government also shoulder part of the responsibility? From an employer's point of view, he pays one-year's wages to employ a person with no preference in sex and age, then why should he pay wages to a pregnant female employee during her 10-week maternity leave, even it is only two-thirds or four-fifths of her wages? It is because during that period, the female employee cannot make any contribution to the company. Of course, she has made great contribution to society, but as such should her employer bear the entire cost? Employers are holding this view as a matter of principle.

The Honourable Frederick FUNG said that he did not understand the contents of a letter submitted by the Federation of Hong Kong Industries. As Mr FUNG has never been in the business field, I think he does not have the slightest idea of what is happening in the business sector, and I did not understand what he just said either. Instead, I share the same views with the Honourable Michael HO. I also want to praise the Government for its work in handling this matter. Mr IP, the Commissioner for Labour, has made great efforts in this respect. At first, he told me that the Honourable LEE Cheuk-yan might make concessions after he had talked with him. At that time, I had serious doubt about whether this could be achieved. In the end, Mr IP has made it and I am glad that both employers and employees have seen eye to eye on a matter at the level of the Labour Advisory Board. We also appreciate Mr LEE's initiative in making amendments to his proposal.

Mr President, about the proposal on maternity leave, I want to say something more. It is justified to amend the rate of maternity leave pay covering a 10-week period from two-thirds to four-fifths of the employee's monthly salary. Both Singapore and Taiwan have so-called economic structures similar to Hong Kong, they are giving pregnant employees an eight-week maternity leave with full pay, which, in fact, is equivalent to 80% of a 10-week maternity leave. I would like to express my thanks to Mr LEE for amending his proposal on his own initiative to make it in line with our two neighbouring countries. In my opinion, it is unreasonable to quote other examples, such as Thailand and Bangladesh, as wages in these countries are quite low. Even if workers there are given a whole year's wages, these may only amount to one or two months' wages for our local workers.

Mr President, both the Liberal Party and business sector are very grateful to the Government for its role as a "mediator" on this matter. We also accept and support changes taking a step-by-step approach and the concept of "better benefits on a day by day or year by year basis" as championed by Mr Michael HO. Of course, we may conduct a further review at a later stage but I hope that this kind of private member's bills will not emerge in great numbers right after the Legislative Council election in September.

Mr President, with these remarks, I support the amendments.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, may I first of all begin by thanking Members who have given credit to the Administration in trying to reach a consensus on these two proposals. I fully appreciate these comments and hope this will set the pattern for future co-operation between us on labour issues and other issues.

I would like to speak on both Bills with your permission. On the (No.2) Bill, the Long Service Payment Scheme was introduced in 1986 to provide financial protection to long-serving and elderly employees who were dismissed. Since it came into operation, the Scheme has been amended six times to take into account the changing needs of the labour market and developments of our economy. As Members will recall, the last major amendment exercise was done in January this year when a comprehensive and forward-looking package to increase both the length of reckonable service and the absolute payment ceiling within a definite timetable was devised and agreed. This was then followed by the increase in the monthly wage ceiling for calculating LSP through a resolution of this Council in June. These and all previous amendments were invariably made in accordance with the broad consensus between representatives of employers and employees in the Labour Advisory Board (LAB) — a long-established and well-tested forum for discussions on labour matters affecting both employers and employees. We are very pleased to see that in this case Members of this Council have supported the approach to consult with the LAB first before coming back to this Council.

During the past three months, we have fully consulted the LAB on the proposals in the Bill and the Board subsequently agreed its consensus on each of them.

First, on the qualifying years of service for eligibility for LSP on grounds of old age, the LAB has proposed to reduce the qualifying years of service from 10 to five while maintaining the retirement age at 65, as it would improve the financial protection of the elderly employees without adversely affecting labour supply by inducing premature retirement.

Second, on the percentage reduction in the amount of LSP for employees under 45 years old and with less than 10 years of service, the LAB is against removing it right away as proposed, but has agreed to discuss this matter further. A review is under way and we will be seeking the LAB's advice later this year.

Third, on the proposal to grant LSP to those employees who resign after working for 10 years, the Board has rejected it, on the ground that it goes clearly against the fundamental principle of the LSP Scheme, which is to provide long-serving employees with financial protection in the event of dismissal, instead of providing employees with compensation upon resignation.

The LAB's consensus regarding each of the above proposals represents a fair balance between the interests of both employers and employees. As such, the Government will support the Committee stage amendments.

I turn now to the Employment (No.3) Bill. Payment of maternity leave for pregnant female employees was first introduced together with employment protection under the Employment Ordinance in 1981. Like the Long Service Payment Scheme, further improvements were made to the relevant provisions in the ensuing years following the broad consensus reached between employer representatives and employees at the LAB. For this reason, the Administration again consulted the LAB on these proposals.

It has long been the Government's intention to improve the package of measures on maternity protection to bring them in line with the relevant international labour conventions. To this end, we have recently completed a comprehensive review of all the existing provisions for maternity protection which include the qualifying service or unpaid maternity leave and for employment protection, arrangements regarding duration of maternity leave and penal damages for wrongful termination of pregnant employees. We have just consulted the LAB last month on a series of recommendations to improve them.

It was in the context of that consultation to these proposals that we sought the LAB's advice on the proposal to give full-pay maternity leave to pregnant female employees. The LAB agreed that the rate of maternity leave pay should be increased from two-thirds to four-fifths of the female employee's wages instead of full pay, after taking into account the interests of employees, the financial impact on employers and practices in neighbouring countries. The Administration will support Committee stage amendments to the Bill which conform to the advice reached by LAB.

Thank you.

MR LEE CHEUK-YAN (in Cantonese): Mr President, this Bill, together with the Employment (Amendment) (No.3) Bill 1995 which will have its Second Reading debate resumed later, can be regarded as the first Private Member's Bills introduced in respect of labour rights. After their introduction, the Bills have undergone consultation at "two levels", that is, this Council and the Labour Advisory Board (LAB), and among the "three parties" of labour, employers and Government. A consensus has been reached as a result. As the Honourable Henry TANG has just said, the consensus can be regarded as the result of a tug-of-war. But I do not agree with him that LAB is an arena for tug-of-war. As LAB is inherently constrained, in that it is an advisory body. The Government, has got the upper hand, leaving little room for the employees to take any initiative. I feel that the tug-of-war has developed gradually at a snail's pace following Hong Kong's democratization process. Before the introduction of direct election, there was simply no tug-of-war at all. It was only after the introduction of direct election in 1991 that some games of tug-of-war started to take place. I hope that our society can go further towards democracy, so that this kind of fair and healthy seesaw battles can really take place. However, I



believe that a society in which fair and healthy seesaw battles can really be fought has to be totally democratic. I look forward to it.

Coming back to my Bill, the present amendments to the original Bill are made in the light of the outcome consultations at the "two levels" and among the "three parties" just mentioned. If my amendments to the Bill are passed at the Committee stage, the provisions on the eligibility for long service payment (LSP) payable upon resignation or retirement, which is currently 65 years of age and 10 years of service with the same employer, will be changed under this Bill to 65 years of age and five years of service.

Although the amended Private Member's Bill is absolutely not perfect, it will, after all, be some advancement in labour welfare legislation. Honourable Members should have received the letter from a group of elderly workers, signed "Lai Chi Lok Workers Evergreen Group" in which it is pointed out clearly that the majority of elderly workers who are engaged in physical work experience deterioration of physical and mental strength at the age of 60, rendering them deficient for the requirement of their original jobs. However, if they resign voluntarily and retire, they will not be entitled to any LSP. Therefore, I would like to reiterate the point that it is absolutely reasonable for retirees at 60 years of age and having five years of service to be eligible for LSP! Here, I would like to appeal to elderly workers for their patience. I undertake to follow up this matter in future.

My Private Member's Bill was to propose total abolition of the discriminatory provisions in the existing legislation which reduces the LSP for employees below 45 years of age. However, the Government would only undertake to review the relevant issues and would not abolish the discriminatory provisions with immediate effect. It is a pity that the Liberal Party would not support this proposal of mine. On hearing Mr Henry TANG talk about "stepping into other people's shoes" just now, I asked him his age and he said he was 43 (I hope it is not a secret!). Since he talked about treating others as one would treat oneself, he should support my proposal for total abolition of the discriminatory provisions against employees below 45 years of age. However, I think in the long run we should enact a "law against unfair dismissal" (which is the last thing the Honourable James TIEN would like to see), to replace the section of the LSP legislation on dismissal, and to protect employees against unjustified dismissal, so as to rectify the present situation, in which employees get no compensation when unreasonably dismissed, and even those young employees with not less than three years of service will have their compensation deducted in a discriminatory way. It is my belief that the "law against unfair dismissal" is the most effective legislation for employment protection. Of course, even if the "law against unfair dismissal" is enacted, the Government still has to revise the legislation on LSP in order to ensure that the LSP for the young workers who die or fail to stay on their original jobs due to injuries at work will not be deducted in a discriminatory way.

The most controversial part of the Bill is the incorporation of a provision granting LSP to employees who resign after 10 years of service. I admit that it is a relatively new proposal. Perhaps I have better foresight than the others, but I hope in time the proposal will sink in and be accepted by Members. However, I still hold the view that the provision should be written into the Bill. In fact, the Hong Kong Confederation of Trade Unions has been receiving lots of complaints from employees saying that their employers have been forcing them to resign by various means, such as freezing their wages, increasing their workload or pulling long faces of disapproval, so as to avoid paying the LSP. Therefore, it is both reasonable and necessary to make loyal employees who have rendered 10 years of service eligible for LSP upon resignation.

I repeat, if I am elected again as a Member, I will introduce a Private Member's Bill in this Council to provide for the payment of LSP upon resignation to employees at 60 years of age and with five years of service, and to employees of all ages with not less than 10 years of service. At the same time, I would propose that a "law against unfair dismissal" be enacted.

As regards the Employment (Amendment) (No.3) Bill, which is a Private Member's Bill introduced by me in this Council on maternity leave pay, I have revised my original proposal of full pay to 80%, or four fifths of a female employee's wages. This is never my wish. Anyhow, it can be said to have raised the amount of maternity leave pay by 20% after all, and can be regarded as the result of the consensus among the "two levels and three parties" which I have just referred to. In my judgment, this is the greatest extent of improvement that can be achieved in this term of office. I can do nothing but accept this compromise. Hong Kong's female employees have been entitled to two thirds of their wages as maternity leave pay since 1981. Yet over the last 10 years, many Asian countries have secured full pay maternity leave for woman through legislation. Even in such Asian countries as China, India and Bangladesh, whose economic conditions are worse than that of Hong Kong, female employees have long been protected by full maternity leave pay. I feel ashamed to hear that Hong Kong is still debating on whether full pay should be given. As a matter of fact, the 180000 civil servants and the employees of many large companies already have the benefit of full maternity leave pay. However, the majority of the relatively low-pay employees, who need the benefit most, are entitled to only two thirds of their wages as maternity leave pay under the existing legislation. Therefore, I hope very much to eliminate this kind of inequality by means of legislation.

Hong Kong's birth rate has never been high. According to the data from the 1990 census, amongst the 230000 married female employees, only 4%, or about 10000 were recipients of maternity leave pay. In 1994 employers spent a total of \$0.12 billion on maternity leave pay. Even if it were full pay, they would only have paid \$0.18 billion, which would have meant an additional \$60 million. The increase only represented 0.027% of the total wage bill of \$26.48 billion. To them it was just a trivial amount. Many members of the public, including female employees, have expressed their concern to me about the high

unemployment rate at present and the difficulties faced by women in seeking employment. They are concerned that if operating costs of companies are raised, women are bound to face more discrimination and hurdles in finding jobs. I hope that employees who hold this view will understand the fact that Hong Kong has developed into a high wage region. As wages are much higher here than on the Mainland, the key to employment lies not in cutting employment benefits or protection, because however great the reduction may be, our wages will still be higher than those on the Mainland; and to voluntarily lower our wages to match them is totally out of the question. We "wage- earners" should "make dual efforts". On the one hand, we should promote Hong Kong towards a high value-added and high productivity economy, and should oppose the importation of labour and prohibit age discrimination through legislation in order to save our "rice bowls". On the other hand, we should strive for the improvement of employees' rights within the limits of Hong Kong's economic strength.

The employers' agreement to increase maternity leave pay to 80% of an employee's wages proves that such improvement is within the bounds of Hong Kong's economic might. However, due to their conservative nature, which prefers an evolutionary approach for everything, the employers have firmly opposed the proposal of full maternity leave pay. Think about it: In terms of the employers' operating expenses, the choice between 80% and full maternity leave pay does not actually make much difference. Even if it does, the effect will be minor. Therefore, I am disappointed that the employers insist on 80% maternity leave pay. I look forward to the day when employers finally agree to the proposal of 100% maternity leave pay. I believe, with its economic power now, Hong Kong can definitely afford full maternity leave pay for our employees. Therefore, I would like to reiterate that, the improvement of maternity leave pay is women's needs and rights, as well as the benefit of current employees, is a matter different from the difficulties faced by women in seeking employment. My aim today is to strive for the improvement of maternity leave pay first .....

PRESIDENT: Mr LEE, I am sorry I have to interrupt you. It is now past eight o'clock and under Standing Order 8(2), this Council should now adjourn.

ATTORNEY GENERAL: Mr President, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

*Question proposed, put and agreed to.*

MR LEE CHEUK-YAN (in Cantonese): Therefore, I stress that maternity leave should come in full pay. If I have the opportunity, I hope you will continue to support full maternity leave pay in the next Session. Meanwhile, the Government has undertaken to submit eight recommendations on improving maternity protection to this Council in October. I wish to highlight one very important recommendation, which deals with protection from dismissal. The penalty in this connection will be raised from seven day's salary to one month's salary. I hope that after this amendment, the improvement on legislation to be made next year by the Government can establish more firmly employment protection for pregnant employees.

As regards the difficulties faced by middle-aged women in seeking employment, the Second Reading of the section on age discrimination of the Equal Opportunities Bill can, to a certain extent, remove the difficulties faced by women over 30 years of age in finding jobs. I must stress that maternity benefits and employment difficulties are separate issues. I hope the legislation on age discrimination can be passed and those Members who vote for the passing of the Bill to raise the level of maternity leave pay will continue to support the enactment of legislation on full maternity leave pay, whether or not they will still be in this Council next Session.

Finally, I would like to discuss the topic of Private Member's Bill. When I joined this Council in February, many people doubted if I had sufficient time to introduce my Private Member's Bills and could succeed in having them passed. Now it is evident that time is enough. As to the level of support, although my proposals are not entirely accepted by all my colleagues in this Council, it can still be said that the introduction of the two Private Member's bills which deal with the Employment Ordinance for the first time, has taken labour legislation a step forward.

In recent years, Members of this Council have become increasingly active in introducing "Private Member's Bills", formerly known as "Private Bills", in this Council, signalling the end of an era of a completely executive-led government. Today, this Council no longer sits in the Chamber and wait for the Government to submit its bills. Instead, it takes the initiative to suggest topics for discussion in a bid to strive for the people's rights and interests. The main objective for Members to introduce Private Member's Bills is to press the Government to respond to the issues in question and to prevent it from resorting to "procrastination" any more. As a matter of fact, introducing Private Member's Bills is not an act of "overturning" the rules of the game in a campaign of confrontation. Instead, it aims at providing a basis on which Members, Government, concern groups and the public may have discussions in search of a result beneficial to the general public. Therefore, I urge the Government not to cling rigidly to the outdated concept of the colonial era that Private Member's Bills were "great scourges" to be totally blocked. On the contrary, Government should adopt an open attitude to respond positively to the appeals in the Private Member's Bills and establish a healthy interactive relationship with this Council. In fact, if Government can respond positively to

the appeals of Members, it can definitely race against Members and by introducing Government bills ahead of them in response to their concerns.

Finally, I would like to point out a very unreasonable development, that is, the stranglehold of the Basic Law over the power of the post — 1997 legislature. At present, Private Member's Bills with charging effect proposed by unofficial Members must obtain the approval of the Governor before her introduction. However, the provisions in the Basic Law even bar members of the future legislature from introducing bills relating to public expenditure and the structure, management and operations of Government. For bills concerning Government policies, the Chief Executive's written approval must be sought before their introduction. This proves that the provisions of the Basic Law impose constraints on Private Member's Bills which, in my opinion, will cause tremendous problems in future and can be regarded as having totally "disarmed" the legislature.

Finally, I would like to remind Hong Kong people that this piece of legislation will be gazetted on Friday and come into effect thereafter. That is to say, if a pregnant woman is halfway through her maternity leave, then part of that leave can earn two thirds of her wages while the other part 80% of her wages, because after Friday, these women will be entitled to 80% of their wages. I would also like to tell all elderly workers in Hong Kong that, after Friday, all employees who are over 65 years of age and have not less than five years of service will be entitled to LSP upon resignation.

Finally, I would like to thank Members, women's and labour groups for their support. In particular, I wish to give my thanks to "Fong Nui". Members should have been deeply impressed by her story of a 68-year-old. The Honourable Andrew WONG has even nicknamed her "Shek Kin" (the villain), so Members should have an even deeper impression on their minds. I would like to thank "Fong Nui" here for her support of the Bill. Thank you, Honourable Members. Thank you, Mr President.

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

Bill read the Second time.

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

**EMPLOYMENT (AMENDMENT) (NO.3) BILL 1995****Resumption of debate on Second Reading which was moved on 29 March 1995**

*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).*

**DIRECTOR OF THE UNIVERSITIES SERVICE CENTRE INCORPORATION  
(REPEAL) BILL 1995****Resumption of debate on Second Reading which was moved on 28 June 1995**

*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.

**EMPLOYMENT (AMENDMENT) (NO.2) BILL 1995**

Clause 1

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

*Proposed amendment*

**Clause 1**

That clause 1 be amended, by adding the following as the Chinese text of the clause -

**"1. 簡稱**

本條例可引稱為《1995年僱傭（修訂）（第2號）條例》。

*Question on the amendment proposed, put and agreed to.*

**Clause 2**

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 2 be amended as set out in the paper circulated to Members.

*Proposed amendment*

That clause 2 be amended —

(a) by deleting the clause and substituting -

**"2. General provisions as to  
employee's right to long  
service payment**

Section 31R(1)(b) of the Employment Ordinance (Cap.57) is amended by repealing "10" and substituting "5".

(b) by adding the following as the Chinese text of the clause -

**"2. 僱員領取長期服務金權利的一般條文"**

《僱傭條例》（第57章）第31R(1)(b)條現予修訂，廢除“10”而代以“5”。

*Question on the amendment proposed, put and agreed to.*

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

Clauses 3 to 6

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

*Proposed amendments*

**Clause 3**

That clause 3 be amended, by deleting the clause.

**Clause 4**

That clause 4 be amended, by deleting the clause.

**Clause 5**

That clause 5 be amended, by deleting the clause.

**Clause 6**

That clause 6 be amended, by deleting the clause.

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 3 to 6, as amended, proposed, put and agreed to.*

Long title

MR LEE CHEUK-YAN: Mr Chairman, I move that the long title be amended as set out in the paper circulated to Members.

*Proposed amendment*



**Long title and Enactment Formula**

That the long title and Enactment Formula be amended, by adding the following as the Chinese text of the Long Title and Enactment Formula —

"本條例草案

旨在

修訂《僱傭條例》。

由香港總督參照立法局意見並得該局同意而制定。"

*Question on the amendment proposed, put and agreed to.*

**EMPLOYMENT (AMENDMENT) (NO.3) BILL 1995**

Clause 1

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

*Proposed amendment*

**Clause 1**

That clause 1 be amended, by adding the following as the Chinese text of the clause -

"1. 簡稱

本條例可引稱為《1995年僱傭（修訂）（第3號）條例》。"

*Question on the amendment proposed, put and agreed to.*

Clause 2

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that clause 2 be amended as set out in the paper circulated to Members.

*Proposed amendment*

**Clause 2**

That clause 2 be amended —

- (a) by adding "and substituting "four-fifths of" "after" "two-thirds of"
- (b) by adding the following as the Chinese text of the clause -

**"2. 產假薪酬**

《僱傭條例》(第 57 章)第 14(3)(a)及(b)條現予修訂，廢除“三分之二”而代以“五分之四”。

*Question on the amendment proposed, put and agreed to.*

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

Long title

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move that the long title be amended as set out in the paper circulated to Members.

*Proposed amendment*

**Long title and Enactment Formula**

That the long title and Enactment Formula be amended, by adding the following as the Chinese text of the Long Title and Enactment Formula —

"本條例草案

旨在

修訂《僱傭條例》。

由香港總督參照立法局意見並得該局同意而制定。"

*Question on the amendment proposed, put and agreed to.*

**DIRECTOR OF THE UNIVERSITIES SERVICE CENTRE INCORPORATION  
(REPEAL) BILL 1995**

Clauses 1, 2 and 3 were agreed to.

Council then resumed.

**Third Reading of Bills**

MR LEE CHEUK-YAN reported that the

**EMPLOYMENT (AMENDMENT) (NO.2) BILL 1995 and****EMPLOYMENT (AMENDMENT) (NO.3) BILL 1995**

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.

MR ANDREW WONG reported that the

**DIRECTOR OF THE UNIVERSITIES SERVICE CENTRE INCORPORATION  
(REPEAL) BILL 1995**

had passed through Committee without amendment. He moved the Third Reading of the Bill.

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

Bill read the Third time and passed.

**ADJOURNMENT AND NEXT SITTING**

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Thursday, 13 July 1995.

*Adjourned accordingly at fifteen minutes past Eight o'clock.*

**WRITTEN ANSWER****Annex****Written answer by the Secretary for Works to Rev FUNG Chi-wood's supplementary question to Question 3**

The requested data for the years 1993 and 1994 are as follows:

	<i>1993 (cu. m.)</i>	<i>1994 (cu. m.)</i>
(a) Volume of construction waste generated	4150000	4540000
(b) Estimate vol. of construction waste that can be used for reclamation, if processed	3101000	3127000
(c) Actual volume of construction waste used for reclamation	1820000	1400000

The construction waste which is suitable for reclamation is very often mixed together with other waste which is unsuitable for reclamation. To separate the two completely will be very difficult and costly, but the Government will monitor the situation closely to ensure that the maximum use of construction waste for reclamation purposes would be made, taking into account the various physical and economical constraints.

