

**Ruling of the President of the Provisional Legislative Council
on the Amendments Proposed to the Legislative Council Bill
by the Hon Andrew WONG**

The Legislative Council Bill was presented to the Provisional Legislative Council on 20 August 1997. The second reading debate on the bill will be resumed on 27 September 1997.

2. Mr Andrew WONG has given notice to move amendments to the above-mentioned bill. I have ruled some of his proposed amendments out of order on the ground that they are outside the scope of the bill. Before I explain individually why some of the amendments are out of order, it would be helpful if I at the outset say what in my opinion the scope of the bill is.

3. The purpose of the bill, according to the long title, is to provide for the constitution, convening and dissolution of the Legislative Council of the Hong Kong Special Administrative Region (HKSAR); to provide for the election of Members of that Council; and to provide for related matters. Clause 2 of the bill also says that the “purpose of the Ordinance is to give effect to the provisions of the Basic Law relating to the Legislative Council”.

4. The term “Legislative Council” should include the first Legislative Council of the HKSAR. The “provisions of the Basic Law relating to the Legislative Council” include Article 68 which incorporates the “specific method for forming the Legislative Council and its procedures for voting on bills and motions” as prescribed in Annex II of the Basic Law. Annex II of the Basic Law stipulates that “in the first term, the Legislative Council shall be formed in accordance with the “Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR”” adopted by the National People’s Congress on 4 April 1990. In accordance with this decision, the Preparatory Committee for the HKSAR (Preparatory Committee) was set up in January 1996 to be responsible for preparing the establishment of the Region and to prescribe the specific method for forming the first Government and the first Legislative Council. The Preparatory Committee decided by resolution on 23 May 1997 the specific method for forming the first Legislative Council of the HKSAR. It is clear that the Preparatory Committee made its decision

with authority derived from Article 68 of the Basic Law, and its decision should be considered as part of the provisions of the Basic Law relating to the Legislative Council.

5. I am therefore of the opinion that the scope of the Legislative Council Bill is to give effect to the provisions of the Basic Law relating to the Legislative Council, which include Annex II of the Basic Law, the “Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region”, and the decision of the Preparatory Committee on the specific method for the formation of the first Legislative Council made on 23 May 1997.

6. In accordance with the Rules of Procedure of the Provisional Legislative Council, Committee stage amendments to a bill that are not within the scope of the bill, i.e. not relevant to the subject matter of the bill, are out of order and cannot be moved.

7. Mr WONG’s amendments that I have ruled out of order may be grouped as follows and my reasons for ruling them out of order are given against each group. Before I made the following rulings, I had taken into consideration the views of the Administration on the amendments, Mr WONG’s response to the views of the Administration, and the advice of the Counsel to the Legislature.

a) Amendments to clauses 3(1), 22A, 23, 24 and 46(8)

Articles 5 and 6 of the Preparatory Committee’s decision stipulate that 30 Members of the Legislative Council are to be returned from functional constituencies and for functional constituencies that are formed by corporate bodies, each corporate member should have one vote. The captioned amendments would have the effect of eliminating corporate electors in functional constituencies and are therefore not in line with the decision of the Preparatory Committee. Since the decision of the Preparatory Committee cannot be implemented, these amendments are not within the scope of the bill and therefore out of order.

b) Amendments to clauses 4(1) to (6), 5 and 6

Article 69 of the Basic Law says that the term of office of the Legislative Council shall be four years, except the first term which shall be two years. Article 9 of the Preparatory Committee's decision also reiterates that the first term of the Legislative Council is two years. The legal advisers of the Administration and the Counsel to the Legislature are of the opinion that the word "year" means a full year and therefore two years means two full years and not "about two years" or "not longer than two years". I accept their advice. The captioned amendments would have the effect of varying the duration of the first and subsequent terms of the Legislative Council and therefore contravene the Basic Law and the Preparatory Committee's decision; they are therefore not within the scope of the bill and out of order.

c) New clause 9B(1)

Article 72(4) of the Basic Law says that the President of the Legislative Council shall exercise the power and function of calling special sessions (meetings) during the recess. Subclause 1 of the proposed new clause removes the discretion of the President to call special sessions of the Council when the Council is in recess. This is not in line with Article 72(4) of the Basic Law and is therefore not within the scope of the bill.

d) Amendments to clauses 18 and 19

Article 5 of the Preparatory Committee's decision stipulates that 21 Members are to be returned from 20 **named** functional constituencies and that nine other Members are to be returned from nine other functional constituencies to be selected from 15 functional constituencies named in the same Article. Mr WONG's amendments to the captioned clauses seek to create five functional constituencies each having six seats. The functional constituencies proposed by Mr WONG and the number of seats in each functional constituency are different from those named by the Preparatory Committee. I am of the opinion that these amendments cannot

give effect to the decision of the Preparatory Committee and therefore are not within the scope of the bill.

e) Amendments to clause 35(2)(f) & (3)

Article 67 of the Basic Law says that “permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 per cent of the total membership of the Council”. To give effect to this provision, the Preparatory Committee has offered in Article 8 of its decision three options to the HKSAR. The effect of the amendments proposed by Mr WONG, if passed, will disable all the people who meet the description set out in Article 67 of the Basic Law to be nominated as candidates in functional constituencies elections, or elections in geographical constituencies, or elections by the Election Committee. I do not consider these amendments to be in line with any of the three options proposed in Article 8 of the Preparatory Committee’s decision and therefore have ruled them out of order.

8. I have ordered that the amendments mentioned in paragraph 7 above be returned to Mr WONG.

Rita FAN
President, Provisional Legislative Council

24 September 1997