

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 3 May 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.

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 JAMES DAVID McGREGOR, O.B.E., I.S.O., 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 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 ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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**

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

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

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ROGER LUK KOON-HOO

**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 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

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

MR PETER LAI HING-LING, J.P.  
SECRETARY FOR SECURITY

MR KWONG KI-CHI, J.P.  
SECRETARY FOR THE TREASURY

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

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR RICKY FUNG CHOI-CHEUNG

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>
Post Office (Amendment) Regulation 1995 .....	151/95
Census and Statistics (Annual Survey of External Investments in Non-Manufacturing Undertakings) (Amendment) Order 1995 .....	155/95
Rules of the Supreme Court (Amendment) (No. 2) Rules 1995 .....	156/95
Organized and Serious Crimes Ordinance (82 of 1994) (Commencement) Notice 1995 .....	157/95

## Sessional Papers 1994-95

- No. 81 - Traffic Accident Victims Assistance Fund Annual Report by the Director of Social Welfare Incorporated for the year from 1 April 1993 to 31 March 1994
- No. 82 - Regional Council Revised list of works annexed to the Regional Council's Revised Estimates of Revenue and Expenditure for 1994-95

**ORAL ANSWERS TO QUESTIONS****Qualifications for Civil Service Employment**

1. MR SIMON IP asked: *In view of the Government's recent announcement that recognition of academic and professional qualifications for civil service employment will be broadened, will the Government inform this Council whether it has any plans to recognize only those academic and professional qualifications, when employing professional officers for professional posts, which are recognized by their relevant professional bodies in the territory for private practice?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, let me make it clear at the outset that the announcement referred to in this question was about appointment criteria for posts requiring a general degree. The announcement did not relate to criteria for appointment to posts in the professional grades in the Civil Service. It is not our intention to change arrangements in respect of professional qualifications which are matters for the relevant professional bodies; arrangement which are well-established and preserved in Article 142 of the Basic Law.

As for general degrees, we have removed previous reference in our recruitment advertisements to British degrees. The guiding elements of our assessment of non-Hong Kong qualifications are as follows:

- (a) we must be absolutely satisfied that the qualification in question is at least as good as the comparable Hong Kong qualification for the purpose of recruitment to the Civil Service;
- (b) we examine each qualification on a case-by-case basis. We may accept some qualifications but not others from a university. And we may accept a certain qualification only if received after a certain date in a case where the standard of a course has been raised above our threshold between one academic year and the next;
- (c) no preference is given to qualifications from a particular country or group of countries. We use the same test for all qualifications. However, we have had difficulties in the past assessing qualifications from some countries. And it was for this reason that we recently enlisted the help of the Hong Kong Council for Academic Accreditation. Since its founding in 1990, the Council has built up an extensive network of international contacts with accreditation bodies and academic institutions. With the Council's help, we are strengthening our system and believe we will shortly have the information necessary to recognize at least some degrees from non-English speaking countries that we have not felt able to recognize in the past. I expect this to include some qualifications obtained in China.
- (d) Accepting such qualifications will allow those who have obtained them to participate in the civil service recruitment process, provided of course that they are Hong Kong residents. They will need to pass other tests, including basic physical fitness and language proficiency in Chinese and English, as well as a rigorous assessment of suitability and potential in competition with other applicants.

The steps we are taking to strengthen our assessment of non-Hong Kong degrees are a response to the still small but growing number of Hong Kong youngsters going abroad to study, not just to traditional destinations in the Commonwealth and North America, but to universities in this region.

MR SIMON IP: *Mr President, I think the Secretary and I are talking at slightly crossed purposes. Although my question is prefaced by a reference to the Government's recent announcement, it is clear that my question was directed really at professional grades and professional qualifications for professional posts. So the question really is whether the Government has any plans to recognize only those academic and professional qualifications, when employing professional officers for professional posts, which are recognized by their relevant professional bodies in the territory for private practice? The reason I ask this question is that I understand that in relation to recruitment in the public sector for professional posts the Government recognizes professional qualifications, some of which are not recognized by the professional bodies in Hong Kong for the purpose of private practice. That is the thrust of my question.*

SECRETARY FOR THE CIVIL SERVICE: Mr President, the practice that we have in place for recruiting professional officers to professional ranks and grades in the Civil Service will not be affected in any way by our announcement of assessing non-Hong Kong, non-British, non-Commonwealth degrees which may be recognized for the purpose of appointment to grades requiring a general degree.

PRESIDENT: Mr IP, not answered?

MR SIMON IP: *I think we are still slightly talking at crossed purposes, Mr President, because I am asking whether the Government has any plans to change the professional qualifications for the purpose of appointing officers to professional grades in relation to qualifications which only the professional bodies in Hong Kong would recognize for private practice? As I understand it, there are qualifications which the Government accepts for professional appointments. For example, in the Attorney General's Chambers, they employ legal officers with qualifications which are not recognized in Hong Kong for private practice. There may be others as well in other professional posts. That is the thrust of my question. Are there any plans for any change?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, whether we are at crossed purposes or otherwise, I am not sure. But I feel that my answer to the last question was absolutely clear in that whatever our practice may be in the future for admission to posts requiring general degrees, we are not changing our existing practice with reference to professional grades. But I think as for the specific example mentioned in the Attorney General's Chambers, may I defer to the Attorney General.

PRESIDENT: Attorney General, do you wish to answer?

ATTORNEY GENERAL: Mr President, thank you. Mr IP is quite right, of course, that lawyers from jurisdictions whose qualifications are not recognized for entry into private profession in Hong Kong are permitted to be employed in my Chambers. But Mr IP will recall that the conditions under which they are employed and the jurisdictions from which they are drawn are described and laid down in the Legal Officers Ordinance and Legal Practitioners Ordinance, as amended, I think two or three years ago, by this Council. So the parameters have been fixed by this Council.

MR EDWARD HO: *Mr President, will the Secretary inform this Council apart from the Legal Department, whether qualifications for recruitment to professional grades are in line with those accredited by corresponding professional bodies?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, I have just confirmed in my previous replies that there are no plans to change our current practice for recognizing professional qualifications for the purpose of appointment to ranks and grades requiring professional qualifications within the Civil Service.

PRESIDENT: Mr HO, not answered?

MR EDWARD HO: *Mr President, in that case, can the Secretary confirm that the present practice is that qualifications will be in line with those accredited by local professional bodies?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, as far as I am aware and except for those exceptions which have been explained by the Attorney General, that is the practice.

MR PETER WONG: *Mr President, to what extent will the Hong Kong Council for Academic Accreditation's information relating to overseas degrees be made available to other legitimate users in Hong Kong?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, the Hong Kong Council for Academic Accreditation does provide a service to the public. In other words, members of the public who have degrees which are not granted in Hong Kong and who wish to find out whether or not they are comparable to a Hong Kong degree, can approach the Council and seek advice.

## **Patients with Terminal Renal Failure**

2. DR HUANG CHEN-YA asked (in Cantonese): *As patients with terminal renal failure have to receive Erythropoietin injections as a treatment for anaemia, will the Government inform this Council:*

- (a) *of the number of patients with terminal renal failure at present; of these, how many have to receive such injections;*
- (b) *of the average annual expenditure on such treatments over the past three years;*
- (c) *whether any patients are required to pay for the injections; if so, what the number of such patients is; and*
- (d) *if the answer to (c) is in the affirmative, whether consideration will be given to adopting other kinds of medical treatments for patients who cannot afford to pay for the injections; if so, what the costs of such kinds of treatment are?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, as at 31 December 1994, about 2 000 patients suffering from end stage renal failure were provided with dialysis treatment in our public hospitals, of whom some 320 were receiving special anti-anaemic injections. The average annual expenditure incurred by the Hospital Authority in providing such injections over the past three years is \$3.13 million.

About half of the 320 renal patients receiving special anti-anaemic injections are contributing towards part or full cost for their treatment. This has been a historical practice when new treatment modalities using expensive drugs were launched in our public hospitals.

In line with the policy that no one should be prevented from obtaining adequate medical treatment through lack of means, patients who cannot afford such injections can apply for waivers through the medical social workers. Furthermore, we are conducting a comprehensive review in conjunction with the Hospital Authority to rationalize the fee structure in public hospitals.

Patients with end stage renal failure who suffer from anaemia could be given other types of treatment such as periodic blood transfusion, the overall cost of which is much less than special anti-anaemic injections. The type of treatment to be used should however be determined by the medical needs of patients as well as the efficacy of the treatment modality prescribed.

DR HUANG CHEN-YA (in Cantonese): *Mr President, if these patients receive such injections, their symptoms of anaemia can be alleviated. As their health improves, they can actually find a job. Hence, not only will their living standard be enhanced, their financial situation will also improve. According to statistics provided by the Government, if a patient has to pay for the injections they receive, he or she has to pay almost \$20,000 a year. \$3.13 million is a small sum to the Government, but it would be very hard on these jobless patients if they have to pay \$20,000 a year as medical expenses. Can the Government immediately promise these patients that such injections would be given to them free of charge rather than having to wait for the completion of the review on the fee structure before the question of free injections for these patients will be considered? Many patients could probably not wait that long; they might have already died of illness by then.*

SECRETARY FOR HEALTH AND WELFARE: We have a system of waivers of fees for patients in need. If any patient requires this assistance there is a procedure in all public hospitals for the patient to see our medical social workers, so that any families or families of patients can approach the social workers for application to waive various fees.

DR LEONG CHE-HUNG: *Mr President, the Government has repeatedly said that the policy is no one would be prevented from obtaining adequate medical treatment through lack of means. The Government has also mentioned that health care in Hong Kong is heavily subsidized in that hospital charges are fixed at HK\$60 a day and out-patient charges are fixed at something in the region of HK\$20 a day, and yet we see a group of patients who will be charged for things like needed injections. The Secretary has also mentioned that a review is being done and I understand that this review has been going on for quite some time. Will the Administration inform this Council when this review will be completed and give us an idea of how the Government would move towards such a situation where the guideline of nobody should be prevented from obtaining adequate medical treatment through lack of means is really taken into consideration?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, we aim to complete this review by the end of the year.

DR CONRAD LAM (in Cantonese): *Mr President, as we all know, many patients in Hong Kong like to receive injections. They tend to think that if they have not received any injection, they have not really seen a doctor. In fact, when patients with terminal renal failure went to see their doctor for a follow-up and found that other patients with similar illness looked better after receiving special anti-anaemic injections, they would blame their doctor for not giving them such injections. To avoid these unnecessary complaints, can the*

*Government tell us what kind of guidelines a doctor should follow in deciding when to give injections to one patient and not to another; for example, how serious a patient's anaemia symptoms have to be before injection becomes necessary? That would make patients realize when it is necessary for them to have injections and even if the Government does not have the money, they can raise enough money to have injections from a private medical practitioner. In this way, patients would not have any misunderstanding about the situation and think that government doctors would be unwilling to give them injections and they therefore have to raise money to receive injections from private medical practitioners. I believe that would help patients understand how their illness should be treated.*

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR HEALTH AND WELFARE: Mr President, it is a duty and responsibility of all the doctors in the public sector to explain to patients the type of treatment that is most efficient for the particular illness or injury required, and it is the duty of the medical practitioner to explain as fully as possible to each patient about the use of different types of treatment for different patients. Each patient's needs are assessed on their own merits. It is not the wish of the doctor to compare one patient's needs with another. It is the duty of each doctor to explain to each patient how their case should be treated.

MR MICHAEL HO (in Cantonese): *Mr President, it was mentioned in the second paragraph of the reply that patients are contributing towards part or full cost for their treatment. The costs were only slightly more than \$3 million over the last three years, which means only slightly more than \$1 million per year. The reply also mentioned that according to the present policy, patients have to contribute to the costs of new, expensive drugs. Mr President, I hope the Government can tell us how it would define "new, expensive drugs" under the policy. In fact, \$1 million was a very small sum when compared with the total expenditure of the Hospital Authority which was \$17.1 billion.*

SECRETARY FOR HEALTH AND WELFARE: The current review of the fee structure for different types of consumables will take into account all the factors that the Honourable Michael Ho has listed, that is, the types of consumables that should be charged, what should the charge be, whether it should be a 100% charge, whether it should be a part charge or part waiver. All these will be taken into account in the current review of the fee structure.

PRESIDENT: Mr HO, not answered?

MR MICHAEL HO (in Cantonese): *Mr President, my question was: how would the Government define "new, expensive drugs"? Mr President, I hope the Government will tell us how much a drug would have to cost before it would be regarded as "expensive", hence falling within the present policy.*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I think it will be premature for me to conclude at this stage before the review exercise has been completed.

### **Juvenile Crime**

3. MR JAMES TO asked (in Cantonese): *Regarding the Research Report on the Social Causes of Juvenile Crime which has recently been completed, will the Government inform this Council of the policy to be adopted and the amount of additional resources to be allocated to ameliorate the present serious situation of juvenile delinquency?*

SECRETARY FOR SECURITY: Mr President, the research into the social causes of juvenile crime, commissioned by the Fight Crime Committee and undertaken by the Social Sciences Research Centre of the University of Hong Kong, has recently been completed. The Fight Crime Committee was apprised of the findings of the research at its meeting last Saturday. The conclusions of the research project are wide-ranging, covering educational, social service, police, and correctional service aspects of our policy. These will be examined by the concerned policy branches and departments in detail in the coming months, with a view to recommending specific courses of action. It is the Administration's intention to make public the research report as soon as possible, so as to obtain feedback from this Council, other concerned boards and committees, and the community generally as part of this detailed examination process. Until this examination is completed, it is not possible to quantify the precise resource implications.

MR JAMES TO (in Cantonese): *Mr President, in fact, back in 1990, the Central Fight Crime Committee was already concerned about the problem of juvenile crimes. Each time when the subject was raised by the public, the Government simply said that it was conducting a research on the social causes of juvenile crime and that it was going to consider how the recommendations could be put into practice after the report was completed. Over the past five years since 1990, the Government has never relied solely on the Report on the Social Causes of Juvenile Crime. Now that the report has been completed, insofar as the implementation of policies and allocation of resources are concerned, will the Government regard the problem of juvenile crimes as a matter of first priority and put in more resources to deal with it, just like dealing with the drug problem, on which the Governor has undertaken to put more emphasis?*

SECRETARY FOR SECURITY: Mr President, let me put it this way. Of course, the question of juvenile delinquency is one which the Government is very concerned about; if only because of the fact that the number of juveniles and young persons arrested has increased over the years. However, I stress that we should also look at the seriousness of the situation in the context of the overall crime situation in Hong Kong. To take one example, while the absolute number of juveniles and young persons arrested has increased from 11 489 in 1981 to 16 205 in 1994, these numbers, however, could be presented in a slightly different picture if they are shown against the total number of offenders arrested. In 1981, the number of juveniles and young persons arrested accounted for 37.1% of the total number of offenders arrested. In 1984, the number of juveniles and young persons arrested accounted now for 32.6% of the total number of offenders arrested. In other words, the percentage has gone down.

That said, however, I repeat what I have said in the beginning, that the question of juvenile crime is a matter over which the Government remains concerned and obviously we will give due emphasis to the recommendations of the research into the social causes of juvenile crime in formulating our future policy direction and in considering the question of what other additional resources may be required to tackle this problem.

MRS SELINA CHOW (in Cantonese): *Mr President, the Honourable James TO has just now raised the point of time. In fact, the time for the preparation of this report is unacceptably long. In his answer, the Secretary said that he would make public the research report as soon as possible, can he specify how "soon" it will be? In what way is the Government going to conduct consultation? And how much time does it estimate to take for the consultation exercise? Will it eventually show that the Government is not sincere in undertaking this task, that is, conducting research on the one hand and adopting other policies in practice on the other?*

SECRETARY FOR SECURITY: Mr President, I should just make the point in relation to the comment that this research project has taken a long time. It has of course taken a long time if only because it is a very comprehensive and detailed research project. It involves something like 2 327 questionnaires and interviews with secondary school students and young persons and another 373 persons who were known to be offenders and these persons have to be interviewed. The data collected has to be analyzed and then the final report has to be produced. We have of course just seen that the research project is completed. I did say in my main answer to the Honourable James TO's question that we will make public the research report as soon as possible. I would hope that we would be able to do so before the end of this month.

MR JAMES TO (in Cantonese): *Mr President, in his answer to my supplementary question, the Secretary has quoted a series of figures. Judging from his words, I have got the impression that he does not admit the increasing gravity of the problem of juvenile delinquency in recent years. He quoted some figures and by that he even thought that the number has gone down. I would like to ask the Secretary, did he or his staff ever look into the problem of juvenile crime in terms of quality. For example, are crimes committed of more serious nature? This is the general conclusion reached by the public at large. Taking the quantity alone, one may not be able to see the significant change in trend. I hope the Secretary could make it clear once again whether the Government thinks that the problem of juvenile delinquency has become more serious over the past years.*

SECRETARY FOR SECURITY: Mr President, I have repeated the statement that the Government remains concerned over the question of juvenile crime. I have repeated that statement twice in answer to the supplementary question by the Honourable James TO. However, as I also mentioned, figures themselves are facts and if there is any doubt about the figures, let me just quote another one. In the first quarter of 1995, the number of juveniles and young persons arrested was 3 844. This compares, for example, with the January to March quarter in 1994 whose figure was 4 174. So the actual number of people arrested in the first quarter of this year, as compared with the first quarter of last year, has actually gone down. I do not, I repeat, I do not use these figures to justify any degree of complacency, nor am I using these figures to show that the Government believes that the question of juvenile delinquency is not a serious issue. I repeat a third time that the Government remains concerned over the question of juvenile delinquency.

MR ALBERT CHAN (in Cantonese): *Mr President, drug abuse and trafficking in dangerous drugs are relatively serious when compared with various juvenile crimes, particularly in the new towns. Will the Secretary inform this Council, in view of the constant and significant increase in drug abuse and drug trafficking amongst the young people in the last few quarters, what policies and measures will the Government take to prevent the young people of Hong Kong from coming under the pernicious influence of drugs?*

SECRETARY FOR SECURITY: Mr President, the policies and measures that the Government takes to combat the problem of drug abusers, particularly amongst the young, is the subject of a Legislative Council question earlier this year. I refer the Honourable Member to the answers I gave at that particular time. Since then, of course, the Governor has conducted a summit meeting on the question of drugs, particularly young drug abusers, and has announced a programme of action. Suffice at this stage just to repeat the key points of the Government's policy against drugs which is, a multi-disciplinary approach

which covers the areas of crime prevention and detection, preventive education and publicity and rehabilitation and treatment.

MR ERIC LI (in Cantonese): *As far as we know, the Security Branch has never come up with a clear and long-term policy on youth. Since the report has been completed, apart from those short-term measures in support mentioned just now, will the Government draw up a clear policy for the young people in order to help reduce the number of serious crimes committed by young people, so as to be in line with the Youth Charter of which the Government is one of the signatories, and to cope with the needs of the young people?*

SECRETARY FOR SECURITY: Mr President, my responsibilities cover the area of public order and public safety. My responsibilities do not, unfortunately, cover the whole question of our policy on youth. However, one of the bodies to which we will be sending a copy of the research report is of course the Commission on Youth, and certainly I believe the Administration will be very interested in the views and comments and advice of the Commission.

MRS SELINA CHOW (in Cantonese): *The Secretary has not answered my question fully. In what way and for how long is the Secretary going to consult public opinions on the report? After such a long time has been spent on conducting survey before coming to a conclusion, would it be the case that the Government simply ignores other opinions and has in fact been proceeding with some other policies? In other words, is the Government now proceeding with these policies without any consultation at all?*

SECRETARY FOR SECURITY: Mr President, I do not have a fixed time scale for conducting the detailed examination of the recommendations arising from this report. As regards the question of how long we are going to give to hear the views of the concerned boards and committees and indeed the community as a whole, again I remain open-minded on this. On the third part of the Honourable Selina CHOW's question, I will simply answer it this way. The recommendations and findings of this very comprehensive research will of course cover in some areas, policies and practices which are already adopted by the Administration currently. For example, they cover the area of the Police Superintendent's Caution Scheme. In other respects, they cover new ideas which we have not hitherto implemented. So in respect of new ideas, we will be looking at whether or not they are practicable in light also of comments from this Council and other related bodies. In respect of policies and practices which are already adopted by the Administration, we will of course be looking at whether any additional actions or resources need to be undertaken. Those policies and practices, which are already adopted and which are touched on in

this particular report, were adopted after receiving the views and comments of the community and indeed this Council.

### **Promotion of the Basic Law**

4. MR TANG SIU-TING asked (in Cantonese): *In view of the fact that the territory's sovereignty will revert to China in less than three years, will the Government inform this Council whether:*

- (a) *it has formulated any publicity plan to promote widely the Basic Law among the public in a systematic manner; if so, what the details of the plan are; if not, why not;*
- (b) *the Education Department will include the provisions of the Basic Law in the secondary school curriculum before 1997; if so, what the progress is; and*
- (c) *non-government organizations may seek financial assistance from the Committee on the Promotion of Civic Education to promote civic education activities relating to the theme of "the reversion of the territory's sovereignty to China and the promotion of the Basic Law"?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, the importance of the Basic Law is well recognized by the Government. Efforts are made to promote awareness of the Basic Law in the context of school education, in our promotion of Civic Education and also our training for civil servants.

In Hong Kong, the Committee for the Promotion of Civic Education is responsible for the promotion of civic education. This involves enabling the public to have a better understanding of the social, political, economic and legal systems under which Hong Kong is governed. And hence, an important objective for the Committee, therefore, is to promote public awareness of the Basic Law and the guarantees that it provides for Hong Kong's systems and way of life.

The Committee has always participated in Basic Law programmes. Since 1991, it has sponsored through its Community Participation Scheme, a number of worthwhile Basic Law projects put forward by community groups and non-government organizations. In 1995-96 another such project will receive the Committee's sponsorship for organizing more Basic Law programmes and bids are welcome from other organization as well.

Since the Basic Law is due to come into effect in a little over two years, the Committee intends to step up its promotional efforts in cooperation with other groups and the media. Ideas being considered include producing a series of three-minute television programmes introducing the Basic Law.

In the context of school education, the Basic Law has been included in the secondary school curriculum since 1990 in subjects like Social Studies, Economic and Public Affairs, Government and Public Affairs. The Education Department has also developed a teaching kit on the Joint Declaration and the Basic Law to assist teachers in presenting the two documents at secondary school level.

DR TANG SIU-TONG (in Cantonese): *Mr President, in the third paragraph of the Government's reply, it is mentioned that since 1991, the Committee on the Promotion of Civic Education (CPCE) has been sponsoring through its Community Participation Scheme a number of worthwhile Basic Law projects put forward by community groups and non-government organizations, and that other bids are welcome. I would like to ask: How many organizations have held such projects during the five-year period between 1991 and 1995? How many such projects have been held and how much money has been spent? Also, what are the requirements for other organizations should they wish to bid for sponsorship?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I can provide the answer in writing (Annex I) if the honourable Member wishes to know the details. However, to put it simply, since the Basic Law is concerned with the present spirit of rule of law of Hong Kong as it perpetuates and protects our existing system, the CPCE has in the past few years focusing on introducing the existing legal system of Hong Kong, on the protection of human rights and other aspects, and on introducing how the Basic Law can be further promoted with reference to the present system and how protection can be strengthened. We have organized a lot of activities under this proposition.

As to sponsorship for the relevant schemes, the CPCE has allotted more than \$250,000 for non-government and other organizations over the past few years for organizing activities which include sponsored publicity programmes concerning the Basic Law and a number of Community Participation Schemes. The two schemes that are better known are organized by the joint efforts of the Joint Committee for the Promotion of the Basic Law of Hong Kong and the CPCE. One of these is "Futures of Hong Kong - 94 Carnival" which was held last December, and the other one is a similar promotion activity for the Basic Law which was held in the Mid-Autumn Festival last year.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, in the reply by the Secretary for Home Affairs it was mentioned that the CPCE would be producing television programmes to introduce the Basic Law. There was a programme produced by RTHK and its subject matter was the Basic Law. In that programme, both the presenters and other people involved in the programme held a doubtful and negative attitude towards the Basic Law. As RTHK is the official radio station of the Government, will the Government make an effort to ensure that staff of either the television or the radio section will be more positive in promoting the Basic Law, instead of holding a negative attitude?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, first of all, I have to state clearly to Members that I am not aware myself of the phenomena described by the Honourable CHIM Pui-chung just now. In my view, both the Government and other organizations are being positive in the promotion of the Basic Law, and we will continue to be as positive as we are in the promotion of the Basic Law. In fact, we have had some experience in this respect. Perhaps Members will remember that a television station produced for us a series of 26 three-minute short films to present the law and order as well as human rights situation of Hong Kong. Therefore, we have had experience in this respect. At present, it is merely that the subject has been changed to the Basic Law to address to the various aspects I have just mentioned, and it is intensified for more people to know about it.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, just now the Government has revealed that a mere sum of \$250,000 was allocated over the past few years for the indirect promotion of the Basic Law. Will the Government set up a Basic Law promotion fund to sponsor and encourage more positively non-government organizations to promote the Basic Law?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, we do not intend to set up a special fund because we feel that existing arrangements are already capable to cope with the need in this respect. I have just mentioned that matters in this respect are mainly co-ordinated by the CPCE. In fact, there are already many government departments taking part directly in the Committee, these include the Home Affairs Branch, the Legal Department, Radio-Television Hong Kong, the Information Services Department, the Social Welfare Department, the Education Department and the Police Force. Therefore, the Government has actually put in a great deal of resources. We all know that the appropriation this year for the CPCE amounts to \$11 million for the publicity activities on various areas of systems of the Hong Kong Government, human rights as well as other aspects of the Basic Law. Therefore, there is no question of funding as we have had sufficient fund for the necessary work in this respect.

DR CONRAD LAM (in Cantonese): *Mr President, I think we all agree that Hong Kong people should understand every aspect of the Basic Law. We all know that the Basic Law does have grey areas in some provisions. For example, with a certain matter, the Hong Kong Government's interpretation is that it is in line with the Basic Law, but according to China's interpretation it is not. In this respect, I would like to raise a point concerning the principle: While the Government welcomes the application for funding by some organizations for the education of the public to have a better awareness of the Basic Law, should a particular activity result in making members of the public aware of the inadequacies of the Basic Law, or the Basic Law's grey areas that are in need of clarification, an activity known as "Why have people burned the Basic Law?" being one of the examples, would the Government approve of this kind of applications? If not, why not?*

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR HOME AFFAIRS (in Cantonese): *Mr President, it is tempting for me to say that this is a hypothetical question and therefore I do not have to answer. However, I think it is not satisfactory for me to say so. Of course there are some grey areas in the Basic Law, but we must understand that the Basic Law is the law applicable to Hong Kong after 1997. Concerning the interpretation of the Basic Law, the Basic Law has already stated in detail how its provisions are to be interpreted. People from various sectors have already raised these matter for discussion before the Basic Law comes into effect. But this is not a major area of our work. Just as I have said, our work centres on making the public know how the Basic Law will affect their daily life and how the Basic Law will safeguard the existing systems and life style after 1997.*

MR JAMES TO (in Cantonese): *Mr President, in his main reply the Secretary for Home Affairs said that the public's awareness of the Basic Law is promoted through Civic Education, training for civil servants and school education. Such work is done by the CPCE through sponsorship, but the CPCE may not go and find out which Basic Law related activities will help people have a correct understanding of the Basic Law. As regards the training for civil servants, there is the question as to which are the grey areas, or when would the understanding of the Basic Law by the Hong Kong Government differ from that by China, or when would the views of some scholars differ from that of jurisprudence experts, so which set of views is being adopted by the Government for training purposes? Or is it the case that the Government has presented all the arguments and various views to the civil servants, so that they have an awareness of the Basic Law in all aspects including the grey areas?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, on the training for civil servants, the Government has been holding seminars for civil servants since 1990, by means of which they are made to be aware of the various aspects of the Basic Law. To date, 14 seminars have been held by the Government with 960 officers from various levels having taken part in. We estimate that in 1995-96, more seminars will be held. At present, it is planned that 15 seminars will be held for 1 500 more officers. As the number of seminars is limited, the number of people participating is also limited. In view of this, we are considering the production of a set of self-teaching material, such as video tapes, so that officers may improve their awareness of the Basic Law in their leisure time. We hope that more officers can be made to understand the Basic Law well in this way.

THE PRESIDENT: Not answered Mr, TO?

MR JAMES TO (in Cantonese): *Mr President, the Secretary for Home Affairs has not answered my question. My question was that: Should there be any grey area wherein the interpretation of the Basic Law by the Hong Kong Government may differ from that by China, or people in our community have different interpretations, which one of these will the Government inform the civil servants of? Will it inform them of all the interpretations? I was not asking how many people have participated in the seminars and how many seminars have been held.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, since the Secretary for the Civil Service happens to be present here, can I ask the Secretary for the Civil Service to answer this question?

PRESIDENT: Are you able to answer, Secretary?

SECRETARY FOR THE CIVIL SERVICE: Mr President, these training courses are at two or three different levels. At the first level, it helps civil servants to understand the Basic Law as it stands. In other words, what it does contain and the spirit behind the Joint Declaration and the Basic Law. At a different level we invite people - academics, political figures - holding different views to come and hold seminars. So I am quite sure that we are exposed to views that are diverse, or that are at odds with each other, and I think these are very useful thought-provoking seminars.

## Appointment of Heads of Departments

5. DR SAMUEL WONG asked: *Following the recent announcement of the next appointment to the post of Commissioner for Transport, the new appointee said on television that she had no previous experience in transport matters but that she was willing to learn. In this connection, will the Government inform this Council:*

- (a) *whether it is now the policy to treat D6 posts as training posts; and*
- (b) *how long on average an appointee with no previous specialist experience is expected to take to learn sufficiently about the subject so as to properly discharge his duties as a head of department requiring specialist attributes?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, it is certainly true that Mrs Lily YAM Pui-ying, whom we have announced to be the next Commissioner for Transport, has no direct experience in transport matters. What she has is a great deal of experience relevant to the duties of Commissioner for Transport. To require directly relevant professional experience for appointments to Head of Department positions would make it a very inflexible system. If anything, we need to move in the direction of a more open directorate.

In the transport field, we have seen time and again that issues can become items of heated public debate very quickly and that political sensitivity and presentation skills in addition to management capabilities are key attributes in the Commissioner for Transport. It was for that very reason that the post was designated as an Administrative Officer post in 1981.

As to the two specific elements to this question:

- (a) First, let me say that it is neither our policy nor practice to treat D6 posts as training posts. Our policy, as always, is to find the best officer for the job. It is however often the case that officers selected to fill such posts are those with potential to rise higher, and to that extent, the experience gained in D6 posts will provide valuable training for the future; and
- (b) as to how long it would take on average for an appointee with no previous specialist experience to settle into the post, this depends very much on the officer and the post in question. Given that the main attributes of a Head of Department are leadership, the management of resources, political acumen, and presentation skills should come quite naturally to an appointee from the Administrative Service who would have acquired these qualities from the broad range of postings he or she would have had. We

would expect such an officer to “hit the ground running” and to be fully effective within a short time.

DR SAMUEL WONG: *Mr President, the Secretary for the Civil Service replied that the post of Commissioner for Transport was designated as an Administrative Officer post in 1981. Could we be informed that there has never been an exception to this rule since 1981, and that it would imply that the departmental officers or professional officers in that particular department are in dead-end jobs with no prospect of promotion beyond Deputy Commissioner level, no matter how good they are or how much they were further trained administratively?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, it is a rather long question and I will try my best to remember the various aspects of this question. First of all, the recent appointees to this post have been drawn entirely from the Administrative Service. It is certainly not true that this post is necessarily a preserve for the Administrative Officer grade. We review on a regular basis through directorate succession planning as how best all Head of Department posts should be filled. And indeed, the filling of Head of Department posts is not a simple matter. It involves the convening of a Senior Postings Board chaired by the Chief Secretary, and all officers, including those from within the Department, are considered. And in this case, definitely, officers from different professional streams within the Department have been considered and I think in the final analysis we felt that at this time, given the political sensitivity of the post, that an Administrative Officer would be the best choice.

MRS MIRIAM LAU: *Mr President, last year in his Policy Commitments, the Secretary for the Civil Service announced that he had completed a comprehensive review of human resource management in the Civil Service and intended to introduce improvements in the area of promotion. Can the Secretary inform this Council what specific improvements he plans to introduce in the area of promotion to Head of Department posts with substantially professional and specialist duties?*

PRESIDENT: Are you able to answer that general question, Secretary?

SECRETARY FOR THE CIVIL SERVICE: Mr President, let me attempt to answer this question by saying, first of all, we have intensified directorate succession planning by making it an annual exercise instead of biennial. Secondly, I have shortened the time frame from a five-year forecast to a three-year, which means that we could better focus on the immediate time frame. Thirdly, we have enhanced the planning for training. In other words, for officers who are identified as having potentials for the post of director or head

of department, we would decide what training they should have in order to enhance their leadership skills, and that is what we are doing. We also work out various ways of secondment, of sending departmental officers to Secretariat Branches whereby they could acquire more administrative skills, for example, in the management of resources and also to get to know the system of the Government more generally.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, we all know that most directorate, officers except the Attorney General who is a lawyer himself, have to possess presentational skills in answering Members' questions. In the second paragraph of his reply, the Secretary mentioned that political acumen is one of the main attributes of a Head of Department. Could the Secretary explain to us what that is?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, political acumen is a quality which is more difficult to define but easier to demonstrate in practice, and I think my colleagues on this side of the House have demonstrated it time and again.

DR SAMUEL WONG: *Mr President, the first part of my question was that whether it had been the rule since 1981 that all appointees to that post were Administrative Officers?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, off-hand I cannot remember whether that is the position. I will check on who have been Commissioners of Transport since 1981 and I will supply the Honourable Member with a reply. (Annex II)

### **The 1996-97 Budget**

6. MR FRED LI asked (in Cantonese): *It was reported that in his recent meeting with the Chinese Foreign Minister, the British Foreign Minister indicated that the Hong Kong Government would consult the Chinese government on the 1996-97 Budget. In this connection, will the Government inform this Council:*

- (a) *whether the Government has changed its stand regarding its reiterations that there was no need to consult the Chinese side on the 1996-97 Budget; and*
- (b) *if the answer to (a) is in the affirmative, what are the reasons for changing its previous stand; and what the specific mechanism for consultation will be?*

FINANCIAL SECRETARY: Mr President, I am glad to be able to reassure Mr LI that the answer to the first part of his question is “No”. As I have already made clear on the record, in response to media enquiries on 20 April, there was no truth whatsoever in the news report that there had been a change in our stance over discussions with China over the 1996-97 Budget.

We have handed over to the Chinese side a detailed programme of proposed activities. One stage of this programme involves a Chinese team observing the planning and preparation process for the 1996-97 Budget. A later stage involves consultations on the 1997-98 Budget.

We hope to hold further meetings with the Chinese side at mutually convenient times as soon as possible.

As there is no change in our position, the second part of Mr LI’s question does not apply.

MR FRED LI (in Cantonese): *Mr President, emphasizing that the preparation of the 1996-97 Budget is closely related to that of the 1997-98 Budget, the Chinese side has asked the British side to consult it fully before the 1996-97 Budget is finalized and wanted the 1997-98 Budget to be formulated jointly by both sides with the Chinese side taking the lead. This is a very clear position to which, I believe, the British side will not accede. From the reply of the Financial Secretary, it is now suggested that a Chinese team is to observe the planning and preparation process for the 1996-97 Budget. Does it show that the British side has made a certain concession and has this concession rocked the bottom line of the Government?*

FINANCIAL SECRETARY: Mr President, I think I have already made the position crystal clear. But to try and make it even clearer, our position remains as I described in my Budget speech, which is where we actually set out the way in which we proposed to deal with the question of the next two budgets. So there was no concession or change of stance or anything else and the newspaper report was a product of a fertile imagination.

MR ERIC LI: *I think in the Government’s reply it admits that there will be discussion with the Chinese side, but not a consultation over the 1996-97 Budget. I think the difference in the meaning of the two words “discussion” and “consultation” seems rather fine. I have consulted the Concise Oxford Dictionary in which the word “discussion” seems to mean a debate or examination by argument on a specific subject; and “consult” means to seek or refer to a person for advice, an opinion or information. Now, first of all, both terms seem, to me to imply a two-way dialogue; and secondly, neither term bind the Government in any way to accept the view of the Chinese side; and thirdly, irrespective of whether advice has been actively sought or not from the Chinese*

*government, in practice the Chinese side has free and ample opportunity to put their views across in a discussion. So can the Government then use more simple and non-political terms to describe what in fact is the difference in practice?*

PRESIDENT: You are seeking a linguistic clarification, Mr LI.

MR ERIC LI: *Mr President, I think what I am trying to say is that linguistically, the two terms seem very, very similar. But I am asking the Government to clarify what in fact in practice the difference is because they are not bound to accept the views of the Chinese side and there is a dialogue across the table. So what then is the difference?*

FINANCIAL SECRETARY: Mr President, actually, I have not relied simply on the distinction between those two words, though to me it is quite clear. I have used other words which you may find even clearer. I think I used them both in my main answer and in the Budget speech but to repeat the key part:

“the expert team (that is to say the Chinese expert team) will observe each stage of the planning and preparation process for the 1996-97 Budget. This will enable Finance Branch to explain every aspect of the budgetary process.”

I hope those words will help explain the answer to the original question.

MR LEE WING-TAT (in Cantonese): *Mr President, in the second paragraph of the reply the Financial Secretary stated that the Hong Kong Government will hold consultation with the Chinese side on the 1997-98 Budget. Besides, the Chinese side has recently appointed several members of the Preliminary Working Committee to assist the Chinese side in the preparation of the 1997-98 Budget. Given that the Budget involves many confidential information which will have an impact on the economic activities, what will the Government do to ensure that the confidential information will not leak out; and has the Chinese side given the Hong Kong Government any precise assurance that this information will not leak out?*

FINANCIAL SECRETARY: Mr President, the Chinese side has indeed undertaken to observe Joint Liaison Group rules of confidentiality and to take all necessary steps to guard against any conflict of interest. On top of that fact, I should perhaps say that in this process for the 1996-97 Budget, I do not expect any budget information that is very sensitive, such as significant revenue proposals, to be made available to the expert team.

PRESIDENT: Mr LEE, not answered?

MR LEE WING-TAT (in Cantonese): *The Financial Secretary said just now that the Chinese side had pledged confidentiality. Can the Financial Secretary clarify that, apart from the Chinese officials, the consultants appointed by the Chinese side will also be bound by this pledge of confidentiality?*

FINANCIAL SECRETARY: Mr President, I do not have the precise wording here but I believe it does. I can clarify that perhaps in writing. (Annex III)

MR FRED LI (in Cantonese): *Mr President, I would like to follow up the question of confidentiality raised by the Honourable LEE Wing-tat. I think all sectors of the community are most concerned about the part relating to revenue in the Budget. In his reply the Financial Secretary stated that the Chinese side would be allowed to observe the planning and preparation of the Budget but he said just now that the part relating to revenue would not be included. Can the Financial Secretary put in clear terms the planning and preparation of which part of the Budget will allow observation from the Chinese side and which part of it will not?*

FINANCIAL SECRETARY: Mr President, of course we have yet to discuss all the details of the process but I think it is very clear that we are seeking to help the Chinese team understand the budget process, not follow every single meeting that we have in preparing the Budget. Hence, it will be perfectly easy to ensure that we can illustrate how we discuss items, whether revenue or expenditure items, without covering sensitive issues such as significant revenue decisions.

DR HUANG CHEN-YA (in Cantonese): *Mr President, the Financial Secretary replied that the Chinese side would only observe the process. To put it in idiomatic Cantonese, to “observe” means to “keep an eye on”. I would like to know whether the Chinese side will “observe” or “keep an eye on” the process in a similar way with which Comrade DENG Xiaoping “kept an eye on” the Chinese government. By that time, if the Chinese side pokes its nose into this and that, how can the Government deal with the situation?*

FINANCIAL SECRETARY: Mr President, I am not utterly clear on the question, but perhaps I can say this. We have quite clear ideas on how best to convey to the Chinese side the budget system and part of that will be taking them through examples, and in choosing those examples, as I have said earlier, we will of course take care not to cover particularly sensitive issues. I think as a practical matter it is actually quite simple.

**WRITTEN ANSWERS TO QUESTIONS****Quality of Drinking Water**

7. DR HUANG CHEN-YA asked: *Given that the chemical solvent tetrachloro-ethylene has been found to cause leukaemia and bladder cancer, will the Government inform this Council of the respective levels of the following volatile organic chemicals:*

- (a) *tetrachloroethylene;*
- (b) *trihalomethanes;*
- (c) *benzene;*
- (d) *dichloroethylene; and*
- (e) *dichloroethane;*

*detected in the territory's drinking water in the past five years?*

SECRETARY FOR WORKS: Mr President, the Water Supplies Department carries out extensive quality monitoring of treated water supply in Hong Kong on an ongoing basis in accordance with the recommendations as set out in the World Health Organization's (WHO) Guideline Values for Drinking Water Quality.

Over the past five years, more than 1 500 water samples have been taken from the supply and distribution network including consumer taps for analysis of trace of organics with the aid of sensitive analytical instruments. The monitoring records indicated that the concentrations of tetrachloroethylene, trihalomethanes (chloroform, bromoform, dibromochloromethane and dichlorobromomethane), benzene, 1,1-dichloroethene, 1,2-dichloroethene and 1,2-dichloroethane in treated water supply were consistently well below the guideline values laid down by the WHO. According to the WHO, the concentrations of these organic compounds in drinking water at such levels should not pose any threat to public health over a lifetime consumption.

**Preventing Noise Nuisance at Cheung On Estate**

8. MR LEE WING-TAT asked (in Chinese): *Regarding the question of preventing noise nuisance at the airport railway station at Cheung On Estate (Tsing Yi North), will the Government inform this Council:*

- (a) *whether it is planned to adopt a design of the total enclosure or other noise prevention facilities for the airport railway station at Cheung On Estates if not, what the reasons are;*
- (b) *of the respective construction costs of noise prevention measures for total enclosure and semi-enclosure designs and their respective effects in reducing the noise level; and*
- (c) *whether the Government will consider further consulting members of the Kwai Tsing District Board, Area Committees and Mutual Aid Committees and the Legislative Council Member of the district concerned about the noise prevention facilities at the Tsing Yi North airport railway station?*

SECRETARY FOR WORKS: Mr President,

- (a) The criteria for the design of the Airport Railway with respect to the environment were established in the Airport Railway (AR) Environmental Impact Study (EIS), the final report of which has been endorsed by Environmental Protection Department and the Advisory Council on the Environment. The EIS has assessed the worst case operating noise of the AR on the basis of rolling stock noise, train length, operating speed and frequency and the distance separation of the AR from sensitive receivers. The noise prevention facility recommended by the EIS and ultimately to be adopted for the northern side of the AR viaduct facing Cheung On Estate is the provision of a 1.4 m high absorptive track side barrier extending from the western end of the Tsing Yi Station to a point 180 m long.

The EIS has not recommended total enclosure for the Tsing Yi viaduct facing Cheung On Estate as the proposed 1.4 m high barrier incorporating acoustically absorbent materials should be able to reduce the AR operating noise at Cheung On Estate to be within the legal criteria, that is 60 dB (A) Leq (30 min) under the Noise Control Ordinance.

In addition, the Mass Transit Railway Corporation (MTRC) has also reviewed the design of the turnback siding which had originally planned to be located at the viaduct opposite the West Cheung On Estate. It has now decided to move the alignment of this particular side track (120 m in total) away from the residential blocks and construct it in tunnel. This will further reduce the noise impacts on the West Cheung On Estate.

Apart from the above noise prevention measures, a number of other measures will be adopted for other parts of the western end of Tsing Yi Station. These will include a cover over the upper railway tracks between Tsing Yi Station and Tsing King Road and an extended height barrier of 3.8 m on the southern side of the viaduct nearest to St Paul's Village. In short, the noise impacts in respect of the AR design and construction have been and will continue to be closely monitored.

- (b) The MTRC does not have a cost estimate nor an assessment of the effect of a total enclosure for the AR viaduct facing Cheung On Estate as there has been no need to utilize this measure in accordance with the EIS recommendation. It is also impossible to give a standard rate as each AR section is different. The long tunnel at one end and the Tsing Yi Station at the other would present significant ventilation problems if the design of total enclosure were to be adopted. Very approximately, the cost for the particular AR section involved would probably exceed HK\$200 million.

It is impossible either to give a direct dollar per metre price for the design of a semi-enclosure, but the recommended 1.4 m high absorptive barrier will be the most cost-effective solution for the Tsing Yi viaduct facing Cheung On Estate. According to the EIS, with this barrier in place, the AR operating noise at Cheung On Estate would be able to meet the legal requirement under the Noise Control Ordinance.

- (c) The MTRC and the Government have already discussed on various occasions with many different parties concerned on issues related to the noise prevention facilities at the Tsing Yi North AR Station, for example, meeting with the Tsing Yi Concern Group in July 1992, meetings with the Kwai Tsing District Board, its various subcommittees and Area Committees concerned respectively in December 1993, March 1994, as well as January, February and April this year. The Kwai Tsing District Office has assisted in these consultations and will continue to arrange various forums for affected local residents to air their views and concerns over the construction and operation of the AR in the district. Indeed, I understand that another meeting with the Honourable LEE Wing-tat and representatives of the Mutual Aid Committee of Cheung On Estate has been scheduled to be held on 8 May. Members can therefore be assured that further consultations and briefing sessions with groups concerned will continue to be conducted as and when appropriate.

### Delivery of Children by Women from China

9. MR CHEUNG MAN-KWONG asked (in Chinese): *Regarding the question of pregnant Chinese women who enter the territory with two-way permits or by illegal means to give birth to babies, will the Government inform this Council:*

- (a) *of the respective numbers of such babies born in the territory, as well as the proportion of such births to the total numbers of babies delivered in each of the public hospitals in the past three years;*
- (b) *of the respective numbers of the babies mentioned in (a) who have obtained the right of abode in the territory in the past three years; whether the remaining ones, who did not have the right of abode, were all sent back to Mainland China;*
- (c) *whether medical and educational facilities have been increased accordingly to cater for such newly increased population, so that the resources and standards of the local medical and educational services will not be affected; and*
- (d) *of the ways to tackle the problem of pregnant Chinese women coming to the territory for childbirth, which the Administration has undertaken to discuss with the Chinese authority concerned; what progress has been made so far?*

SECRETARY FOR SECURITY: Mr President,

- (a) The number of children born to such women in the past three years is as follows:

<i>Period</i>	<i>Children born to II mothers</i>	<i>Children born to Two-way Permit Holders</i>
1992	2 232	4 606
1993	2 634	6 208
1994	2 324	6 943
	-----	-----
Total	7 190	17 757

The percentage of deliveries by Chinese women who entered Hong Kong by two-way permits or by illegal means over the total deliveries in public hospitals is about 15%, 19% and 18.5% for 1992, 1993 and 1994 respectively. A detailed breakdown by hospital is at Annex.

- (b) Not all such children have automatic right of abode in Hong Kong. Their resident status will depend on the resident status of their father. Our statistics show that during the past three years the number of such children granted permission to stay is as follows:

<i>Year</i>	<i>Children born to II mothers granted stay</i>	<i>Children born to two-way permit holders granted stay</i>
1992 (Feb to Dec)*	1 902	4 233
1993	2 453	6 035
1994	2 231	6 725

\* No statistics are available before February 1992.

All those who were not granted permission to stay were repatriated as a matter of policy.

- (c) The Government is committed to provide school places to all children who are eligible for public sector places, including children born to Chinese women who are granted permission to stay. They have, therefore, been taken into account in projecting the need for education facilities. The facilities and services for children born to local residents will not be affected. Provision of hospital services to two-way permit holders and illegal immigrants giving birth in Hong Kong have been made from existing resources through improved efficiency and productivity without affecting the quality of care for other patients.
- (d) We believe that the solution lies in tackling the problem at source. There is already good co-operation with the Chinese authorities in tackling the problem of illegal immigration into Hong Kong. As regards those who enter Hong Kong on two-way permits, we have raised the problem with the Chinese authorities during the Annual Border Liaison Meeting in February this year. The Director of Immigration has also raised this with the Director of the Bureau of Exit-Entry Administration of the Public Security Ministry during his recent visit to China. The latter indicated that consideration would be given to adopting measures to try to curb the trend. Such measures may include postponing the issue of two-way permits to women at an advanced stage of pregnancy.

Percentage of Deliveries by Chinese Mothers in the  
Total Deliveries of 12 Hospitals from 1992 to 1994

<i>Hospital</i>	<i>1992</i>			<i>1993</i>			<i>1994</i>		
	CM	TD	%	CM	TD	%	CM	TD	%
CMC	234	2 404	9.7%	409	2 633	15.5%	430	2 529	17.0%
KWH	1 017	5 173	19.7%	1 794	5 338	33.6%	1 651	5 237	31.5%
PMH	838	4 436	18.9%	950	4 198	22.6%	1 006	4 419	22.8%
PWH	1 207	7 939	15.2%	1 565	7 943	19.7%	1 618	7 885	20.5%
QEH	1 101	6 906	15.9%	1 306	6 618	19.7%	1 258	6 153	20.4%
QMH	281	1 023	27.5%	213	941	22.6%	114	772	14.8%
TMH	529	5 454	9.7%	840	5 965	14.1%	924	6 508	14.2%
TYH	392	2 871	13.7%	746	5 069	14.7%	734	4 806	15.3%
UCH	~207	3 457	~6.0%	235	3 537	6.6%	255	3 511	7.3%
PYNEH#				62	343	18.1%	361	3 281	11.0%
POH	91	516	17.6%	90	486	18.5%	103	498	20.7%
OLMH	~308	2 058	~15.0%	~305	2 031	~15.0%	~348	2 325	~15.0%
Total	6 205	42 237	14.7%	8 515	45 102	18.9%	8 802	47 924	18.4%

CM : Deliveries by Chinese Mothers

TD : Total Deliveries

# : PYNEH Start from 15 October 1993

~ : approximate figure

CMC Caritas Medical Centre

KWH Kwong Wah Hospital

PMH Princess Margaret Hospital

PWH Prince of Wales Hospital

QEH Queen Elizabeth Hospital

QMH Queen Mary Hospital

TMH Tuen Mun Hospital

TYH Tsan Yuk Hospital

UCH United Christian Hospital

PYNEH Pamela Youde Nethersole Eastern Hospital

POH Pok Oi Hospital

OLMH Our Lady Maryknoll Hospital

**Taxi Stands**

10. MR ROGER LUK asked: *Will the Administration inform this Council:*

- (a) *of the existing policy regarding the setting up of taxi stands;*
- (b) *whether there are plans to increase the provision of taxi stands in the urban areas; and*
- (c) *what measures are being taken to tackle the problem of taxis waiting for fares on the roadside at many locations (for example, Wan Chai, Mong Kok and so on), thereby illegally occupying and using a traffic lane as a taxi stand and creating unnecessary traffic congestion?*

SECRETARY FOR TRANSPORT: Mr President, taxi stands are provided at locations where passenger demand for taxi services is high. Before a taxi stand is set up, various factors are taken into account, including local traffic conditions, road space and capacity, the width of pavements and road safety.

At present, there are 104 taxi stands in the urban areas. Most of these are located adjacent to public transport interchanges, major business and shopping centres or large housing estates. There are plans to provide about 10 more taxi stands in the coming 12 months.

To enhance traffic circulation, busy roads are designated as restricted zones where boarding and alighting are prohibited at certain times of the day. Even at locations where such restrictions do not apply, taxi drivers are not allowed to wait for a fare on a roadside except at a taxi stand. Offenders are liable to fixed penalty tickets or prosecution. Indeed, in recent months, the police launched a number of blitz operations at locations where malpractices were common.

**Sewer Extension Work in South Bay Road**

11. MR JIMMY MCGREGOR asked: *Will the Government inform this Council when the sewer extension work which has been going on for the past two years in South Bay Road will be completed and whether this road will then be left undisturbed with no further road openings for a reasonable period of time?*

SECRETARY FOR WORKS: Mr President, the sewer extension work along South Bay Road is part of the Hong Kong Island South Master Plan aimed to improve the sewerage infrastructure and water quality in the Island South region. Based on the present rate of progress, the Drainage Services Department anticipates that the works will be completed around the end of September 1995.

The Highways Department has also arranged to resurface the road, starting in March this year, to dovetail with the drainage works. After the completion of the road resurfacing works by October 1995, there will be a one-year mandatory restriction on road openings, except for emergencies or other unforeseen circumstances.

### **Smoking in Government Clinics**

12. MR LAM KUI-CHUN asked: *Since smoking in government clinics is not a statutory offence, the Director of Health may only carry out the anti-smoking policy through the co-operation of the smokers to observe the instructions given by the staff in such clinics. In this regard, will the Administration inform this Council:*

- (a) *whether consideration will be given to making smoking in government clinics a statutory offence as in other public places such as Mass Transit Railway compartments and cinemas, and*
- (b) *what measures the Administration will put in place to effectively prohibit smoking in government clinics if the status quo is maintained?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, an amendment to the Smoking (Public Health) Ordinance is proposed which will empower heads of government departments and non-government organizations to designate any part(s) of the premises under their control as no smoking areas. Offenders will be liable to prosecution and a maximum penalty of a fine at \$5,000 (Level 2).

It is expected that this amendment will be introduced into the Legislative Council on 10 May 1995. Subject to the amendment being passed, the Director of Health intends to designate the public areas of government clinics as no smoking areas. Meanwhile, clinics have been administratively designated as no smoking areas. Although clinic staff cannot take legal action against people who smoke there, they can and do ask offenders to stop.

### Semi-private Beds in Hospitals

13. MR VINCENT CHENG asked: *Regarding the introduction of semiprivate beds in the hospitals managed by the Hospital Authority, will the Administration inform this Council:*

- (a) *of the level of subsidy per bed provided by the Government for semi-private beds in hospitals under the Hospital Authority;*
- (b) *of the breakdown of costs for room, food, nursing, surgical fees, theatre/operation fees, drugs and dressings, laboratory charge, diagnostic tests for such beds; and*
- (c) *whether further pilot studies are being contemplated; if so, what are the details, including the location of the hospitals and the projected level of fees?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the level of subsidy provided by the Government for the 39 beds in two hospitals presently operating in the semi-private room pilot scheme is between 40% and 60%. The daily maintenance fee for a semi-private room in Ruttonjee Hospital is \$600 per day. For Tsan Yuk Hospital, it is \$800 for a double room and \$1,200 for a single room. The fee is inclusive of room charges, consultations, meals, drugs, medical investigations and treatment.

Since the level of medical treatment provided to all patients is identical, the operating cost for semi-private beds is essentially the same as for general ward beds, except for a marginal increase in meal and electricity charges as a result of better “hotel” services. The components of the operating cost are as follows:

- |     |   |     |
|-----|---|-----|
| (a) | medical services<br>(including the cost of medical and nursing staff, depreciation on medical equipment and other related expenses) | 70% |
| (b) | patient support services<br>(including the cost of radiology, pathology and pharmacy)   | 15% |
| (c) | hotel services<br>(including the cost of food, accommodation and administration)  | 15% |

A further 18 semi-private beds are planned to be provided under the pilot scheme in Grantham Hospital on Hong Kong Island in the summer of 1995. The daily maintenance fee will reflect the same 40% to 60% government subsidy.

### **Collision involving United States Navy Submarine**

14. MR TAM YIU-CHUNG asked (in Chinese): *As it has been reported that a US Navy submarine collided with a cargo vessel in Hong Kong waters in mid March, will the Government inform this Council:*

- (a) *Whether the submarine was carrying nuclear weapons at the time of collision; if so, whether the Government has any contingency plan in case of nuclear leakage; and*
- (b) *Whether it is aware of the activities of submarines in Hong Kong waters and able to restrict such activities so as to prevent submarines from colliding with other vessels and ensure water-course safety?*

SECRETARY FOR SECURITY: Mr President,

- (a) The United States Government policy is neither to confirm nor to deny the presence of nuclear weapons on board any specific United States warship. The United States authorities have, however, advised that it is not currently the practice for attack submarines, such as the one involved in the collision, to carry nuclear weapons.

The British Forces, and the Hong Kong Government, have detailed contingency plans to deal with the very unlikely event of a release of radioactive material from a warship in Hong Kong waters. The plans include measures both to control the incident and to protect the health and safety of the public. These contingency plans are exercised on a regular basis.

- (b) The Hong Kong Government is informed in advance of all planned visits to Hong Kong by nuclear powered warships. These warships, like all vessels using Hong Kong waters, are bound by Marine Department regulations, which are designed to ensure the safety of sea traffic, and by the International Regulations for the Prevention of Collision at Sea. They are assigned to dedicated anchorages, well away from centres of population and busy sea areas.

### **Use of Car Phones**

15. DR LAM KUI-CHUN asked: *There is a comparative study in the United States showing that drivers who regularly use car phones are more frequently involved in traffic accidents than those who do not use car phones. Since using mobile telephones while driving is commonplace in the territory, will the Administration inform this Council:*

- (a) *whether the Administration has any information to show whether the above phenomenon also exists in the territory;*
- (b) *if the answer to (a) is in the negative, whether the Administration will consider conducting a similar study and making a report to this Council; and*
- (c) *if the answer to (a) is in the affirmative, whether the Administration will consider introducing legislation to ban the use of mobile telephones while driving motor vehicles?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) The Administration does not have data on the frequency of use of car phones by drivers. Police investigations into traffic accidents have concluded that the use of mobile phones whilst driving have been a contributory cause of accidents on only two to three occasions each year. Details are annexed.
- (b) The Administration will continue to monitor the situation and seek relevant information, including research and other studies, from overseas sources.
- (c) The Administration has no plans to legislate to ban the use of mobile telephones by drivers. However, motorists may be prosecuted for careless driving if the use of a mobile telephone is proven to have caused a traffic accident.

The Road Users' Code advises drivers to stop their cars at a safe place if they need to use their mobile phones. This message is also repeated in ongoing road safety publicity programmes and, for example, has also been included in the Road Safety Quarterly and in the leaflet "Safety Tips for Road Users".

Annex

Accidents caused by the Use of  
Mobile Phones whilst Driving

<i>Accidents</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>
Fatal	0	0	0	0
Serious	0	0	1	1

<i>Accidents</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>
<i>Slight</i>	2	3	1	2
	--	--	--	--
<i>Total</i>	2	3	2	3
	= =	= =	= =	= =

### **Supermarkets in Public Housing Estates**

16. MR FRED LI asked (in Chinese): *The report on the study of supermarkets released by the Consumer Council indicates that of the total number of 106 supermarkets in 236 public housing estates and Home Ownership Scheme (HOS) estates in the territory, 80% are run by two large consortia, while supermarkets in remote areas such as New Territories North and Island South are even monopolized by a single operator. In this connection, will the Government inform this Council:*

- (a) *of the criteria adopted by the Housing Department in planning the number of supermarkets in each public housing or HOS estate;*
- (b) *of the number of public housing and HOS estates with only one supermarket, together with the locations of these estates;*
- (c) *of the number and the locations of public housing and HOS estates with no supermarket, resulting in the residents having to use the supermarkets in nearby public housing or HOS estates; and*
- (d) *what long-term measures the Housing Department will put in place to encourage competition and prevent consortia from monopolizing the operation of supermarkets in public housing and HOS estates, so as to safeguard the interests of consumers living in public housing and HOS estates?*

SECRETARY FOR HOUSING: Mr President, when the Consumer Council conducted the survey in March 1994 on which its report was based, 106 out of a total of 236 public rental housing or Home Ownership Scheme (HOS) estates had one or more supermarkets. By April 1995, there were 123 supermarkets in 243 estates, of which about two-thirds were operated by two major chain-store operators. The remainder were run by smaller chain-store operators or individual retailers.

Answers to the four specific points raised are:

- (a) The Housing Department has guidelines for planning the number of supermarkets in public rental housing and HOS estates. In general,

an estate with a population below 10 000 is unlikely to generate sufficient business to attract a supermarket operator, and no such provision is made. A supermarket measuring between 400 sq m and 800 sq m is normally provided in a new estate with a population of between 10 000 and 30 000. Two supermarkets may be provided if the population exceeds 30 000. Factors other than population, such as the number of supermarkets in the vicinity of the estate, are also taken into account in determining the number of supermarkets to be provided.

- (b) A list of public rental housing and HOS estates with one supermarket is at Annex 1.
- (c) A list of public rental housing and HOS estates with no supermarket is at Annex 2.
- (d) The Housing Department lets commercial premises to supermarket operators by open tender, and will allow new operators to join provided they can offer a satisfactory service to residents. This practice is supported by the Consumer Council. In fact, major chain-store operators do not monopolize the operation of supermarkets in public rental housing and HOS estates, but also face competition from other operators and individual retailers. There is no evidence to show that the two large operators charge higher prices in supermarkets located in geographical districts where they have a larger market share. Indeed, if any operator is found to be abusing its dominating position or adopting a high pricing policy, the Housing Department will take appropriate action and may not renew the tenancy agreement of the operator concerned. Hence, the interests of consumers living in estates are adequately protected.

Annex 1

Public housing estates with one supermarket

1. Apleichau Estate
2. Chak On Estate
3. Cheung Ching Estate
4. Cheung Hang Estate
5. Cheung Shan Estate
6. Cheung Wah Estate
7. Cheung Wo Court
8. Ching Lai Court
9. Ching Wah Court
10. Choi Ha Estate

## Public housing estates with one supermarket

11. Choi Wan Estate (I)
12. Choi Yuen Estate
13. Chuk Yuen South Estate
14. Chun Shek Estate
15. Fu Heng Estate
16. Fu Shan Estate
17. Fu Shin Estate
18. Fung Tak Estate
19. Fung Wah Estate
20. Hau Tak Estate
21. Heng On Estate
22. Hin Keng Estate
23. Hing Man Estate
24. Hing Wah Estate (II)
25. Hong Tin Court
26. Ka Fuk Estate
27. Kai Yip Estate
28. Kam Ying Court
29. Kin Sang Estate
30. King Lam Estate
31. Kwai Fong Estate
32. Kwai Hing Estate
33. Kwai Shing West Estate
34. Kwong Fuk Estate
35. Kwong Tin Estate
36. Kwong Yuen Estate
37. Lai Kok Estate
38. Lai Yiu Estate
39. Lee On Estate
40. Lei Cheng Uk Estate
41. Lei Muk Shue Estate
42. Lek Tung Estate
43. Lek Yuen Estate
44. Lok Wah North Estate
45. Lung Hung Estate
46. Lung Poon Court
47. Mei Lam Estate
48. Mei Tung Estate
49. Nam Cheong Estate
50. On Kay Court
51. On Ting Estate
52. Pak Tin Estate
53. Ping Shek Estate
54. Po Lam Estate

## Public housing estates with one supermarket

55. Pok Hong Estate
56. Sam Shing Estate
57. Sha Kok Estate
58. Shan King Estate
59. Shek Kip Mei Estate
60. Shek Wai Kok Estate
61. Shui Pin Wai Estate
62. Shun Tin Estate
63. Siu Hong Court
64. Siu Lun Court
65. Siu Sai Wan Estate
66. Sui Wo Court
67. Sun Chui Estate
68. Sun Tin Wai Estate
69. Tai Hang Tung Estate
70. Tai Hing Estate
71. Tai Ping Estate
72. Tai Wo Estate
73. Tai Yuen Estate
74. Tak Tin Estate
75. Tin Ma Court
76. Tin Ping Estate
77. Tin Shui Estate
78. Tin Yiu Estate
79. Tsing Yi Estate
80. Tsui Lam Estate
81. Tsui Ping Estate
82. Tsui Wan Estate
83. Tsui Yiu Court
84. Tung Tau Estate
85. Wah Fu Estate (I)
86. Wah Kwai Estate
87. Wah Ming Estate
88. Wan Tau Tong Estate
89. Wan Tsui Estate
90. Wo Che Estate
91. Wong Tai Sin Estate
92. Yau Oi Estate
93. Yin Lai Court
94. Yiu On Estate
95. Yiu Tung Estate
96. Yue Tin Court
97. Yue Wan Estate

## Public housing estates with no supermarket

1. Chai Wan Estate
2. Cheung Kwai Estate
3. Cheung On Estate
4. Cheung Sha Wan Estate
5. Ching Nga Court
6. Ching Shing Court
7. Ching Tai Court
8. Choi Fa Estate
9. Choi Hung Estate
10. Choi Po Court
11. Choi Wan Estate (II)
12. Chuk Yuen North Estate
13. Chun Man Court
14. Chun Wah Court
15. Chung Ming Court
16. Chung Nga Court
17. Fu Keung Court
18. Fuk Loi Estate
19. Fung Chuen Court
20. Fung Shing Court
21. Hiu Tsui Court
22. Ho Ming Court
23. Homantin Estate
24. Hong Lam Court
25. Hong Nga Court
26. Hong Pak Court
27. Hong Wah Court
28. Hong Ying Court
29. Hung Hom Estate
30. Jordan Valley Estate
31. Ka Lung Court
32. Ka Tin Court
33. Kai Tai Court
34. Kai Tsui Court
35. Kam Hay Court
36. Kam Lung Court
37. Kam On Court
38. King Lai Court
39. King Ming Court
40. King Nga Court
41. King Shan Court
42. King Tin Court

## Public housing estates with no supermarket

43. King Tsui Court
44. Ko Chiu Road Estate
45. Ko Yee Estate
46. Kwai Chung Estate
47. Kwai Hong Court
48. Kwai Shing (East) Estate
49. Kwai Yin Court
50. Kwong Lam Court
51. Kwun Tong (LYMR) Estate
52. Lower Ngau Tau Kok Estate (I)
53. Lower Ngau Tau Kok Estate (II)
54. Lower Wong Tai Sin Estate (I)
55. Lai King Estate
56. Lai On Estate
57. Lam Tin Estate (I)
58. Lam Tin Estate (II)
59. Lok Nga Court
60. Lok Wah South Estate
61. Lung Tin Estate
62. Lung Yan Court
63. Ma Hang Estate
64. Ma Tai Wai Estate
65. May Shing Court
66. Ming Nga Court
67. Model Housing Estate
68. Nam Shan Estate
69. Ngan Wan Estate
70. North Point Estate
71. On Shing Court
72. On Yam Estate
73. Pang Ching Court
74. Po Hei Court
75. Po Lai Court
76. Po Nga Court
77. Sai Wan Estate
78. San Fat Estate
79. San Wai Court
80. Sau Mau Ping Estate (I)
81. Sau Mau Ping Estate (II)
82. Sau Mau Ping Estate (III)
83. Shan Tsui Court
84. Shatin Pass Estate
85. Shek Lei Estate (II)
86. Shek Pai Wan Estate
87. Shek Yam Estate
88. Shun Chi Court

## Public housing estates with no supermarket

89. Shun On Estate
90. Siu Hei Court
91. Siu Hin Court
92. Siu Kwai Court
93. Siu Lung Court
94. Siu On Court
95. Siu Pong Court
96. Siu Shan Court
97. So Uk Estate
98. Tak Nga Court
99. Tin King Estate
100. Tin Oi Court
101. Tin Wang Court
102. Tin Yau Court
103. Ting Nga Court
104. Tsz Ching Estate
105. Tsz Man Estate
106. Tsz Oi Estate
107. Tsz On Estate
108. Tung Chun Court
109. Upper Ngau Tau Kok Estate
110. Upper Wong Tai Sin Estate
111. Un Chau Street Estate
112. Valley Road Estate
113. Wang Fuk Court
114. Wang Tau Hom Estate
115. Wo Lok Estate
116. Wong Chuk Hang Estate
117. Wu King Estate
118. Yan Ming Court
119. Yan Shing Court
120. Yan Tsui Court
121. Yat Nga Court
122. Yau Tong Estate
123. Yee Ching Court
124. Yee Kok Court
125. Yee Nga Court
126. Yee Tsui Court
127. Ying Ming Court
128. Yu Ming Court
129. Yue Fai Court
130. Yue On Court
131. Yue Shing Court
132. Yuen Long Estate
133. Yuet Lai Court
134. Yuk Po Court

**Breach of Regulation on Registration of Electors**

17. MR ERIC LI asked (in Chinese): *The Boundary and Election Commission (Registration of Electors) (Functional Constituencies and Election Committee Constituency) Regulation stipulates that any person who provides false and incorrect information upon registration as a voter with the Registration and Election Office is liable to a fine of \$5,000 and imprisonment for 6 months. In this connection, will the Government inform this Council of the respective numbers of persons convicted of breaching this regulation in each of the past three years together with the numbers of people convicted who were fined and those who were imprisoned?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Boundary and Election Commission (Registration of Electors) (Functional Constituencies and Election Committee Constituency) Regulation only came into operation on 15 December 1994. This Regulation deals with the registration of electors for the Legislative Council functional constituencies and Election Committee Constituency. Since the Regulation's coming into operation, there has not been any complaint concerning the provision of false and incorrect information by electors for the functional constituencies and the Election Committee Constituency. Nor has there been any conviction for the relevant offence.

Prior to December 1994, legal sanction against false registration in functional constituencies was contained in the Legislative Council (Electoral Provisions) (Registration of Electors and Appointment of Authorized Representatives) Regulations. (The Regulations did not cover the Election Committee Constituency as it did not exist then.) During the three years immediately preceding December 1994, there was no complaint concerning false registration in functional constituencies; nor was there any conviction for the relevant offence.

There is similar legislation dealing with false registration in geographical constituencies. Before March 1994, the relevant legislative provisions were set out in the Electoral Provisions (Registration of Electors) Regulations. The provisions are now contained in the Boundary and Election Commission (Registration of Electors) (Geographical Constituencies) Regulation. During the past three years, the police and the Independent Commission Against Corruption dealt with a total of 55 cases concerning false registration for geographical constituencies. Following investigation, it was concluded that there was no evidence to substantiate the allegations for 21 of the cases. Action on a further 25 cases has stopped, either because the allegations were subsequently withdrawn, or because there was insufficient information for the concerned departments to pursue the cases further. Investigation on the remaining nine cases is still continuing.

### Overseas Education Allowance

18. MISS EMILY LAU asked: *Regarding the overseas education allowance for children of civil servants, will the Administration inform this Council:*

- (a) *when and why the allowance was introduced;*
- (b) *how many children are currently benefiting from the allowance;*
- (c) *of the number, ranks and terms of service of the civil servants concerned, who are in receipt of the allowance; and*
- (d) *how much it will cost in total in 1995-96 to send these children to receive education in the United Kingdom?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, my replies to the four questions raised are as follows:

- (a) The Overseas Education Allowance Scheme was introduced in 1963 to enable children of overseas officers to continue education in their country of origin. In 1972, the scheme was extended to local officers on grounds of parity.
- (b) In 1994-95, 3 683 children were in the scheme.
- (c) With the time and resources available, we have not been able to identify the ranks of all the civil servants concerned. The number and terms of service of the civil servants concerned, broken down into salary bands, are as follows:

<i>Salary point</i>	<i>Local officers</i>	<i>Overseas officers</i>	<i>Total</i>
MPS 1-9	107	-	107
>MPS 9 - MPS 33	2 011	5	2 016
>MPS 33 - MPS 44	451	33	484
>MPS 44 - MPS 49	141	55	196
Directorate	114	94	208
Total	2 824	187	3 011

(The total is lower than (b) above because some officers have more than one child studying abroad.)

- (d) in 1995-96, about 4 000 children are estimated to be in the scheme at a cost of \$322 million. The great majority of them will be receiving education in the United Kingdom.

**Environmental Black Spots in the New Territories**

19. MR FUNG CHI-WOOD asked (in Chinese): *Regarding the setting up of a task force to tackle and clean up environmental black spots in the New Territories, will the Government inform this Council:*

- (a) *of the actual work done by the task force in the past six months and the achievements made so far;*
- (b) *of the classification of the black spots identified, together with a breakdown of these black spots by classification; and*
- (c) *how the Government will tackle these black spots and what the specific time-frame for action is?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, answers to the three-part question are as follows:

- (a) In July 1994, a Black Spots Task Force was set up in the Lands Department to clean up black spots in the New Territories. Since August 1994, the Task Force has been, inter alia:
  - (i) implementing an action plan to bring early and visible improvement to areas identified as being environmentally degraded, initially in the Pat Heung area. So far, 203 government sites comprising 5.2 hectares of land being illegally occupied have been cleared, with 84 of which landscaped. The Central Enforcement and Prosecution Section set up in the Planning Department in July 1994 has been complementing the action of the Task Force by stepping up its enforcement efforts under the Town Planning Ordinance (Cap. 131) in the Pat Heung area to ensure maximum impact of government action;
  - (ii) studying container-related operations in the Ha Tsuen/Lau Fau Shan area;
  - (iii) exploring the drawing up of a code of practice for container depot operations in liaison with the Hong Kong Container Depots and Repair Association Limited to encourage self-discipline and improvements; and
  - (iv) examining suitable sites for relocating port back-up and open storage uses.

- (b) Black spots, in general, constitute any operations/activities which cause visual, traffic, flooding, dust and odour nuisances/problems. Many open storage and port back-up uses in the rural areas of the New Territories are found to be black spots. According to the recently completed Study on Port Back-up Land and Open Storage Requirements by the Planning Department, there were, as at August 1993, 1 453 sites (covering 362 hectares) for open storage uses and 237 sites (covering 198 hectares) for port back-up uses. The Task Force is ascertaining exactly how many of these are black spots.
- (c) There are three courses of action to tackle black spots: seeking to discontinue the operation/activity, moving it to places where the land use is compatible with the planning, environmental and traffic requirements, and allowing it to continue subject to the necessary improvements.

In view of the widespread nature and complexity of the problem, a 10-year implementation programme is thought to be necessary to clean up the New Territories. Over the next few years, the Task Force will be developing strategies and initiatives to bring about improvements. This will be no easy task. The co-operation and involvement of those living and working in the New Territories will be essential. If necessary, we may consider legislative amendments to deal with problematic areas which cannot be effectively dealt with through the means now at our disposal. We intend to consult widely as we develop our plans of action. Proposals will in due course be made for consideration by the Special Committee set up in November 1994 to advise the Government on all matters relating to environmental black spots in the New Territories and to monitor the work of the Task Force.

### **Highways Department Representatives at District Board Meetings**

20. MR WONG WAI-YIN asked (in Chinese): *It is learnt that despite repeated requests, the Highways Department has been declining to send representatives to some district board meetings, causing dissatisfaction among members of those district boards. In this connection, will the Government inform this Council:*

- (a) *of the criteria adopted by government departments in deciding whether to send representatives to or to decline attendance at district board meetings;*
- (b) *the district boards whose meetings the Highways Department has declined to send representatives to in the last district board session;*

- (c) *the district boards whose meetings the Highways Department has declined to send representatives to since the commencement of the current district board session;*
- (d) *of the reasons why the Highways Department declines to send representatives to district board meetings;*
- (e) *whether the operation of a district board was disrupted, as a result of the absence of an official from the Highways Department who had promised to attend a district board meeting but proceeded on leave without arranging for a replacement to attend the meeting, causing delay in the discussion of the projects concerned; and*
- (f) *how the above situation can be improved?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) Departmental attendance at district board meetings is by invitation and determined by the District Officer, in consultation with the District Board Chairman. Instructions to departments have been promulgated in circulars which are reviewed and updated periodically.

(b) and (d)

The present practice and standing arrangement is that the Territory Development Department represents all Works Branch Departments (including the Highways Department) at district board meetings on engineering and project programming matters. It is for this reason that the Highways Department declined requests to attend, on a regular basis, each and every meeting of the Yuen Long, Eastern, and Central and Western District Boards during the past session.

- (c) I have been advised that the Highways Department did not send a representative to attend the discussion at the Yuen Long District Board meeting held on 20 April 1995. However, written advice was provided to the district board before that meeting.

(e) and (f)

In retrospect, the Director of Highways recognizes that the business of the district board would have been better facilitated had his representative been able to attend. Meanwhile, to improve communication, the Department has recently agreed to attend Yuen Long District Board Traffic and Transport Committee meetings regularly on a trial basis for one year.

**BILLS****First Reading of Bills****INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1995****PUBLIC ENTERTAINMENT AND AMUSEMENT (MISCELLANEOUS PROVISIONS) BILL 1995****ESTATE DUTY (AMENDMENT) BILL 1995****DUTIABLE COMMODITIES (AMENDMENT) BILL 1995****DISABILITY DISCRIMINATION BILL**

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

**Second Reading of Bills****INLAND REVENUE (AMENDMENT) (NO. 2) BILL 1995**

THE FINANCIAL SECRETARY moved the Second Reading of: “A Bill to amend the Inland Revenue Ordinance.”

He said: Mr President, I move that the Inland Revenue (Amendment) (No. 2) Bill 1995 be read the Second time.

This is the first of the three Bills which the Secretary for the Treasury and I will introduce this afternoon to give effect to the revenue proposals in this year’s Budget.

The Bill now before Members has two main purposes. Firstly, it seeks to introduce a number of salaries tax concessions to benefit both the taxpaying population in general and specific target groups. Secondly, it seeks to specify the minimum records which a business must keep for tax purposes, and to increase the maximum penalty for non-compliance. These proposals have already been fully covered in my Budget speech and in the Budget debate. I shall therefore be brief this afternoon.

*Salaries tax concessions*

Let me first deal with the proposed salaries tax concessions. Briefly, the Bill proposes to improve existing benefits in three ways.

- First, the Bill increases most salaries tax allowances (notably, the single, married person, first and second child, and dependent parent/grandparent allowances) by 10%, slightly above the rate of inflation.
- Secondly, it increases substantially the allowances for those with extra financial responsibilities. Specifically, it doubles the allowance for taxpayers who look after a dependent parent or grandparent at home and increases by 25% the single parent allowance.
- Thirdly, it introduces a new disabled dependent allowance for taxpayers who support a disabled dependent, whether at home or elsewhere in Hong Kong. This new allowance will be in addition to existing allowances (for example, married person, child or dependent parent) received by the taxpayer in respect of the disabled family member in question.

We estimate that the total cost of these salaries tax concessions will amount to \$1.2 billion in 1995-96 and \$7.7 billion in the period up to 1998-99.

These proposals seek a prudent balance between leaving money in the pockets of taxpayers, especially those with extra financial responsibilities, and maintaining healthy reserves, whilst at the same time taking into account the impact on inflation. I believe that these proposals do represent a reasonable balance and I hope that Members will be able to support them.

*Business records*

Let me now turn to the proposals on business records. The Bill specifies in greater detail the records which a business must keep to enable its assessable profits to be readily ascertained and increases the penalty for non-compliance from \$5,000 to \$100,000. These proposals are intended to encourage compliance and to enable the Commissioner of Inland Revenue to detect tax evasion more effectively. Again, I hope that they will receive Members' support.

Mr President, with these remarks, I commend the Bill to Members.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

**PUBLIC ENTERTAINMENT AND AMUSEMENT (MISCELLANEOUS PROVISIONS) BILL 1995**

THE SECRETARY FOR RECREATION AND CULTURE moved the Second Reading of: “A Bill to amend the Places of Public Entertainment Ordinance and the Amusement Rides (Safety) Ordinance.”

He said: Mr President, I move the Second Reading of the Public Entertainment and Amusement (Miscellaneous Provisions) Bill 1995.

The Bill's aims are to achieve two objectives. Firstly, to repeal the Commissioner for Television and Entertainment Licensing's (CTEL) wide discretionary power to grant, or refuse the grant of, a public entertainment permit under the Places of Public Entertainment Ordinance. This is to remove any possible inconsistencies with the Bill of Rights Ordinance. Secondly, to amend the definition of amusement ride in the Amusement Rides (Safety) Ordinance to place legislative control on certain manually driven amusement devices such as multi-axis chairs which may be potentially dangerous.

CTEL issues about 3 200 permits every year to various types of public entertainment in accordance with the provisions of the Places of Public Entertainment Ordinance. In discharging this duty, CTCL has rarely turned down applications on the ground of objection to the form and content of the entertainment. Despite this, we are proposing to abolish the permit system to remove any possible inconsistency with the Bill of Rights Ordinance.

The proposed removal of the permit system is part of the Government's continued efforts to give effect to its commitment to promote freedom of expression. The abolition of the permit system will also simplify the existing dual licensing system for public entertainment by making the Urban Council and the Regional Council the sole licensing authorities. In future, an organizer of a public entertainment will only need to obtain one licence from the licensing authority to comply with hygiene, fire and building safety requirements for the venue. These requirements are mainly to ensure the safety of participants.

Mr President, I would like to emphasize that the removal of the permit system does not mean that we will lose control over live public performances. Objectionable public performances will continue to be controlled by section 12A of the Summary Offences Ordinance, under which it is an offence to take part in, provide or manage any public live performance of an indecent, obscene, revolting or offensive nature. Police officers acting under a warrant can enter premises where it is suspected that such a performance is or may be taking place, conduct a search and seize articles related to the performance. In fact, the permit system cannot be an effective safeguard against impromptu indecent public entertainments anyway and enforcement action by the police was relied upon in the past.

The Bill also amends the Amusement Rides (Safety) Ordinance to put amusement devices like multi-axis chairs, which are solely driven by human power but carry potential danger, under comprehensive safety control. However, Members can rest assured that simple and safe mechanical devices found in children's playgrounds like swings, slides and see-saws are not caught by this amendment. Subject to the passage of this amendment, the design, installation, repair, operation, as well as operating personnel in charge of multi-axis chairs will be subject to the extensive and stringent safety measures prescribed in the Amusement Rides (Safety) Ordinance.

Mr President, I now wish to summarize the main provisions of the Bill.

Clause 2 proposes to revise and update the definition of "entertainment" under the Places of Public Entertainment Ordinance. Outdated forms of entertainment like exhibition of abnormal persons or animals will be removed from the definition whereas a new form of entertainment, that is laser projection display, will be included.

The Secretary for Recreation and Culture is empowered under clause 5 to amend the list of entertainments in the Schedule by regulation as well as to determine the circumstances under which licence conditions can be waived, cancelled, added or varied, and the circumstances under which fees can be waived or reduced. An amendment to the Schedule would normally be made at the request of and in consultation with licensing authority.

Clause 6 repeals section 8 of the Places of Public Entertainment Ordinance, which deals with the permit system for public entertainment.

To give effect to the relevant recommendations in Mr Justice BOKHARY's report on the Lan Kwai Fong incident, clause 8 empowers the licensing authority to impose licence conditions, including conditions as regard crowd control measures and the provision of first aid services to better ensure the safety of participants in public entertainment events.

Clauses 11 to 12 add a new Schedule to the Amusement Rides (Safety) Ordinance so as to define "amusement rides" to include manually driven devices which are capable of revolving through more than 90 degrees, including mutliaxis chairs. The Secretary for Recreation and Culture is empowered to amend the new Schedule by regulation.

Mr President, the removal of the permit system on Bill of Rights grounds and the amendment to the Amusement Rides (Safety) Ordinance are proposed in response to public demands for promoting freedom of expression and public safety, respectively. I hope that the Bill will gain the support of Members of this Council.

Mr President, I beg to move.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

### **ESTATE DUTY (AMENDMENT) BILL 1995**

THE SECRETARY FOR THE TREASURY moved the Second Reading of: “A Bill to amend the Estate Duty Ordinance.”

He said: Mr President, I move that the Estate Duty (Amendment) Bill 1995 be read the Second time.

The Bill before Members seeks to adjust the Schedule of asset values for the purpose of assessing estate duty so as to offset the effect of inflation on the value of relatively small estates. Specifically it increases, from \$5.5 million to \$6 million, the level below which no duty is payable and adjust the bands correspondingly above this threshold. Thus estate duty will be payable at 6% on estates between \$6 million and \$7 million; 12% for estates between \$7 million and \$8 million; and 18% on estates over \$8 million.

We estimate that the cost of these concessions will amount to \$20 million in 1995-96 and \$100 million in the period up to 1998-99.

These proposals will help to relieve the tax burden on smaller estates at a relatively modest cost. I hope that Members will be able to support them.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

### **DUTIABLE COMMODITIES (AMENDMENT) BILL 1995**

THE SECRETARY FOR THE TREASURY moved the Second Reading of: “A Bill to amend the Dutiable Commodities Ordinance.”

He said: Mr President, I move that the Dutiable Commodities (Amendment) Bill 1995 be read the Second time.

The Bill before Members seeks to increase the specific duty rates on tobacco and hydrocarbon oils by 8%, in line with inflation in 1994. This is consistent with our overall budgetary strategy whereby we aim to maintain the revenue yield in real terms from the various sources of revenue to ensure financial stability.

In the particular case of tobacco duty, we also believe that there is a need to increase the duty rate in order to maintain the deterrent effect of the duty on smoking. We will work together with the Customs and Excise Department to

ensure that the success of the Task Force in tackling cigarette smuggling is maintained in the future.

We estimate that these proposals will generate additional revenue of \$560 million in 1995-96 and \$2.6 billion in the period up to 1998-99.

Mr President, with these remarks, I commend the Bill to Members.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **DISABILITY DISCRIMINATION BILL**

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: “A Bill to render unlawful discrimination against persons on the ground of their or their associates’ disability in respect of their employment, accommodation, education, access to partnerships, membership of trade unions and clubs, access to premises, educational establishments, sporting activities and the provision of goods, services and facilities; to make provision against harassment and vilification of persons with a disability and their associates; to extend the jurisdiction of the Equal Opportunities Commission to include discrimination against persons on the ground of their or their associates’ disability, and for connected purposes.”

She said: Mr President, I move that the Disability Discrimination Bill be read a Second time.

With the introduction of this Bill, we are taking a major step forward in achieving our goal of integrating people with a disability into our community. It will require everyone to give them an equal opportunity — a fair chance — to participate fully in the community and it will provide them with the legal means to obtain redress against discrimination, harassment and vilification. It gives the same protection and support to their families and carers as well.

The areas of life in which discrimination and harassment will be unlawful include employment; education; transport; access to buildings and services; and participation in partnerships, professional organizations, clubs and sports. In short, the Bill is comprehensive in its scope. This is important if integration is to be a reality. But, equally important, the Bill is balanced in its approach. It gives people with a disability a means of redress, while ensuring that the interests of the community as a whole are also taken into account.

In future, it will be unlawful to treat a person with a disability less favourably than others because of their disability, in circumstances that are materially the same. But, on the other hand, employers will not have to hire a certain quota of people with a disability. Building owners will not have to change existing buildings — unless they plan to carry out major additions or

alterations. Transport operators will not have to make existing buses, ferries or trains more accessible. This is because the Bill provides for two key exemptions; “unjustifiable hardship” and “genuine occupational qualification” which covers “inherent requirements of the job”.

The first means that building owners or transport operators, for example, could defeat a claim of discrimination by proving that it would cause them “unjustifiable hardship” to make special arrangements to meet the needs of a person with a disability.

The second means, for example, that where a person could not meet the requirements of a particular job because of his or her disability, the employer would not be breaking the law in deciding not to hire him or her.

The District Court and the Equal Opportunities Commission will play important complementary roles in enforcing the provisions of the Bill. The Equal Opportunities Commission is to be set up under the Sex Discrimination Bill which was introduced into this Council on 26 October last year. Members will know something of the power of the proposed Commission as set out in that Bill. But it is worth repeating the main points. The Commission will receive and investigate complaints of discrimination. We envisage most cases being settled through conciliation. Where this fails, complainants will be able to take their cases to the District Court.

The Equal Opportunities Commission will issue codes of practice for each sector so that all parties involved will have practical guidelines to follow regarding how they are expected to behave. The Commission will, of course, consult groups representing people with a disability and the sector concerned in drafting these codes. The codes will be laid before this Council before coming into effect. When considering a case under this law, the court will have to take into account any relevant provisions in the codes when making its judgment. These codes of practice will provide practical guidelines to help the different sectors in the community to comply with the Bill. Since employment is a major and complex area which we need to get right, we propose, in line with the Sex Discrimination Bill, that the employment provisions in the Bill should not come into effect until the code of practice has been issued. The Bill also provides that, for five years, employers with fewer than five employees will be exempted. This is another example of how we are trying to achieve a balanced approach.

Disability discrimination legislation is a relatively new approach the world over. In Hong Kong, we continue to believe that the best way to achieve our goals for people with a disability is for the Government, for disability groups and those who may be affected by the Bill to work together to make it work. And it will work best, if everyone aims to improve life for people with a disability progressively, over time and with reasonable requests being met by reasonable responses. We want to see the law and public education complementing each other. We want to see them bringing about conciliation not

confrontation, co-operation not conflict. I hope I can count on Members of this Chamber to support what we are aiming to achieve by introducing this Bill.

Mr President. I move that the debate on the motion be now adjourned.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **PROTECTION OF TRADING INTERESTS BILL**

### **Resumption of debate on Second Reading which was moved on 29 June 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).*

## **HONG KONG ARTS DEVELOPMENT COUNCIL BILL**

### **Resumption of debate on Second Reading which was moved on 15 June 1994**

*Question on Second Reading proposed.*

MRS SELINA CHOW: Mr President, the Bill before us provides for the establishment and functions of the Hong Kong Arts Development Council as a statutory body for the development of arts in Hong Kong.

It is the original intention for the Bill to resume its Second Reading debate earlier this year on 8 March so that the statutory Council could be established on 1 April. Members, no doubt, are aware of the cause for delaying the resumption of the debate of the Bill. I shall leave it to Miss Christine LOH to explain her proposed amendment to provide for the opening up of meetings of the Council which she will move at the Committee stage, and the Administration to put forward its counter proposal.

First, let me highlight some of the other main concerns discussed by the Bills Committee.

The most controversial issue is on the method of selection of the Council members. Clause 3 of the Bill provides for 20 members, of whom 16,

including the Chairman and the Vice-chairman, will be appointed by the Governor, and the remaining four will be *ex officio* members.

The Bills Committee has noted the strong aspiration from the arts community for elected members in the Council and expressed grave concern over the appointment system by the Governor as proposed in the Bill. Members generally shared the view that a non-representative Council might not command the respect of the arts community as it ought to, and that elected elements should be introduced to allow for some degree of democratization.

The Administration explained that in the absence of a well-defined constituency for the arts community, there would be no assurance of open and fair elections. The Administration has also indicated that whilst it did not object in principle to elected membership, it would not be feasible to work out the mechanism for a credible and equitable election system without delaying the setting up of a statutory body by April this year. The Administration, however, subsequently advised us that it would not be prepared to open the membership of the Council for direct election as it was government policy to restrict such election to the three-tier representative government only.

In response to the Bills Committee's concern, the Administration then proposed providing up to three members of the Council to be nominated by the arts organizations representing the literary, visual and performing arts. It also advised that should the Committee Members insist on direct election for the Council, it would withdraw the Bill.

Having considered the Administration's firm stance and as the proposed nomination system represented a step towards a more representative Council, the Bills Committee accepted the concept of nominations by the respective sectors of the arts community and proposed that half of the Council should be nominated for appointment by the Governor.

The Administration advised that it was unable to accept the suggested proportion of nominated membership. As there would be four *ex officio* representatives in the Council and the discretion of the Governor would thus be unacceptably restricted.

After considerable deliberation, the Bills Committee finally reached a consensus with the Administration. On the basis that the arts community be adequately represented in the Council, nine members of the Council would be nominated by the arts community representing the nine arts categories, namely the literary arts, visual arts, performing arts, drama, dance, music, film arts, arts criticism, arts administration and arts education. The Council would be enlarged to consist of 22 members, four of whom would be *ex officio* members representing the Urban Council, the Regional Council, the Recreation and Culture Branch and the Education Department, having nine places for appointed members to be determined by the Governor. This represents an acceptable

compromise as relevant amendments to the Bill will be introduced by the Administration later this afternoon.

The Bills Committee has also considered the draft guidelines on setting up the representative organizations of the nine arts categories and their nominees for membership of the Council. These guidelines, when finalized, should be gazetted as a code for public reference. The issue has been taken up further by the Legislative Council Panel on Recreation and Culture.

Mr President, another area of concern is the inclusion of arts criticism and film arts into clause 4(a) of the Bill. The Administration took the view that arts criticism was not an art form in itself, but a multi-disciplinary activity which permeated through various arts activities. It should therefore not be given the same status as the literary, performing and visual art forms. Our Committee considered the divergent views submitted by individuals and groups of the arts community on the matter and concluded that the issue of whether arts criticism is an art form should be a separate one from whether the discipline was important enough to be explicitly named and included in the law. And as members agreed to the latter, informed criticism of the arts should therefore be inserted in the relevant section alongside arts education and other related aspects.

On the question of film arts, Members of the Bills Committee received an extensive representation from film makers and were persuaded that it is a composite art form and therefore should be duly recognized and incorporated into the Bill. To accord proper status to arts criticism and film arts, the Administration has agreed to the Bills Committee's suggestion to adopt a combined version of clauses 4(a) and 4(b) incorporating the two elements and will move the appropriate Committee stage amendments.

The Bills Committee has also expressed concern over the Governor's power, as proposed under clause 16, to give direction to the Council, which might have bearing on its independence and freedom of artistic expression. The Administration has responded that in an executive-led government, the residual power of directions should be vested in the Governor. The parameter in exercising this power is set by the provision under which the direction given must be consistent with the functions and power specified in the Bill and that the power should only be invoked in the public interest. The Bills Committee has been assured that the Council could apply for judicial review should it consider the Governor has not acted in the public interest.

Mr President, I would like to express my appreciation to the organizations and individuals who have put forward their views on the Bill and the Administration for its time and effort. May I also take this opportunity to thank Members of the Bills Committee for their active involvement and contribution in studying the Bill.

Before I close, I would like to make clear the position of the Liberal Party regarding Miss LOH's amendment. We believe it is a matter of constitutional consistency that we have to consider very carefully before we legislate to control the proceedings of any statutory council as it may unnecessarily tie down the flexibility and efficiency of its operation. Currently, none of the three-tier representative bodies are so restricted. Openness of proceeding is of course a principle we must all uphold, but such openness must not be dictated by rigid legislative provisions which cannot cater for the variety of circumstances which might require that openness be temporarily suspended or curtailed for the protection of reputation, commercially sensitive information, legal obligations and so on. Requirement by law would also formalize the process and unnecessarily tie down the flexibility and efficiency of the operation of the Council. It should therefore be up to the Council to determine, having considered each individual case, when open meeting should be suspended. The Liberal Party accepts the Administration's proposal to provide for such circumstances through the Standing Orders of the Council. I might also add that we have received representation from the Hong Kong Federation of Writers and Artists which is a widely recognized representative body of the arts community supporting the Administration's proposal.

Mr President, subject to the adoption of the amendments to be moved by the Administration, I support the Bill.

MISS CHRISTINE LOH: Mr President, at last we have the Bill before us.

The Administration's behaviour in its handling of this Bill has betrayed an unhealthy and unreasonable sense of priorities. This Bill should have come before us a long time ago. The only reason for the Administration's delay has been to prevent the creation of any statutory obligation for the proposed Arts Development Council (ADC) to hold its meetings in public. It has seemed at times to care more about the fate of this single issue than about the creation and the operation of the ADC itself. It had, in effect, made the ADC a hostage to its own bureaucratic obstinacy.

And yet, the Administration's objections arise entirely from its own tortuous and incomplete reasoning.

The Administration insists that it is perfectly happy for the ADC to meet in public, and to have the presumption of public meetings written into the ADC's Standing Orders. The Administration has gone so far as to use my legislative amendments as the basis for those Standing Orders. Mr President, therefore, the Administration in fact has no objection to the substance of my amendments whatsoever.

The Administration says, however, that it cannot accept a legal obligation for the ADC to meet in public, for fear that this might create some unspecified “operational difficulties”, what Mrs CHOW called “inflexibility”, and would establish a precedent for other governmental bodies.

The argument about this unspecified “operational difficulties” is clearly a bogus one, since it is hard to see any necessary difference in practice between open meetings conducted as such in furtherance of standing orders, and open meetings conducted as such in furtherance of a legal obligation. Both would be open meetings, and the difficulties that arose, or did not arise, would be the same in either case.

The same holds for the argument, advanced by three members of the ADC, that: “..... as a general rule people in open meetings are more likely to take the easy option and either approve things they should not, or defer decisions unnecessarily.”

If that is true, then it will be equally true whether the meeting is an open meeting because Standing Orders say so, or an open meeting because the law says so. In fact, I very much doubt that greater openness is likely to encourage weak or bad judgement on the part of ADC members. I think it is more likely to reinforce their sense of responsibility to the public, to reach decisions that they are confident will stand up to public scrutiny.

The Administration argues that, by accepting a principle of open meetings for the ADC, a precedent would be set for other advisory bodies. Mr President, I have to say that this, if it is true, worries me rather less than it seems to worry the Administration. I find nothing inherently offensive or frightening in the notion that advisory bodies should be open to the public. If other statutory bodies would like to open up their meetings by law, I fail to see why that would be a bad thing. Indeed, it would be a very good thing.

As to the practical question of whether a precedent is being set, all I can say is that, if so, that does not form part of my amendments. My purpose here is only to fix a legal obligation upon the ADC. My amendments would only affect the operations of the ADC. The other bodies within the Government’s consultative structure would not be affected by my amendments.

If the Administration is truly worried about setting a precedent for other advisory bodies, then its acceptance of my idea on nominations for the nine artistic disciplines by the arts community to the Governor for appointments to the ADC is, if anything, much more revolutionary. What if other advisory bodies now all want to elect representatives for nomination to various boards by the Governor?

I suggest, therefore, that the Administration's position on open meetings is contradictory at best. It claims to support the principle of open meetings for the ADC. But it refuses to make that principle the subject of a statutory guarantee. In other words, it wants to be sure that the principle it claims to uphold can be overturned in the future.

The purpose of creating a legal obligation on the ADC to meet in public would be to ensure that the principle could not be easily overturned in the future. Mr President, you know this to be true. You disallowed my Access to Information Bill on the ground that it could have charging effect even though I tried to mirror my Bill along the lines of the Administration's new code of practice, because you recognized that a code could be withdrawn at any time by the Administration, and as such, my Bill would impose expenditure on the Administration should the code be withdrawn. The conclusion is: a legal right is much more secure, and much more certain; and it would impose obligations on the Administration.

Further, the Administration's disingenuous argument to win support that future amendments to what is guaranteed in legislation is more difficult than changing what is in administrative standing orders, in fact supports what I am trying to say. However, the Administration attempts to argue that standing orders can be refined easily to cope with new circumstances, and is therefore, preferable.

I call upon fellow Councillors that you read my amendments carefully. There is sufficient flexibility there to take into account new circumstances. If you pass my amendment, it is unlikely that we would have to bring further amendments in the foreseeable future to increase flexibility, and you would be giving the public a clear right to attend the ADC's meetings.

If we believe that the new ADC should be open and accountable, then we should say so in law. It is as simple as that. And if we are not prepared to say so in law, then — like the Administration — we are, at most only half-hearted in our commitment.

The Administration is not being wise, or impartial, in this matter; it is merely giving vent to its bureaucratic instincts. Left to itself, it will always argue for administrative instruments of one sort or another — in this case, the internal "Standing Orders" of the ADC. Administrative instruments are the source of bureaucratic power, and the enemy of public accountability.

Unlike the Administration, I do not wish to see the future of the ADC turn on the outcome of this narrow argument. But I do want it to be recognized that there is an important issue at stake here, and that the Administration's arguments are both short-sighted and self-serving.

Finally, Mr President, I wish to respond to Deputy Secretary, Mrs Rachel CARTLAND's, angry outburst at a Bills Committee meeting that I have "a personal political agenda" in pushing for a legal right to open meetings in the ADC. It is no secret that much of my political agenda is built around the notion of open government. I believe that we need to see and understand better how our government takes decisions. This desire might cause the Administration some inconvenience, but so be it. I will continue to push for both access to information and open meetings, to be guaranteed by law.

MR MAN SAI-CHEONG (in Cantonese): Mr President, we do need courage and a high degree of initiative to have changes made to the existing system, customs or concepts. The "executive-led" way of handling things behind closed doors seems to have become the amulet of a great majority of bureaucrats and executives in the high echelons of Hong Kong's governing hierarchy. Of the existing government councils or committees, which number several hundred, only a handful of them, such as the District Board, the Housing Authority and the Consultative Committee on the New Airport and Related Projects, hold meetings in public. While it is unlikely to change the common practice in one single attempt, we have to take the first step anyhow.

Given that the Arts Development Council (ADC) is set up to promote and plan the development of arts in Hong Kong and since arts belongs to the general public, the process of making decisions will, therefore, concern the quality of living of the people of Hong Kong. Such being the case, it is necessary to open ADC's meetings and enhance transparency in its operation so that the people will be able to learn of the arts development policies, which are of immediate concern to the public, and the standpoint of ADC members on individual issues as well as their overall performances. Regrettably, some people still pander to outworn beliefs, thinking that to hold meetings in public will give rise to operational difficulties in the ADC. They also hold that in so doing the early development of the Council will be affected and that a precedent will be set in respect of the formulation of legislation, thereby putting pressure on other councils or committees under the Government. These views are beneath contempt. Operational difficulties can in fact be overcome through administrative measures and on no account can they be taken as the pretext for objecting to meetings being held in public. If we recognize the spirit of opening meetings, the ADC will, sooner or later, adopt such practice. The argument of such practice being inappropriate in the early development of the ADC is unfounded, to say the least. Developed countries, such as the United States where common law is practised, and even neighbouring Taiwan, have provided for open meetings by legislative means. It is worthwhile to draw on their experiences. If we consider the spirit of holding public meetings desirable, there is no harm for other government bodies to follow suit and to adopt this practice speedily.

The ADC is a public body. It is the fundamental spirit of the ADC that different sectors and different interest groups in the community be allowed to convey their views and exert influence in the formulation of policies. Since its policy will have a direct or indirect bearing on the quality of living of every member of the community, everyone should have the right to know the process through which decisions are reached. This is the simplest rationale ever. In this connection, Members of the Democratic Party and I support the Honourable Miss Christine LOH's amendment to provide for meetings to be held in public by legislative means.

MR WONG WAI-YIN (in Cantonese): Mr President, originally I did not intend to speak. Yet, in the meeting of the Home Affairs Panel of the Legislative Council this morning when the issue of transparency of advisory bodies was discussed — and in fact the Legislative Council has repeatedly discussed similar subject matters before — Members were dissatisfied with the performance of the representatives of the Home Affairs Branch. In this connection, the Democratic Party will throw its full weight behind the Honourable Miss Christine LOH's amendment to the Hong Kong Arts Development Council Bill seeking to provide for meetings to be held in public by law so that members of the public can participate in or have knowledge of the operation through sitting in on public meetings.

In fact, under the Government there are at present several hundreds of advisory bodies, a great majority of which do not meet in public. Only a few of them are exceptions. The Honourable MAN Sai-cheong has mentioned this point earlier on. The Government explained that meetings are not held in public because the information concerned is sensitive and the venues of meetings are too small. The first explanation is acceptable and, in fact, for many meetings and even for those of the Legislative Council, while all the meetings are held in public, we would proceed to closed-door meetings when sensitive matters are involved. This explanation, I believe, is acceptable to the public. But as regards the second explanation which is that members of the public are not allowed to sit in on meetings because the venues are too small, it is indeed utterly ludicrous. Government officials concerned have repeatedly said that the Government would step up its effort to encourage advisory bodies to hold meetings in public. Yet, when the Government was asked what substantive action would be taken to assist the advisory bodies to open their meetings, the government officials concerned were silent. Besides, as the government officials concerned have said it is due to the venues being too small that meetings are unlikely to be held in public, they may agree that the meetings of certain advisory bodies can be open to the public and they are not open to the public only because of the space constraint of the venues. The Government, however, has refrained from providing bigger venues to enable meetings to be held in public. Does it show that while the Government said verbally that vigorous steps would be taken as an encouragement, it has taken no concrete action at all to offer assistance? How can the goal be possibly achieved under this circumstance?

The Democratic Party is of the view that if the decisions of the advisory bodies will have a bearing on the public, their meetings should indeed be held in public across the board. Should it be unlikely for some advisory bodies to meet in public, the Government is obliged to give the public an explanation and let the public judge whether it is justified for the bodies concerned not to meet in public. For instance, I do not see anything wrong in the operation of the Housing Authority which did not meet in public in the past but holds public meetings now. As a matter of fact, I remember that during the early deliberation of the Hong Kong Arts Development Council Bill, the Government took exception to the proposal that the Council should meet in public. But subsequent to Miss Christine LOH proposing the amendment seeking to require Arts Development Council's (ADC) meetings to be open to the public by legislative means, the Government hastily proceeded to hold discussions again and put off the Bill and then attempted to solve the problem administratively by introducing provisions in the Standing Orders. It shows that we have to push the Government before the Government would take any action. In adopting this attitude, is the Government compelling the Legislative Council to require other advisory bodies to meet in public by law before it will take administrative measures in haste to open the meetings? Is it the case that the Government will take action only when the Legislative Council forces it to do so? If Miss Christine LOH has not proposed this amendment, I believe that the Government would not consider opening the meetings by administrative measures. I am greatly disappointed with the attitude of the Government. I, therefore, would very much like to see that the Hong Kong Arts Development Council Bill will set a precedent, whereby the Government will earnestly consider opening the meetings of other advisory bodies to the tune of 400 in addition to enabling the Hong Kong ADC to meet in public. If there are meetings which cannot possibly be held in public, I hope that the Government will explain the reasons to the public.

SECRETARY FOR RECREATION AND CULTURE: Mr President, on 15 June 1994, the Hong Kong Arts Development Council Bill was introduced into this Council. The main aim of the Bill is to set up the Hong Kong Arts Development Council (HKADC) as an autonomous statutory body to promote and develop the arts in Hong Kong.

I would first like to thank Members of the Bills Committee, especially its Chairman, Mrs Selina CHOW, for their hard work and thorough examination of the Bill. In the course of this exercise, we have maintained very close liaison with the HKADC and the rest of the arts community to gather their views. We have discussed these views exhaustively with Members of the Bills Committee. We have responded positively to the ideas put forward. As a result, we have now reached an agreement with the Bills Committee and the arts community on a package which broadly meets the aspirations of the arts community and includes significant improvements over the original Bill. I hope this Bill will now receive the full support of this Council.

Mr President, I would now like to outline briefly the three major elements of the agreed package.

Firstly, in response to the strong desire of some sectors of the arts community and the Bills Committee, the Government has agreed to include explicit references to film arts and arts criticism in appropriate clauses of the Bill. Whilst the Bill is enabling in nature and does not exclude any art forms from the scope of the HKADC, the proposed amendments I am going to move during the Committee stage will give specific recognition to the contribution of film arts to the local arts scene alongside other art forms such as visual, literary and performing arts. Arts criticism will also be appropriately recognized.

Secondly, we have agreed to amend the clauses dealing with the composition of the Council to provide for the membership to include persons drawn, one each, from nine specified categories of the arts. Furthermore, we have introduced a mechanism whereby organizations representing those categories may each nominate one person for consideration by the Governor for appointment as a member of the HKADC. These measures will ensure that the HKADC will have a good range of expert advice representing a wide cross section of the arts interests available to it, together with strong and credible link to the arts community. However, it should always be remembered that the HKADC's role is to develop the arts for the benefit of the community as a whole. The latter's interests must also be represented and this will be done by the other nine non-official members who will be appointed by the Governor from the community at large.

We believe that this creates a proper balance in the non-official membership of the Council. However, since we also need to accommodate four *ex officio* members, these changes have resulted in the need to increase the size of the Council's membership from 20 to 22 in total.

These changes have been worked out and agreed by all parties concerned after many rounds of detailed discussions. They have produced a practical and workable solution to a difficult problem. I would like to thank both the Bills Committee and the arts community for their contributions to this process.

In order to help the arts community in the selection of nominees, the Government has prepared a set of guidelines, on which we have consulted the HKADC, the arts community and the Recreation and Culture Panel of this Council. We have now analyzed the feedback obtained and have fine tuned the guidelines accordingly. We are now working out an implementation programme. We have already issued the guidelines and it is our intention to issue the implementation plan when it is ready, so that the arts community can start organizing themselves and preparing for the nomination process to start once this Bill is passed into law.

The third element of the package which I want to discuss is the method of meeting the calls that have been made for the operations of the HKADC to be more open and transparent in future. During the final stage of our discussions with the Bills Committee, the Honourable Christine LOH proposed a series of amendments to the Bill to require Council meetings to be opened to the public, except in certain circumstances. Let me state here firmly that the Government is totally opposed to these proposed amendments. We believe them to be inappropriate, unnecessary, inflexible and motivated by broad political objectives rather than by the particular needs of the arts community. We have stated that whilst we have no objection in principle to the concept of Council meetings being open, we believe strongly that this matter should be addressed by the HKADC administratively through the use of Standing Orders, rather than by enshrining such provisions in the law. This is the norm for all other statutory bodies including the Legislative Council, the two municipal councils and the district boards.

To agree to Miss LOH's amendment would be to subject the HKADC to additional and unnecessary restrictions to those of other statutory bodies. It may also imply mistrust of the HKADC and I see no justification in fettering the HKADC in this way. Miss LOH's proposal would also have potentially far-reaching implications for other statutory and advisory bodies in Hong Kong. Her proposed amendments are not germane to the HKADC Bill. It is therefore not appropriate to consider them in the context of this Bill.

Mr President, the objectives of achieving open and transparent operations for the HKADC can be met fully by adopting suitable standing orders. In this regard, I am happy to inform this Council that the present HKADC has already decided to open its meetings to the public shortly and has already considered a set of draft Standing Orders covering this area. These were agreed by the HKADC as a positive and constructive response to Miss LOH's concern. These Standing Orders have since been issued and will be formally adopted by the HKADC at its next meeting on 11 May 1995.

In the light of this, there is no valid reason for Miss LOH to continue to press for her amendments. Indeed, I am surprised that she should be insisting on moving these amendments, especially since as the current Vice-chairman of the HKADC, she is fully aware that the HKADC has twice voted to reject her proposal to make the holding of open meetings of the Council a legal requirement.

Mr President, I do not wish to reply in great detail to the points that Miss LOH has just made. We have discussed this issue exhaustively and come up with the solution that meets our needs, those of the arts community and of the HKADC. The time has come to heal any wounds caused by the recent disagreements, to go forward and to do the important work required of the HKADC. The only small point I would like to make is that our Standing Orders which have been adopted by the HKADC are, as it happen, not based on Miss

LOH's proposal but on the tried and true methods adopted by, among others, the Legislative Council itself.

Mr President, with these remarks, and subject to the Committee stage amendments proposed by the Administration, I commend the Hong Kong Arts Development Council Bill to Members for approval, but I oppose the Honourable Miss Christine LOH's proposed amendments.

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

Bill read the Second time.

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

### **Committee Stage of Bills**

Council went into Committee.

### **PROTECTION OF TRADING INTERESTS BILL**

Clauses 1 to 7 and 10 were agreed to.

Clauses 8 and 9

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members. These are minor drafting amendments which seek to reflect better the meaning of the English text. Thank you, Mr Chairman.

*Proposed amendments*

#### **Clause 8**

That clause 8(5) be amended, by deleting everything after “即使” and substituting “該法律程序所針對的人並不在該法院的司法管轄權範圍內。”.

#### **Clause 9**

That clause 9 be amended, in the section heading, by adding “強制” before “執行” .

That clause 9(1) be amended —

- (a) by adding “強制” before “執行” where it twice occurs.

(b) by deleting “相當於第 8 條” and substituting “與第 8 條相應” .

That clause 9(2)(b) be amended, by adding “強制” before “執行” .

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

*Question on clauses 8 and 9, as amended, proposed, put and agreed to.*

## **HONG KONG ARTS DEVELOPMENT COUNCIL BILL**

Clauses 1, 3, 4, 5, 8, 9, 10, 12, 15 and 20

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that the various clauses as set out under my name in the paper circulated to Members be amended.

The new clause 1 specifies the date on which this new legislation will come into operation. We propose that this date should be 1 June 1995. This will provide a firm target whilst allowing sufficient time for the necessary financial and administrative arrangements to be made to ensure that the transformation of the Council into a statutory body is smooth.

The amendments to clause 3 reflect the consensus achieved following extensive consultations by the Administration with the Bills Committee, the Hong Kong Arts Development Council (HKADC) and the arts community on the method of selecting members of the HKADC. The present package enables much greater participation by the arts community in the appointment process, and at the same time ensures that the Council will benefit from the presence of a wide range of artistic and professional expertise. This will be conducive to the smooth and efficient operation of Council's business. The new clause 3(3)(a) will increase the size of the Council from the previously proposed 20 to a total of 22. The reason for this has been explained earlier when I moved the Second Reading of the Bill.

The new clauses 3(3A) and 3(3B) will enable the arts community to organize themselves in order to nominate their representatives as candidates for consideration by the Governor for appointment as members of the Council. The arts community can nominate up to nine persons for appointment, each of these nine persons shall represent one of the nine categories specified in clause 3(3B). For the purpose of nomination, the Governor is empowered under this clause to specify in the Gazette up to nine organizations or groups of organizations. Each organization so specified shall, in the opinion of the Governor, be representative of one or more of the nine specified categories. The amendment to clause 3(4) is a consequential amendment to take into account the introduction of the nomination mechanism. I have mentioned earlier the Administration has drawn up a set of guidelines to facilitate the nomination process by the arts community. We are now working on the implementation plan. We hope that the arts

community can take advantage of the opportunity that they have requested and have been given through these amendments to nominate their representatives onto the Council in the future.

The new clause 4(a) combines the original clauses 4(a) and 4(d) with suitable amendments to clarify that the scope of the HKADC will include film arts as well as the literary, performing and visual arts. It also makes explicit reference to arts criticism in the appropriate place. The reason for this amendment has been explained in my earlier speech moving the Second Reading of the Bill.

Similarly, the amendment to clause 5(2)(b) includes a further explicit reference to arts criticism.

The amendment to clause 5(2)(1) distinguishes between movable and immovable property and accords different powers to the Council with respect to these two categories. The amendment, which places the same obligations on the HKADC as are already in force for other similar bodies, was suggested by the Bills Committee and accepted by the Administration.

The amendment to clause 15 specifies that the Governor shall not later than three months after the receipt of the annual report, the annual statement of accounts and the auditor's report on the accounts of the HKADC table these reports and statements before this Council. The same time limit is currently adopted by some other statutory organizations. The proposed amendments would give further precision to this clause. Mr Chairman, the other amendments to clauses 3(4)(e), 3(4)(k), 4(c)(2)(b), 9, 10(1), 12 and 20 of the Chinese version of the Bill are purely consequential and technical in nature.

Mr Chairman, I beg to move.

### *Proposed amendments*

#### **Clause 1**

That clause 1 be amended —

- (a) in the clause heading, by adding “**and commencement**” after “**Short title**”.
- (b) by renumbering clause 1 as clause 1(1).
- (c) by adding -

“(2) This Ordinance is to come into operation on 1 June 1995.”.

**Clause 3**

That clause 3 be amended —

- (a) by deleting subclause (3)(a) to (c) and substituting -

“(a) a Chairman, a Vice-chairman and 16 other members, each of whom shall be appointed by the Governor for a term not exceeding 3 years;”.

- (b) by adding -

“(3A) The 16 other members referred to in subsection (3)(a) may include up to 9 persons nominated by organizations or groups of organizations specified under subsection (3B), and each such organization or group of organizations may nominate for this purpose not more than 1 person for each of the interests represented by that organization or group of organizations, and each such person shall, in the opinion of the Governor, be experienced in the interest for which he has been nominated.

(3B) The Governor may by notice in the Gazette specify for the purposes of subsection (3A) up to 9 organizations or groups of organizations each of which shall, in the opinion of the Governor, be representative of one or more of the following interests -

- (a) literary arts;
- (b) music;
- (c) dance;
- (d) drama;
- (e) visual arts;
- (f) film arts;
- (g) arts administration;
- (h) arts education;
- (i) arts criticism.”.

That clause 3(4) be amended, by deleting “to (c)” and substituting “or nomination under subsection (3A)”.

That clause 3(4)(e) be amended, by deleting “行政事務” .

That clause 3(4)(k) be amended, by deleting “具合法裁判權的” .

#### **Clause 4**

That clause 4 be amended —

(a) by deleting paragraph (a) and substituting -

“(a) to plan, promote and support the broad development of the arts, including the literary, performing, visual and film arts, and to develop and improve the participation and education in and the knowledge, practice, appreciation, accessibility and informed criticism of the arts, with a view to improving the quality of life of the whole community;”.

(b) by deleting paragraph (d).

That clause 4(c) be amended, by deleting “現” where it twice appears and substituting “達” .

#### **Clause 5**

That clause 5(2)(b) be amended, by deleting “and accessibility” and substituting “, accessibility and informed criticism”.

That clause 5 be amended, by deleting subclause (2)(1) and substituting —

“(1) acquire, take on lease, purchase, hold and enjoy movable property and sell, let or otherwise dispose of or deal with movable property;

(1a) acquire, take on lease, purchase, hold and enjoy immovable property and lease or, with the approval of the Financial Secretary, sell or otherwise dispose of immovable property;”.

#### **Clause 8**

That clause 8(2)(b) be amended, by adding “饋贈、” before “捐贈” .

#### **Clause 9**

That clause 9 be amended, by deleting “發展局的” and substituting “的發展局” .

**Clause 10**

That clause 10(1) be amended, by deleting everything after “資金可” and substituting “撥作及支付償還貸款。”。

**Clause 12**

That clause 12 be amended, by deleting “會計” and substituting “帳目”。

**Clause 15**

That clause 15 be amended, by adding “not later than 3 months after the receipt of such statement and reports by the Governor” after “Legislative Council”.

**Clause 20**

That clause 20 be amended, in the Chinese text —

- (a) by deleting the heading before the clause and substituting -

“《申訴專員條例》”；

- (b) by deleting the clause and substituting -

“20. 本條例適用的機構  
《申訴專員條例》(第 397 章)附表 1 現予修訂，加入 —  
“香港藝術發展局。”。

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

*Question on clauses 1, 3, 4, 5, 8, 9, 10, 12, 15 and 20, as amended, proposed, put and agreed to.*

Clauses 2, 6, 7, 11, 13, 14 and 16 to 19 were agreed to.

New clause 16A Council Meetings open to Public

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

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 16A as set out in the paper circulated to Members be read the Second time.

In the Secretary's speech just now, he seems to have highlighted eight reasons why he is against new clause 16A. He said that it was inappropriate; that it was unnecessary; that it was inflexible; that it was not needed by the arts community; that it was motivated by political objectives; that it implies mistrust of the Council itself; that it has far-reaching implications beyond that of the ADC; and that he said the ADC itself is against it.

Perhaps I could deal with the reason of inappropriateness, that it is unnecessary and that it is not needed by the arts community. I think I have, in fact, dealt with it adequately in my opening speech, but the Secretary said just now that he did not want to go into any detailed comments. I suspect he does not want to go into any comments because he cannot. It really goes to the root of the problem and I urge Members to reconsider the difference between a right guaranteed by law and one that is simply in administrative order. There is a world of difference. Anything in standing orders can be changed and taken away. Something that is given as a right is much more secure and much more permanent.

As to the point about flexibility, what I have done is that I have re-drafted my amendment to make sure that that degree of flexibility can be provided for. All it takes is for two-thirds of the Members present in order to close a meeting, and before they close the meeting, of course, they would have to state the general reason why they are closing the meeting without disclosing the information which may be confidential. I think with that in place you have all the flexibility that you want. But perhaps when the Secretary stands to speak again, he can more properly explain why he feels that that degree of flexibility is not enough. But perhaps he can also enlighten me as to why a statutory right is inappropriate, unnecessary and not needed by the arts community.

As to implying mistrust of the ADC, that really baffles me. I would have thought that something that is guaranteed by law does not imply mistrust of anybody. It is simply a right that is given to the people. It does not imply that if you require somebody to do something by law that you mistrust them. Otherwise we have lots of problems with many of our laws.

As to, of course, this point about far-reaching implications, that is really up to the Government to think about. If the Government is serious about more openness and more transparency, then access to information and open meetings guaranteed by law are two very excellent ways of doing it. Well, yes, it has far-reaching implications. It will make our Government more open, less secretive, and that is a very good thing.

This last point about, again, that I am motivated by political objectives. Well, actually, as I said earlier on, my political agenda is one of open government. I do not need to hide behind anything to enunciate that. If, as the

Secretary says, that my amendment is so unpopular because the ADC members do not want it, or the majority of them do not want it, and other people in the arts community can do without it, then, yes, he is right. I should drop my amendments if I am motivated by political popularity. I am motivated by principles. I want to make this Government more open in every way that I can, and I think pushing for open meetings guaranteed by law is a very good way. And that is why I am doing it, and that is why I have chosen not to withdraw my amendments.

The last point about that the ADC has voted twice against my amendments. I would just like to comment on that. The reason for that to a great extent is because the Government threatened to take away a statutory body. Many artists are afraid that they will not have the ADC. This threat was given, I believe, on 3 March when there was a public meeting. Everybody was aghast. And because of that fear, people thought: Well, let the Bill go through first. And I would like to say and put it on record here that many of those artists, many of those people in the Arts Development Council who have not supported a legislative right to open meetings have said to me that perhaps I would like to move it on another occasion and that they would give me my full support. So, perhaps I could say to the Secretary here that if I lose on votes today, I would probably wish to move an amendment some time in the future on exactly the same thing, and then let us see what happens.

*Question on the Second Reading of the new clause proposed.*

MRS ELSIE TU: Mr Chairman, this amendment, in my estimation, puts the Arts Development Council into a legal straitjacket and leaves the members without freedom or flexibility.

I think we can do without this kind of bureaucracy. The ADC will have open meetings, but will have its own Standing Orders on the criteria under which their meetings may be held, if necessary, in camera. We on this Council would probably object to being tied hand and foot by legislation, and we should not deprive other bodies of freedom.

As a Member of this Bills Committee, Mr Chairman, I consider this amendment unnecessary, and urge colleagues not to support it, in order to give the ADC a little more freedom and flexibility.

Thank you, Mr Chairman.

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, let me reiterate once again that the Administration does not object to open meetings and transparency in principle, but we firmly believe, and so does the HKADC, that this should be addressed through a set of Standing Orders to be

promulgated with the power conferred on the HKADC under clause 18 of the Bill to make rules and regulate its own procedures.

The amendments proposed by Miss LOH are totally unacceptable to the Administration and therefore the three Official Members of this Council will vote against them, and I hope the other Honourable Members of the Council will see fit to do so.

Mr Chairman, there has never been any dispute over the merits of the idea of the HKADC's operation being open and transparent. What is in dispute is the means to achieve that openness and transparency. The Administration firmly believes that legislation is not necessary to enable open meetings to take place. Indeed, the Legislative Council meeting is open to the general public but this is not due to any legislative measures. Rather it is in compliance with Standing Order 66 of this Council. The two municipal councils and the Housing Authority, just to quote a few, also provide for open meetings in their Standing Orders. Most statutory bodies in Hong Kong are required under the law to open their meetings. To impose such a legal requirement on any statutory body is not only fettering the discretion of that body unnecessarily, but is also tantamount to casting a vote of no confidence in the ability and integrity of its members to run its business properly and in the public interest. There is nothing wrong with the existing administrative arrangements for open meetings, and there is no reason to suppose that the HKADC circumstances are any different to those of other bodies of similar nature.

Does the Honourable Miss LOH consider that her colleagues on the HKADC are less capable, have any less integrity or that they will abuse or ignore its Standing Orders and not open the meetings to the public? Does she not trust the arts community, who will be nominating nine of their own representatives for membership of the HKADC in running their own business properly? Or is she questioning the performance of her colleagues to date? The answer is clear. The proposed amendments do no more than to serve the purpose of advocating the Honourable Christine LOH's own personal political agenda at the expense of the genuine needs of the arts community. The HKADC Bill is just being used as a convenient vehicle because it happens to be before Members now, or, to quote from papers issued by Miss LOH on this matter, because "this amendment represents the first legislative attempt to open up meetings of a Government advisory body in Hong Kong".

The Honourable Miss Christine LOH's amendments ignore completely the strong wishes of the arts community to have the HKADC established as a statutory body at an early date. It ignores the established practice in Hong Kong, including this Council, of leaving the conduct of meetings to the discretion and wisdom of the members of such councils or boards, and it ignores the fact that the proposed amendments achieve no more than the Standing Orders which have been proposed by the present HKADC and which meet fully the objectives of opening the HKADC's meetings. The Honourable

Christine LOH herself has endorsed the Standing Orders in her capacity as Vice-chairman of the HKADC.

I strongly appeal to the Honourable Members of this Council to reject this proposal, which is not central or essential to the HKADC or the Bill itself, in order to avoid holding up the establishment of the statutory HKADC any longer. Mr Chairman, the Administration is unable to support the proposed amendments by Miss LOH. If the amendments are carried, I may have to consider postponing this Bill for further consideration, so as to give the Administration more time to reassess fully the political implications of the amendments.

MISS CHRISTINE LOH: The Secretary has repeated on several occasions that I am advocating my own personal political agenda. Well, as I said, my agenda is open government, so I am not ashamed of that. For him also to say that this is a convenient occasion for me to do so and for me to have said in my papers circulated to Members that this is a first legislative attempt to open up meetings, well, yes, yes, Mr Chairman. This is the first legislative attempt, and I wonder if this will be the last. I cannot say that there are no Members here who sit on other statutory councils that they would not ever wish to move amendments to other statutory bodies to open up the meetings.

I cannot guarantee that to the Secretary, and perhaps I could say to him, what is his political agenda for opposing open meetings when he has already admitted that he fully endorses open meetings? He just does not want it guaranteed by law. He is not able to say why he does not want the legal right. Of course he contrasted with this Council and to say that we do not have laws governing our meetings and yet we open up all our meetings. I wonder whether it would be better eventually for there to be laws governing all public bodies and their meetings. This idea is not new to Hong Kong. In other countries, many of them do have open-meeting laws, and it has got nothing to do with whether we trust the members of those various bodies or not. If what Mr SO is saying is that if the imposition of legal obligation means distrust, well, as I said earlier on, that really does not make sense because we impose legal obligations on many people, on many bodies, and yet we do not say that we impose legal obligations on them because we do not trust them.

His last comment was that I, as Vice-chairman of the Arts Development Council endorsed the Standing Orders. Well, of course I endorsed the Standing Orders because that is in no way contradictory to there being a legislative right. The two are not mutually exclusive, and obviously if my amendment is going to lose, then what I want as second-best is for there to be the best set of Standing Orders that there can be, so that we can operate within them and to make sure as soon as possible that the meetings of the ADC are going to be open.

Thank you, Mr Chairman.

*Question on the Second Reading of the new clause put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the “Noes” had it.

MISS CHRISTINE LOH: Division.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

CHAIRMAN: We are short of the head count. Have all Members pressed the right button? Are there any queries? If not, the results will now be displayed.

Mr HUI Yin-fat, 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, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, 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, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, 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, Dr TANG Siu-tong and Mr James TIEN voted against the motion.

THE CHAIRMAN announced that there were 20 votes in favour of the motion and 31 votes against it. He therefore declared that the motion was negated.

CHAIRMAN: As the Second Reading of new clause 16A has not been agreed, it cannot be added to the Bill. Consequently, Miss LOH cannot proceed with her proposed amendment to the Schedule because it is dependent on the addition of the new clause 16A to the Bill.

**Schedule**

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that section 4(1) of the Schedule of the Bill be amended as set out under my name in the paper circulated to Members.

The amendment to this section will give greater flexibility to the operations of the Council in respect of its schedule of meetings.

Mr Chairman, I beg to move.

*Proposed amendment*

**Schedule**

That schedule, section 4(1) be amended, by deleting “2” and substituting “3”.

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

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

Council then resumed.

**Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

**PROTECTION OF TRADING INTERESTS BILL** and

**HONG KONG ARTS DEVELOPMENT COUNCIL BILL**

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.

**PRIVATE MEMBER'S MOTIONS**

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on the speeches for the motion debates and Members were informed by circular on 1 May. The movers of the motions will have 15 minutes for their speeches including their replies and another five minutes to reply to proposed amendments. Other Members, including movers of

amendments, 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.

## EMPLOYMENT POLICY

DR HUANG CHEN-YA moved the following motion:

“That in view of the increasing difficulty faced by local workers in seeking employment and in order to enhance their employment opportunities, this Council urges the Government to terminate the policy for the importation of labour, examine the feasibility of introducing legislation to accord priority to local workers in employment, and formulate a comprehensive employment policy which should include:

- (1) special arrangements for assisting older displaced workers, middleaged women and the disabled in seeking employment; and
- (2) a long-term manpower training programme.”

DR HUANG CHEN-YA(in Cantonese): Mr President, I move the motion standing under my name in the Order Paper.

The Government recently published the unemployment rate for the first quarter of 1995 which is as high as 2.8%, the highest in nine years. The number of unemployed combined with the number of underemployed means that 100 000 people are having difficulties finding employment. A survey conducted this week also reveals that the economic confidence of the people of Hong Kong has fallen to the lowest point in nine years. The low-paid people, in particular, are worried most about their future and they lack confidence. All these point to the fact that the economy of Hong Kong has entered a danger zone and the Government must draw up policies to help the public overcome employment difficulties.

In fact, over the past few years, the growth of employment opportunities has been outstripped by the growth of our workforce. With the growth in demand lagging behind supply plus the importation of labour and the supply of illegal workers, it is not surprising to find that local workers are encountering difficulties in finding jobs. Moreover, the vacancy rate of the manufacturing industry has fallen from 5.2% in 1989 to 2.49%, the corresponding rate in the hotel industry has dropped from 4.1% to 2.82% and the rate in the construction industry has declined from 5.7% to 1.37%. The figures show that the vacancy rates have dropped significantly and therefore it is just natural that workers are finding it difficult to secure jobs.

The Hong Kong Government has all along been taking pride in the territory's low unemployment rate. In fact, the Government is pulling wool over the eyes of the Hong Kong people in an attempt to hide its dereliction of duty in

failing to formulate a comprehensive employment policy. The participation rate of the labour force in Hong Kong is only 66%, which is lower than the corresponding rates in Europe, the United States and Japan while the participation rate of women is even lower. If the labour force participation rate in Hong Kong is in line with that of the developed countries, the unemployment rate of Hong Kong will be as high as 7% to 8%. Therefore, the existing unemployment rate of 2.8% is in fact concealing the actual unemployment situation because many people who cannot find jobs have withdrawn from the labour market and are no longer deemed unemployed.

With local workers facing difficulties finding jobs and with robust economic growth becoming a thing of the past, the government of a country should give priority to safeguarding the employment opportunities of local workers. Only by allowing local workers full employment to give full play to their potential will economic development be boosted and the chances for social crises mitigated. Therefore, we think that the Government of Hong Kong should formulate a comprehensive employment policy, thereby creating employment opportunities for local workers. Similarly, we should remove the obstacles for local workers in securing jobs, that is, to scrap the importation of labour and to crack down on illegal workers.

Mr President, I will focus my discussion on the creation of employment opportunities and the drawing up of long-term manpower training policies. My colleagues from the Democratic Party will speak on other subjects, including the social crisis resulting from the importation of labour, the enactment of laws to limit the importation of labour, the fight against illegal workers and suggestions in relation to the employment of women and the disabled.

Mr President, the most efficient way to enhance employment opportunities will be to halt the importation of foreign labour. Continued importation of foreign labour will only enable employers to employ a large quantity of cheap labour, rendering it possible for them to maintain labour-intensive and low value-added businesses. As a result, there will be no desire on the part of the investors to invest in machinery upgrading and manpower training. That will surely hamper Hong Kong's further economic development and will reduce the chance to create more new jobs in Hong Kong. Concurrently, the importation of labour will continue to increase the employment difficulties faced by local workers, thereby bringing down the wages of the local workers. That will lead to hardships, pent-up anger and social instability. Therefore, the Government should immediately bring to a halt the importation of foreign labour, with a view to alleviating the difficulties of local workers in seeking employment. If the Government continues to ignore the opinion of the public and be bent on having its own way, the Democratic Party will ask the Government to immediately enact laws to limit the importation of foreign labour, so as to ensure that priority will be given to local workers in employment. Importation of labour should only be viable if local workers have been offered adequate employment opportunities. On the law enacting front, actions should include:

- (1) legislate to prescribe the upper limit for foreign labour employed by companies;
- (2) legislate to prescribe the upper limit for foreign labour in a particular trade, for example, in the “sunset” trades or those trades which record a drastic drop in the vacancy rate. No more foreign labour should be imported for these trades;
- (3) legislate to require employers to accord top priority to local workers;
- (4) legislate to require employers to implement matching schemes between foreign labour and retrained labour;
- (5) legislate to provide that if employers have to import foreign labour, they will have to take part in the job matching scheme;
- (6) legislate to require employers to provide information relating to the staffing of the companies, so as to forestall the scenario that employers dismiss local workers for the sake of importing foreign labour or dismiss local workers after importing foreign labour;
- (7) step up the prosecution of employers employing illegal foreign labour and employers employing foreign labour for illegal purposes, that is, those employers who require domestic helpers to be engaged in the retail industry or in other jobs.

I would like to reiterate that the termination of labour importation does not mean limiting the importation of domestic helpers. I ask the employers not to get confused about this. We are asking for punishment to be increased and prosecution to be stepped up against employers employing illegal workers, but are not asking for the abolition of the importation of domestic helpers.

To guarantee the employment opportunities for local workers, a more comprehensive and positive method would be to formulate an employment policy, which the Hong Kong Government has so far failed to draw up. An employment policy should include: (1) the creation of more job opportunities with a view to reducing unemployment; (2) the formulation of a long-term manpower training policy with a view to upgrading our labour quality; (3) the removal of obstacles for employment of women, such as age and sex discrimination, the lack of nursery places and the inadequacy of social support facilities. Improvement of facilities and the provision of tax concessions are also necessary to provide incentives for the employment of the disabled.

As regards the creation of job opportunities, the Hong Kong Government should, on the one hand, promote the development of industry and the services sector and, on the other hand, lend a helping hand to the motive force of Hong Kong's economy — medium or small enterprises. That would encourage free

enterprise among the people of Hong Kong in expanding their business, thereby providing more employment opportunities. The Democratic Party has the following proposals with regard to the expenditure part of the Budget for the coming year: 1) to allocate funds for the setting up of a “sponsorship fund for medium and small enterprises”, under which medium and small enterprises will be assisted by way of loan to procure machinery and they may be subsidized in the exploration of overseas market, the employment of consultants and the fees in relation to intellectual property and so on. The fund will also assist chartered franchisees to establish their businesses or expand overseas businesses; 2) to allocate funds to subsidize the conduct of detailed marketing and technological study for every service trade so as to promote the development of the service industry; 3) to increase the allocation of funds to those agencies providing logistical support for industries, such as the Productivity Council. To establish a technological data bank to include the information relating to technology transfer, so that the factory managements may be updated with regard to the latest developments on the technology front and in respect of their trading partners.

As regards the provision of training to our labour force, the primary aim is to equip our workers with high levels of skill and enable them to earn good income, so that they may move up the social ladder to high-salaried senior posts. In that way, they will avoid being continuously replaced, with their positions and pay continuously dropping. The secondary purpose is to enhance the creativity, positiveness and initiative of workers, so as to raise their efficiency and to enhance their resilience to market changes. Only through this can productivity be raised and economic development be enhanced.

I have the following recommendations with regard to the retraining and on-the-job training programmes:

1. To allocate additional resources in order to increase the investment in the provision for training for our labour force. The Employees Retraining Board (ERB) will be having a deficit during the 1994-95 financial year. In other words, with limited resources, many courses will not be upgraded and the number of trainees will be limited. Therefore, we request the Government to increase its injection into the Employees Retraining Fund in the upcoming Budget.
2. To provide incentives for employers to carry out on-the-job training. We propose to allocate funds to set up a “skill-training fund” in order to provide incentives for enterprises to provide staff with on-the-job training. This will enable staff to incessantly upgrade their skills, which will assist the enterprises in moving towards high value-added production activities. The expenditure incurred by the enterprises in staff training may be reimbursed in part from the Fund. In order to encourage enterprises to provide training for senior staff, the amount of fund open for application for this particular purpose may also be slightly adjusted upwards.

3. At present, there is ample room for improvement as far as the quality of training courses is concerned. This includes two aspects: firstly, it is a continuous process to train the labour force, but the existing course durations only last for about three months and there is a long queue, thereby rendering it difficult for the trainees to receive continuous retraining. Secondly, the courses provided are not in line with market demand. The recently published *1994 Demand and Supply Report on Technical Manpower of Major Hong Kong Industries* has really shocked me. The survey report shows that the supply of craftsmen in clothing technology, civil/structural engineering and building/constructing technology, mechanical engineering, marine engineering and printing technology fell short of demand. The Vocational Training Council explains the phenomenon as being the result of the courses' lack of attraction to young people. I will then ask a question: When the manufacturing workers are having difficulty in securing jobs, why cannot we take the positive step of upgrading the skill of the existing manufacturing workers so as to fill the vacancies? Moreover, the employers are always complaining that the courses offered by ERB have failed to meet their requirements. For that reason, ERB should maintain close contact with the Chambers of Commerce.

To put it in a nutshell, the Hong Kong Government should expeditiously abolish the policy of importing foreign labour and a long-term employment policy should be drawn up to enhance the employment opportunities of local workers, reduce unemployment, strengthen training, improve the employment conditions for workers and provide assistance for the employment of women and the disabled.

Mr President, the “rice bowls” of the Hong Kong people should be protected, so that they will not have to worry about unemployment. Today, just outside the Legislative Council Building, the Democratic Party handed over to me 10 000 signatures from the public, requesting the Government to terminate the policy of importing foreign labour and to formulate an employment policy, so that local workers will have jobs to do and their “rice bowls” secured. I will reflect to the Secretary for Education and Manpower the public's sentiment and aspiration, in the hope that he will change his mind as well as his policy.

With these remarks, I so move.

*Question on the motion proposed.*

PRESIDENT: Mr James TIEN has given notice to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I propose to call on him to speak and to move his amendment now so that Members may debate the motion and the amendment together.

MR JAMES TIEN moved the following amendment to Dr HUANG Chen-ya's motion

“To insert after “seeking employment and” the words “the recruitment difficulties faced by some employers and”; to delete “their employment” and substitute with “both employment and recruitment”; to delete “terminate the policy for the importation of labour, examine the feasibility of introducing legislation to accord priority to local workers in employment,” and substitute with “conduct a review”; and to insert “and retraining” after “training”.

MR JAMES TIEN (in Cantonese): Mr President, the motion put forward by Dr the Honourable HUANG Chen-ya can only reflect part of the present situation in Hong Kong. Dr HUANG has only observed a rise in unemployment and the panic situation among local workers. However, he has not even mentioned a single word about the market recession, operational problems and so on which the business and industrial sector is now facing. I hope, by putting forward this amendment, I can balance the views of employers and employees so that people of various sectors can have a clearer picture of what is actually happening to the economy of Hong Kong. We can then review the overall labour policy from a realistic angle.

Members representing the labour sector often accuse employers of depriving workers of the benefits to which they are entitled. Can I ask them whether they have ever seriously considered the problems faced by employers from the employers' angle?

I would like to quote some examples to let Members know what difficulties industry and commerce are encountering in the course of development. I think when Members walk along the streets these days, they will find more and more “To let” notices posted on shop premises and many shops are offering to sell their goods at reduced prices. People will also find it much easier than before to have tables to sit down to at restaurants and hire taxis in the street. Recession has indeed caused difficulty to various trades and industries.

Apart from the competition coming from our neighbouring countries, we have to face the problems of significant increase in rental charges, high interest rate and so on. All this, coupled with the ever increasing labour benefits and regular wage adjustments at more than 10% each year, is proving too much of a burden to employers across the board so that they could hardly take a breather.

Viewing from the local employers' angle, the second part of Dr HUANG's motion seems to be somewhat unreasonable. If he could urge the Government to introduce legislation to accord priority to local workers in employment, in view of the difficulty faced by employers in recruiting workers, can we similarly urge the Government to implement legislation to accord priority to local employers in employing local workers so that we can require job seekers

to take those organizations operated by local investors as their first choice in order to resolve the problem of “jobs with no workers” faced by employers? Mr President, I simply cannot agree with it.

Undoubtedly, some vacancies in certain types of trades or industries are left unfilled because local workers are not willing to take those jobs. As the veteran workers are getting old and the younger generation refuses to join these trades because of long working hour or poor working environment, employers in these trades have no alternative but to rely on the “far from adequate” quotas for importing workers. If we are to terminate the importation of labour in a “clean cut” manner, it will serve no purpose other than to cause these trades or industries to fold up. Other affected firms or companies, because of a shortage of manpower, will also have to move to the mainland or otherwise close down their business. By that time, the rate of unemployment may double. Of course, unemployment has been on the low side in the past as far as Hong Kong is concerned. The present rise to 2.8% is considered high already. But two times 2.8% is 5.6%. Let me quote some figures for Members’ comparison. At present, unemployment rates are 7% in the United States of America, 9% in Britain and 10% in Australia. For those Members who are in favour of terminating the importation of labour, have they ever considered the serious implications?

Mr President, I have conducted a brief questionnaire survey of 2 000 members of the Federation of Hong Kong Industries, which I am representing, to consult them with regard to Dr HUANG’s motion. The findings show that, of the 323 questionnaires returned, 81% oppose a complete termination of importation of labour; 42% indicate that their companies’ operation will be affected if the Labour Importation Scheme is scrapped. In addition, 73% oppose the implementation of legislation to accord priority to local workers in employment.

The result of the survey shows that, from the employers’ angle, not only will termination of labour importation and implementation of legislation to accord priority to local workers in employment fail to solve the problems of the local labour market, but they will also impede the overall development of Hong Kong.

We should resolve the problems of recruitment difficulty and unemployment through positive means. The On-the-job Retraining Scheme and the Employees Retraining Scheme have proved to be less than effective. Both employers and employees should put forward more recommendations to the Government so that the effectiveness of the two schemes can be improved. On the other hand, we will ask the people in the business and industrial sector and the chambers of commerce to co-operate with the Government in helping job seekers who are disabled or who are of relatively old age to secure suitable jobs. This will reduce unemployment and alleviate the problems faced by the business and industrial sector.

With regard to the imported workers presently in Hong Kong, they should be allowed to stay on. Since economic development has moderated, running a business nowadays is not as easy as before. In fact, some firms or companies which are on the verge of bankruptcy are solely relying on imported workers to continue with their business. It is predictable that if this policy is scrapped, more industrial and commercial organizations will be unable to continue with their business. By that time, the unemployment rate may rise yet again.

At present, of the quota of 20 000-plus imported workers, only 20 000 are actually working. This merely accounts for 0.6% of the 3 million-strong workforce. Even by completely replacing imported workers with local workers, unemployment will only fall from 2.8% to 2.2% at most. So long as the structural problem of Hong Kong's economy remains unsolved, unemployment will not go away.

Finally, I hope Members will have more contact with employers and employees of different trades or industries in order to have a full understanding of the difficulties faced by employers. Making empty promises to workers unceasingly will not only set back the development of commerce and industry, but in the long run, it will have quite the opposite effect in that more local workers will lose their jobs.

Mr President, with these remarks, I move my amendment.

*Question on Mr James TIEN's amendment proposed.*

MISS ELSIE TU asked: Mr President, I am glad that Dr HUANG has raised this motion, because I have for some time been trying to draw attention to the problem, both in speeches and in letters to the government departments concerned.

There is a wide information gap between the workers and the Government on the extent of local unemployment and underemployment. Anyone over the age of 30 is now unlikely to succeed in being selected for any job where the employment of imported workers is permitted. Imported workers are cheaper in some cases; they can be exploited or even cheated by some unscrupulous employers, and they do not have to be paid the benefits which the law provides for local workers. This problem has been snowballing for years, and now is the time to stop it before it is totally out of control.

I think at this point I need to issue a word of warning to those who seek to introduce more laws to give even greater benefits to workers. We need to learn a lesson from the United States and Britain, where trade unions went so far in their demands that they actually damaged the workers they claimed to be trying to assist. With the development of China and other parts of Southeast Asia, our

economy is on the decline, and it is important for us to consider whether we want to cause further decline by making more and more demands.

I have no sympathy towards employers who seek cheap labour to increase their fat profits, such as those in New York who employ semi-slave Mexican labour, including young children, while local workers are unemployed. Nor do I sympathize with those foreign companies who take their business abroad where there is cheap labour, sometimes slave labour, like the infant carpet-makers in India and Pakistan. Those people have no loyalty to their own country, and are depriving their countrymen of jobs and destroying their homeland's economy.

In the modern world, where it is easy to transport business from country to country, there are always people who are willing, for their own profit, to destroy the workers at home. We all need to be moderate and far-sighted. Workers need to be far-sighted too, and not opt for immediate benefits which will widen the gap in understanding between capital and labour. Workers need to know if employers have a real problem in business, while employers need to consider the livelihood of workers.

That is why, a few months ago, I suggested that the Hong Kong Government should set up a working group including representatives of capital and labour, as well as government officials, to investigate the way Hong Kong is going, discuss each other's problems, and see whether labour needs to be imported at all, and if so, in which areas of work and to what extent. Apparently, so far the Government has listened only to employers. Our workers must not be sacrificed, because in the end that will benefit neither side. Nor should our workers, for political purposes, be led to commit economic suicide by making unreasonable demands.

I would have preferred Dr HUANG's motion to urge the Government, not to terminate, but to phase out, the policy of importing workers and to do so as quickly as possible. We do not know what problems a sudden termination would create, but I do agree that the present policy is unacceptable.

I do not oppose Mr TIEN's proposals, but in my estimation, the matter is too urgent to spend a long time reviewing the policy. Some ways must be found at once to engage our Hong Kong workers first before looking abroad to fill any vacancies.

Mr President, these are my views on the motion and the amendment.

MR NGAI SHIU-KIT (in Cantonese): Mr President, Hong Kong is an economic city. The remarkable success in economic development that we have enjoyed in the past has been the result of the efforts made by a group of versatile and ambitious investors and a highly skilled workforce. Both management and labour have put in efforts in a harmonious and friendly environment to create

sustained economic success in Hong Kong. That is also the basic reason for social stability.

With the industrial transformation underway in Hong Kong in recent years, there is an apparent change in demand for various types of work in the industrial sector and in the vacancy rates of various industries as compared with those of the past. The Government's failure to step in promptly to provide appropriate retraining for the local workers in line with the industrial transformation has led to the situation where there are "people looking for jobs and jobs looking for people". To the industrial sector, a labour importation policy under proper control is a practical and effective way to meet the demand for workers to vacancies in certain work processes in the course of transformation as well as an important factor in ensuring that the industrial development of Hong Kong will not stop.

The industrial and commercial sector has always been an advocate for and exponent of the principle of promoting employment for local workers, formulating comprehensive employment policies, helping those who have difficulties in their employment and carrying out long-term manpower training programmes. Nevertheless, Dr the Honourable HUANG Chen-ya's motion calls for the Government to terminate the policy for the importation of labour and examine the feasibility of introducing legislation to accord priority to local workers. Apparently, these proposals have not been formed after careful consideration and I have great reservations about them.

Mr President, the present policy for importation of labour, despite the loopholes in its implementation definitely helps in easing the labour shortage suffered by many industries in Hong Kong so that Hong Kong's economy, in spite of the pressure resulting from the shortage of labour in recent years, has been able to maintain considerable growth. We cannot just set at naught the contribution of these foreign workers to the economic development of Hong Kong.

In my opinion, there is no direct relationship between the unemployment rate and the labour importation programme. The labour importation policy does not start today. It started back in 1989. During this period, there have been rises and falls in Hong Kong's unemployment rate. It is obvious that there does not exist a close inter-relationship between the two.

The rises and falls in the unemployment rate are closely related to seasonal changes and the mobility of the working population. Relying solely on the ground that the unemployment rate in the first quarter of this year has reached 2.8%, it would be far too arbitrary to say categorically that foreign workers have taken away local workers' jobs and all imported workers must go. Such argument represents an oversimplification to the unemployment problem.

All along, the industrial and commercial sector has maintained that there must be strict control over the number of workers to be imported and this policy must be applied only to industries which have actual needs. The major premise is that the local workers' employment should absolutely not be affected. I expect the Government to look more closely into the employment situation of various industries and the actual needs of individual industries in the review to be conducted later so as to allocate the quotas for imported labour properly such that the whole programme can be perfected.

As regards Dr HUANG Chen-ya's proposed introduction of legislation to accord priority to local workers in employment, it is basically a violation of the principle of free competition in the local labour market. The people of Hong Kong have absolute freedom in the choice of their occupation. By the same token, employers also have the right to hire people of the highest calibre. To require by means of legislation employers to give priority to certain people in employment will actually be a violation of the operation mode of a free economy. It will also go against the spirit of free enterprise on which Hong Kong's success has been built and dampen the enterprising aspirations of the people of Hong Kong.

To achieve the ideal goal of full employment, I think that both sides will have to put in efforts. When hiring workers, if employers purposely make unreasonable demands which are unrelated to the job to make things difficult for local workers applying for the job, these are the doings of unscrupulous employers and I believe these employers would receive little sympathy from most people of the industrial and commercial sector. As for the workers, I also hope that they will understand that nowadays workers have to keep on learning new skills to enhance their calibre and capability. They should, on the other hand, not be too fastidious about the work. They can then excel in this highly competitive employment market.

Mr President, there must be a harmonious relationship between management and labour before foreign investors can be attracted to Hong Kong to create more employment opportunities. If the economy is headed for an upturn, there will be more employment opportunities and the quality of life may then be improved. On the contrary, it would be unwise to restrict the employment or working choices of either the management or labour. It would only encourage confrontation between management and labour which would not be in Hong Kong's interest.

The amendment proposed by the Honourable James TIEN fully reflects the views of the industrial and commercial sector of Hong Kong. It does not hastily demand of the Government to terminate the labour importation policy immediately. Instead, it seeks to promote the employment of local workers in a positive manner. I will therefore support Mr TIEN's amendment.

Mr President, these are my remarks.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MR MARTIN BARROW: Madam Deputy, last night I tried to look through Hansard to see how many times this subject has come up during my seven years as a Member of this Council. Certainly I have spoken on it in seven policy and seven Budget debates and on at least four or five other occasions when there have been special debates. Adding Question Time, it has probably been on the agenda at least 30 times.

Over the past week, I have talked to employers across a wide section of the economy — retailers, engineers, contractors, dockyard operators, hotel proprietors and so on. They all confirm that they continue to have difficulties in recruiting and retaining the labour they need. Madam Deputy, the labour shortage is still with us and the Government must take immediate action to resolve the apparent mismatch, remembering that vacancies as at December 1994 were 64 500, up on 12 months before.

I must also urge the Government not to overreact to the short-term slight rise in unemployment which is still miniscule by world standards and it should analyze where these people are, how long they have been unemployed, who they are, and what they want to do. It is also important to take into account the fact that underemployment has fallen in recent years from 2.2% in March 92 to 1.4% today, more than offsetting the 2.4% to 2.8% increase in unemployment. In other words, the total has fallen from 4.6% to 4.2% over the three-year period. Is this perhaps due in part to people who are part-time in industry moving to full-time jobs in the private sector? I hope the Government will have a really hard look at what is going on and in the meantime stand firm, so that there are no delays in replacing people within the current quotas.

In particular, the Government must maintain its resolve regarding the new airport construction manpower needs. I already hear reports that the fainthearted in the Government are causing delays in the approval process, adding to what is already an extraordinary bureaucratic steeplechase. It is in the interest of the whole community, including of course those who live near the existing flight path in Kwun Tong, that Chek Lap Kok should be finished as quickly as a possible and at a minimum cost. Any retreat or impediments on labour supply for the new airport is surely not in our community interest.

In addition to looking at the recent situation, we should note that the labour shortage has already been with us since the mid-1980s. At that time, both the business community and the Government may have projected that the shrinkage of the manufacturing sector would provide enough people to cater for the expanding service sector. What has been underestimated is that the move of manufacturing into China, and the resulting rapid growth of Hong Kong as a service centre for the mainland, stimulated an even faster growth in all the service sectors, particularly those which are involved with Hong Kong's growing economic links with the Mainland. As a result, the service sector has

absorbed more employees than the 550 000 who moved out of manufacturing. As a whole, this transfer of people was relatively smooth, a remarkable feat in itself demonstrating the adaptability of our workforce. I do recognize, however, that there are a few, who have had difficulties finding employment and I fully support government moves to help these people with retraining and in other ways.

Labour organizations believe that some employers are offering unreasonably low wages to local workers, so that when they cannot hire workers on those terms, that becomes a reason for importing labour at lower cost. There are also allegations that local workers, particularly women over 35 years of age, are discriminated against. As I said, it can be shown that local employers are still having genuine difficulties in recruiting workers. Employers will not want to take all the time, trouble and cost to hire overseas workers if adequate supply of local workers were available. Thus objections to importation of workers should subside if the position is properly explained and politicians should not try to gain short-term political mileage out of the issue. This is an area where employer, employee and the government representatives should sit together to resolve any problems that may exist.

I am concerned that Hong Kong's position as an international business centre, as a gateway for China and as a location for the regional headquarters of international businesses will suffer without an adequate supply of labour. We must remember that Singapore has had a much more flexible policy for many years.

From the employer's perspective, imported labour is one of a number of answers to the problem. The Government must do everything it can to increase the local labour participation rate through retraining and other measures.

I would like to make it clear that I do not support unconstrained movement of people into Hong Kong. Schemes must be limited and properly controlled. A carefully controlled scheme will not adversely affect the livelihood of local workers, but we must make every effort to address their concerns. But I am sure that all sectors in Hong Kong would agree that we need a full workforce to maintain service standards.

I believe that the community as a whole suffers when service standards are not maintained. Look at just one example: the shortage of nurses. I am not suggesting that sector should necessarily be filled by people from overseas, but it is symptomatic of the problem. An increase in overall supply would make it easier perhaps to encourage Hong Kong people to join that profession.

The arguments surrounding inflation are of course sensitive. But again, I must emphasize that those who may benefit in the short term from a labour shortage are among those who suffer first from inflation if we do not successfully break this spiral.

It goes without saying that a real increase in pay and benefits for the Hong Kong workforce is the right long-term aim, and keeping the labour market relatively tight will stimulate an upward trend of wages. Should there be real unemployment, in other words, a figure of around 4%, imported workers should of course be the first to be laid off. I would also add that I support the measures to impose tough penalties against any employer who abuses the importation scheme.

Finally, a long term aim must be to train Hong Kong people to take the higher paid positions and any resulting gaps at the lower end should be filled by people from China or elsewhere.

With these words, I support Mr James TIEN's amendment.

MR MICHAEL HO (in Cantonese): Madam Deputy, first, I would like to talk about the following incidents which happened recently:

- (1) the FUNG Yiu-king Convalescent Hospital had recently advertised that it had three vacancies for the post of Health Care Assistant and it received more than 400 applications;
- (2) according to a television report, a building company in Hong Kong had even gone so far as to provide foreign labour hire service, despite the Government's requirement that a foreign worker had to be under the direct employment of a single employer;
- (3) when an office-bearer of the Democratic Party was having a meal in a canteen of the Chinese University, he noticed that a Filipino worker was cleaning the canteen.

These incidents showed that, on the one hand, workers in Hong Kong were desperate to find a job and, on the other hand, employers had made use of the loophole of the policy for the importation of foreign labour to take advantage of cheap labour.

The Democratic Party will certainly take positive steps to urge the Government to terminate the policy for the importation of labour, but we think that it is also necessary to amend the laws in order to give local workers job security. We have heard that some groups have suggested "according priority to local workers", but the scope of that proposal is still unknown.

In 1993, the United Democrats of Hong Kong introduced a Private Member's Bill in my name to restrict the importation of foreign labour. Although the Bill was negated in February this year, the Democratic Party had promised that it would persist with the course. We have conducted extensive studies on the subject and we hope we can publicize the findings soon. Our views in the interim are as follows:

We think that legislation which seeks to confer job security on local workers should be able to serve the following purposes: first, making it obligatory for employers to give priority to local workers in their recruitment and second, strengthening the supervision over employers to confirm that there are real difficulties in recruiting local workers in Hong Kong.

There may not be a particular piece of law in other countries which specifically provides that employers should employ local workers. That, however, does not mean that there are no specific provisions in any of their laws which confer job security on local workers. In Singapore, there are laws on foreign labour; in Taiwan, there are laws on employment services and there are immigration laws in other countries which stipulate that employers have to give sufficient grounds to show that there are real difficulties in recruiting local workers before they can employ foreign workers. The following measures will be welcomed:

- (i) *to set down an upper limit by way of legislation restricting the number of foreign workers that a company can employ*

When the Government introduced the Labour Importation Scheme in 1989, it had stipulated that the number of foreign workers employed by a company should be no more than 20% of the number of local workers in its employ. However, that ceiling was abolished in 1991 when the Government further relaxed the restrictions of the policy for the importation of foreign labour. If an upper limit of the number of foreign workers that a company can employ is set down, employers will have to take positive steps to find suitable local workers to fill the vacancies.

- (ii) *to set down an upper limit by way of legislation restricting the number of foreign workers that different trades can employ*

At present, although factors like the demand for workers, the employment situation of workers, wages and the contribution of different trades to the economy will be considered by the Government in its allocation of quotas, the policy for the importation of foreign labour, which initially aimed at solving the problem of labour shortage, has gradually become the Government's tool to combat inflation. The weighted ration of the above factors considered by the Government in its allocation of quotas would be unknown to outsiders. The Government should withdraw or reduce the quota of imported foreign labour for trades in which employment opportunities have been dropping or will not increase.

- (iii) *to make it compulsory for employers to accord priority to local workers in employment by means of legislation*

At present, an employer has to register its vacancies with the Labour Department for a certain period before it can apply for a quota for the importation of foreign labour. However, there has been a high incidence of employers deliberately raising their requirements or setting out harsh demands in their recruitment. To prevent this situation, legislation can be enacted to make it compulsory for employers to publicize vacancies for foreign labour in the newspaper and in the Labour Department to show that there is no local worker available for employment before they can import foreign labour. An alternative measure is to enact an anti-discrimination law, forbidding employers to refuse to employ local workers on grounds of age, sex and so on.

- (iv) *to enact legislation requiring employers to adopt a scheme co-ordinating the employment of foreign labour with that of retrained workers*

Employers are required to employ a certain number of retrained local workers when they employ foreign workers.

- (v) *to enact legislation requiring employers to provide information on the staffing of their companies*

Employers are required to provide information on staffing changes before and after the application for the importation of foreign labour in order to prevent them from dismissing local workers so as to employ foreign labour.

- (vi) *to enact legislation prohibiting employers to import cheap foreign labour in the name of training*

At present, the Government has no apparent control over workers who come to Hong Kong to receive training. Employers can repeatedly import workers in this manner. There is no minimum wage, it is not necessary to provide any special allowance and there is no restriction on working hours and benefits. We have to legislate to clarify the situation in this area. Employers have to prove that the training to be received by these workers can only be obtained in Hong Kong before they can import them.

The above provisions can be written into a law which specifically provides for the employment of foreign labour, or they can be included in the subsidiary legislation of the Immigration Ordinance as I had proposed in the Private Member's Bill which we debated in February in connection with the importation of foreign labour.

Concerning the question asked by the Honourable Martin BARROW as regards the importation of foreign nurses, I shall be happy to discuss the complexities of the question with him later.

MR TAM YIU-CHUNG (in Cantonese): Madam Deputy, I strongly objected to the labour importation policy in as early as 1989 when the policy was first implemented. At that time the negative effects brought about by the structural changes of our economy had not fully unfolded, and therefore workers did not show too much resentment. But this year cases of local workers' "rice bowls" being snatched away by imported workers have reached a level which the Government can no longer afford to take no notice of. Even government statistics show that the unemployment rate has reached 2.8%, the highest in nine years. People unemployed plus people under-employed number more than 120 000. According to statistics kept by the Federation of Trade Unions (FTU) and the internal surveys it has conducted, the unemployment rate and the under-employment rate are 9.5% and 9.4% respectively. We think that with such high unemployment rate the Government has a duty to terminate with immediate effect the labour importation policy and devise priority employment scheme for local workers. The Honourable James TIEN mentioned just now that the unemployment rate in countries like the United Kingdom, the United States and Australia is far higher than that of Hong Kong. But I want to point out that in countries like the United Kingdom, the United States and Australia, the unemployed are protected by unemployment benefits, whereas workers in Hong Kong are devoid of such protection. For this reason, Hong Kong is not in a position to compare with those countries.

Moreover, most of the people I have contacted lately are very concerned about the aggravating unemployment problem. Unemployment has become talk of the town. Those relatively older people and the less educated ones in particular are reacting strongly to the recent difficulties in getting employment. To the "one person, one letter" campaign against the labour importation policy organized by the FTU recently, citizens responded enthusiastically and this reflects the difficulties workers are facing in getting employment. I hope the Government will take prompt action to mitigate workers' resentment before it reaches flashpoint. Terminating the labour importation policy would be the very first step.

In order to have a thorough understanding of the impact foreign workers have on local workers, the first thing we have to know is their exact number in Hong Kong. According to official statistics, there are currently 25 000 skilled and semi-skilled foreign workers plus another 3 000 or so working specifically for the new airport. In addition to this, there are about 140 000 foreign domestic helpers. Such is the number of foreign workers working in Hong Kong legally, and those working in the black market have yet to be taken into account.

We can hardly know the actual situation where local workers' "rice bowls" are being snatched away by foreign workers in the black market. But I might cite some known figures: in 1994, more than 5 000 illegal foreign workers were arrested, and 15 000 were found to be overstaying. But how many of them are left unnoticed? We simply do not know! How long had they been working in the black market before they were arrested? We do not know either! Besides, of the foreign workers and domestic helpers who have come here legally, how many of them are being exploited to work overtime, how many of them have part-time work, how many of them have to engage in work other than that specified in their contracts? Once again we do not know. The only thing we know is that over the past year the Government prosecuted 800 wicked employers. This being the case, there is no way we can assess the actual situation.

But there is one fact I would like to point out, that is, in our everyday life, we find foreign workers whenever we go. In fast food shops there are foreign worker waiters, in hair salons there are foreign worker shampoo assistants, and even in five-star hotels there are foreign worker cooks. The situation has reached a point where there is hardly any distinction between legal foreign workers and black market foreign workers. Initially the Government promised to import skilled foreign workers only for those trades or professions in need, and to monitor the situation closely. But government information revealed that in 1993 there were fish-ball makers being imported and last year there were beef-ball makers imported. On learning that even such kinds of workers are being imported, local workers do not know whether to cry or laugh. Such is really a tragic irony!

As regards those manufacturing workers who are fortunate enough to keep their rice bowls, they are being unreasonably treated in terms of pay rise. Many manufacturing workers know only too well that nowadays foreign workers are the first to get employed whereas local workers are the first to be laid off. Dare local workers ask for a pay rise? Worse still, we are worried that this situation is spreading to other trades and professions as well.

On 1 May, the International Labour Day, six labour-side representatives from the Labour Advisory Board and I met the Secretary for Education and Manpower. During the meeting the Government said that no new quota would be approved and that a review would be underway. However, I hope that while the review is underway, the Government will vigorously combat illegal foreign workers and black market foreign workers, and that when the review is completed, the Government will totally abolish the labour importation policy.

Lastly, I would like to point out that the FTU is a leader in opposing labour importation and an advocate for the enactment of laws to ensure priority employment for local workers. In this aspect, the FTU has brought a good measure of its influence to bear on this Council and society. I urge Members representing the industrial-commercial sector in this Council to consider seriously the feelings of the workers. I must also point out that the amendment

put forth by the industrial-commercial sector, which aims to maintain the labour importation policy, will only worsen employer-employee relations. It is only a short-sighted expedient and it will bring no good to the economic development of Hong Kong.

I support the original motion and oppose the amendment.

MR FREDERICK FUNG (in Cantonese): Mr President, the latest unemployment and underemployment rates as published by the Government show that the local employment situation has gone from bad to worse. As far as the Government is concerned, alarm bells must be ringing. Frankly speaking, however, the Government seems to be too thick-headed to understand the real situation. It still believes in its established policy instead of facing up to the problem even though the job opportunities of about three million workers are being adversely affected, especially those lower class people and aged people whose jobs are at stake. The severity of local unemployment is due to a variety of factors while the Government's labour importation policy is the key trigger. The problems arising from labour importation are all directly or indirectly jeopardizing the job opportunity of local people. We wonder how a government can win the support of its people if their job opportunities, which is their most basic need, are not protected although they have discharged their civic responsibility in the form of paying tax. The Government has advanced a "plausible argument" that Hong Kong needs imported workers to ease the problem of labour shortage and the Employees Retaining Scheme can help local workers change jobs. However, there is a tremendous difference between the actual situation and what the Government said. I propose that the Government should formulate a long-term labour training scheme so that the skills of our local workers can be put to good use and contribute to the prosperity of Hong Kong.

Under the Government's general importation scheme, the number of imported workers is maintained at 25 000. However, some employers just take advantage of the policy. They, on the one hand, unreasonably raise the requirements for hiring local workers so that they can have a pretext to apply for cheaper foreign labour. On the other hand, they reduce the fringe benefits that local workers would have been entitled to. At the same time, illegal workers here are as numerous as weeds that grow fast and furious. The situation has not improved despite the police's repeated mopping-up operations. According to the Immigration Department, the number of illegal workers and overstayers has been on the rise over the past three years from 1992 to 1994. In 1994, for instance, 5 404 illegal workers were intercepted and 15 864 cases concerning overstayers were being investigated. Further, there are cases in which foreign domestic helpers are required to undertake jobs other than of a domestic nature. According to government sources, there are presently 200 000 foreign domestic helpers in Hong Kong who come from various countries such as the Philippines, Malaysia and Thailand. It is found that the number of domestic helpers engaging in non-domestic work is increasing. Last year, the number of successful prosecutions instituted by the Immigration Department

was only 946. It is difficult to estimate how many cases escape prosecution. We feel that such a situation will severely affect the job opportunities of workers engaging in ordinary, run-of-the-mill trades, particularly hawkers, sales persons and waiters.

Under such keen competition, job opportunities of local workers are at stake. I hope the Government will stop the labour importation scheme so that local workers can have a better chance to get jobs.

According to some relevant figures, aged people, middle-aged women as well as the disabled will encounter more difficulties in looking for employment. This is obviously a kind of discrimination on the ground of age and sex. According to official information, the female labour force participation rate has remained more or less at 49% since 1981. More importantly, the employment rate for women who are married or aged 30 and above is very low. This fully reflects the fact that married middle-aged women are unable to find jobs due to various factors which, of course, include importation of labour. In March last year, the survey result from "The Movement of Women Aged 30" shows that all clerical jobs on offer in the recruitment section of the Local Employment Service, Labour Department, require that the applicants must be below 40 of age and about 63% of these job offers require that the applicants must be below 30. We can see from this what a plight those middle-aged female job-seekers are in.

The employment opportunity of the disabled is even more disappointing. Although the Disability Discrimination Bill was passed early last month so that it is now an offence for a person to unfairly treat a disabled person on the basis that he is disabled, it offers little protection to the disabled in employment because the law will not require an employer to hire certain number of disabled people. The difficulty encountered by the disabled in employment is greater than we can imagine. If the Government does not try to improve their employment opportunity, the community's misunderstanding towards them will be deepened and the disabled will not be able to integrate into the community. Of course, I welcome the Government taking the initiative in employing the disabled. Unfortunately, however, the progress is so slow that only 3 778 disabled people were employed in 1993 and 3 840 were employed in 1994. The number will rise to 4 000 only in March 1996. The Government really needs to increase the number of disabled people employed and try to persuade the employers in the private sector to employ these people too.

I urge the Government to consider seriously the formulation of a long-term manpower training programme so that local workers can fully participate in the local labour market. The Government needs to conduct a review as to why response from the public has been far from satisfactory since the Employees Retraining Scheme was implemented in 1992. The object of the Scheme is to provide courses for those housewives aged 30 and above who have worked in the same trade for at least two years and those who have been driven out of job due to structural change of our economy. However, the participants can only, once every two years, take a short course which lasts for four or eight

weeks. Within such a short training period, the participants can grasp no more than some simple basic knowledge which is insufficient to meet their job requirements in future. Hence, I suggest that the employers who have applied for hiring foreign workers should take part in designing these courses so that the enrolled employees can apply their knowledge. Secondly, the timetable and the content of these courses can be arranged in a more convenient and pertinent manner. Besides, I also recommend that the maximum allowance for the retrainees be increased from the existing level of \$3,400 to two thirds of the median wage in order to attract more eligible employees.

I do not support the Honourable James TIEN's amendment. There are some employers who make use of the labour importation scheme to exaggerate the problem of labour shortage. In August last year, when the Government had completed the allocation of the 11 000 foreign worker quota under the general importation scheme, it was found that only 40 000 out of the 100 000 quota were actually qualified under the scheme. This fully reflects that the importation scheme has been abused by some employers. Besides, under the government policy of bringing in people from China to receive employee training, problems also exist where many employers are found to have abused it as a way of recruiting cheap labour in a different guise.

With these remarks, I support Dr the Honourable HUANG Chen-ya's motion and oppose the amendment.

MR MARTIN LEE (in Cantonese): Madam Deputy, I do not think I need to elaborate on what is happening in the Hong Kong labour market. As a directly elected representative, I am fully aware of the current widespread public resentment. The unemployment rate for the first quarter of this year is 2.8%, which is the highest in nine years. As a matter of fact, underemployment and unemployment among the lower class are more serious than those reflected by statistics released by the Administration.

It is time for the Administration and the public to join hands in solving the problem. I do not wish to see labour and management keep on pointing fingers at each other. Nor do I wish to see the Administration continuing to ignore the employment problem.

At present, the labour sector is most vehement in attacking the importation of labour, which has driven a lot of local workers out of their jobs and caused a host of labour problems, including age discrimination, abuse of labour importation, difficulties faced by middle-aged workers in switching jobs and so on. On the other hand, employers, represented by the Honourable James TIEN, maintain that there is labour shortage in certain sectors where they find it impossible to recruit local workers.

Objectively speaking, when there are job vacancies which cannot be filled, labour importation is one of the solutions. An example is the importation of 'overseas domestic helpers'. The labour community has no objection to this. The Honourable LEE Cheuk-yan, labour union leader, even help these domestic helpers fight for their interests. By the same token, the Legislative Council Panel on Manpower, after learning the real situation, raised no objection to the importation of fishermen.

However, as far as general importation schemes are concerned, workers and employers hold conflicting views and each side sticks to its own views. In the circumstances, the Administration should play the role of an honest arbitrator. To play this role well, the Administration should pay attention to my suggestions. Even though the Administration may oppose Dr the Honourable HUANG's motion, I still hope to receive a positive response from officials to my suggestions.

My suggestions are made mainly to achieve the following goals: allocate labour resources in an effective way. Resolve, through administrative means, the situation in which labour and management stick to their own views. Such a situation arises because the Administration lacks a set of administrative procedures capable of ensuring that imported labour is not abused. The current practice is that figures about labour shortage are submitted by employers. Whether such figures reflect the real position has long been a subject of dispute. Also, employers applying for labour importation are required to register job vacancies with the Labour Department. However, employers may manage, using various pretexts, such as unsuitable qualification or age mismatch, to reject local workers seeking employment. Then, the employers may have legitimate grounds for applying for labour importation. Thus, there is an unceasing influx of imported labour as well as a swelling army of unemployed local workers.

At the beginning of 1995, the Administration introduced a Pilot Job Matching Programme for job seekers over 30 years of age. This shows the Administration has begun to find the right way. My idea is that the pilot programme should be extended to become a 'General Job Matching Programme' (GJMP).

In the GJMP I suggested just now, a Working Committee (the Committee), comprising representatives from labour, management and the Labour Department, should be set up as a supervisory body for the implementation of labour importation. All employers purporting to have failed to recruit local workers must register job vacancies with the Committee before applying for labour importation. I need to specify the word 'must' to show that it is something mandatory, not voluntary, for employers who want labour importation. The Committee will then conduct job matching to shortlist candidates for employers, who will be given a quota for labour importation only after they have conducted job interviews and can prove to the Committee that the vacancies cannot be filled.

After the GJMP takes effect, the above measures will make it clear as to whether it is labour or whether is management who is lying, and as to who is abusing imported labour. The system can then be free from dispute. The merits of GJMP are that the programme is simple, and can be put into effect immediately. GJMP may resolve the situation in which labour and management stick to their own views and may enable specific information about labour shortage in various trades to be detected. If employers are, as described by Mr James TIEN, indeed troubled by labour shortage and supportive of fair labour importation schemes, Mr James TIEN should support my proposed GJMP because it can cater to the interests of both labour and management.

I want to reiterate that I hope the Secretary concerned may give a clear answer to my suggestions on behalf of the Administration when he responds.

With these remarks, I support the original motion and oppose the amendment motion.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, the Administration has recently announced two up-to-date statistics. The first one is the 2.8% unemployment rate in the first quarter of 1995, which is the highest level in the past nine years. The second figure is the 9.5% inflation rate in March, which is 1% higher than the estimate of the Financial Secretary. From these figures, we can see that importation of labour has brought about local unemployment. And together with the attack of inflation, it will become a contributory factor to social instability, and will thus sound the alarm of social unrest during the transition period.

At present, there are over 120 000 unemployed and underemployed families in Hong Kong. There is no unemployment protection system here. If a worker is unemployed, he will have no means to support his and his family's living. What pushes inflation is the necessary expenditure on rent, clothing, transport and so on. Even if there is no money to spend on food, the worker cannot stop the impact of inflation on his family. "The rain falls throughout the night with the roof already leaking (a double misfortune), unemployment plus inflation is indeed worrying." This is the best description of the difficult situation faced by many local workers.

The Honourable James TIEN remarks that the unemployment rates in the United States and the United Kingdom are higher than that of Hong Kong, implying that the workers in Hong Kong are already lucky enough. That is indeed a cynical remark. The Administration also thinks that the 2.8% unemployment rate represents no more than a very slight increase, which can be regarded as full employment judging from the international standard. In regard to the unemployment problem of workers, the Administration places so much emphasis on international standard. However, in regard to the protection of the workers' livelihood, the Administration does not seem to respect the international standard at all as demonstrated by its failure to introduce the

international covenants or conventions on wage protection, collective bargaining, unemployment relief and so on. This can best illustrate the “double talk” of the Administration which can twist and mould the international standard into double standards so as to protect the interests of the capitalists at the expense of local workers.

Since Hong Kong lacks a comprehensive social security system, there is no way we can describe the unemployment rate, which is the highest in nine years, as full employment. We cannot dilute social grievances simply by relying on the so-called international standard. Hong Kong is now characterized by a sluggish property market, a plunging stock market, a manufacturing sector which is moving its base elsewhere, a shrinking service sector, underemployment, plus a wage level which is unable to catch up with the inflation rate, a weakening of public consumption power and so on. These are the results of a vicious circle. We thus have grounds to believe that the unemployment rate will breach the so-called international standard of 3%. Then, will the Administration immediately abolish the entire policy for the importation of labour? If the answer is in the negative, that means the international standard for unemployment is only an excuse for importation of labour. The purpose is to restrict local wage growth so that the employers can employ more cheap imported labour and reap greater profits.

Madam Deputy, the Honourable NGAI Shiu-kit says that there is no relationship between the unemployment rate and importation of labour. Up till now, the Administration still insists that the imported workers have not displaced local workers. According to the information obtained, as at the end of March 1995, there were about 20 000 general imported workers working in Hong Kong. I discover from my preliminary calculation that about 16 000 of them took up unskilled, junior clerical and service-related jobs. These jobs are actually suitable for middle-aged, local workers with junior secondary education level, but have now been taken up by the imported workers. If it was not “local workers being displaced by imported workers”, what could that be? Therefore, what has been stated by the Administration or by Mr NGAI Shiu-kit is illogical and meant to deceive.

As a matter of fact, numerous illegal workers have also joined in displacing local workers. Among them, apart from illegal immigrants, there are tourists from Southeast Asia, Two-Way Exit Permit holders from China and domestic helpers who illegally change their jobs. When I read the newspaper today, I saw a report on imported workers for hire, which is absolutely ridiculous. When dealing with labour importation, the Administration has been very lax. But when it comes to combating illegal workers, the Administration is still half-hearted. This irresponsible way of handling the issue has aroused the indignation of the unemployed local workers.

At this critical juncture, Mr James TIEN's amendment only shows that the business sector merely cares about its short-term interests and ignores the feeling of the unemployed workers. Mr TIEN's proposed amendment to the original motion to seek to delete "terminate the policy for the importation of labour" is tantamount to a refusal to recognize the impact of labour importation on local workers. This reflects the ignorance of and insensitivity to a social crisis on the part of the Members from the Liberal Party. Importation of labour will only result in a sustained worsening of conflicts between labour and management, which will lead to social unrest.

Recently, there have been a number of relatively vehement social protests, one following another. From another angle, we can see that the grassroots people are now resenting the hardships that plague their living. Under the adverse circumstances of a downturn economy, nil protection for employment, a sharp rise in the cost of living index and so on, the public will give vent to their inner dissatisfaction through protesting against house demolition, unemployment, price increase, rental increase and the like. The labour importation policy has already infuriated the grassroots workers in general. If the Administration continues to turn a blind eye to this situation, the workers will have no other alternative but to take to the streets and fight to the end. The workers have never been so furious as they were on Labour Day, 1 May this year, and that should be a clear signal.

The Hong Kong Government should positively get rid of its "sunset" mentality and demonstrate its political wisdom as well as social conscience. It should immediately terminate the labour importation policy and freeze the various public utility charges and public housing rentals in 1995, so as to give the grassroots workers a breather. In the long run, the Administration will have to take the initiative in promoting economic development and to provide proper employment arrangements for local workers who are at a disadvantage.

There will be less than 800 days before the arrival of 1 July 1997. But on top of political instability, Hong Kong is also facing the risk of social unrest triggered by economic factors. The unemployment problem will be the number one bomb during the transition period. If the problem is not eased as early as possible, the various kinds of unrest during the transition period will accumulate to precipitate an explosive crisis at any time.

Madam Deputy, with these remarks, I support the original motion.

DR TANG SIU-TONG (in Cantonese): Madam Deputy, government statistics show that a rising unemployment rate of 2.8% has been registered in the first quarter of this year, which is a new high since September 1986, and the number of unemployed people stands at 73 500. Comparing with the figures in September last year, there has been an increase of 15 000 unemployed people in half a year's time. Apart from unemployment, workers who are suffering from underemployment numbered nearly 44 000. Because of this, there are at

present nearly 120 000 workers in Hong Kong who are in predicaments. This should be sufficient to illustrate that unemployment in Hong Kong is getting worse and worse.

It would be platitudinous to discuss the causes of this phenomenon. It is well known that over the past 10 years, Hong Kong has been faced with the problem of unemployment as a result of industrial restructuring. Apart from the fact that factories are being relocated to China, the quotas for imported labour have been expanded by the Government in the recent two or three years. Such a "structural change", as it is called, undermines the employment opportunities of local workers on the one hand, and increases the supply of labour on the other. The cumulative effect of this is that the employment situation of local workers is getting worse. Take for example the manufacturing sector. The number of manufacturing workers has dropped from 850 000 of 1988 to the present 430 000, which means that over the last seven years, one in two manufacturing workers was laid off, dismissed, forced to change job or do so of his own accord.

In the face of the high unemployment rate, the attitude taken by members of the public differs a lot from that taken by the Government. The public is very worried that their employment may not be secure, but the Government is optimistic about it. With all the panache that accompanies a plausible argument, the Government said, "By international standards, an unemployment rate of 3% can be treated as full employment." These self-deceiving words of the Government infuriate those workers who are already unemployed or facing unemployment. The social security provided by European countries or the United States differs from what is available in Hong Kong in that they have social security allowance and satisfactory retirement plans in place to cater to the basic livelihood of workers who will therefore not be affected by short spells of unemployment or retirement. For Hong Kong workers, however, they are living a "hand-to-mouth" existence, and once they are out of work they will have to "live on their own fat". With totally different social security systems, even when the unemployment situations are similar, the livelihood problems faced by workers vary from place to place. Workers' unemployment has become a social problem of Hong Kong as it bears on social stability. It is indeed an ostrich policy of the Government to comfort itself by saying "There is still full employment". We have to ask the Government this: How serious is the unemployment rate before the Government considers it serious? When is the Government willing to face up to the unemployment problem?

The unemployment rate of Hong Kong in 1989 was 1.3%, 1.9% in 1992, 2% in 1993, 2.3% in 1994, and it is 2.8% in the first quarter of this year. If the trend goes on like this, it is very likely that the rate will shoot past the 3% mark by the summer vacation this year. Following the approval by the Government of the importation of 3 000 workers in 1989, the Government expanded the

quota to 25 000 in 1992, and that did not even include that 2 000 foreign workers for our infrastructural projects. In November 1994, approval was given for the quota of imported workers for infrastructural projects to be increased from the approved 5 500 in February 1993 to 17 000, and it was also agreed that the quota would be further expanded to 27 000 when construction of the projects get into full swing in 1996. That number will constitute 90% of workers needed for the infrastructural projects. Apart from the 140 000 foreign domestic maids, there are also many other foreign workers in Hong Kong. At the same time, there are quite a number of organizations that use "employees training" as a disguise to import cheap labour from mainland China. Such a phenomenon is most common in the catering business. Besides, many overstaying travellers and two-way permit holders are making inroads into the labour market as illegal workers. It is an undeniable fact that with foreign workers flooding Hong Kong, the employment of local workers has been undermined. It is incredible that the Government has denied that the rise of the unemployment rate has anything to do with the importation of labour. The fact that since 1989 the number of imported workers has been gradually rising in tandem with the rise of the unemployment rate constitutes sufficient proof that a vast number of local workers' jobs have been grabbed from them by foreign workers. Labour organizations and the mass media have been receiving complaints from workers; these workers criticize some employers for offering harsh employment conditions to local workers who look for jobs, and finding faults with them so as to create an illusory situation that "there are jobs available but nobody is taking them up". The employers are doing this with a view that they may be granted quotas of imported workers. Some employers even take advantage of the situation of labour supply outstripping demand to exploit workers by offering them low wages and harsh employment contracts. These unhealthy situations are attributable to the flooding of the labour market by foreign workers.

The employment opportunities of workers are determined by supply and demand on the labour market. Personally, I am not optimistic about the future employment opportunities of workers. Recently, there has been a reduction in the number of posts in enterprises and organizations of various sizes, which has affected the employment opportunities generally. The Hongkong Telecom is planning to cut 2 500 posts through "natural wastage"; the Hospital Authority and the Hong Kong School of Motoring are reducing the size of their staff. According to an estimate by the industrial sector, the number of winding-up cases in respect of small to medium enterprises in 1995 and 1996 will go up, and relocation of manufacturing processes to China will continue. Such may merely be the tip of the iceberg with regards to the reduction of employment opportunities. It is my worry that various enterprises and organizations will follow suit by cutting down on their staff size, thus shrinking the employment opportunities even further. According to *Manpower 2001 Revisited*, a report compiled by the Census and Statistics Department, there will be a surplus of 84 000 workers who are of lower secondary school level or below in the

coming year. This means that there will be a large number of over-aged people and people of lower educational level who will have become surplus labour as a result of the economic structural transformation of Hong Kong and the general requirement for higher academic qualifications. The competition for low-wage jobs will be a fierce one. It is my view that the Government must stop the importation of labour at once and review the issue of priority of employment to be given to local workers. I think the Government should help workers improve their academic qualifications and their opportunities to switch jobs by providing more facilities for open learning and continuing education as well as employees retraining programmes. At the same time, the Government should encourage more industrial and commercial investment to be made in Hong Kong in order that more vacancies can be created for local workers. Heavier penalties on people who employ illegal workers should be imposed.

Madam Deputy, the Government has been taking a short-sighted view of labour. It is indeed most urgent that an overall review be conducted and a long-term strategy be formulated, otherwise the manpower problem is bound to get worse. This will aggravate the latent factors of social unrest which will be detrimental to the future development of Hong Kong.

Madam Deputy, with these remarks, I support the motion.

MR VINCENT CHENG: Madam Deputy, I will be short because this issue has been discussed so many times in this Council. I am sympathetic to the cause made by Dr HUANG and some of the colleagues in this Council regarding the plight of unemployed workers. The rise in the unemployment rate, even though still low, is a sign of warning, and we should not take it lightly. The Government must ascertain whether this is the beginning of an unwelcome trend or just a statistical blip.

I have also discussed this issue with several professional economists, and from what I have heard or read, none of them are yet prepared to revise their forecast downward. They all want to have more evidence before they change their views. Therefore I think it may be a bit early to call for a complete ban of the Labour Importation Scheme.

In the present situation, I think the Government's policy goals are still valid. They are, first, to allow a limited number of imported workers where a shortage is proven; second, to ensure that wages are not depressed and should even rise in real terms in line with economic growth; and third, to provide retraining to allow workers to acquire new skills to meet the change in demand as a result of economic restructuring.

The question is whether the policies have been effectively implemented. Judging from the press reports and evidence put forward by labour unions, I believe that there are rather widespread abuses by employers. I, therefore, urge the Government to impose heavier penalties to deter such abuses. We also have

to review whether the retraining programme has achieved the desired result. Madam Deputy, the current situation does call for another look at the labour importation policy to see whether there are areas for fine-tuning, but I do not think it calls for a complete ban of labour importation.

Thank you.

MISS CHRISTINE LOH (in Cantonese): I think the Government's Labour Importation Scheme is problematic. The Honourable James TIEN and Dr the Honourable HUANG Chen-ya basically have reached a consensus on this point, and the Honourable Vincent CHENG has highlighted a number of problem areas earlier on. Nevertheless, the directions in which Dr HUANG and Mr TIEN are proceeding are different. Dr HUANG has said that we should perhaps stop the Labour Importation Scheme whilst Mr TIEN has suggested that we should undertake a review. I myself think that there are problems with both arguments. If we are to terminate the Scheme now, the question is, as Mr CHENG asked, do we have sufficient manpower resources to cope? But on the other hand, if we simply conduct a review, it would seem that concrete action is lacking.

It is apparent that, at the moment, many in our community are very angry. I also received numerous complaints. Some people in their fifties - very much younger than Madam Deputy indeed - are very distressed because they cannot find jobs. Sometimes they even shed tears in front of me. However, the Government, in response, has said that it was not a very serious problem. If it is really so, why have I received dozens of complaints in a month's time?

I feel that there exists a phenomenon at present to which the Government should pay attention. And that is the antagonism between employers and employees which has even led to confrontation. Employers complain that we do not understand the many difficulties they are facing. Take for instance, prices are soaring and suitable workers are not available. But employees think that businessmen only covet profits and have forgotten the benefits of workers. Such antagonism and division, I believe, are not going to do any good to Hong Kong during such a sensitive period of transition. Actually, employers and employees are not without common ground as far as discussion and resolution of the present problem is concerned. But the question is who can undertake the task of a co-ordinator. Can we find a solution simply through passive means such as asking the Government to conduct an internal review? I do not believe that would be the case. But because the Government is most capable and efficient, it is the only party which can undertake co-ordination work. Therefore, I think the next thing the Honourable Michael LEUNG should consider is how we can, by way of an open procedure, make the community - I am sure both employers and employees are very concerned about this matter - understand and face up to the root of the problem as well as the individual problems that employers and employees have to face. As the problem of employers and employees will eventually become a social problem, this is

something which everyone will have to face and resolve anyhow. If there is a more open procedure through which we can look into the problem and find a way out, it may be possible that we can to some extent soften the antagonism between employers and employees, which will be a good thing as far as the overall social structure of Hong Kong is concerned.

Finally, I understand that I cannot propose another amendment to the motion at this stage. But I hope Dr HUANG and Mr TIEN will consider my suggestion. Can we at this stage, and just for the time being, I stress, suspend the Labour Importation Scheme? And on the other hand, the Government must actively, and in an open manner, provide co-ordination so that we can assess the root of the problems and come up with sensible solutions. Some of the solutions may be rather long-term and we may need time to work them out. If we do not have open discussion, I am sure employers and employees will go on telling their own stories while the Government will be stuck in the middle, sometimes admitting some of the problems but at other times denying the existence of any problems. If Dr HUANG and Mr TIEN both think that it is possible to consider suspension of the Scheme, then I believe today's discussion in this Council will produce a good outcome.

MISS EMILY LAU (in Cantonese): Madam Deputy, it is common knowledge that local workers are facing employment difficulty. It is also a hot topic in town. Last Friday night, when I had a consultative meeting in Mei Lam Estate, Sha Tin, I received many names from the people there. They asked me to submit those names to the Government so that the Government can find jobs for them as the Labour Department has introduced a Job Matching Scheme since early April. I will submit the names to the Government at the earliest opportunity. I hope the Government will be able to do something for these people. In this light, I agree that the Government should spare no effort to help those displaced workers to seek employment in the same trades or otherwise switch to other jobs. I also fully agree that the Government should review the current labour importation policy and study the feasibility of introducing legislation to accord priority to local workers in employment as soon as possible. Madam Deputy, this is surely the original idea of Dr the Honourable HUANG Chen-ya's motion. But for some unknown reason or due to pressure from certain unspecified quarters, he amended the original terms of his own motion to the effect that the motion now before us is calling for termination of the importation of workers. In doing so, he is giving a stronger excuse for the Honourable James TIEN to amend his motion. Earlier on, Dr HUANG urged the Government to legislate extensively in order to tackle this serious problem. From that I get an impression: is he going to lead Hong Kong in the direction of a planned economy? Is it the best and most appropriate option for a place like Hong Kong which has espoused the doctrine of free economy? Although Dr HUANG only has one minute to respond, I hope he will address this point, or perhaps other Members from the Democratic Party can clear my doubt.

Madam Deputy, many people actually do not object to giving priority to local workers in employment. Despite that a few Members expressed divergent views on it, the majority of us do hope that the Government will help these people to seek employment. Nevertheless, we get the impression that some employers are trying to pull down the level of wages through importation of workers with a view to reducing production costs and making more profits. Therefore, the conflict of interests between employers and employees is really a problem which it will be difficult to resolve. However, the Government and the Legislative Council must face up squarely to this problem and help defuse the time bomb. But I do not necessarily agree to the immediate termination of importation of labour. It is because there are indeed situations where there are "jobs with no workers". I am sure Members still remember the complaints this Council has received. Take for instance, the soya product manufacturing industry and the printing and dyeing industry sent their delegations to this Council where they told us that they had difficulty recruiting locally; worst still, they were not given any quota by the Government for importing workers. In this connection, Madam Deputy, I think the Government can consider dealing with the obnoxious industries and the non-obnoxious industries separately. If the obnoxious industries have difficulties in recruiting local workers, the Government may approve quota for them to import foreign workers. As to non-obnoxious industries, they should be asked to recruit locally at the maximum level of wages and the Government should consider allowing them to import workers only when their effort to recruit locally proves futile.

The present labour importation policy, as many Members have commented, is riddled with "holes and sores". Last month, the Government announced the figures of imported labourers for the years 1992 to 1994. Some of the figures are really worth noting. According to these figures, there are 4 000 imported labourers in the manufacturing sector, of whom 55% are serving as waiters; there are 1 800 imported labourers in the clothing industry, of whom 55% are involved in ordinary sewing process. In fact, we all know that the clothing industry is relocating itself across the border. That is the reason why there are so many local workers who are being unemployed or underemployed. I believe the Government can understand why these workers are filled with anger when they look at these figures. Why is it that local people cannot serve as waiters and sewing workers? Why do we have to bring in workers for these kinds of jobs? How can we blame Hong Kong people for their complaint against imported workers for snatching their "rice bowls"?

Madam Deputy, the Government has always refused to disclose this kind of information. Now that the Government has made public the information, though a bit late, I still welcome the disclosure. I think it is good for the Government to depart from its practice of keeping everything under wraps and increase the transparency of the scheme. I also agree that the Government should disclose the list of employers who apply for imported workers, together with the posts and number of vacancies concerned. It is because this Council has received complaints from some small sized companies that the Government refused them any quota for imported workers. If the Government does not

disclose the list of employers, I am afraid there will be every suspicion that there is a "secret deal" between the Government and the big businesses. Mr TIEN once said in this Council that employers would not wish the list to be disclosed for fear that the trade unions would have a bone to pick with them and would try to make things difficult for them by getting workers to approach them to apply for jobs. I think, in fact, Mr TIEN would understand that workers are in a desperate situation at the moment. Who will bother to make such attempts simply to keep the employers in suspense? Instead, should they know that there are employers who are so desperately looking for workers or trying to import workers, they would have queued up to look for jobs there. This is precisely what both workers in need of jobs and employers in need of manpower wish to see. So I hope the Government will carefully consider disclosing the list. Another advantage from the disclosure will be to enable the public, the trade unions and the Legislative Councillors to monitor the scheme to avoid possible abuse.

Apart from these, I would like to urge the Government to keep an eye on the sale of quota for imported workers which is highlighted in many recent reports. The Government should also pay close attention to issues such as the abuse of quota and the crackdown on illegal labourers. Some Members said a moment ago that there were some imported workers who got hired to other employers recently. I am very surprised that the Immigration Department knows absolutely nothing about it. Some people asked me to suggest to the Government that a reporting system be set up based on fine and reward in order to encourage the public to report illegal labourers and abuse of imported labourers. Madam Deputy, I think the ultimate objective of the scheme is to give priority in employment to local people and, at the same time, allow those industries which have real difficulty in recruiting locally to import labourers.

With these remarks, I support Mr James TIEN's motion.

MR LEE CHEUK-YAN (in Cantonese): Madam Deputy, many of the arguments put forward just now boil down to one question: Should the policy of labour importation be abolished? The Honourable Miss Emily LAU asked, a moment ago, why Dr the Honourable HUANG Chen-ya changed the wording of his motion. I was partly responsible for that change. As Members all know, I have all along been opposing the policy of labour importation. I think unless the policy is completely abolished, the unemployment problem cannot be solved. So, the idea of introducing legislation to accord priority to local workers in employment and arrangements for assisting workers to find jobs will not help tackle unemployment. The only way is to abolish the policy of labour importation. Why? First, I hope Members will admit that imported labour have displaced local workers in competing for employment. If Members do not admit this as a fact, it would be meaningless for me to go on any further. If Members do, the next step is to find ways to abolish the policy of labour importation. Why did I say imported labour have displaced local workers in competing for employment? Mr Michael LEUNG will certainly disagree with

me. He has been absolutely obstinate and refused to admit the above fact. I do hope that when he responds today, he would not be obstinate anymore but would be willing to admit the fact. The reason is simple. Just try to analyze what causes so many people to be jobless. The unemployed are over the age of 30, with an education level below Form Three. Each year, 50 000 workers in the manufacturing sector lost their jobs. There have been altogether 400 000 workers who lost their jobs. It is this group of people who face the prospects of unemployment. Now, who are the employees being imported? They are those who have taken up the same jobs that our local workers are trying to get. Miss Emily LAU said that they are waiters/waitresses, female workers in the clothing industry, junior cooks and sales people. The jobs they are doing are precisely those which the unemployed workers have lost. So, what is the use of spending money on retraining local workers for such jobs? On the one hand, the Administration retrains workers to be sales people. On the other, it allows imported employees to take up the same kind of jobs. Hence, money is spent on retraining local workers to be sales people but retrained personnel are not given the opportunity to take up the jobs they are trained for. This is the kind of policy we are having. We must take note of the substantial conflict between employees retraining and labour importation. Once Members accept that imported employees have displaced local workers from their jobs, abolition of labour importation is obviously the logical solution to the unemployment problem.

The crux of the Honourable James TIEN's amendment serves to sidetrack the issue and describe it as one of recruitment difficulty faced by employers. I feel that we need to look closely at the nature of the "difficulty" reported. How much are employers prepared to pay? Who do they intend to employ? For instance, I find that there is age discrimination in the entire retail business. To get recruited, sales people in cake shops need to be under 25, while those in fashion chain stores, including the one owned by Mr James TIEN, the age limit is 30. It is against this background that employers complain they cannot find suitable local workers. Why can they not employ people who are thirty something? There are lots of job seekers but employers just would not give them a chance. Instead, the employers tell the Administration they fail to find suitable local workers and therefore need to import labour. Is this a real recruitment difficulty?

Salary is another consideration. Several months ago, a private home for the aged put up an advertisement to recruit staff, and then reported a failure to recruit and therefore needed imported employees. We asked them about the salary they were prepared to pay. The answer was a monthly pay of \$4,800 to \$5,200 for working a six-day week with 12 working hours per day. We must bear in mind that Government - subsidized homes for the aged are paying \$7,000-odd to their employees, who work 8 hours a day. Over a hundred people queue up for vacancies in such subsidized homes. Should the unemployed be furious if employers are prepared to pay only \$4,000-odd and demand 12 hours' work per day; and then complain that they cannot find local workers for the job and therefore would want imported labour? Of course, the

unemployed should right fully feel angry because it is not they who do not want the jobs. It is the employers who deny them their job opportunities. Salaries offered are sometimes too low to be acceptable. Why must employees be forced to accept low salaries? As an example, let us look at security guards. There are at present vacancies for guards at an hourly rate of \$8. That means a monthly pay of \$3,000-odd if one works an 8-hour day. The pay is less than that of a domestic helper. How can one be asked to accept such a low pay? So, we can see that the entire problem should not be viewed as a recruitment problem. Rather it should be viewed as an unemployment problem. We trust that if employers can offer suitable employment terms, they should have no difficulty in recruiting local staff. Is labour shortage the result of harsh employment terms? We should not be confused. The matter should not be turned into a recruitment issue. We should focus our attention on the harm done to our local workers as a result of the policy of labour importation.

Unemployment mentioned just now is part of the harm done. Another part of the harm done is the fact that wages for local workers have been kept low. As at September 1994, the real wage for workers in a number of trades has fallen, compared to the corresponding period of the previous year. For example, real wage for retail business has fallen by 8.4%; security, 5.3%; container service, 11%; metals industry, 10.1%; and clothing industry, 0.4%. All had a downward trend. Causes? Imported labour, which leads to a situation in which labour supply exceeds demand. Naturally, workers' income has fallen. Therefore, I hope Members understand workers' sufferings are caused by the policy of labour importation. They are facing unemployment and low wage.

Although I did not seem to have mentioned the difficulties experienced by the business community, I do understand their position. For example, the present high rents could lead to increased costs for business owners. In fact, I very much want to see an end to the opposing positions which labour and management are taking, where management is always suppressing labour. Can both parties co-operate? The problem now is that the entire Hong Kong economy is pyramidal in form, in which land developers, large capital groups and banks monopolize all economic benefits. Apparently, the current conflict is between owners of small enterprises and us. However, we should join hands to check rents to give the business community a chance to catch its breath. I think this is the best way out.

THE PRESIDENT resumed the Chair.

MRS SELINA CHOW (in Cantonese): Mr President, whenever the problem of unemployment is discussed, some tend to focus on the unemployment rate and just ignore the supply and demand of labour in the labour market. They fail to assess various factors leading to unemployment. For those who favour slogan-shouting instead of formulating relevant policies, they have been accustomed to such an approach of problem solving. That is to say, they prefer to do it the

easy rather than the hard way and to simplify the problem. They adopt such an approach because it is the easiest way to curry favour with others.

Of course, superficially there is nothing wrong in ingratiating oneself with others. Some will even say: Is this not one of the merits of democracy? At least it is because I have got a vote, so they show concern for my interests and try to please me! Unfortunately, such a mentality is usually made use of by those master politicians. It is a common phenomenon that some tend to curry favour with the public instead of telling them straightaway the cause and effect of a problem. Neither will they take the initiative in considering how best to solve the problem.

It is just like describing to the patient the symptoms of his illness as the root cause. Perhaps in doing so, the patient might feel that the doctor has shown solicitude for this suffering. But I am sure Dr the Honourable HUANG Chen-ya understands best that besides showing sympathy and concern towards his patients, a good doctor must excel in diagnosis and prescription in order to cure his patients.

Through shouting the slogan "Hong Kong's economy is healthy", some are seeking to deal with the problem in a way which is not only self-deceiving, but also deceiving others as well. I wonder what sort of society Hong Kong will eventually become. If Members care to pay more attention to the latest social situation, I believe Members will see that such irresponsible behaviour has already resulted in unnecessary confrontation and disputes.

Whenever there is any social problem resulting in any public discontent, there will invariably be some who will look for a scapegoat. Without a scapegoat, how can these people win public support and how can they portray themselves as the mouthpiece of the people?

In this debate, the importation of labour scheme is the scapegoat I just referred to. It is guilty of leading a rise in the unemployment rate. But is the problem as simple as this? Will there be no more unemployment in Hong Kong once we have stopped the importation of foreign labour?

In the face of the structural change of our economy and the relocation of our manufacturing industries to the north, the unemployment rate in Hong Kong is higher than before and the problem is especially acute in some trades. Undeniably, we have to pay more attention to this problem and address it as soon as possible.

However, we have to be aware of the real problem that Hong Kong is facing. It is not a problem of unemployment only. In fact, the employers are also complaining that they are unable to hire workers. The real problem is "some are looking for jobs while some are looking for workers", which in fact is a situation of maladjustment! It is totally misleading to say that all the unemployed can get a job if the labour importation scheme is terminated.

The retail industry, for instance, has been facing labour shortage. It is not because the employers do not want to hire more workers but because nobody is willing to join. As a result, for those workers who stay on, the working pressure has become much heavier and the working hours have become much longer than before.

The reason why we have such a situation is because the job nature and working hours of this trade are also the key factors for job-seekers to consider. Secondly, those who try to change jobs after having received retraining are unwilling to join this trade. As a result, the vacancy level of this industry remains high and there is reluctance on the part of the authorities concerned to provide retraining to workers to enable them to join the industry.

During my conversation with some workers in the retail trade, they said the controlled importation of foreign workers would help relieve their working pressure which would be beneficial to both the workers and the companies in which they were working. I also saw that imported workers were working harmoniously and were on friendly terms with their counterparts in Hong Kong.

The above example shows that the Government needs to take the initiative in studying thoroughly the supply and demand of labour in all industries and face up to the problem of co-ordination between the Employees Retraining Scheme and job placements so that the retrainees can slot into the jobs for which they are trained and meet the needs of both employees and employers.

Mr President, regarding the policy of labour importation, it must be implemented under a fair and uniform standard. Now some who strongly criticize the labour importation policy have not even said a word about our long-term importation of a large number of foreign domestic helpers. It is clear that double standards are being adopted in this issue. They are being even more hypocritical in urging the Government to stop the importation of foreign workers on the ground that local workers have been deprived of job opportunities while they themselves are hiring foreign workers at home. Is it not an example of saying one thing and doing another? If they deny this, I would demand that those who support Dr HUANG's motion in urging for the termination of the labour importation scheme should indicate whether or not they support the termination of importation of Filipino maids.

I would like to make it clear that I am not suggesting that importation of foreign domestic helpers should be stopped for I consider that, in a free society, people's choice as reflected in the market should not be controlled by the Government. On the contrary, it would be the wisest thing to do to have more choices available and then the market decide which one to pick. In doing so, quality of services can be improved through competition.

Presently, there are 140 000 foreign domestic helpers in Hong Kong. I am not sure whether local women can replace them all. But I am certain that the employment opportunities of those aged 30 and above who have been rendered unemployed due to relocation of our industries to the north or who are housewives wishing to restart a working life are taken up by these foreign workers. This is also a key contributory factor to the situation in which "women aged 30 find it hard to get a job".

In view of this, my motion to be moved next week will solely concern the employment of women. Creative recommendations to help female job-seekers integrate into the labour market and solve the problem of labour shortage are welcomed.

Tomorrow, the Woman Party Organization of the Liberal Party will provide some detailed, concrete recommendations on how to design a course of training for professional domestic helpers under the Government's Employees Retraining Scheme.

With these remarks, I support the Honourable James TIEN's amendment.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, this is a rather sensitive question to discuss. Because the grassroots people represent the majority, it is certain that supporting them can gain recognition and score points. However, we have to understand the overall situation of Hong Kong. I have more than once mentioned here that out of about 100 people in Hong Kong, there are only five proprietors at most and the rest belong to the working class. The whole question is one of how to add two or three more proprietors to the five proprietors in Hong Kong to create more job opportunities. The question is not to make it hard for the five proprietors to do business so that there will be only two or three or even one left who will have to deal with the employment problem of the 99 workers all on his own. This is the most important question. We have to put forth good proposals in a more sensitive and constructive manner instead of passing the entire buck to the Honourable Michael LEUNG. Mr LEUNG will retire in two or three months' time and will have no deal with this afterwards. Why should we still give him a hard time? I hope that after he retires, he will become a proprietor and create employment opportunities for the people of Hong Kong and that is worth hoping for.

The bosses in Hong Kong are not so unscrupulous and money-minded as some Members have alleged. In fact, many bosses are "on saline drip" at present and they have to face many social problems. Firstly, it is the rents, of course; secondly, it is the labour problem; thirdly, it is the problem of their own successors. Many businessmen are required to face this problem because their children have become professionals and do not want to succeed their father in his business. Listed companies can move their businesses northwards or move to Thailand or other places for investment, hence, they basically do not have such problems. Therefore, when we discuss this problem, we have to

consider proprietors at the grassroots level and then we can solve the problem in a realistic manner.

I have also watched the City Forum and heard many people say the importation of labour has to stop immediately. But after the proprietors stop importing foreign labour, will there be people who are willing to fill the vacancies which these foreign workers leave behind? Who can guarantee? If someone can give a guarantee, I believe the local proprietors will absolutely not object. Could they possibly "make a big fortune" by importing foreign labour? Therefore, I personally agree with the proposal to stop labour importation immediately but there must be some guarantee that workers will be available to fill those vacancies. Of course, the business owners will pay reasonable wages to the workers. If there is such a guarantee, I am sure that business owners and employers in Hong Kong will not object. We have to understand that although the salary for a domestic helper is around \$3,000 at present, the actual expenditure of hiring one may well be around \$6,000 as the employer has to provide her with food and lodging, medical care, holidays, plane tickets and so on.

Hong Kong's present situation is unique. Firstly, many industrial and commercial undertakings have moved north because they are unable to compete in Hong Kong. They moved their operations to mainland China immediately after China began the open door policy and there have been a few hundred thousand people affected by this move. Secondly, as many Members observed earlier on, there are over 100 000 domestic helpers in Hong Kong. I am not criticizing the women in Hong Kong but, in fact, many of them prefer to go out to work and hire domestic helpers because the trivial and sundry household chores make them feel moody. When they go out to work, they can gain more knowledge. If these women who are in their thirties are willing to stay at home to take care of part of the housework or even work part-time as domestic helpers, I believe that it would be a solution also. Of course, many would pretend not to hear it when we talk about this problem. However, we should talk about these things and not just take sides with any one of the parties.

At present, the most important consideration is the Government's attitude. I personally think that, undeniably, the Government should have a minimum wage policy for the local workers to let people understand what industries are drying out so that they do not have to take the trouble to hang on to their business. It can also give them an indication that their efforts would be fruitless. Secondly, in respect of striking a balance in society on the whole, the Government should consider freezing the rents of commercial premises because if business operators are there just to take care of the workers, they will, in fact, be making no profit. Thirdly, concerning the retraining policy, I firmly believe that the Government is carrying it out but the Government should do it more vigorously. Fourthly, earlier on, Members talked about the need for strict control over illegal workers. With regard to this, the Government must strictly enforce such control.

Concerning the labour importation policy, I personally believe that it should continue to be carried out appropriately and should not be terminated immediately and in one go because that would only cast even more adverse effects on the economy and the state of law and order in Hong Kong. Therefore, Mr President, I earnestly hope that this motion debate can elicit a positive outcome and that Members are not attacking one another, so that people from all walks of life in the society can understand one another's difficulties.

Mr President, with these remarks, I support the Honourable James TIEN's amendment.

MR LEE WING-TAT (in Cantonese): Mr President, when we discuss the menace posed by labour importation to the employment opportunities of local workers, we surely cannot forget that another tip of the iceberg is illegal labour. At the moment, there are more than 50 000 workers who are imported through various proper channels. And I believe that the number of illegal workers is far greater than this. At present, the number of imported domestic helpers has already reached 140 000, and many of them are believed to be illegal workers engaging in other non-domestic work. If we also take into account those illegal workers who came to Hong Kong in the capacity of visitors, two-way permit holders from China, visit visa holders from other Asian countries, overstaying visitors and so on, the number of illegal workers is enormous. Therefore, it is roughly estimated that the number of illegal workers is higher than that of imported workers, possibly over 50 000 people. In Chinese restaurants, cleaning companies, on-street stalls and factories, foreign workers and illegal workers can be seen everywhere. Apart from the threat in terms of numbers posed by illegal workers to local workers, the harsh conditions which they can put up with, for example low wages, have made it absolutely impossible for local workers to compete with them. A more important consequence is that improvement to the employment conditions of local workers will be impeded. And therefore, the wage level for the grassroots workers will certainly be lowered gradually. According to statistics for September 1994, the real wage index for workers in the manufacturing and retailing sectors was lower than the inflation rate. In many other industries such as import/export, manufacturing and retailing, wage growth slowed down as compared with the corresponding period of the previous year. But in regard to the situation of local workers being deprived of their employment opportunities, the Hong Kong Government only turns a blind eye to it, or, if not a blind eye, a "half-blind eye".

Obviously, the Hong Kong Government has not been putting in enough efforts to combat illegal labour. Neither is there sufficient manpower to arrest illegal workers nor is there the sort of penalty that will have a deterrent effect. Although the Hong Kong Government says that the manpower for arresting illegal workers will be increased, in face of the phenomenal size of illegal labour, the strengthening of the task force will still be to little avail. For example in 1994, only 5 400 illegal workers were arrested. Assuming that

manpower has been beefed up against illegal workers and the number of illegal workers arrested has increased, it will still be far from the tens of thousands of illegal workers who we reckon are working in Hong Kong. We therefore suggest that apart from beefing up manpower, the Hong Kong Government should, by giving awards, encourage members of the public to report the discovery of illegal workers. Public monitoring of the activities of illegal workers will be a better approach to suppress the market for illegal workers. On the other hand, the existing punishment imposed on illegal workers has no deterrent effect and is unfair to the workers.

PRESIDENT: Mr LEE, I do not want to interrupt you, but this motion is about foreign workers, not illegal workers.

MR LEE WING-TAT (in Cantonese): Mr President, we think that the subjects for discussion in this motion debate, namely, importation of labour and employment of local workers, are related to illegal workers which I am talking about now. It is because the problem which we are facing at present relates to the impact imported workers and illegal workers have on the overall employment situation of local workers. I therefore think that my speech is relevant to the motion before us.

PRESIDENT: I will not stop you, Mr LEE, but I am drawing your attention to the wording of the motion.

MR LEE WING-TAT (in Cantonese): Thank you, Mr President. The existing punishment imposed on illegal workers has no deterrent effect and is unfair to the workers. According to the information provided by the Immigration Department, an illegal worker, once convicted, will usually be sentenced to 15 months' imprisonment. An employer who employed illegal immigrants, if given a custodial sentence on conviction, will usually serve a term of less than 15 months' imprisonment. In regard to the penalties imposed on a convicted employer who employed visitors, the amount of fine varies from \$1,000 to \$120,000, while the period of imprisonment varies from one month to six months. I think that the penalties concerned are too lenient, especially in regard to those employers who employed illegal workers. Mr President, the Democratic Party reckons that, in view of the wide disparity in bargaining power between the workers and the employers, many illegal workers will be forced by their employers to take up duties outside the scope of their employment. It will thus unreasonable if the penalties on employers are lighter than those on workers. I therefore think that the penalties concerned, including the period of imprisonment and the amount of fine, should be increased so as to exert greater deterrent effect on the employers of illegal workers.

Mr President, with these remarks, I support Dr the Honourable HUANG Chen-ya's motion.

MS ANNA WU: Mr President, importation of labour is an anomaly. It is an exception to the rule. It is an interference with the market forces. As such, it should not be permitted unless all avenues to accord priority to local labour have been exhausted.

It must be obvious to all those who wish to see that the disabled, the women, and the thirties and above are considered obsolete in our labour market. My quick check of two recruitment publications on one particular day revealed that age-specific advertisements comprise almost 30% of all advertisements. In the case of the sales and retail industry, the figure was as high as 45.3%. Many employers in their search for applicants impose stringent and non-job related requirements on age and educational qualifications. This results in an artificial reduction of our pool of labour force.

The Assistant Commissioner for Labour indicated to the Legislative Council Panel on Manpower on 4 April 1995 that, "since November 1994, employers had been asked not to specify age requirements in job advertisements registered at the Local Employment Service of the Labour Department. In vetting the applications under the 1994 General Importation of Labour Scheme, some 6 000 letters had been issued to employers advising them to remove certain unreasonable conditions, such as age requirements and academic qualifications, to facilitate the recruitment of local workers. As a result of the screening, 60 000 vacancies intended to be filled by imported workers had been rejected."

This reflects the extent of abusive applications that exist. This is also, perhaps just the tip of the iceberg regarding the degree of discrimination and distortion that exists in our labour market.

While Government has required removal of age-specific advertisements in the Labour Department, a recent random check of advertisements posted in the Department revealed the following: typing/clerical work: below 28; inputting data: 20 to 30; part-time nursery teacher: 18 to 40; cashier: below 35; cleaning: 35 to 45; cleaning: 30-45.

It is clear that without compulsion to provide fair employment opportunities to the local labour force (and I wish to emphasize we are talking about fair employment opportunities and not mandatory employment) these problems will not disappear on their own. I urge the Government to consider the following:

first: statutory prohibition of unreasonable age, gender and other non-job related requirements for job-seekers;

second: tailor-made job training and job matching exercises to enable individuals to enter the job market, and employment of support policies and measures such as flexible working hours and on-job nursery services for working mothers;

third: provision of special tax deductions to employers who establish support services, special training and facilities for employees and in particular for the disabled.

The Government cannot steadfastly refuse to prohibit artificial, unnecessary and unreasonable barriers obstructing access to jobs and expect support for its importation of labour scheme. A level playing field must be provided to the businesses as well as to the individuals. We must encourage individuals to be self-reliant, not to be dependent. We must also encourage businesses to help themselves by widening their choices and enhancing competition within the local labour force. I urge the Government to suspend the importation of labour scheme. There would be no incentive to redirect our human resource policy otherwise.

Thank you, Mr President.

MR ALBERT CHAN (in Cantonese): Mr President, first of all, I would like to respond to a few questions raised by the Honourable Emily LAU. Just now, she asked the Democratic Party whether we are looking for planned economy when we asked to legislate for the protection of workers' rights and restrictions on labour importation. I am shocked by her questions. I think this reflects Miss Emily LAU's speaking style which is "to press on until the word startles". When striving to enact laws to protect freedom of the press, Miss LAU has been asking the Government time and again to amend the relevant legislation and to enact laws to protect freedom of the press. However, Miss LAU did not say that it would give rise to "planned press". The reason that the Democratic Party urges the Government to legislate or amend the law to protect workers' rights or to restrict the importation of labour is that it is obvious that the Government has been abusing its power over the past years, which has resulted in the authorities' collusion with businessmen as well as the deprivation of local workers' employment opportunity. On many occasions, we have seen that because the legislation is ineffective as a monitoring tool, the Government has been able to lay down the quotas and specify the categories of trades by exercising its executive power, which has subjected the Hong Kong labour market to unnecessary intervention. The employment opportunity of Hong Kong workers is thus greatly affected.

Moreover, Miss Emily LAU mentioned that as the printing and dyeing sector was unable to recruit enough workers, it was therefore the sector's hope that more quotas of imported labour could be allotted to them. A few years ago, I had received complaints from members of printing and dyeing trade who were all in their fifties. They told me that they had been working in a factory for 20

to 30 years. However, in the recent three to four years, they did not get any rise in pay; at the same time, imported workers who joined the factory as new workers receive wages similar to theirs. In working out the duty schedule, too, the proprietor had deliberately assigned some unfavourable shifts to local workers. Whenever workers were required to work overtime, it was certain that the opportunity would not be given to local workers. Old local workers who have been working for more than 20 years are being particularly discriminated against regarding their conditions of employment. So why should we allow workers to be imported for this sector? I hope that Miss Emily LAU will pay more attention to the situation of these workers instead of believing what proprietors have said unilaterally just because they come to her to air their grievances.

Just now Mrs Selina CHOW said that the retail sector was unable to recruit enough workers. I wonder if she has listened to what the Honourable LEE Cheuk-yan has said, which is that it may be difficult for the retail sector to recruit workers if prospective employees are restricted to those of 30 years of age or below. But we do not understand why the retail sector has imposed such an age restriction. In major cities of Europe and the United States, people of over 40 or 50 years of age are being employed in posh shops to sell upmarket goods. So why should the retail sector in Hong Kong discriminate against Hong Kong residents who are over 30 years of age? I find it shocking that such a discriminatory ideology can still find support in the Legislative Council these days. It is perhaps the ideology of the Liberal Party.

Mr President, from the employment situation of workers of the construction industry, we can clearly see that workers are suffering a great deal as a result of the Government's labour importation policy which is putting the cart before the horse. As early as three or four years ago, construction industry workers began to face the difficulty of underemployment and unemployment. They cherished the hope that employment opportunity would improve as soon as the Airport Core Projects (ACP) got under way. However, Mr President, for the sake of controlling the bidding prices of projects, the Government set extra labour importation quotas especially for the ACP and had in place a large number of imported workers ready for exploitation by contractors.

Government officials have time and again argued that measures are in place to ask contractors, when recruiting workers, to give priority to local construction industry workers. But these lies crumble completely in the face of various kinds of evidence to the contrary. Firstly, whilst the labour importation scheme for the airport core projects is expanding, the labour force for construction sites has shrunk sharply from 69 138 of 1990 to 57 425 by the third quarter of 1994, a wastage of almost 12 000 people. In the same period, over 10 000 workers were engaged in the core projects of the airport. Therefore, it is really a lie to say that importing workers has not broken local workers' rice bowls. As the major area of Hong Kong's economic development in recent years is in the tertiary industries, it is very difficult for construction industry workers to switch to these industries without retraining. It can be

imagined, therefore, that the majority of workers who left their own trades have been forced to take up some relatively low-paid, unskilled jobs as job opportunities are not readily available.

On the other hand, the survey findings released by the Hong Kong Construction Industry Employees' General Union in March this year show that underemployment is getting worse. Among the 340-plus workers interviewed, only a little over 20% of them had been fully employed during the previous two months; those who had been employed for less than 10 days accounted for 14%, which was twice as much as the figure for the corresponding period of last year.

Both the Administration and representatives of the industrial and commercial sector must bear in mind that behind these cold statistics are tens of thousands of families in predicament as a result of having lost their principal source of income. The question of workers' employment has become a time bomb within our community nowadays. Should the Government and employers of various sectors fail to make a joint effort to solve the employment problem, the damage caused when this problem gets out of hand would be very serious.

Mr President, labour importation has become an improvised makeshift adopted by the Government. Our community has paid a heavy price for it. Employing imported workers not only leads to the massive outflow of money with Hong Kong sustaining financial losses, it also results in many local workers being forced to find employment in China when they are unable to do so in Hong Kong. This gives rise to the situation of "daddy not home" in many families.

Mr President, for the above reasons, I support the motion moved by Dr the Honourable HUANG Chen-ya.

MR JAMES TO (in Cantonese): Mr President, I would like to discuss the employment policy of Hong Kong in respect of women workers. Over these years, the Government has not been paying attention to the disadvantageous position of women in the labour market. The Government alleged that the participation rate of women in the labour market is about 47% over the years and the constant growth of this rate within many age groups had shown that women did not face any difficulties in getting a job.

This argument has clearly ignored the fact that in recent years, the unemployment rate of women has been on the rise. In 1990, the unemployment rate for women was 1.3% which rose to 2.2% in 1994, which is an increase of 70%! The unemployment rate for women in various age groups also showed a rising trend. For example, the unemployment rate for women within the 20-29 age group, that is to say, women below 30, rose from 1.8% in 1990 to 2.7% in 1994; the unemployment rate for women within the 30-39 age group rose from 0.7% in 1990 to 1.4% in 1994.

More importantly, the above figures do not cover full-time housewives. For example, there are about 630 000 women in Hong Kong who are within the age group of 30-40. Only 50-60% in this group are within the working population and the rest have to stay at home to do unpaid work. The Government has, however, classified housewives as people who are not engaged in economic activities, ignoring their wishes to find a job and arbitrarily pressing the unemployment rate of women down to a low level.

The constant rise in the unemployment rate of women, the difficulties faced by women above 30 in seeking a job and the great number of women having to stay at home show that women are in a disadvantageous position in seeking employment. There are some special reasons for this.

Since the manufacturing sector began to shrink in the mid-1980s, the production processes have been moving northward, making it difficult for many women workers who are semi-skilled and not well-educated to change their jobs. The Government's policy of importation of foreign labour has made it even more difficult for them. At present, there are about 190 000 foreign workers in the labour market of Hong Kong, even excluding workers imported in the various ways mentioned by the Honourable LEE Wing-tat. Imported foreign labour are employed in a variety of trades, including domestic helpers, wholesaling, food and beverage and import and export and so on. Besides, there are ingrained prejudices in the labour market against middle-aged women and sexual prejudices in general. Hence, it has become even more difficult for women to find a suitable job because of serious age and sex discrimination. The lack of community support services provided by the Government has also posed an obstacle in the way of women who wish to find a job. Besides, the terms and conditions of employment offered by many jobs are very unfavourable and that has directly discouraged women, especially mothers of single-parent families, from joining the labour market. These women would then have no choice but to remain as housewives.

Under the Job Matching Scheme promulgated by the Government at the beginning of the year, there are job centres at present which directly match job-seekers over 30 years of age to trades which have vacancies. Besides, under this Scheme, retraining programmes for job-seekers would be designed according to employers' demands and arrangements would be made for those who have attended the programmes to work in the trades concerned. The Scheme has the advantage of offering women, who are seeking to change jobs from sunset industries and industries which require a low level of skills, a chance to improve their skills, so that they can adapt to the new working environments. If the Government can put in more resources in this area and offer courses of various types teaching different levels of skills, I believe that would benefit a greater number of women.

However, we should note that women who are unemployed, seeking to change jobs or awaiting employment, come from different backgrounds. Some

are workers from sunset industries, some are skilled while others are educated to a certain level and so on. They have faced difficulties in finding a job not because of a lack of skills and education alone. An equally important factor is that they are adversely affected by the policy of importation of foreign labour and unequal treatment to women in the labour market. To place all of one's hopes in the Job Matching Scheme as a solution to the employment problem of women would be to neglect and avoid the factors in the system which have caused difficulties to women in obtaining employment. However, a more important factor is whether we have a free environment which provides fair employment opportunities. The Legislative Council is now scrutinizing the Equal Opportunities Bill. I hope that while the Government has recognized the need and is willing to improve on the equality of job opportunities for man and woman, it would also consider the problem of age discrimination, further securing the job opportunities for women.

It has been clearly pointed out by the media and many surveys that because of the importation of foreign labour, job opportunities for local workers have been reduced. Besides, age discrimination is an additional factor which accounts for the difficulties faced by women in finding jobs. Many trades, for example, hotels, wholesaling, real estate agencies and commercial services, have now set 28 or 30 as the age ceiling for employment. If we refer to some of the more popular newspapers, we would notice that the age requirement of 30 or below appears in many of the recruitment advertisements. Some Members have, according to their wishes alone, proposed to provide training for women workers, inflexibly allocating them to a particular trade, for example, domestic helpers. They have ignored problems like age discrimination and the importation of foreign labour. That is not tackling the source of the problem, is it? In this respect, I have to point out that the job of a domestic helper should not be the only choice open to women. The inflexible approach of allocating them to this trade regardless of their different levels of skill, education and expectations is not really attending to the needs of women who are looking for jobs.

At present, the median wage of 74% of domestic helpers who stay with the employers' family is \$3,200 per month. Comparing with that of workers from the manufacturing sector which is \$5,000-5,500, there is a difference of about \$2,000. Putting it simply, the salary of a worker from the manufacturing sector will be greatly reduced if she becomes a domestic helper. What women workers need are not merely job opportunities, they need jobs which are paid reasonably. If people claim that they are helping women to find specialized jobs on the one hand, but on the other hand neglecting the remuneration that women workers would get after they have changed their jobs, that, in effect, is pushing women into taking up low-paid jobs. An approach as such is really a blow to women's rights.

Besides, some Members have suggested training housewives to become domestic helpers. That kind of proposal has really originated from deep-rooted sex discrimination. Some women who had received secondary or tertiary education had to leave the labour market temporarily to bear and raise children. When they decide to join the workforce again, they have already reached middle age. They would encounter difficulties in getting a job due to factors like age and sex discrimination. Although these housewives have shouldered the burden of doing unpaid household chores, they certainly are not born as domestic workers. Thinking that they are a reserve labour force of domestic helpers is ignoring their needs and avoiding the crucial issues of age and sex discrimination.

With these remarks, I support the motion.

MR FRED LI (in Cantonese): Mr President, Dr the Honourable HUANG Chen-ya from the Democratic Party is proposing a debate on the employment problem of local workers. Members' attention is, of course, focused on the Government's labour importation policy. Nevertheless, a comprehensive employment policy should also take care of the needs of the handicapped at the same time. It should provide sufficient employment opportunities for them to help them strike it out on their own. I am now going to talk about the employment problem of the handicapped.

At present, assistance in seeking jobs available to the handicapped in Hong Kong can be considered extremely inadequate. There is also a lack of long-term policy directions in encouraging the handicapped to seek employment.

First, in respect to skills development and training, the Government has set up sheltered workshops for the handicapped. At present, the total number of places available in all the sheltered workshops throughout the territory is only 5 095. The Government plans to increase the number by about 700 in 1995-96. However, according to the five-year plan for social welfare development, the goal of the Government was to increase the number of places to 6 235 in 1995-96, but demand in 1997-98 is expected to reach 6 986 places. There will be a shortage of close to 1 000 places. It can be seen that the places in sheltered workshops fall far short of the set goal and the Government has not done enough in employment development and training for the handicapped.

In fact, many handicapped people have a certain degree of working ability. If the Government can encourage them to actively seek employment, on the one hand, they can re-integrate into society and live on their own ability; and, on the other hand, the shortage in the supply of social welfare services can also be eased. In the long run, the handicapped people may even become a strong logistical team to back up the workforce in Hong Kong. It is regrettable that the Government is not active enough in helping the handicapped find employment and encouraging the employers to hire the handicapped.

Last year, the Democratic Party has suggested for the Government to set up an employment tax allowance for the handicapped and to provide tax benefits for hiring handicapped people so as to encourage more handicapped people to work and more employers to hire handicapped people. Unfortunately, both suggestions have not been adopted by the Government. This is indeed regrettable.

As regards giving the handicapped people tax concessions, representatives of certain rehabilitation groups and I have met with the Commissioner of Inland Revenue, Mr Anthony AU YEUNG. As we understand it, handicapped people can enjoy tax concessions if they have to buy wheelchairs or aids or fix prosthetic limbs and so on because of their working needs. The criteria for these concessions are only set out in the internal papers of the Inland Revenue Department but have not been widely introduced to and publicized among the handicapped people or the bodies concerned. Actually, these measures are all helpful in encouraging handicapped people to work. The Government should publicize them more widely and introduce them to more people. One of the ways to do so would be to state clearly on the tax return form and the notes on how to complete the tax return that should handicapped people require the purchase of the equipment for their work, they may apply for tax concessions. Because of the severe lack of publicity, I believe that most handicapped people do not know that they can enjoy such benefits.

We have to recognize that objectively, handicapped people are different from able-bodied people. To be able to go to work, they need more immediate care and attention; especially, they need special attention when using the means of transport. It is a shame that the existing mass transit carriers do not provide sufficient care or facilities for the handicapped. Only the Kowloon-Canton Railway has been equipped with lifts in every station to help the handicapped go up and down. As for other transport carriers such as the Mass Transit Railway Light Rail Trains and buses, none of them is equipped with any facilities for the convenience of the handicapped. Actually, the authorities can provide certain simple installations, such as flood lighting boxes to help the blind and the deaf, fluorescent light strips on the handles to help the passengers with weak eye sight or signal bells fixed to a lower position inside the vehicle to instruct passengers to get off, which will be helpful to those who have difficulties in walking. These are all technical devices which are widely used abroad. Because handicapped people have trouble moving around, they are usually afraid to go out to look for a job and they usually have to pay higher travel expenses. Therefore, in order to encourage them to go out to work, the Government must provide sufficient assistance to them. The Government has only provided four rebus routes at the moment and the number of routes will be increased to seven this year. But even so, the supply falls far short of actual demand. The Government should substantially increase the services in this area. At the same time, it should also give the handicapped people travelling allowance to encourage more of them to go out to work and to participate in society.

Mr President, for a responsible government, the priority of its work is to provide adequate employment protection for local citizens, including the handicapped of course. To encourage more employers to hire handicapped people, the Government should take the lead in actively taking in more handicapped people so as to set an example, step up education to the public to remove their prejudice against the handicapped and secure more employment opportunities for the handicapped people.

In addition, a signature campaign which I participated in recently touched off some deep feelings within me. I have launched many signature campaigns before, but because of this motion debate, I recently conducted yet another signature campaign in some housing estates in Kwun Tong to call on the public to support this motion of ours. Many women, young people, students and older men all took the initiative to come up to sign their names. There were five or six clip-boards laid on a table but the residents still had to queue up to wait for their turn to sign. We collected over 3 300 signatures in merely eight hours. After signing, they even said, "Mr LI, it has been very hard to find a job recently. I have long been out of work, but still I cannot find any." They were women in their thirties. Some had to work the overnight shift in convenience stores and they only made \$20 an hour. Measured against our present day standards, their lives are indeed rather difficult. On the other hand, many women also telephoned my office asking about job vacancies and whether the office could hire them to do cleaning work or any other work, even two or three hours would be better than none. It is of course impossible to have so many employment opportunities available in my office. Councillors have a fixed amount of allowance and we cannot look for more allowance elsewhere. As I am a full-time Council Member, I just cannot take money out of my own pocket to employ them. I feel it strange that so many people have come to me to ask about employment problems recently. Therefore, I am bringing up a few points about the employment problem of the handicapped to complement Dr HUANG Chen-ya's motion.

With these remarks, I support Dr HUANG's motion.

MR HENRY TANG (in Cantonese): Mr President, the unemployment rate for this quarter is as high as 2.8%, the highest in nine years. According to standards laid down by economists, anything less than 5 % is still regarded as full employment. However, since Hong Kong's economy is undergoing a structural change, and the mechanism for retraining has yet to take time to mature, therefore, I believe the rising unemployment rate indicates that problems do exist and solutions have to be sought.

It is an undisputed fact that there are people without jobs. One day, I went to a restaurant in Sham Shui Po to have an interview with a radio station, and I saw many construction workers just "idling around" the whole day. But when I have tea with some of my business friends, I often find them grumbling about not being able to find enough workers. Can I solve the problem simply

by inviting my business friends to that restaurant in Sham Shui Po to have tea with those workers? I do not believe it will be that simple at all. This sort of job placement work is precisely the function of the Education and Manpower Branch and the Labour Department. Which trades, or what kinds of job in particular, are urgently short of labour? Which trades and what kinds of job are having an oversupply of workers? Workers without job and jobs without worker has become a serious matter because, I suppose, the Government has only a blueprint rather than a detailed plan for manpower co-ordination.

The current mechanism for labour importation, if resorted to in strict accordance with the law, can actually fill up some blank areas in Hong Kong's industrial-commercial sector with the effect of linking up all work processes. If we simply ignore the reality and abolish the labour importation policy, the 25 000 foreign workers currently working in Hong Kong will be forced to leave immediately, and the entire production line will be broken up due to a lacking in continuity. Other workers will also be implicated and their rice bowls will be at stake.

Many people detest labour importation so much that they denounce every supporter of this policy as if the latter have committed "the crime of the century". But on giving it further thought, the detractors will find that the 150 000 foreign domestic helpers currently working in Hong Kong are also a category of "imported workers". Their presence has helped release many married women from their household chores, enabling them to work outside and thus give big boost to Hong Kong's human resources. But why are these workers not being judged from the same "labour importation" angle as the others? On the other hand, there are in Hong Kong nearly 100 000 expatriate professionals, among them include even legislators, working at different levels and playing different roles in different posts. These people are very closely associated with the growth of Hong Kong's economy, and I never heard people say they should be driven out of Hong Kong. For this reason, we should handle this matter from a broader perspective and we should not simply and blindly equate "people without job" with "foreign workers snatching away our rice bowls".

Moreover, I believe that the Government, when reviewing the employment policy, should also undertake to review the effectiveness of the Local Employment Service (LES) of the Labour Department. Every year, there are 110 000 to 120 000 people looking for a job at the LES, but the success rate has dropped to 15.5% for the year 1994 from 19.4% for the year 1991. That is to say, of the hundreds of thousand job seekers only 10 000 to 20 000 have successfully found a job. Such a low success rate is really regrettable.

In terms of operating cost, the Government appropriated \$32 million last year to the nine offices under the LES, and 17 227 people were successful in getting a job under its referral service. That makes the average cost per

successful referral \$ 1,875. Setting this against current market conditions, if employment agencies or head-hunter agencies operate with such high costs, I think these companies should just wind up for good. Therefore, I suggest that the Government take bold measures and consider privatizing the LES, so that it would detach itself from the Government bureaucracy and become independent. This would enable the LES to take greater initiatives and have more flexibility. This would also improve the passive bureaucratic attitude of: “if one wants to find a job, one has to register first. But nothing else could be done if no job could be found”. On the other hand, apart from giving subvention to the LES, the Government could reposition the LES to make it come under the Employment Retraining Board (ERB) so that the two institutions could work more closely together and thus increase the efficiency of the job referral service to retrained employees.

Furthermore, I hope the Government will also review the operation mechanism of the ERB. The courses currently provided by the ERB fail to address market demand effectively to achieve maximum cost-effectiveness. Some popular courses have long queues while the less popular ones have only very few participants. Moreover, some courses are being abused. Some people take these courses as leisurely activities, while others take it as a way to earn extra money. There were people who even told the lecturers straightaway that they were not looking for jobs. This is really not the original intention of the retraining scheme, for such an approach will fail to relieve Hong Kong's demand for human resources.

Lastly, I hope that, when reviewing the employment policy, the Government will also give conscientious employers their due credit apart from finding a way out for the unemployed. This is because to many workers the very word “employer” means blood-thirsty beasts who fatten themselves by devouring others, and importation of workers is invariably being labelled exploitation of local workers' interests. But, in actual fact, is this really the case? In fact, it can be said that the industrial-commercial sector and the workers are dependent upon each other, because without workers the industrial commercial-sector can hardly conduct business. Our economy is undergoing a structural change, and if the industrial-commercial sector does not assist in employee retraining during this time, how can the level of human resources in Hong Kong be maintained? On the other hand, if the expedient of labour importation is not allowed when there is a severe shortage of labour, manufacturing production costs are bound to increase substantially. More industries will then be forced to move northward, and more workers will be faced with unemployment. Therefore, I earnestly hope that the Government will review the current laxity in law enforcement. There are wicked employers who unlawfully abuse foreign workers, such as deducting workers' wages unreasonably, forcing them to work overtime in breach of the relevant legislation, neglecting their safety at work, or even threatening these workers by keeping their identity documents and so on. Such abuses should be eradicated

and the employers concerned severely punished. Furthermore, the Government should keep an eye on the operation of foreign worker agencies and the fact that there are foreign domestic workers employed for non-domestic activities. The rising unemployment rate and public pressure should not be the sole reason for terminating labour importation.

With these remarks, I support Mr James TIEN's amendment.

MR ANDREW WONG (in Cantonese): I rise to speak in support of Dr the Honourable HUANG Chen-ya's motion, and in opposition to the Honourable James TIEN's amendment.

Frankly speaking, I am prepared to accept most of what is there in Mr James TIEN's amendment. I would even say that the amendment proposed should be incorporated into Dr HUANG's motion. For example, first, there are indeed some employers who are faced with recruitment difficulties. This is a reality. If everyone agrees, this part may, after consultation, be inserted in the motion. Second, recruitment enhancement. Indeed, assisting employers to recruit staff means they can succeed in recruiting local staff. This is equivalent to assisting local staff to find jobs. Lastly, the addition of retraining to long-term manpower training. I believe both the Democratic Party and the Liberal Party would agree on this point. The greatest difference in opinion may lie in the feasibility of terminating the policy for the importation of labour and introducing legislation to accord priority to local workers in employment. And there's the rub. Mr James TIEN proposes a review of the employment policy instead of termination of the Labour Importation Scheme. Reviews are of course necessary but they cannot completely replace what is there in the original motion. Merely conducting reviews is undoubtedly sheer stalling. So, I fully endorse the reasons the Honourable Mrs Elsie TU gave when she said she could not support Mr James TIEN's amendment. The amendment serves to procrastinate things. The unemployment problem is getting serious. The Administration should have conducted periodical reviews before to find out whether the policy of labour importation is working smoothly.

From what Members said a moment ago, I could see that we are not that divided on the issue. In fact, we hold rather uniform views. Although Dr HUANG has not clearly defined what he means by termination of the policy for the importation of labour, he has definitely indicated he does not mind importing labour in certain areas where there is a need to do so. He is not saying importation of labour should be banned in all trades. For example, if the employment of 140 000 domestic helpers is questioned, obviously the answer is that they should stay. But then what does termination mean? Does it mean that were the proposal to terminate carried today in this Council, and then tomorrow passed in the Executive Council and implemented by the Administration, then the next day all labour importation would stop? Naturally, everything has to be done in stages. For example, resigned staff are not to be replaced. So, I think there should not be any great difference in opinion on the matter. It would be

better if the wording is changed to say that certain reforms should be carried out in the policy for the importation of labour. Later, I will come to these reforms.

Another point I would like to make is that people may question the desirability of legislation that accords priority to local workers in employment. They may say such legislation may serve us as well as harm us, and can lead to socialism if the relevant laws are meticulously prepared. I think this is an overstatement. As the Honourable Martin LEE said, the word “law” may be construed as “means”. The spirit of the “means” is like this: Before laws are enacted, a supervisory committee may be set up to look into labour importation. Employers wishing to import labour must meet the requirements laid down by the supervisory committee. They may get imported labour only when they fail to recruit local labour. Then relevant laws may be enacted. The laws may be simple rather than complex but they must reflect the spirit mentioned. I think Dr HUANG has chosen rather mild terms in which to couch the part of his motion regarding legislation to give priority to local workers. He only wants to examine the feasibility of such legislation. However, I must take exception to those terms. I think we should immediately look into the matter and introduce relevant legislation. Before introducing such legislation, we may implement Mr Martin LEE’s proposals. Indeed, the idea of legislation to accord priority to local workers in employment is not the brainchild of the Democratic Party alone. Just now, the Honourable TAM Yiu-chung has clearly broached the idea. I understand that over the years the Democratic Alliance for the Betterment of Hong Kong and the Hong Kong Federation of Trade Unions have been trying hard to promote the idea, which I agree should be implemented. The feasibility of such legislation should be looked into. In addition, ways to ensure employment and priority in employment for local workers should be implemented without delay. The next step is to enact relevant laws. Furthermore, we need legislation to deal with unreasonable dismissals. This is something Hong Kong trade unions have been striving for, without success. Employers may arbitrarily dismiss workers at any time and then ask to import labour. Is this acceptable? I think not. To cope with the paradoxical situation in which unemployment and unfilled vacancies exist side by side, the first thing to do is to come to grips with legislation to accord priority to local workers. If properly enforced, such legislation may enable employers to recruit staff to fill any unfilled vacancies, at the same time as labour is being imported.

I think the crux of the problem with the Labour Importation Schemes lies in the general importation scheme. The scheme sets a quota that may change each year. So, some employers may be given a quota for a certain year but may lose it after two years. This is done to ensure fairness in quota allocation. For example, pig farm A may be given a quota for imported labour this year but the same may be taken away from it and given to pig farm B after two years, since there is insufficient quota for all. Nevertheless, pig husbandry may continue to be the kind of job no local workers would want to take up. That is why I think the general importation scheme is problematic. It should be changed to a special importation scheme. Whenever vacancies in a certain trade are not filled by

local workers, the number of unfilled vacancies will be the permitted quota for labour importation for that trade. To arrive at a correct number, prior research is required, and the entire policy would provide better flexibility. The figure for the sum of all quotas under the general importation scheme would definitely give rise to a lot of political disputes and heated debates in this Council may result. On the other hand, we all agree that we are not saying importation of labour should be prohibited. We think we have good reasons to have imported more than 100 000 overseas domestic helpers.

In addition, under the general importation scheme, costs incurred by each employer for imported labour is a monthly levy of \$400 paid into the Employees Retraining Fund, plus a basic wage for the imported employee. Nevertheless, loopholes exist. Some imported employees may voluntarily reduce wages, thereby lowering the costs for the employers. This can give rise to a number of problems. I suggest that the levy should be substantially higher than \$400, say \$2,000 or \$3,000. So, a further two or three thousand dollars would enable prospective employers to recruit local staff. Why bother to import labour? Of course, I am referring to employment in those trades in which labour importation is allowed. If an employer would not employ a local worker who is prepared to accept a monthly pay of four or five thousand dollars, the employer must be very foolish.

In conclusion, reforms must be carried out for the general importation scheme. If, in addition to these reforms, the general importation scheme is terminated to be replaced by another scheme, and legislation to accord priority to local workers in employment is introduced, problems will be ironed out.

Mr President, with these remarks, I support Dr HUANG's motion.

PRESIDENT: You do not have a second speech, Mr TIEN.

MR JAMES TIEN: Mr President, under Standing Order 28, Members may speak more than once by seeking your permission to explain some parts of their speeches which have been misunderstood. The Honourable LEE Cheuk-yan earlier made a point about myself which I think I would like to clarify so that Members could vote accordingly. May I proceed?

PRESIDENT: Yes.

MR JAMES TIEN: Mr President, the Honourable LEE Cheuk-yan said that my company employs imported workers, and because of that it seems to have deprived some of the local workers of their chances in getting jobs. I want to state here that none of the companies that I own, or that I control, employ any imported worker as of now. The only ones that I have are the three Filipino

maids in my house. The views I have expressed are on behalf of the employers who have responded to me. Thank you.

PRESIDENT: Dr HUANG, do you wish to speak to the amendment? You have five minutes for that purpose.

DR HUANG CHEN-YA (in Cantonese): Mr President, I believe nobody would oppose the importation of labour if the Government had an employment policy such that the people were highly skilled, earning good income, and economic growth was so good that vacancies were arising all the time and people would have no difficulty finding jobs. Legislation to give local workers priority of employment is really to allow the importation of labour in circumstances where there is the need and where there will be no harmful effects on the employment of local workers. However, the Liberal Party opposes even this very proposal, and it can be seen from this that the Liberal Party is really thinking of abusing imported labour instead of having them imported according to demand. One can see from the speeches made by Members from the Liberal Party that all they want is to continue the importation of labour; they are simply indifferent to the formulation of an employment policy and to the promotion of the economy so that more workers will be employed and need not worry about their livelihood; still less do these Members have any sympathy for older or disabled workers, all they say to the unemployed are sarcastic comments. A number of Members stressed that the unemployment rate of only 2.8% is nothing to fear. What they are being faced with are over one hundred thousand unemployed or underemployed people, who are in dire straits; and yet they are talking about harmony between employers and employees in the face of workers' sufferings; it is really astonishing to learn that they are so cold-hearted. The unemployment rate of Hong Kong is lower than the 5% of the United States of America, assuming that labour participation rates in the two places are the same; if the hidden unemployment rate is also taken into account, the unemployment is probably as high as 7.8%, which is the same as in Europe.

It is said that unemployment is a problem arising out of economic transformation. But according to the documents released by the Census and Statistics Department this year, among the unemployed in the third quarter of 1994, 60% of them were employed in the retailing, catering or other service sectors, and it is these very sectors that have applied for the greatest number of imported workers. It is obvious from this that the problem is not one of economic restructuring or the unemployment of manufacturing workers, but one in which workers of the service industry having been dismissed. It is argued that the reason why workers have difficulty in finding jobs and employers have difficulty in recruiting workers is that those who are looking for jobs are relatively older, whereas employers need younger workers. However, information provided by the Labour Department has it that the unemployment rate of those aged between 20 and 29 has been on the high side over the past 10 years; it was even as high as 3.4% in the third quarter of 1994.

Therefore, employers cannot say that they do not employ local workers because there are no young workers available. Also 60% of those unemployed in the third quarter of 1994 have reached secondary education level. So, the cause of unemployment is not that local workers have not been sufficiently educated.

The Honourable James TIEN said that Hong Kong employers also had all sorts of difficulties, and that they were hard put to it to deal with economic recession and the rise in wages. Now, let me emphasize this: the Democratic Party has never forgotten the economic contribution employers have made to Hong Kong. For this reason, I had set out a series of recommendations to support the business and industrial sector when I spoke earlier on. It is my conviction that if the Government accepts the Democratic Party's recommendations, the business and industrial sector will benefit a lot with more jobs available to local workers whose productivity and skills will be enhanced, which will in turn improve the competitiveness of Hong Kong companies. This would be far better than the policy of labour importation proposed by Mr James TIEN, as that could only serve to maintain low value added, labour intensive enterprises. It is in fact a proposal to lead Hong Kong down the road of economic recession. It would only create social unrest and plunge the economy into further recession by adopting a low wages policy to help employers. I hope that the Liberal Party, rather than caring solely for the interests of employers, will spend more time to work out some other more useful economic policies that will benefit not only both employers and employees but also the economic development of Hong Kong as a whole. I also hope that when the Government speaks on this motion, it will genuinely demonstrate its care and concern for the unemployment problem of Hong Kong and say it will formulate a comprehensive employment policy so that Hong Kong workers will be able to find jobs and need not worry about unemployment.

Hong Kong can be described as a very prosperous society. However, it is a shame on this prosperous society of ours that we should have so many workers who have to worry about unemployment. All along, the Government has not been trying to work out an employment policy. This is completely wrong. Comparing with overseas countries, the number of people in employment is far too low.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I would like to comment on both the motion by Dr HUANG and the amendment motion by Mr TIEN, and in the process, respond to a number of points of concern raised by Members this afternoon. The primary concern of Dr HUANG Chen-ya's motion is what the Government should do to enhance the employment opportunities of local workers in the light of their increasing difficulties in seeking employment. Members are also concerned about the recent rise in the unemployment rate.

Let me start by stating our commitment: no matter what the unemployment rate is, we are always mindful of the need to safeguard and to improve the employment opportunities of local workers.

The Administration cannot support the motion because we do not consider it right to terminate our labour importation policy, nor do we see the need to legislate to give priority to local workers in employment.

*Nature of Hong Kong's employment policy*

Our basic employment policy is to ensure that there is a stable, well-trained and well-motivated workforce to support the economic growth of our community. This policy comprises different elements which are formulated to meet the changing needs of the economy and in the best interests of Hong Kong. These include the provision of training and retraining, provision of employment services, promotion of health and safety at work, safeguarding employees' compensation and promoting harmonious labour relations. Of these, the provision of employment services and training and retraining have always been geared towards the policy objective of enhancing the employment opportunities of local workers.

Hong Kong's economic success owes much to our hard-working people and our free market system. Entry of foreign nationals to work in Hong Kong is nothing new. From the very beginning, expatriates brought in managerial expertise and professional knowledge. The rapid and large scale development of our manufacturing industry in the fifties and sixties could not have happened without the arrival of large numbers of people with capital and talents from China. Then in the seventies and eighties, foreign domestic helpers arrived to fill vacancies no longer sought by local workers.

In a time of rapid economic expansion and restructuring, we introduced the importation of labour schemes as short-term measures to relieve temporary bottlenecks in our local labour market and to build our new airport and the related projects. These schemes are all carefully designed and controlled to ensure that both the types and quantity of the imported workers are strictly confined to those sectors of industry facing genuine shortage of local workers. Many operators in these sectors would not have been able to maintain their business operations and to support their existing local workforce without these schemes, especially at time of critical labour shortage. Clearly it is not in the interest of local workers to see the closing down of such businesses. Moreover, Members will wish to note that the policy of importation of labour includes not just those admitted under the general schemes and Airport Core Programme schemes, but also overseas professionals and foreign domestic helpers. Surely, the community will not wish to see to be deprived of the services of these people.

Thus, the importation of labour policy has by no means gone against our efforts to enhance employment opportunities for local workers. On the contrary, it has served to complement what we have been doing. It will not be right to call for its termination without thoroughly and carefully reviewing its value in the context of our overall employment policies and our economy.

### *Unemployment rate*

We are of course aware that the overall unemployment rate has recently risen during the last few months. The latest rate of 2.8% or in actual terms, some 79 000 people out of a workforce of nearly three million has prompted discussions in the public arena that in order to contain the unemployment rate, we should discontinue our importation of labour policy now. This, I am afraid, is not the appropriate way to take.

The rise in the unemployment rate is due largely to the recent moderation in the expansion of some service sectors such as retailing and restaurants, which in turn gave rise to a reduced take-up of workers released from the manufacturing sector. However, more than three-fifths of the unemployed workers in the first quarter of this year have been unemployed for less than three months. This suggests that, in most cases, the unemployment has not been prolonged. Moreover, of those unemployed, over one third have left their jobs to find better ones, rather than being laid off. We should also note that, of those workers now in employment, manpower utilization has been maintained at a very high level, as shown by the persistently low underemployment rate of around 1.5% — the latest figure being the lowest in recent years at 1.4%.

That said, the Government fully appreciates the recent public concern about a greater number of local workers becoming unemployed, and is sympathetic to the genuine difficulties faced by these workers who have to adapt themselves to perhaps entirely new job requirements. We will therefore do all we can in our existing policy to help those workers; first, to extend our job placing services and assistance; second, to step up training and re-training courses tailor-made in particular for the needs of such workers; third, to strengthen monitoring and control of the Labour Importation Schemes; and fourth, to increase and step up enforcement action against illegal workers.

### *Importation of labour*

As I have said on previous occasions, the labour importation policy is built upon the premise of giving priority in employment to local workers and of preventing displacement of local workers by imported workers. We will conduct a thorough review of the operation of the General Importation Scheme before proceeding with the next allocation which is not due until early next year. The purpose is to ensure that the existing scheme does work according to the purpose, and to improve the effectiveness of the various safeguards for deterring abuses. We will study carefully the employment situation of different sectors and recommend appropriate changes to such things as quota allocation

criteria and mechanism. Further improvements to the monitoring procedures will also be considered including the possibility of involving both employers and employees in the process. Both this Council and the Labour Advisory Board as well as employers and employees associations and bodies will be fully consulted on this review, which should be completed before the end of this year.

*Feasibility of introducing legislation to accord priority to local workers in employment*

The second part of the motion proposes to examine the feasibility of introducing legislation to give priority to local workers in employment. As we have explained to the Manpower Panel last month, we do not see any need to legislate for such purpose. We already have sufficient administrative safeguards under our importation policy to ensure priority of employment will be given to local workers. The way ahead is to strengthen the effectiveness of such measures. This we will examine in our review. Moreover, Hong Kong's economic success, and its continued success, hinges largely on the effective operation of our free market economy. By enacting legislation to intervene with the employers' freedom of choosing suitable employees and the employees' freedom of choosing jobs will unnecessarily hamper the free market mechanism. As such, it will only tarnish Hong Kong's reputation as a world-renowned international business centre, and risk discouraging both existing and potential investors from pursuing their business plans in Hong Kong. This is indeed a price which Hong Kong as a whole cannot afford to pay. And lastly, even if such legislation were proved necessary and feasible, it will be extremely difficult if not impossible to have it enforced effectively, without at the same time causing serious disruption to the labour market, damaging our harmonious labour relationship and unnecessarily mistaking the freedom of choice.

*Integration of existing Local Employment Service and Employees Retraining Scheme*

But apart from the employment problems facing local workers, the Government is equally concerned about the same problems facing employers. Both parties should therefore be brought together to communicate with each other direct to resolve this paradoxical problem through mutually agreed means.

We have therefore started this process through our Pilot Job Matching Programme launched on 1 April 1995 through an integration of the existing services of the Local Employment Service (LES) and the Employees Retraining Board. At five selected offices, actual job vacancies from employers are being matched with unemployed persons at or over 30 years of age registered at these offices. We give active employment and counselling services to these job-seekers and make direct job referrals. The Employees Retraining Board is also arranging tailor-made retraining courses to strengthen their adaptability. So far, the Programme has registered 286 people and has successfully placed 81 of them in jobs with monthly wages ranging from \$4,000 to \$11,000.

*Formulation of a comprehensive employment policy*

The third part of the motion calls upon the Government to formulate a comprehensive employment policy which should include special employment assistance for the older displaced workers, middle-age women and the disabled and a long-term manpower training programme. May I just remind and reassure Members that our present employment policy is already quite comprehensive and sufficiently well-placed to enhance the employment opportunities of local workers.

One important aspect of this policy is to maintain a level of labour standards comparable to those of countries with comparable economic development and socio-cultural backgrounds. Employment assistance and job placement services as well as manpower training and retraining facilities are two important elements under this broad policy objective. In this regard, we abide fully by the relevant International Labour Conventions which, in brief, advocate the establishment of a system of free public employment agencies and an active employment policy designed to promote full and freely-chosen employment with a view to stimulating economic growth and overcoming unemployment.

At the working level, the Labour Department provides a network of free public employment agencies through its Local Employment Service for able-bodied job-seekers and the Selective Placement Service for the physically and mentally disabled ones. The Employment Service of the Hong Kong Council of Social Service provides free employment assistance to the socially maladjusted.

In addition, we have a series of special services to cater for the special needs of specific groups of workers. For displaced workers, we have the Employees Retraining Scheme set up in 1992 to provide these workers with suitable retraining courses to facilitate their re-entry into the active workforce. For unemployed persons over 30, we have launched the Pilot Job Matching Programme which I have just described. And for elderly job-seekers, the priority service for job-seekers aged 50 and above is available in all the LES offices. Finally, for disabled job-seekers, the Labour Department provides specialized placement service to those wishing to seek jobs in the open labour market and organizes a wide range of promotional activities to enhance public awareness of the working ability of the disabled.

*A long-term manpower training programme*

Turning to the policy on manpower training, it has long been the Government's policy to provide a well-trained workforce to meet the demands of our dynamic economy. We are seeking to achieve this:

- by providing an appropriate system of tertiary and continuing education;

- by providing a comprehensive system of technical education and vocational training; and
- by retraining displaced workers through the Employees Retraining Board.

We always endeavour to ensure that our training policy is flexible and adaptable to the needs of the labour market, especially those arising from the restructuring of our economy. On retraining, we will work with the Employees Retraining Board to maintain the successful placement rate of 60% to 70% for its retrainees who are active job-seekers.

### *Conclusion*

While we share with Members of this Council the concern about the recent unemployment rate problems, we have strong reservations about the proposals to terminate the importation of labour policy and to introduce legislation to give priority in employment to local workers. These are just not the solutions to the problems in question. Adopting radical measures such as these without assessing their consequences will have a detrimental effect on our economy, leaving our local workers much worse off than before.

The way ahead should therefore be to make a balanced assessment of the situation in our labour market and our economy, and to draw up practical and effective ways to help ease the employment difficulties facing our local workers in certain sectors.

Hong Kong's success owes much to the formulation and effective implementation of a comprehensive and well co-ordinated employment policy in tune with the latest economic and social developments. As with other policies, there is always room for improvements. We in the Government will continue to work with this Council and all employers and employees associations and bodies to introduce suitable improvements to our employment policy in the best interests of the public. For the reason I have already given earlier, we cannot therefore support this motion.

8.00 pm

PRESIDENT: Just pausing there, Secretary. It is now 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.*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I turn now to the amendment motion. Mr TIEN's amendment to the motion comprises two parts. First, it adds to it the concern about recruitment difficulties facing employers on top of that facing employees in the original motion. Second, instead of asking for a termination of the importation of labour policy and legislation to give priority in employment to local workers, it asks the Government to review and formulate a comprehensive employment policy to help resolve the different difficult problems experienced by both employers and employees. This points to a rational and prudent approach in handling the most contentious labour issues ahead of us, and is thus worthy of support.

As the notion of "employment" is essentially a relationship between employers and employees, any territory-wide relationship between employers and employees, any territory-wide labour problems in our economy will invariably involve both employers and employees. This amendment motion has thus made up for the deficiency of the original motion by presenting a complete picture of the employment situation facing us today.

To review and formulate an employment policy by striking a balance between the different interests of employers and employees in the light of the overall labour situation in the economy has been the Government's long-established policy in dealing with employment-related issues. We will continue to work with Members of this Council and other concerned parties along this approach.

The amendment also highlights "retraining" as a particularly important aspect of our employment policy to be reviewed. This view is fully shared by the Government. As I have explained earlier, the mismatch of skills and experience arising from our economic restructuring process is in fact the major underlying cause of the paradoxical problem of employers not getting the staff they need and employees unable to find jobs. The provision of suitable retraining programmes to facilitate the displaced local workers to re-enter the workforce has proved to be the most practicable and effective means of redressing this imbalance. This is also why we have included arrangement for retraining on top of the proactive employment services of direct job referrals. Of course, we will work with the Employees Retraining Board closely to upkeep the quality of the retraining programmes and the success rate of retrainees in seeking job upon completion of such courses. We, of course, also welcome views from Members of this Council on how to improve the Scheme further.

For these reasons and with the remarks I have first made, the Administration supports Mr TIEN's amendment motion. Thank you.

*Question on Mr James TIEN's amendment to Dr HUANG Chen-ya's motion put.*

*Voice vote taken.*

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Mr James TIEN voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Dr TANG Siu-tong, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

Mrs Elsie TU and Miss Christine LOH abstained.

THE PRESIDENT announced that there were 26 votes in favour of the amendment and 21 votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Dr HUANG Chen-ya, you are now entitled to reply and you have one minute 17 seconds out of your original 15 minutes.

DR HUANG CHEN-YA (in Cantonese): Mr President, the people of Hong Kong again learn a lesson today. In a society in which the parliament is not fully democratic, the livelihood of the people cannot be protected. The basic employment right of the public is neither given the least protection nor due importance having attached to.

The speech of the Administration has shown that it is at its wits' end as regards the increasingly serious unemployment problem but it still says by way of defence that it has a comprehensive employment policy. The Liberal Party and the Government are still holding fast to the importation of foreign labour. Their

intention is to deceive and lead the public into believing that everything is going well in Hong Kong and there is nothing to worry about because the Government has, right from the start, a comprehensive programme, although it fails to spell out the comprehensive employment policy that it says it has.

The Democratic Party will not take part in this scam. We will vote against the amendment. I would like to tell everybody that we would continue to request the Government to renounce this unreasonable policy and to formulate a genuinely comprehensive employment policy. We would consider the possibility of introducing a Private Members' Bill in order to protect the employment opportunities of local workers. When this Council has more Members representing the public after September, we will have another go.

Thank you.

*Question on Dr HUANG Chen-ya's motion as amended by Mr James TIEN put.*

*Voice vote taken.*

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Mr James TIEN voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Elsie TU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, 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, Dr TANG Siu-tong, Ms Anna WU and Mr LEE Cheuk-yan voted against the motion.

Miss Christine LOH abstained.

THE PRESIDENT announced that there were 26 votes in favour of the motion as amended and 22 votes against it. He therefore declared that the amended motion was carried.

### **COURT OF FINAL APPEAL**

MR JIMMY MCGREGOR moved the following motion:

“That this Council, having considered the present situation regarding the establishment of a Court of Final Appeal and having regard to the most recent comments and views of members of the Hong Kong Law Society, the Bar Association of Hong Kong and others concerned with this matter, urges the Government to set up the Court of Final Appeal at the earliest opportunity, in alignment with the obligations set out in the Joint Declaration and the Basic Law and in conformity with the agreement reached in 1991 between the Governments of China and Britain on its composition.”

MR JIMMY MCGREGOR: Mr President, let me explain my motive in seeking to have the question of a Court of Final Appeal (CFA) for Hong Kong again debated fully in this Council. I have lived all my life under the protection of the rule of law. I joined the Royal Air Force (RAF) at the age of 16 at the beginning of the Second World War because I felt deeply, even at that age, that the system of life which I knew was under the greatest possible threat. I did not then think of its central bastion of democracy supported by the rule of law, but I have thought many times since of what might have happened if that War had been lost. It would have been a long dark night for most countries of the world.

I have spent many years working in Hong Kong, in the RAF, then the Government, then the institutional support system then, finally, the business function and the work of this Council. I have always known that the core of our success, the basis for foreign and local confidence in our further development has been the guarantee that Hong Kong policies would remain liberal and fair to all, depending upon the maintenance and application of the rule of law. The independence of the Judiciary from the executive and the legislature has been of paramount importance. There must continue to be full public demonstration that the legal system by which our society is regulated is fair in every sense of the word, is open and accountable through the courts and is not subject to hidden and malicious pressures.

I have travelled in many other countries, promoting Hong Kong as a place for businessmen and investors to come and invest. One of the strongest points in the many discussions which I and my colleagues entered into with foreign investors was the long track record in Hong Kong of stability and quality in the establishment and maintenance of public policies affecting the way we live and do business. Hong Kong has been remarkably successful in securing the participation of foreign investors in the rapid development of our economy and

society. I have no doubt that all of them will say that one of the greatest attractions for them has been the rule of law in the Hong Kong and its fair and reasonable application. Hong Kong's legal system is second to none in the world and it is this system which will give Hong Kong the best possible chance of success after 1997 when both people and foreigners will judge whether the guarantees and assurances they have enjoyed for many years in a lawful and well-ordered society will continue.

There is also no doubt that Britain and China agree that the present Hong Kong judicial system, with all its traditions and powers, shall continue to operate through the transition and far into the next century. That is what is promised in the Joint Declaration and in the Basic Law. That is what both Governments clearly agree as an essential element in the administration of this territory as a Special Administrative Region (SAR) of China after 1997. It is perhaps rather remarkable that such an agreement should have been reached since the system of law practised in these two sovereign countries is vastly different, one from the other. One cannot easily be influenced by the other. The background and historical imperatives for the two systems of law have been totally different. It is quite remarkable that China accepted the need for Hong Kong to retain its present judicial system, based on that historically established by the colonial power and containing many principles and procedures which do not relate to Chinese laws nor, indeed, to the Chinese perception of how the rule of law should be maintained and operated.

If it had been possible for Hong Kong to have continued to operate its judicial and legal systems from 1997 without modification, then no doubt this Council would have had an easy time. That was never possible and very many changes have had to be made to localize our laws and bring them into the ambit and supervision of China, as the future sovereign power. Hundreds of laws have had to be amended for this purpose. Hundreds more have had to be examined against the enlightened provisions of new human rights legislation in Hong Kong and in an atmosphere in the community which seeks to entrench that which is good and fair and eliminate that which is bad and unfair.

I think China sometimes finds difficulty in understanding and accepting that this process is a natural one in a territory which has become conscious of its status in the world, of its basic human rights and of the considerable expertise of its citizens, its community and its society. Even if the colonial power were to remain in control, Hong Kong people would not accept the legal and moral *status quo*, but would seek change to improve their rights and their influence on the system of government.

I do not accept the theory that the British Government is acting out of pique or mischief to cause trouble with China on such vital issues as the maintenance of the legal system and the rule of law. I believe that the British are genuinely trying to leave Hong Kong with the system of law promised in the Joint Declaration and described in some detail in the Basic Law. That there should now be argument between the two sovereign powers over the setting up

of the CFA is unhelpful to Hong Kong's stability. In 1991 and at the instigation of the Honourable Simon IP, elected representative of the legal profession in this Council, we debated his motion on the CFA and in particular the agreement reached in the Joint Liaison Group (JLG) on the formation and composition of the Court.

Hansard contains the arguments adduced by many Members against acceptance of that agreement and specifically against the proposed composition of the Court itself, the so-called 4:1 formula. Although a few Members abstained and some expressed approval of the Sino-British agreement, a substantial majority threw it out. We did so because, among other things, virtually the entire legal profession in Hong Kong strongly advised us to do so. It also seemed clear that the two Governments were taking liberties with the interpretation of the reference to "judges" in the plural in both the Joint Declaration and the Basic Law. There seemed to have been some horse trading between the two Governments before the 4:1 formula was agreed. Most of us believed that the British has let us down and that they had agreed to a formula which would not secure for us the quality of judges in the CFA that seems necessary.

Three and a half years have passed and the controversy has continued. There has been never ending debate without the emergence of an agreed solution to the problem. Our legal profession is no longer unanimous however in its opposition to the 4:1 formula. Alternative arrangements could probably ensure a high quality of judges for the Court. The Government has drafted a law which incorporates the 4:1 formula. China has said apparently that there must be agreement on the Bill before it is put to this legislature. I believe that this Council has a duty to come to a view about these developments and so to whether we should now agree to a CFA as negotiated between the two sovereign Governments.

Other Councillors have introduced amendments to my motion. These show the depth of the interest in the Court within the community and underline the great importance of the Court to the efficiency and completeness of the judicial system in Hong Kong. It is right that we should argue this matter with force and conviction in our efforts to give Hong Kong an independent and efficient judicial system which is at the centre of our separate existence as a colony and then an SAR. It would be tragic in my view, however, if we were to argue heatedly over this issue any yet fail to agree on a solution. In my opinion, it would be a dereliction of our duty if we decide that no CFA need be established before 1997, that the Judiciary is left without the wisdom and the authority, indeed the absolutely essential respect and hierarchical power that a well-established CFA will bestow.

Councillors, we have a stark choice. The 4:1 formula is clearly, to me, not negotiable. That is what I believe. Not to accept it means, I think, that we shall not have a CFA before 1997. After that, it will be in the hands of the

Chinese and SAR authorities. At the very least, there will be a judicial vacuum, damaging to the rule of law and to the confidence on which we all depend.

Some of my colleagues on this Council have taken me to task for seeking detailed discussion on this important subject before agreement is reached on it in the JLG. My answer is that there is already an agreement, the 1991 agreement between the two sovereign Governments. The subject has such importance for Hong Kong that each and every Member of this Council should consider it his or her bounden duty to the people of Hong Kong to take a view for or against the 1991 formula, for or against a CFA before 1997, for or against the construction of a complete judicial system which will work within the established rule of law and give it a high level of efficiency. I am surprised that so many Councillors seem nervous about expressing an opinion and taking a positive position. The business sector is strongly in support of the 1991 agreement, yet there are businessmen in this Council who prefer to sit on the fence. That, my friends, does not say much for business acumen.

I believe that the Liberal Party should be in the forefront of support for the 1991 agreement. It seems a pity that the Democratic Party is also unable to accept a formula which provides a CFA which only differs from their acceptance level by one foreign judge. I feel that if they vote against the 1991 formula, they will not really help Hong Kong. I do however respect the sincerity of both parties and I do not challenge their integrity, only the wisdom.

I do not support the Honourable Simon IP's amendment. It is quite complicated and one part of it in particular is most unacceptable. The idea that the Hong Kong Government must clear the passage of important legislation with China in regard to its presentation to this Council and that every word must be approved by China negates completely the function of both the Executive and Legislative Councils in Hong Kong. There is an agreement between the two sovereign Governments on the the basic thrust and the systems to be applied in the CFA. The policy has been accepted by the Executive Council. The legislation is up to this Council. The two sovereign Governments have made it abundantly clear that they will not agree to any material change in the 1991 accord nor, therefore, in the 4:1 formula. Mr IP's amendment in my view has no possibility of being accepted by either of these two Governments. It should not therefore be supported.

So, I believe that a CFA is essential and already overdue. I hope Councillors will support my motion which seeks to set it up as soon as possible, incorporating the 4:1 formula in its composition.

Thank you, Mr President.

*Question on the motion proposed.*

PRESIDENT: Mr Martin LEE, Mr Moses CHENG and Mr Simon IP have given notice to move amendments to this motion. As Members were informed by circular on 28 April, under Standing Order 25(4) I shall ask Mr Martin LEE to speak first, to be followed by Mr Moses CHENG and Mr Simon IP; but no amendments are to be moved at this stage. Members may then express their views on the main motion as well as on each of the proposed amendments listed in the Order Paper.

MR MARTIN LEE (in Cantonese): Mr President, the motion on the Court of Final Appeal (CFA) moved by the Honourable Jimmy McGREGOR “basically” urges the Hong Kong Government to set up the CFA in conformity with the secret agreement reached in 1991 between the Governments of China and Britain on its composition.

I wish to quote from what the Governor said when he delivered the policy address on 6 October 1993, “But at the end of a century in which again and again we have seen hope and promise so often turn to ashes when men and women failed to stand up for what was right and for what they believed in, there is a point beyond which I do not believe that we could justifiably go, even in pursuit of an agreement to which we genuinely aspire.”

Mr President, I would very much like to know how Mr Jimmy McGREGOR would feel now that we are coming towards the end of the current legislative session when he looks back on 4 December 1991. That was the day when we all applauded to congratulate the Honourable Simon IP for his motion was carried by a vast majority of votes.

“The Joint Declaration provided that one of the features of a largely autonomous Hong Kong was an independent judiciary. The integrity of the judiciary is one of the pillars that underpins our economic success.”

“To secure investors’ confidence, I believe there must be a body of distinguished jurists of a comparable stature to replace the Privy Council. We need the flexibility to invite judges of international renown to sit on our Court. Otherwise, the replacement for the Privy Council is likely to be the Hong Kong Court of Appeal in a different guise. This makes the whole exercise almost meaningless.”

“We should not sacrifice composition and flexibility for speed. Whenever it (the CFA) is set up, in or before 1997, it must be in accordance with the letter and spirit of the Joint Declaration and the Basic Law.”

“I appeal to my fellow Legislative Councillors to ensure that the Court of Final Appeal is given the flexibility that it needs, a flexibility promised by both the Joint Declaration and the Basic Law.”

Mr President, the above paragraphs were quoted from Mr Simon IP's speech made on 4 December 1991 when he moved his motion. Those were his words, not mine. Mr President, I thought that was a remarkable speech on 4 December 1991 and I still think so on 3 May 1995.

It was those viewpoints which had prompted me to explain the importance of setting up a CFA in Hong Kong to Mr LI Jusheng, then Deputy Director of the Xinhua News Agency and one of the Chinese representatives in the negotiations of the Joint Declaration, when I met him in 1983 after I had completed my term of office as Chairman of the Bar Association of Hong Kong, Mr LI initially thought that the CFA should be set up in Beijing but he was successfully persuaded to change his mind.

At that time, Mr LI Jusheng thought that the CFA should be composed of local judges of Hong Kong. I then explained the importance of inviting overseas judges to Mr LI and suggested having three judges out of five who would come from the common law jurisdictions, I said that was essential to maintaining the confidence of overseas investors. Eventually Mr LI Jusheng said, "That is a very good idea, Mr LEE, but will Britain agree?"

After that, I immediately discussed the matter with Mr Michael THOMAS, then Attorney General. However, he asked a similar question, "Will China agree?" We all know what happened afterwards. The Governments of China and Britain wrote the provision of the establishment of a CFA for Hong Kong and the arrangement of inviting judges from other common law jurisdictions to sit on the Court in the Joint Declaration. The Chinese Government then copied what was written in the Joint Declaration into the Basic Law which was later promulgated in order to confer flexibility on the CFA in inviting overseas judges to sit.

Looking back on past events today, I still think that was the right direction. Unfortunately, I have seen hopes and dreams turn to ashes because some of us failed to stand up for what was right under Chinese pressures. They were trying to go beyond the point which we could justifiably go: distorting the meaning of the provisions of the Joint Declaration and the Basic Law, trying every possible way to cover up their irresponsible attitude and even giving up their duties as legislators. As distorting and tampering with the Joint Declaration and the Basic Law is going beyond the point which we could justifiably go, we cannot interpret the provisions concerning the CFA according to our own wishes. I am therefore moving to delete "having regard to the most recent comments and views of members of the Hong Kong Law Society, the Bar Association of Hong Kong and others concerned with this matter". That does not mean that we are not willing to consider the views of others. However, provisions concerning the CFA have clearly been written down in the Joint Declaration, in black and white. Although some people have made a "U-turn",

specific provisions concerning the basic principles would not change simply because the Hong Kong Law Society has made a “U-turn”. I have therefore decided to delete that part from the original motion.

Finally, I wish to point out once again the serious consequences of accepting the secret agreement reached by the Governments of China and Britain. According to a source close to the Sino-British Joint Liaison Group as reported in today’s newspaper, the Chinese Government has asked the British Government to amend the CFA Bill completely so as to limit the jurisdiction of the CFA to cases of an economic nature and to make provisions for Beijing to overrule decisions made by the CFA with which it shall disagree.

Now, the Hong Kong Government has the responsibility to clarify whether that is really the position taken by the Chinese Government. I would now formally ask the Government whether it can deny the position taken by the Chinese Government is that reported in the paper.

Mr President, that is the consequence which has arisen from the secret agreement reached by the Governments of China and Britain. The Chinese are apparently trying to take back the independence of the judiciary of the Special Administrative Region step by step. If we tolerate that kind of action today, we are in effect holding the candle to the devil. If we went beyond the point which we could justifiably go, we would then have to cower and give way until the independence of our judiciary disappears altogether.

The public of Hong Kong is actually aware of the importance of the rule of law in the run-up to 1997. The CFA will be the last bastion of the rule of law. The bastion of the rule of law cannot be jerry-built with sand from the seaside. A CFA built in this way cannot endure the attack of any big wave, it will be swept out to the sea.

I hope the Government can submit this Bill to the Legislative Council without delay so that the Liberal Party and the Democratic Party can amend it together in order to set up a CFA for Hong Kong which complies with the Joint Declaration and the Basic Law.

Those are my remarks.

MR MOSES CHENG (in Cantonese): Mr President, the establishment of the Court of Final Appeal (CFA) is a judicial matter of concern to the entire society of Hong Kong. It is also related to the integrity of the Hong Kong judicial system in the future, as well as the confidence of the international community in the consistently independent judicial system of Hong Kong. In view of this, both the Liberal Party and the people of Hong Kong share a common goal, that is, we hope that the CFA can be established at the earliest opportunity before 1997, lest there be a judicial vacuum after 1 July 1997.

Regrettably, when we look back on developments over the past three-odd years, we find that the CFA issue has been completely politicized. Some people criticized that the ratio of local to overseas judges as specified in the 1991 agreement reached between the Governments of China and Britain was inconsistent with the Joint Declaration and the Basic Law; and some also reproached others for “changing stance”. People argued and argued over the two figures of “four” and “one”. However, as regards the more important question concerning the actual operation of the CFA, it has long been forgotten.

My colleagues in the Liberal Party and I are indeed extremely fed up with this kind of endless political arguments, and I believe that many members of the public share the same feeling, too. The Liberal Party hopes that these unnecessary arguments can come to an end today, and that Members of this Council can concentrate on the basic issues of the CFA. We should study, with a pragmatic attitude, how the future CFA can operate smoothly, how it can demonstrate its independence and authority to the international community, and how it can go through a smooth transition to 1997.

Mr President, since the actual operation of the future CFA may be affected by the ratio of judges, I propose to amend the motion of the Honourable Jimmy McGREGOR by deleting the section concerning the agreement reached in 1991 between the Governments of China and Britain on its composition. First of all, I have to point out clearly that my amendment is prompted neither by political aims, nor based on the assumption that the agreement between China and Britain is inconsistent with the Joint Declaration and the Basic Law. In regard to the 4:1 ratio of local to overseas judges in the future CFA, the Liberal party is not blindly against it, but merely has some reservations towards it.

The true reason for my proposing the amendment, which I spelt out during this Council’s first debate on the CFA in 1991, is that if the number of overseas judges is rigidly fixed, the CFA may encounter difficulties during the course of a trial in the event that the case before it is related to specialized legal questions involving two jurisdictions where local judges’ expertise in that respect may be lacking. That is the worry of the Liberal Party and the main reason for our support for certain flexibility to be accorded to the CFA when inviting overseas judges.

In 1991, I did remind the Government to take note of this problem. I also asked the Government what the solution would be if the agreement between China and Britain really affected the actual operation of the CFA. However, whether the Government has studied this problem and whether it has taken any reference from the trial experience of the Privy Council and the CFAs of other countries, it has not yet given a thorough answer to us. The government officials time and again stressed that the 1991 agreement was the best arrangement that the Hong Kong Government could fight for, and that if this arrangement was not accepted, the CFA could not be set up before 1997. I

think that the reason used by the Government to persuade Members into accepting the 1991 agreement is not convincing enough.

The Liberal Party reckons that the future Bill on the CFA should match practical needs. It will not be necessary to specify in the Bill itself the mode of composition in regard to local and foreign judges so as to take into account the operational flexibility of the CFA.

I therefore hope that the Chinese and British Governments will, following the above direction, consider the details of the Bill from the perspective of the actual operation of the CFA and discuss the Bill in the spirit of sincerity and co-operation. What is more important is that the CFA will have to be established under the consensus reached between the Chinese and the British Governments in order to ensure its continuity.

The CFA will be a very important component part of the future legal system in Hong Kong and will have profound impact on society as a whole. Quite different from the amendment proposed by the Honourable Martin LEE, the Liberal Party and I believe that the Legislative Council should, in regard to this issue, take into consideration the views of the Hong Kong Law Society, the Bar Association of Hong Kong and members of the public and clearly indicate our consensus to both the Chinese and the British Governments. Hong Kong has to set up its own CFA as soon as possible, to make sure that it can straddle 1997 without any difficulties, and to ensure that it will enjoy sublime legal status in the eyes of the Hong Kong people and the international community before and after 1997.

I believe that the proposal of the Liberal Party is the best way to end the CFA controversy from a pragmatic perspective. I call upon Members of this Council to support my amendment.

Mr President, I so submit.

MR SIMON IP: Mr President, there are two parts to my amendment to Mr McGREGOR's motion. They are capable of standing alone as separate amendments. I shall ask for them to be voted on separately one after the other. The first part provides that agreement should be reached by the JLG on the terms of the draft bill currently being discussed by the JLG before it is presented to this Council.

Under the Joint Declaration and the Basic Law, the Court of Final Appeal (CFA) is an institution to be established in 1997. If it is to be established prior to 1997, it must be done by agreement between Britain and China, which they did in 1991 in principle and in broad terms. The details of implementation must in my view be subject to further discussion and agreement by the two Governments. Any attempt by the Hong Kong Government to enact a law before then would be premature. To say this gives China a veto is in my view

misunderstanding the situation. It is more accurate in my view to say that you cannot implement an agreement until an agreement has been reached. The message from the Chinese Government is very clear. If unilateral action is taken by the Hong Kong Government, any Court set up before 1997 will be dismantled.

Moreover, Sino-British co-operation is already suffering badly. The working relationship between the Chinese, British and Hong Kong Governments will deteriorate further if unilateral action is taken on the bill. Everyone knows this is not in the interests of a smooth transition. Thumbing the nose at China may produce some short-term political popularity for some, but at the risk of long-term political cost for all.

I want to make it clear that my remarks about unilateral action are confined to this issue and this issue alone. They are not indeed to affect other issues which must be dealt with as required according to their own circumstances.

I now turn to the second part of my amendment. Mr President, the Government consulted the legal profession at the end of the last year on the draft bill. It is well known that views within the profession are strongly divided. I need not rehearse the opposing arguments as they are already well known. The fact is that one faction of the profession opposes the 4:1 composition whilst the other faction supports it. But the overwhelming common view is that it is better to have a Court before 1997 than after 1997. Even the resolution passed by the Bar Association rejecting the draft bill went on to state that it is desirable that a CFA be set up before 1997 provided that as enacted, it conforms with the Joint Declaration and the Basic Law.

The major difference is over the meaning of the Joint Declaration and the Basic Law. Legal opinion on this issue is split with respectable arguments being presented on both sides. Continuing heated debate on the subject remains inconclusive. Even Professor Sir William WADE, in his second opinion, had this to day:

“While I see the force of the argument based on the use of the word ‘judges’ in the plural in Article 82, I do not think that it is conclusive, since it would be natural to use the generic plural so as to leave the number of overseas judges open, to be prescribed by a further law under Article 83; and the plural need not necessarily mean a plurality on any one occasion. Article 82, being framed in general terms, is capable of a range of interpretations, from unlimited discretion at one end of the scale to a ‘4:1’ ratio at the other. All these interpretations could arguably be said to be in accord with the Basic Law.”

Mr President, the solution I propose is to accept the composition of the Court as specified in the bill but incorporate in the Letters Patent wording identical in substance to Article 82 of the Basic Law. The overall effect would then be that the validity of the provisions of the Court of Final Appeal Ordinance, if enacted, would be subject to the overriding provisions of the Letters Patent. A similar result would in any event arise after 1997 when the Basic Law comes into effect as it would supersede the Letters Patent and would govern the validity of all laws of the Hong Kong Special Administrative Region.

It would ultimately be for the courts themselves to determine whether the composition is compatible with the Letters Patent or the Basic Law. If the answer is “yes, it is compatible”, then the ground for objecting to the composition is removed and the problem no longer exists. If the answer is “no, it is not compatible”, then the more liberal wording of the Letters Patent and the Basic Law would prevail, thereby permitting greater flexibility on the part of the Court to invite overseas judges. This, Mr President, would be the rule of law in action.

Mr President, many people, myself included, have expressed strong opinions over the last three and a half years and they continue to do so. These opinions have led to no solution. Three and a half years on, it is quite clear that people, the business community in particular, want to see the deadlock broken. They want a solution and I am offering them one. It may be the only and final solution. I ask that my proposal be considered seriously.

My amendment are equally applicable even if Mr McGREGOR’s motion is successfully amended by Mr LEE or Mr CHENG.

Mr President, a proposal has been made that if a bill is presented to this Council, then the bill should be amended by simply incorporating Article 82 of the Basic Law. It is contended that by so doing Hong Kong would be at liberty to set up a Court with unlimited flexibility. However, the reality is that if such a Court is set up in disregard of the agreement by the JLG, it is certain that such a Court would be dismantled in 1997. It is quite pointless to set up a Court that is going to be dismantled in a year or less. That in my opinion is not a solution to the problem. The only solution that I can see to the deadlock is the solution I have proposed, and I would ask fellow Members to give it serious consideration.

CHIEF SECRETARY: Mr President,

### *Introduction*

All of us know that one of the key elements of Hong Kong’s success has been the rule of law and judicial independence. Both the Joint Declaration and the Basic Law specifically provide for the continuation of these systems beyond 1 July 1997, with one important change. Appeals from the courts of Hong Kong may currently be made to the Privy Council in London, but this

arrangement must cease not later than 1 July 1997. Both the Joint Declaration and the Basic Law state that the power of final adjudication of the Hong Kong Special Administrative Region (HKSAR) shall be vested in the Court of Final Appeal (CFA) of the Region, which may as required invite judges from other common law jurisdictions to sit on it.

#### *Early establishment of the CFA*

The Joint Declaration and the Basic Law both provide that the CFA would be in operation in Hong Kong after 30 June 1997. But after the Joint Declaration was signed in 1984, it became clear to us that it would be much more sensible to set it up before 1997. If this was not done, there would be a period both before and after 30 June 1997 when it would not be possible to seek a final adjudication: before 30 June 1997, because cases can take up to a year to be heard by the Privy Council; after that date, because it would obviously take the SAR government some time to set up the CFA. That was why we began negotiations with the Chinese side in 1988.

#### *The 1991 JLG agreement*

In September 1991, after the subject had been discussed by the two Prime Ministers in Peking, we reached an agreement in the Joint Liaison Group (JLG) on the early establishment of the CFA before 1997, including an agreement on the composition of the Court. According to this agreement, the CFA, in every sitting, should be composed of the Chief Justice, three permanent Hong Kong judges, who could be either local or expatriate, and one non-permanent judge selected from either a list of non-permanent Hong Kong judges or from a separate list of judges from other common law jurisdictions.

Unfortunately this agreement did not meet with universal approval. In December 1991, this Council passed a motion in favour of greater flexibility in the appointment of overseas judges to the CFA. This motion was based on the assertion that the 1991 JLG agreement was inconsistent with the Joint Declaration and the Basic Law. However, this assertion, which has been repeated today by Mr Martin LEE, is not correct. The Attorney General will elaborate on the legal arguments later. All I will say now is that it is frankly inconceivable that the 1991 agreement would have been made if either Government had believed it to be inconsistent with the Joint Declaration and the Basic Law. We believed at that time, and we still firmly believe now, that the agreement is fully in accordance with the Joint Declaration and the Basic Law.

Much has happened since December 1991. The Chinese side have made it clear, both publicly and privately, that they are not prepared to re-negotiate the 1991 agreement, and that a CFA set up on any other basis will not survive 1997. But, so far as I am aware, there is universal agreement that we should if at all possible set up the CFA before 1997. Accordingly, the Administration remains convinced that it would be in the best interests of Hong Kong to stand by our

commitment to establish the CFA before 1997 on the basis of the 1991 JLG agreement. We therefore strongly support Mr Jimmy McGREGOR's motion.

Mr Moses CHENG and Mr Martin LEE have both proposed deleting the last part of the motion which refers to the 1991 JLG agreement. As I have said, the Administration is committed to establishing the CFA on the basis of the 1991 agreement. Not only is the agreement consistent with the Joint Declaration and the Basic Law, but it is, as Members of this Council know well, the only realistic basis on which the CFA can be set up before 1997. It is, in other words, the only basis for the early establishment of the CFA that both Mr CHENG and Mr LEE and, I am sure, other Members of this Council wish to see. So the *ex officio* members will vote against both these amendments, and I call upon other Members of the Council to do the same.

#### *The present position*

Mr McGREGOR's motion urges the Government to set up the CFA at the earliest opportunity. That is, and has always been, our aim. As Members will know, we have drafted a CFA Bill, which we handed to the Chinese side on 5 May last year. We also sought the views of the legal profession on the draft bill last November. Both the Bar Association and the Law Society supported the establishment of the CFA before 1997. Both also suggested a number of technical amendments to the bill. We considered these very carefully, and accepted some of them. These we handed to the Chinese side in January.

Since receiving the draft bill, the Chinese side have asked us a total of 28 questions, in four batches. We answered them all fully and promptly. The experts of the two sides met on 24 March this year and again on 27 and 28 April. At the latest round of expert talks we made progress. We gave the Chinese side further amendments to the draft bill in response to suggestions and comments that they had made at the previous round of talks. The Chinese side at last produced a full and clear statement of their outstanding concerns, some of which we were able to deal with on the spot. Both sides welcomed the progress that had been made and agreed that the momentum achieved should be maintained. We proposed that a further expert meeting should take place as soon as possible, but the Chinese side were unable at that stage to agree to a specific date. We are now awaiting confirmation from them of when they will be ready for the next meeting.

#### *Way forward*

So that is where we are now. We are committed to introducing the CFA Bill into this Council, in order to implement the 1991 agreement and establish the CFA before 1997. We would like to have introduced the bill in February, but we have deferred doing this, in order to give the Chinese side as much time as we reasonably can to study the bill and confirm that they are content with it. They have had the bill for almost a year now.

The time constraints facing us are very real. Because appeals to the Judicial Committee can take up to a year to be heard, it is important that the CFA should be operating by about July 1996. And the Judiciary will need at least a year after the bill is enacted to put the practical arrangements in place and to have the CFA up and running. They will have to fit out the premises for the Court, select and appoint the judges — both in Hong Kong and from overseas, draw up detailed rules of procedure and enshrine them in subsidiary legislation. This all means that the CFA Bill must be enacted before the end of the current Session. We recognize, of course, that Honourable Members will wish to have a reasonable amount of time to study this important bill. So we must introduce the bill into this Council as soon as we possibly can.

This timetable is not one we have invented to put pressure on the Chinese side, or indeed on Members of this Council. It simply reflects what needs to be done if we are to meet our obligations under the 1991 agreement and establish the Court before 1997. If we fail to meet this timetable and the Bill is not enacted by the end of this Session, it will need to be introduced into the new Session of the Legislative Council. But the new Legislative Council will not meet until October, and, as Members know, the first month or so of each Session is devoted largely to the debate on the Governor's policy address. Even if we introduced the bill at the first possible opportunity, it is not realistic to imagine that it would be enacted before the beginning of 1996, at the very earliest. This would mean a delay of at least six to nine months. It would then be very difficult to set up the CFA before 1 July 1997.

This delay would simply not be acceptable. We would be rightly criticized for not meeting our obligations under the 1991 agreement. And we would already be in a situation where appeals going to the Privy Council would not be heard before 30 June 1997. That is why, if the Chinese side do not tell us very soon that they are content with the draft Bill, we will have to face the difficult decision of whether to continue to wait for Chinese agreement, or whether to introduce it into this Council anyway in order to meet our obligations under the 1991 agreement and to set up the CFA as soon as possible before 1997, and to do what we believe best for the people of Hong Kong. We hope, naturally, that we do not have to make this decision. And we still believe that, although the time available is now very limited, it should be sufficient to allow us to complete our work in the expert group talks, provided that both sides are willing to work positively and quickly in a spirit of goodwill and co-operation.

But the stakes are high. Delaying the bill beyond the end of this Session would mean losing the continuity that the 1991 agreement was meant to provide. We would then be facing the problem of a judicial vacuum that we have worked so hard to prevent. But that, to my considerable astonishment, seems to be what Mr Simon IP is proposing.

Some have argued that it does not matter much if there is no CFA before 1997 because the number of cases likely to come before it is small and because the Chinese side have said that the SAR government will set up the CFA on 1 July 1997. The Administration cannot agree. The fact is that, as I have said before, if the CFA is not set up before 1997, there will be a judicial vacuum at the apex of our judicial system. This would seriously undermine public and international confidence in Hong Kong. Honourable Members will be aware that the business community, both in Hong Kong and overseas, have expressed considerable concern about this problem. And this concern is being translated into action. It is clear that, as the Japanese Consul-General has pointed out this week, increasing numbers of investors are now insisting on disputes over their contracts being litigated outside Hong Kong or being subject to arbitration, so that they do not come within the jurisdiction of the Hong Kong courts. In other words, one of the key reasons for Hong Kong's success as a premier business location is being undermined.

Nor is that all. A failure to set up the CFA before 1997 would affect the people of Hong Kong in more direct ways. It would mean denying justice to the litigants involved. As a fundamental matter of principle, this would be wrong, no matter how few of them there may be. Test cases which need the most authoritative decisions from the highest court would also have to wait, and Hong Kong's legal system would be deprived of the important points of law that arise from these cases. And, of course, there would be complete uncertainty over when and on what basis the CFA would be established by the HKSAR after 1 July 1997.

I find it hard to believe that this is what Mr Simon IP wants. Yet that is the risk we would be running if his amendment was passed. Whilst we will continue to work very hard for an agreement in the JLG, we cannot guarantee that we will get one in the timeframe available.

### *Conclusion*

The issue before this Council today is a simple one, but a very important one. It is an issue that must be faced, and face squarely, now. Do we, or do we not, want a CFA set up before 1997? The Administration's answer is an unequivocal yes. We are fully convinced that a CFA established before 1997 is in the best interests of the people of Hong Kong. As a party to the 1991 agreement, and from subsequent public statements, this view is shared by the Chinese side. And, as I have already pointed out, the only realistic way to do this is on the basis of the 1991 agreement. There is nothing to be gained by further delay.

I therefore strongly urge Members of this Council to support Mr McGREGOR's motion. That will give the people of Hong Kong, and international investors, a clear signal that this Council is committed to the rule of law, and that its Members are prepared to do their part in ensuring continuity in the judicial system in Hong Kong during the transition to 1997.

MISS EMILY LAU: Mr President, one of the powerful justifications for setting up the CFA now is said to be the judicial vacuum which will arise when appeals to the Privy Council must cease upon the transfer of sovereignty in 1997.

But the judicial vacuum argument is unrealistic because once the Privy Council ceases to be the ultimate appellate body for Hong Kong, and if nothing is put in its place, the Court of Appeal will be the ultimate appellate court until something else is set up.

Since the 1991 secret JLG agreement in effect requires the CFA to comprise, almost exclusively, of former Court of Appeal judges, the so-called “vacuum” would, in qualitative terms, remain unfilled.

Some people, like our Chief Secretary and others, have said it would be damaging to business confidence if the CFA is not set up as soon as possible. However, nobody has explained why investors should feel more confident in a CFA composed almost exclusively of former Court of Appeal judges and based on a model which the legal profession universally rejected in 1991. If investors are so confident in former Court of Appeal judges, why they have not the same level of confidence in the current Court of Appeal?

There is simply no point in legislators second-guessing what the Chinese Government will accept or will put in place as the CFA of the Hong Kong Special Administrative Region. However, we definitely should not support the establishment of a CFA constituted in a way that is contrary to the Sino-British Joint Declaration, the underlying purpose of which is to enable the Court, as required, to invite judges from other common law jurisdictions to sit.

#### *The Joint Declaration and its objectives*

One of the objectives of the Joint Declaration is to maintain the prosperity and stability of Hong Kong. To achieve this, the British Government clearly regarded continuing links with the rest of the common law world as a key element. One way of doing so is to allow the CFA to invite judges from other common law jurisdictions to sit.

Another reason for inviting foreign judges, a reason seldom mentioned in public, is that foreign judges may be less susceptible to manipulation and control by the Chinese Communist Government.

It should be obvious to all concerned that in order for Deng Xiaoping’s concept of “one country, two systems” to succeed, it is essential to maintain confidence and continuity in our legal system and the Judiciary. In this respect, the Joint Declaration stipulated that after 1997, Hong Kong courts shall “exercise judicial power independently and free from any interference”.

For the CFA to have the freedom to invite judges from other common law jurisdictions to sit would enable the decisions of the Court to enjoy similar standing as decisions of the Privy Council. This would mean that, despite the transfer of sovereignty, the right of accused persons and litigants to a final hearing before an appellate body of similar standing to the Privy Council would be maintained.

Without denigrating the quality of our local judges, they simply do not enjoy the same standing as those in the Privy Council or even of their counterparts in Australia and New Zealand.

In summary, what is provided for in the Joint Declaration was the establishment of a CFA which has the flexibility to invite judges from other common law jurisdictions to sit. This is not a mere question of numbers.

On any given appeal, it would have been for the CFA itself to decide how many members should sit and who should sit, whether and if so, how many judges from other jurisdictions should be invited to sit. This flexibility is an aspect of judicial independence promised in the Joint Declaration and it has been destroyed by the 1991 JLG agreement.

*Overtaken by events*

However, Mr President, it seems today's debate has been overtaken by events, as pointed out by Mr Martin LEE. It was reported in the Eastern Express today that the Chinese Government has informed the British Government at last week's JLG expert talks that Beijing wanted to amend the Court of Final Appeal Bill to provide for a "post-verdict remedial mechanism". If true, this would mean stripping the Court of its final power of adjudication and to me and many people would constitute a serious breach of the Joint Declaration.

In addition, the Chinese Government has reportedly asked for the Bill to stipulate that the CFA would have no power to inquire into the "constitutionality of laws". This could mean that the Court would not be allowed to hear politically sensitive cases. The newspaper report said Chinese officials have also privately indicated they would like the Court's power restricted to economic disputes only.

Mr President, if the Chinese Government had indeed made such outrageous suggestions — suggestions which are tantamount to tearing up the Joint Declaration, the Administration has a duty to explain to this Council and the people of Hong Kong what it intends to do. Hiding behind the cloak of confidentiality simply will not do. Since our future is at stake, we demand to know what is going on behind those tightly shut JLG doors.

Confidentiality breeds suspicion and erodes public confidence. I call on the Administration to take the Hong Kong people into their confidence so that we can all make plans intelligently about our future. The people of Hong Kong would also like to know what the British Government would do for us if and when the Joint Declaration is torn up by the Chinese.

Mr President, with these remarks, I oppose Mr McGREGOR's motion and Mr IP's amendment and support Mr CHENG and Mr LEE's amendments.

MR TAM YIU-CHUNG (in Cantonese): Mr President, the issue of the Court of Final Appeal (CFA) was debated three years ago. At that time, some Members kept saying that the early establishment of the CFA would increase the business community's confidence in the future of the Special Administration Region. Despite this, they made great play of the argument with regard to the number of foreign judges. As a result, the issue was politicalized. Eventually, the hope of the early establishment of the CFA vanished.

Regarding the establishment of the CFA, my consistent position is in fact simple and clear. It can be described as briefly as "in conformity with three things", that is, in conformity with the Joint Declaration, in conformity with the Basic Law and in conformity with the Sino-British agreement on the establishment of the CFA.

Seeing that some are still arguing the number of foreign judges today, I feel a little bit disappointed. The reason is that three years ago I had already pointed out that those who challenged the Sino-British agreement on the ground of flexibility in fact wanted to increase the number of foreign judges. But how many foreign judges will satisfy them? Four? Or five? They had better frankly admit that they want to have the CFA set up in the Privy Council of England! Although they speak in a loud voice, they have no courage to say what they are thinking in their inmost heart. My view on this remains unchanged, which is reaffirmed by a remark made by Mr LU Ping, Director of the Hong Kong and Macao Affairs Office of the State Council, who clarified last year publicly that a foreign judge would be regarded as local after one year's service in a court of law in Hong Kong. Hence, when the CFA is in operation, besides the Chief Justice who, in accordance with the Basic Law, must be a Chinese citizen and permanent resident of Hong Kong with no right of abode in any foreign country, the other three local judges and one foreign judge may all be foreign nationals. I think such "flexibilities" is acceptable.

Mr President, I support the establishment of the CFA in conformity with the Sino-British agreement reached in 1991. The reason is simple because more experience will be garnered and a more sizeable body of case laws based on precedents will be built up if the CFA is established at an earlier date. And I believe such experience and precedents will straddle 1997 and become a valuable asset of the CFA of the Special Administration Region. Now we all consider that the setting up of the CFA at the earliest opportunity will play an

important role in stabilizing the investors' confidence. I would like Members to consider more carefully why the setting up of the CFA at the earliest opportunity can boost the investors' confidence. The limited number of precedents in the coming two years will not of course serve as the sole contributory factor to such confidence. Instead, what really counts is the cooperation between the Chinese and the British Governments and the spirit of "one country, two systems" which the early establishment of the CFA will make manifest. Confidence will therefore be built up because our CFA is set up under British sovereignty and is operated under the British judicial system where a body of case laws based on precedents will be built up. After 1997, the CFA's operation will not come to a halt due to change of sovereignty.

By the same token, if the establishment of the CFA is not in conformity with the Sino-British agreement reached in 1991 or the agreement is extensively amended by the Legislative Council, the CFA might face the fate of being dismantled and a new one will be set up again in 1997. The loss that Hong Kong will suffer will not be limited to a handful of precedents but will be exacerbated by variables or imponderables that come with the change of sovereignty. I must stress that if my colleagues in this Council had accepted my point of view three years ago, there would already have been a CFA in place in Hong Kong now. It would demonstrate to China and even the whole world that our judicial system is sound and Hong Kong is an ideal place for investment. Such a judicial system will continue to operate which will be a positive factor when sovereignty passes.

Mr President, with the Honourable Martin LEE and the Honourable Moses CHENG move to delete the phrase "in conformity with the agreement of reached in 1991 between the Governments of China and Britain on its composition" from the original motion. Even though the CFA can be set up in disregard of China's objection, the Court itself as well as the body of case law it has built up would only last until the end of June 1997. What will be gained by doing this? I will therefore vote against this amendment. Regarding the amendment moved by the Honourable Simon IP, I support the first part of it as I consider the second part of his amendment will give rise to variables or imponderables. I think the spirit of the original motion is generally acceptable. But the most important thing is that it fails to spell out what is being called for in the first part of Mr IP's amendment concerning the agreement reached in 1991 between the Governments of China and Britain on the composition of the CFA. The omission of this point may be regarded as a fly in the ointment.

Mr President, I so submit.

DR LEONG CHE-HUNG: Mr President, in spite of my admiration and respect for my friend, Mr Jimmy McGREGOR, I stand today to oppose his motion. I oppose it because it is ill-conceived. In my mind, ill-conceived because the words of his motion are conflicting, for to me the implicit meaning of the Joint Declaration and Basic Law in relation to the CFA and the secret agreement reached between the Chinese and the British Governments in 1991 are poles

apart. For while the Joint Declaration and Basic Law call for flexibility in composition of the proposed CFA, the JLG's agreement has set in concrete the ratio of fixed local judges and variable overseas judges to be 4:1.

I oppose the motion because it is untimely. For with the tabling of the Court of Final Appeal Bill hopefully, as the Chief Secretary has said, at the eleventh hour, what is the value of this debate? Is this debate a precursor, a dress rehearsal of the debate on the resumption of the Second Reading of the proposed Court of Final Appeal Bill, if this bill manages to go so far?

I oppose the motion because I believe that we in Hong Kong should work within the framework of the Joint Declaration and the promises of the Basic Law. This is where the confidence in the future of Hong Kong will depend. There is thus no compromise for any infringement. Perhaps, Mr President, the only value of today's debate is to allow Members here to be upstanding and to be counted, or at the same time, to show their state of mind to the two Governments so that they can make their decision.

So the nine professional groups in 1991 under the chairmanship of the Honourable Simon IP passed a resolution unanimously stating clearly our support for the setting up of a CFA within the flexible framework as depicted by the Joint Declaration and the Basic Law. The medical profession has not retracted from this stand and will stand by it.

Mr President, it has always intrigued me why the British Government would agree to the fixed 4:1 ratio of the CFA judges. The British Government, through their experience with the Privy Council, knows only too well that very experienced judges are needed for the CFA if that is to gain the confidence of the international business community. It is, therefore, the quality of the CFA in that sense of the word, the quality of the judges there, not the setting up of the final CFA, that would prevent a legal vacuum.

It also baffles me why the Governor, in one of his question and answer sessions to this Council, said that he accepts the legal interpretation of the word "judges" in the Joint Declaration and the Basic Law to mean: "Many overseas judges but one sitting at each hearing". He paraphrased it with the example that he might be invited to lunches and that would mean not having many lunches at one day, but many lunches in many days. This is definitely not my understanding of the Joint Declaration or the Basic Law, and I dare say that probably this is not the situation with many Members of this Council too. To me, this amounts to the legal interpretation as using the eloquence of the use of the English language to pull wool over the eyes of Hong Kong people. I therefore do not condone and I have my reservations.

So, the Government has stressed, and it seems actually just now so eloquently spoken about, repeatedly and strongly, that the CFA must be best established and functioning before 1997. So be it. The best thing would be to bring the bill forward to this Council for approval for its establishment and for

the Council to amend it in whatever way this Council feels to be the aspiration of the Hong Kong people. This, of course, is the constitutional way.

The Government has also repeatedly stressed on other occasions that it will abide by this Council's decision, if the Government is true, I believe. Then let me sound a bit of caution. It would be very, very embarrassing indeed if the Government were to withdraw the bill if there were to be amendments not within its wish under the blatant contemptuous eyes of the general public.

MR PETER WONG: Mr President, the 1991 Joint Liaison Group agreement on the Court of Final Appeal (CFA) triggered off a long-drawn-out public debate which stands in the way of the establishment of the Court. Members of the Accountancy Functional Constituency and myself believe that the time for action is long overdue.

The controversy surrounding the CFA stems from a common concern over the strength of the Court as the pinnacle of justice in post-1997 Hong Kong. It is believed that Hong Kong's legal system needs to be kept vibrant by drawing upon the lifeblood of common law jurisdictions in other parts of the world. The importance of inviting common law judges to sit lies in the need to maintain the confidence of international investors in the territory where the rule of law is competently administered by learned, experienced and independent jurists.

Accountants whose views I canvassed emphasized that our main concern should be the calibre of CFA judges. Ideally, the Court should be constituted with judges of standing similar to those who sit in the Privy Council. In reality, we are faced with the administrative problem of the shortage of eminent local judges, and I agree with the Chief Justice that the CFA is a strictly legal issue and should not be politicized. Given the benefit of the doubt and with experience, the Court under the SAR government can grow into a fully-fledged and respected legal entity in due course; just like its counterparts in Canada and Australia. It is also possible to modify the composition of the Court as required after 1997 when the 1991 agreement will no longer be binding. In my view, we should look pragmatically at the problem in hand from a broader perspective.

There are other aspects to the CFA Bill that merit our discussion. The undue restrictions on access to the Court under clause 29(1) and inadequate provisions for the preservation of the independence of the Court after 1997 are some of the germane issues equally, if not more, important than the restrictive clause 9 of the Bill on the composition of the Court. Indeed, the flexibility of the Court's composition has been blown out of all proportions.

I do not intend to rehearse the arguments for and against the composition of the CFA proposed by the Bill, or discuss whether it contravenes the Joint Declaration and the Basic Law, because by doing so I do not see a way out of the deadlock. For this reason, I do not support the amendments of the

Honourable Martin LEE and the Honourable Moses CHENG which will in effect reinforce the intransigent stances of both sides and further delay the setting up of the Court. Instead, I see a viable solution to the conundrum in the Honourable Jimmy MCGREGOR's motion which best meets the interests of Hong Kong.

It is the genuine wish of the accountancy profession and the Hong Kong public that the CFA be set up before 1997, as it will provide a buttress for the common law tradition to stand erect after 1997. By filling a legal vacuum, the Court promises certainty, continuity and smooth transition, which are essential to maintaining Hong Kong's reputation as a world financial centre. Further, getting the Court up and running before 1997 offers a chance, however remote, for a through train of the CFA judges. Hong Kong has already suffered greatly from the derailment of the political through train. It cannot afford another derailment of the judicial through train.

Mr President, China has repeatedly stated that any matter straddling 1997 would need the co-operation and consent of the two sovereign states. The adverse effects of the lack of co-operation has already been borne out by the delay in the New Airport project, the Old Age Pension Scheme and the Strategic Sewage Disposal Scheme. Whilst it is important for Britain and China to reach agreement on transitional problems, it is even more important for these agreements to be honoured and implemented. By taking unilateral action in setting up a CFA that contravenes the 1991 agreement, Hong Kong has to face the dire consequences of having the Court dismantled in two years' time. It is therefore important that the two sides reach a consensus on the CFA Bill to avoid another head-on collision. In this regard, I wholeheartedly support the first part of the Honourable Simon IP's amendment urging that the bill should not be tabled in this Council unless China's consent is secured.

Being a pragmatic professional, I am convinced that this is a case of "a bird in the hand is worth two in the bush". To set up the CFA as soon as possible and in accordance with the 1991 agreement is the only sure way out of a much-politicized legal issue. The second part of the Honourable Simon IP's amendment, which came at the eleventh hour, is a thoughtful attempt to subject the marathon disputes to the verdict of the Court itself, and to enhance the Court's independence and autonomy. The pursuit of the course of justice, designed to bring all parties to a win-win situation, without jeopardizing the early set-up of the Court, found favour with me initially. My reservation, however, is the overcast of uncertainty surrounding the proposal and the impact this may have on Hong Kong's stable transition. As a legislator, I see my duty to put Hong Kong's overall interests over and above sectional interests. Therefore, with great reluctance, I cannot support the amendment.

Mr President, with these remarks, I support the Honourable Jimmy MCGREGOR's motion.

MR ERIC LI (in Cantonese): Mr President, there had been a lively debate in December 1991 on the question of the Court of Final Appeal (CFA) and we had voted on matters of principle. I believe, in today's debate, Members do not have to be too meticulous about their speeches; all they have to do is to recognize that today's motion is "a blind man's stick", tailor-made for the Government, wherewith to try and find out whether the CFA Bill can "pass" in the Legislative Council.

The process of reaching the agreement in 1991 between the British and the Chinese Governments had been conducted behind the scenes to keep Hong Kong people in the dark. So is this round of meetings of the Sino-British Joint Liaison Group (JLG). In fact, what the people of Hong Kong need most is a detailed account of the progress and matters which have been discussed during the meetings by the British and the Chinese Governments, not attempts to expand the bargaining power of either side in ignorance of what really is at issue.

The Honourable Jimmy McGREGOR is expecting this Council to send out "an invitation card" to the British Government, telling it that this Council has paved the way to the unilateral introduction of the Bill. On the surface, the motion is openly asking the British and the Chinese Governments to observe the agreement made in 1991. In fact, it is manifestly putting the Legislative Council on the spot, making it play the role of a rogue who aids and abets the British Government in ignoring the co-operation of both parties during the meetings in 1995 and inciting the British Government to introduce the Bill unilaterally in disregard of China's opposition. Hostility between the British and the Chinese Governments is something the people of Hong Kong would not want to see. To make the Legislative Council play such a role is to do injustice to the people of Hong Kong, to make the Legislative Council take the blame of spoiling the co-operation and to break the continuity of the CFA beyond 1997.

What Hong Kong need to do now is to try and create a co-operative atmosphere for the British and the Chinese Governments, seek to understand the progress and matters that have been discussed in the meetings between the British and the Chinese Governments and not to intervene blatantly. Hence, Mr McGREGOR's motion cannot be supported.

The amendments moved by the Honourable Martin LEE and the Honourable Moses CHENG are basically similar in nature. Both amendments have taken into account the intention shown in the voting results of the Legislative Council on the motion debate on the CFA in 1991. On the whole, they have reflected the consensus of the people of Hong Kong and have clearly reflected their wishes. I think that both amendments can be supported. However, as a message to the British Hong Kong Government, Mr LEE's amendment is clearer and hence more preferable. When the time comes for scrutiny of the Bill, although the various considerations brought up by Mr Moses CHENG are certainly practical, his amendment makes one feel that it is a rejection on the surface but consent in disguise. As an expression of stance on

matters of principle, it contains too many reservations. Mr Martin LEE's amendment is clearer in this respect. Hence, I would support Mr Martin LEE's amendment first. If his amendment could not be carried, I would then support Mr CHENG's amendment.

The Honourable Simon IP's amendment is akin to shutting the door of the Legislative Council tight, reminding the Hong Kong Government not to ask for embarrassment by introducing the Bill unilaterally. Although the amendment has reflected the worries of the people of Hong Kong about the hostility between the British and the Chinese Governments, it has not adequately reflected the urgent need of the people of Hong Kong, especially the industrial and the commercial sector, to establish the CFA. Besides, it also detracts from the executive-led style of government of the British Hong Kong Government in that it attempts to affect the exercise of the Government's right to introduce a Bill to the Legislative Council when it thinks fit. Hence, though well-intentioned, the amendment could not reflect the dilemma of the people of Hong Kong adequately. On the one hand, they wish to establish the CFA without delay; on the other hand, they want no hostility between the British and the Chinese Governments.

In fact, incidentally, the original motion and the three amendments have similarly urged the Government to fulfill its responsibilities and to establish the CFA as soon as possible. The urgent demand of the people of Hong Kong is beyond the slightest doubt. However, as the British Hong Kong Government is the only executive-led authority which knows perfectly well what has happened in the meetings of the JLG, the Hong Kong Government has the responsibility to give a clear account of the progress and matters which have been discussed in the meetings of the JLG and let this Council decide when it is appropriate to introduce the Bill and then act accordingly. Apparently the Chief Secretary has made up her mind on this question and it is not necessary for this Council to worry. The Chief Secretary has earlier also confirmed that there has been steady progress in the meetings on the question of the CFA, as reported by the press. This Council has no role to play in the JLG. We cannot jump the gun and make decisions in ignorance simply because we are worried. This kind of political gesture is not only unwise, it is also unnecessary. It might even cause unnecessary misunderstanding on the part of the Chinese side and make the meetings fail when success looks within grasp. Hence, at this crucial moment and without any specific Bill placed in front of us, this Council can only reflect honestly the subjective wishes of the people of Hong Kong on matters of principle. When the Bill concerned is tabled for scrutiny, we have to ask the Hong Kong Government to disclose adequate details of the meetings of the JLG. Having obtained the details of the whole picture and taken the opinions of the different sectors of the community into consideration, we can then fulfill our legislative duties practically and decide accordingly.

Mr President, those are my remarks.

MR RONALD ARCULLI: Mr President, I do not wish to reiterate the position of the Liberal Party on this debate because it has already been set out by the Honourable Moses CHENG. I would, therefore, confine my comments to the amendment proposed by the Honourable Simon IP. However, before I do so I note that he will be asking for separate voting on the two paragraphs, and I think for the matter of clarification, I just wondered whether he proposes to drop the word “and” between paragraphs (1) and (2), so that those who wanted to support perhaps one or the other of the paragraphs would not be linked as it were by the “and”.

Mr President, I shall now comment shortly on the substance of Mr IP’s amendment. However much some of us may desire for an agreement between the Chinese and the British Governments on the CFA Bill, the Liberal Party cannot support the first proviso for a very simple reason: because the decision whether or not to table any bill in this Council concerning the CFA, or indeed any other matter, rests either with the Administration or perhaps any Member of this Council.

Despite Mr IP’s qualification that paragraph (1) applies only in this instance, I loathe to remind him that this would nonetheless set a precedent, no doubt in the opinion of some an undesirable one. As regards paragraph (2), I congratulate Mr IP for his ingenuity. However, it does not answer what we have called the flexibility question. According to his reasoning, if the CFA itself concluded that the 1991 agreement was contrary to the Joint Declaration or the equivalent provision in the Basic Law, then the CFA itself would cease to exist. On the other hand, if the CFA concluded that the 1991 agreement conformed with the Joint Declaration and the Basic Law, the fixed formula, so to speak, would remove the flexibility formula which some of us consider desirable.

Mr President, we have heard what the Chief Secretary has said about difficult decisions and difficult questions, and we believe that at this time, this Council has enough difficult questions to deal with without creating more for ourselves. For these reasons, the Liberal Party will not support either paragraph (1) or paragraph (2) of Mr IP’s amendment.

DR CONRAD LAM (in Cantonese): Mr President, the debate on the Court of Final Appeal has laid bare several major problems.

Firstly, the Chinese and British Governments’ perceptions of the Joint Declaration and the Basic Law can be described in a phrase and that is, “they do as they wish.” It means that their interpretations rest with their respective wishes. In fact, I have made enquiries about the grey areas embedded in the Basic Law earlier on today when the Government answered questions in this Council but the Government has failed to give us a satisfactory answer. The Basic Law and the Joint Declaration have, in fact, undergone no changes at all since they were written up. Surprisingly, our perception, degree of acceptance

and interpretation of them have all along been changing. What are the reasons? Are there changes in the meaning of words in dictionaries? Or the interpretation of some articles or sections need to change with the times whilst 1997 is drawing near? Is this the underlying reason?

Secondly, if what the Honourable Martin LEE and the Honourable Miss Emily LAU have said just now concerning the coverage in today's newspaper is true, that will be a very serious problem as it is a revelation of the Chinese Government's perspective on the law. Should things persist in such a way, what would the Court of Final Appeal become at the end of the day? It will eventually become a tool of the Beijing Government and, by then, there would be days for which we feel sorry and days which are saddening and gloomy. We seem to have learned from the remarks of the Chief Secretary just now that the Chinese side seems to be using the stalling tactic now. That is, the Court of Final Appeal must be set up in conformity with the conditions as laid down in the secret agreement between the Chinese and the British Governments in 1991, come what may.

The Chief Secretary mentioned the observance of principle. I agree that we ought to go by the principle but I have the feeling that what the Chief Secretary said earlier on seemed to be somewhat threatening and that is, either you take it or you would have nothing at all. As a matter of fact, we all hope to see the early establishment of the Court of Final Appeal. Yet, the substance and the principle of the question are not a matter of whether there is or there is not the Court of Final Appeal, but a matter of right and wrong. Should we accept something which is bestowed on us on the basis of a wrong principle? More importantly, if we accept what we are offered in violation of the spirit of the Basic Law and that of the Joint Declaration, we will be taking the first step to rip the Basic Law and the Joint Declaration to pieces.

As a matter of principle, I absolutely cannot accept the motion proposed by the Honourable Jimmy McGREGOR.

MS ANNA WU: Mr President, I would like to begin with a passage from *Through the Looking Glass* (by Lewis CARROLL):

“When I use a word,” Humpty Dumpty said in a rather scornful tone, “it means just what I choose it to mean — neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things”.

“The question is,” said Humpty Dumpty, “which is to be Master — that is all.”

Well, the question is: Can the Joint Declaration mean so many things? The question is: Who is to decide what it means?

Various justifications have been advanced by the Government to curtail the flexibility of the Court of Final Appeal (CFA) to invite overseas judges to sit on the Court.

The Government says that the Joint Declaration is to be interpreted in light of the 1991 Memorandum, a subsequent agreement. It says that this approach is consistent with the requirements relating to interpretation under the Vienna Convention on the Law of Treaties. I do not wish to dispute the wisdom of the Convention. In fact, I would like to see the Convention applying to China which is not a party to it. However, the crux of the matter is whether the Government is interpreting or varying a very important term of the Joint Declaration.

The Memorandum of 1991 between the two sovereign parties was negotiated for through and in the Joint Liaison Group (JLG). The JLG is not an organ of power. It has the power neither to vary the Joint Declaration directly, nor to do so through the back door under the guise of interpretation.

Article 82 of the Basic Law empowers the CFA to invite overseas judges the same way the Joint Declaration does. Article 83 of the Basic Law stipulates that the structure, powers and functions of the CFA are to be prescribed by law.

The combination of the Joint Declaration and the Basic Law is to vest that power to decide on the composition of the CFA with either or both of the CFA and the Hong Kong legislature. That power to decide the number of overseas judges having been given to someone else, I do not know what power is left to the two sovereign parties to curtail the flexibility relating to the composition of the court.

It would be most dangerous for the Joint Declaration, a finely crafted agreement, which was Hobson's choice for Hong Kong, to be varied by a subsequent agreement. The words in the Joint Declaration and the Basic Law must mean what they say and not something else as subsequently decided upon by the sovereign parties.

Mr President, I cannot accept Mr McGREGOR's motion as it stands without deletion of the reference to the 1991 Memorandum. Neither can I accept the condition that Mr Simon IP seeks to attach to the setting up of the CFA — that the terms relating to its establishment must be agreed in the JLG before it is presented to the legislature. That would undermine what the Joint Declaration and the Basic Law have provided and would represent a usurpation of the powers given to the courts and the legislature of Hong Kong.

Turning to the second part of Mr IP's amendment — to incorporate a provision in the Letters Patent containing the relevant wording of Article 82 of the Basic Law, so that the disputed terms will be subject to the interpretation of the Hong Kong courts and the CFA can rule on the validity of its own establishment. I support such an incorporation but even if this can be achieved

relatively quickly, the provision may prove to be illusory. The provision will unlikely be litigated upon before 1 July 1997. Unless the Attorney General is willing to litigate on behalf of the public against himself as the representative of the Government, there may not be a litigant with the relevant interest or resource to challenge the issue.

Mr President, it has been stated by many that if we want a “through train” for our Judiciary, the government bill is the only way forward. This is too simplistic a view. There is no assured “through train” because the role of the Standing Committee of the National People’s Congress in interpreting the Basic Law has not been provided for in the current government bill.

While the issue remains unresolved, I would urge the Government to:

- (1) Explore the possibility of having the Privy Council sit in Hong Kong when hearing Hong Kong cases for the period up to 1 July 1997. This would reduce the likelihood of having unfinished cases before 1 July 1997. This would also enhance Hong Kong’s judicial profile and would not impose any liability on the SAR government; and
- (2) Consider providing a long appeal period so that any right of final appeal of a case heard in the lower court before 1 July 1997 would be preserved beyond that date.

Mr President, whatever the outcome of the debate over the CFA, I would also urge the Government to:

- (1) Upgrade the quality of our judges and increase the rank so that we have the necessary human resources when a new court is set up.
- (2) Simplify our court procedure and increase court efficiency to make legal redress more accessible and less costly.
- (3) Consider specialist courts; for instance consider establishing a family court with rules designed to reduce formality and hostility between parties and to make it easier to draw in experts in the fields of social services, counselling and other disciplines. To some extent, specialist skills are already available in the courts today but we need to organize those talents into more defined areas of specialization. The courts need to be more focused, to catch up with developments in technology, securities, futures, shipping, construction, telecommunication and so on.
- (4) Review alternative forms of dispute settlement such as arbitration, mediation, tribunal and commission style hearings. These are significant components in our system of justice which need to be further developed to supplement the existing court system.

Finally, I would like to add that international businesses have since the early 1980s designated a forum of litigation outside Hong Kong or opted for arbitration. One reason for their doing so was the perception of general political uncertainty relating to Hong Kong. This phenomenon is not new. The Chief Secretary might remember that I made the same points to her not that long ago for a different reason. While businesses can resort to arbitration or use a different court, individuals suing the Government cannot, and that is why we must have a credible court, not a compromised court.

Thank you, Mr President.

MR NGAI SHIU-KIT (in Cantonese): Mr President, as far as the Court of Final Appeal (CFA) is concerned, local businessmen do hope it can be set up before 1997. However, it has been three years since the Sino-British agreement was reached in 1991, but the problem is still dragging on unresolved. I think the Government should explain this to the public.

Mr President, we hope the CFA can be set up as soon as possible to so that it can have a smooth transition. Straddling 1997, this is an important issue which will depend on close co-operation between China and Britain. Comprehensive and sincere consultation should be undertaken on every important aspect of the CFA Bill with a view to reaching a consensus that is in the best interests of Hong Kong in the long run. Successful consultation brought China and Britain to an agreement on the number of local and overseas judges in 1991, but there are still many other important issues where further consultation will be necessary. The ratio of judges is only one of the constituent factors of the CFA, and there are other important issues as well. Those are issues that have considerable bearing on the smooth operation of the future CFA, and therefore both parties should consult each other to reach a consensus.

Evidently, if, despite China and Britain having divergent views on the CFA issue, consultation is in process, then to table the CFA Bill to this Council by the Hong Kong Government would mean a unilateral action which would only aggravate differences to a point where no solution would be possible. To set up the CFA unilaterally would by no means be in accordance with the 1991 agreement, and the net result would be more trouble. Transition would then be made more difficult. Neither would it be advantageous to the investment environment.

I hope Members will, in a pragmatic manner, call on both China and Britain to reach a consensus through consultation in the shortest possible time, so that the CFA can be set up soon and have a smooth transition.

Since the motion put forth by the Honourable Jimmy McGREGOR and the amendments put forth by various Members fail to reflect my views, and since neither the motion nor the amendments mention the 1991 agreement and the importance of reaching a consensus on this issue through consultation, I oppose both the motion and the amendments.

Mr President, these are my remarks.

MR LAU WONG-FAT (in Cantonese): Mr President, if the date for the establishment of the Court of Final Appeal (CFA) had, right from the start, been fixed to be 1 July 1997, I believe there would have been less dispute. It would be entirely to the advantage of Hong Kong to establish a CFA before 1997. This is the consensus between the Chinese and the British governments and among Hong Kong people. Ironically, the consensus has failed to help in the smooth, early establishment of the CFA. It has been three years and eight months since both governments reached agreement on the CFA but the matter is still under active discussion. Moreover, the Sino-British Joint Liaison Group has, regrettably, yet to iron out differences over some important related issues.

Back in December 1991 when this Council had a debate on the CFA, I said that it was narrow-minded to deny the advantages and importance of the whole agreement merely on account of the ratio of overseas judges, and if the early establishment of the CFA was thus sacrificed, it would be penny wise and pound foolish. This view I still hold now.

The purpose of establishing a CFA before 1997 is to allow time for the CFA to gain experience and to build up its authority, so that upon the coming into existence of the Hong Kong Special Administrative Region, there is a CFA that is fully operational. This is pragmatic and beneficial to Hong Kong. Hence, every sector of the community should likewise adopt a pragmatic and responsible attitude in contributing whatever they can to the establishment of the CFA.

Although the Administration has drafted a Court of Final Appeal Bill and intended to submit the same to this Council, the problem remains unresolved. There are now three choices: One, no CFA before 1997; two, the British side unilaterally establish a CFA before 1997; and three, implement the agreement reached by the Chinese and British governments, who should reach a consensus on other matters related to the establishment of the CFA.

Choice one is obviously not in the overall interest of Hong Kong. Choice two would result in something that would cease to be effective after 1997. This runs counter to the original intention of establishing a CFA early and is not conducive to the smooth transition of Hong Kong. So, we end up with choice three, which should be the only practicable choice that is in the interests of Hong Kong.

Mr President, in the 1991 Sino-British agreement, both countries reached a unanimous view on the ratio of judges. Both countries reiterated explicitly that they will not reopen negotiations on the issue. There are now only 700-odd days before sovereignty reverts to China in 1997. It would be futile to haggle over the issue. Some are arguing that if the ratio of judges is not altered, they would rather not have any CFA at all before 1997. I feel that this kind of attitude is short-sighted, irresponsible and oblivious to political realities.

These people appear to be upholding certain principles, but they are self-contradictory and unconvincing. Just look at what they do about elections. Those who advocate democracy obviously think that democracy means full and total direct election. To them, all other modes of election are unacceptable. If they do hold fast to their principles, they should boycott our elections. They should refrain from participating in any council elections which are not direct elections. The fact is that such people are most zealous in standing for and in winning elections. Perhaps they are hoping to change the system of election. If that is the case, they should not be so extreme in their attitude towards the CFA issue. Rather they could first allow the CFA to be established and see how things work out, and make requests for review and improvement when they discover there is such a need.

Mr President, as I said just now, other than having both the Chinese and British governments implement fully the 1991 agreement and reach a consensus on major issues related to the CFA, all other courses of action are unrealistic and impractical.

These are my remarks.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, I would like to respond to a few perilous views.

The first view is that held by the Administration and the Honourable Jimmy MCGREGOR. In order to set up a Court of Final Appeal (CFA) before 1997, they do not scruple to give up the principle of flexible invitation of judges as specified in the CFA section of the Basic Law.

This argument of theirs is no different from keeping the branches but doing without the trees or the forest. The branches signify an emasculated CFA; the trees refer to a complete and intact CFA; and the forest is the Basic Law. For the sake of an emasculated and inflexible CFA, they give up a

principle which is obviously right, and give a free hand to others to distort the Basic Law as well as the CFA. This is tantamount to giving up the forest and the trees. Without any forest or trees, at the end what we can get will only be those withered branches. This is a dangerous way of dealing with the issue. I would advise the Administration and Mr Jimmy MCGREGOR not to dream anymore. It is because history tells us that one cannot sue for peace just by ceding territory, and that if one sues for peace, one will have to cede more territories. When we, through the 1991 agreement, deprive the CFA of its flexibility we will be regressing gradually and will have to cede more and more territory. For instance, there is a press report today saying the Chinese Government demands that the future CFA only deal with cases of an economic nature. Perhaps in the future, if the Beijing authorities disagree with the verdict of the CFA or think that the verdict is politically inappropriate, it may overturn the verdict. How much more territory will we have to cede in order to exchange for peace? It would be naive to think that an agreement or a kind of permanent peace could be exchanged by giving up our judgement as to right and wrong. It would be better to stick to the principle and make our own judgement between right and wrong.

The second view is that held by the Honourable Simon IP. He said that it should be left to the courts to determine whether the establishment of a CFA before or after 1997 was contrary to the Letters Patent or the Basic Law. This would be tantamount to referring the present contradiction to the central authorities for resolution and postponing the judgement. But can such referral and postponement solve the problem? If the standpoint of the Hong Kong Government and Mr Jimmy MCGREGOR, that is, giving up the principle of right and wrong, can be comparable to giving a death sentence to the CFA and the Basic Law, the standpoint of Mr Simon IP can thus be regarded as simply postponing the execution of the death sentence to two years later. Please do not forget that the power to interpret the Basic Law is vested in the Chinese Government. If this issue is to be dealt with by the courts, it will still be left to the Chinese Government to interpret the law. There is a Chinese saying to this effect: Though I did not kill my neighbour, it was because of me that he died. So what is the point in so doing?

The third view is that held by Mrs Anson CHAN, the Chief Secretary. She is worried that if the CFA is not established before 1997, there may be a judicial vacuum. Of course, that also worries me. But what is even more worrying is that in order to prevent a judicial vacuum, a “judgment vacuum between right and wrong” may arise. Then the Administration will be confronted with a moral crisis. How can a government which is devoid of moral and conviction lead us towards highly autonomous rule? In this regard, I am deeply disappointed with Mrs Anson CHAN, the Chief Secretary, who used to be very firm in her standpoint. Now I know that she is only firm *vis-a-vis* the Legislative Council and the general public. But *vis-a-vis* the Chinese Government or on the CFA issue, she only appears to be strong and firm but is actually weak inside.

During the meeting today, I learnt of the opinions expressed by quite a number of Members, and I heard of the word “pragmatic”. “Pragmatic” is a very positive word. But what does “pragmatic” refer to today? “Pragmatic” has turned out to be a signal of regression and a first sign of “changing stance”. It is pity that such a very positive word as “pragmatic” is now being misused, abused, and being distorted like the Basic Law and the CFA. I am deeply aggrieved at the way the Chinese language has been polluted and misinterpreted.

It is said that Cang Jie was the inventor of Chinese characters. His invention had startled heaven and earth and made the gods and muses cry. It is because with the written language, human beings can develop knowledge as well as retain knowledge. Nevertheless, if Cang Jie were still alive and discovered that language could be distorted and misinterpreted to such an extent, I believe that he would be even more startled than heaven and earth, and would cry even more sorrowfully than the gods and muses.

Mr President, with these remarks, I support the views of the Honourable Martin LEE.

MR SZETO WAH (in Cantonese): Mr President, both the Honourable Martin LEE and the Honourable Miss Emily LAU referred to the information revealed in *Eastern Express* today. Let me ask government officials to clarify this and not to play deaf and dumb any more by shielding once again behind the maxim “silence is golden” mentioned by Mr Chris PATTEN.

The Honourable TAM Yiu-chung said his proposition would be in keeping with the “three conformities”, but he did not explain how it would be in keeping with the Sino-British Joint Declaration and the Basic Law. As a matter of fact, he has made the secret agreement reached in the Sino-British Joint Liaison Group (JLG) something that overrides both the Sino-British Joint Declaration and the Basic Law. His proposition is merely an instance of “one conformity” instead of the “three conformities”. That he takes one for three is like counting the plural form for the Sino-British Joint Declaration and Basic Law as singular. He also said that had we listened to him three years ago, the Court of Final Appeal (CFA) would already have come into existence. In fact, if we did, it would not be him that we listened to but Beijing, since what he said could not pull much weight. He also pointed out that those who were against the reaching of a secret agreement in the JLG were merely hoping that the CFA would be established in London. Is it true that only in London can we find overseas judges? Is it true that no other places in the world except London practise common law? On the contrary, I wonder if he is actually thinking of having the CFA established in Beijing. This is precisely what the news today’s *Eastern Express* is implying.

On 4 December 1991 when this Council was holding a debate on the CFA, I cited the literary quotation of “calling a stag a horse”. It was when the eunuch ZHAO Gao wanted to overthrow the Qin Dynasty that he deliberately called a stag a horse in order to sound out whether or not the emperor’s officials were submissive in the face of his authoritarian power. My feeling is that the secret agreement reached in the JLG is a means to sound Hong Kong people out. It attempts to sound us out and see how we are going to react, having seen that the Sino-British Joint Declaration and Basic Law being altered so arbitrarily. If a stag can be called a horse, people in future can be called cattle or slaves.

Finally, I must say I appreciate what the Honourable Eric LI has said. Rarely have I heard him speak so brilliantly. I find the incisive criticism against the Honourable Jimmy MCGREGOR’s motion especially splendid. Incisive it really is.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, this is exactly the case with the Legislative Council. Issues on which motions were moved yesterday would be changed today. Motions moved years ago may also be changed today, because we have to go along with trends. Right from the beginning up to the present moment, I support the proposal of having a fixed ratio of 4:1 for the Court of Final Appeal (CFA) judges. It is only a figure and I wonder why Members doubted its flexibility at that time. Very often, the venue and date of a football match to be held two years later are fixed today. Is there any flexibility? What is fixed is in fact the rule. In the Privy Council the ratio of judges is 5:0. I once lost my case and I had no knowledge of the judges. However, I accepted the reality. Some people said that the level of Hong Kong judges is not good enough. I cannot help asking, “Is the level of Hong Kong lawyers good enough?” How come there are 11 Legco Members who are Queen’s Counsels, barristers, solicitors or trainee solicitors, comprising 20% of our membership? I hope Hong Kong lawyers will not be too subjective and arrogant. We should understand that our judges belong to a class, our lawyers belong to a class, our actors belong to a class and our footballers belong yet to another class. We cannot allow other professionals to remain not good enough while we demand that our judges should belong to the world class. This in fact does not tally with the reality of Hong Kong.

China and Britain are two major powers, having their own treaties and their own recognized agreements. What is the Legislative Council of Hong Kong? Of course, we are not looking down upon ourselves, as we are the legislators enacting laws of Hong Kong. However, some Members hope that China and Britain could reach an agreement quickly and then submit it to this Council, which could then refuse to endorse it. From the standpoint of China and Britain, will they accept this? So there are in fact many problems in many issues. While Members of this Council are arguing endlessly, solicitors and barristers have also joined the battle, leaving the people utterly in the dark about what is going on. The public, getting an impression that even such high-class people cannot reach any agreement after repeated negotiations, prefer not to

listen to their arguments. In such a case, they are in fact making irresponsible voices to the public.

Mr President, the CFA is, of course, a matter involving Hong Kong. Now some people are worried about what they could do if there is miscarriage of justice by judges. In reality, judges will not make wrong judgments because judgments are made according to their jurisdictions authorized by the laws. Should there be any contravention of the law, we can make amendment to it. So we should be “pragmatic”. Someone has just criticized the word “pragmatic”. But in reality, we should aim at our objective and do what we should do.

Many people questioned whether the word “judge” (in Chinese) in Article 82 of the Basic Law should be interpreted as plural or singular in meaning. We can assume that it is in plural because that Article does not stipulate that there is only one case. There might be two or three cases and so more than one overseas judge will be invited to hear the cases. It does not matter even if different interpretation is applied. So we can only express our disapproval. If we disagree to it, we can refuse to take part in it. If lawyers query the quality of judges, they can leave the profession out of anger. But will there be any change? Of course, we should not speak or act in such an extreme way. In respect of many issues, we have to understand the actual situation. In regard to this issue, the Legislative Council has been arguing on it for three years and eight months. It is almost four years now. Perhaps it will be totally fruitless even though we have started to debate on it right from the commencement of our term of office up to the end of it. It is not realistic.

I very much commend the Honourable LAU Wong-fat for the speech has made today. His speech is full of sound ideas. In the future, we will be left with two choices only. The first one is that we will not have a CFA until after 1997. A few of Members have just put forth various proposals. Nevertheless, no matter how useful a proposal is, it will not be implemented. From the standpoint of the Chinese Government, of course, it will earnestly hope that the CFA can be established before 1997. As a matter of fact, there will be no through train for the three-tier councils. It will then give a better impression to all other countries in the world if there could be a through train for the CFA either. If we do not want to have it, or if this Council does not endorse it, the Chinese Government can do nothing. The only choice left is for the Chinese and British Governments, through either secret agreements or negotiations, to review the law. Even though one day the Chinese Government thinks that it is right, it will not reveal its thought because endorsement of this Council is required even though the Chinese Government has agreed. If eventually this Council negatives it, I think the Government will be reluctant to give any comment even though this Council can be ordered to affix its seal in accordance with the Letters Patent and Royal Instructions. In view of this, if we are having such an attitude, what we have passed will be overturned. Under such circumstances, how could the Chinese side take the risks, not to mention the fact that it theoretically does not recognize the legitimacy of this Council? So the

Government cannot always force the Chinese side to nod its head. Basically it is impossible for the Government to say yes or no.

I think if the Government is a responsible one, it should try to introduce to this Council a proposal which can conform with the Sino-British agreement. Its implementation will become possible if it can solicit Members' support for it. After 1997, its implementation can be carried on if the Special Administrative Region is of the opinion that it is in line with the people's interests as well as the interests of various sectors. By that time, problems will be solved. On the other hand, should Members continue with their arguments incessantly, I believe it would not produce any satisfactory result that can also win our support, no matter how constructive the proposal would be.

Mr President, I put forth my personal opinions for the consideration of the Government. In principle, my opinions are in line with the spirit of the Honourable MCGREGOR's motion. However, in view of the existence of many other pending problems, I will abstain from voting for all the motions.

MR JAMES TO (in Cantonese): Mr President, the Democratic Party does not support the Honourable Simon IP's amendment for the following reasons:

Firstly, we hold that his amendment will only keep the issue dragging on or, in other words, it will only delay the explosion of the so-called "bomb".

Secondly, we find that his amendment can, in no way, help solve the problem of the Court of Final Appeal (CFA), that is to say, to achieve maximum flexibility for the CFA in a manner consistent with the provisions of the Joint Declaration and Article 82 of the Basic Law. Why? Let us assume that the future CFA has to rule whether the Ordinance governing the establishment of the CFA before 1997 is in breach of the Joint Declaration, the Basic Law or the Letters Patent, as is suggested by Mr IP. If the future CFA rules that the Ordinance is incompatible with these documents, then the CFA will be destroying itself and can no longer continue to exist. If the CFA rules that the Ordinance is not in breach of such documents, then the said court, which we originally deemed to be lacking in flexibility and incompatible with the provisions of the Joint Declaration and the Basic Law, will have to continue functioning.

Thirdly, the standpoint of the Democratic Party is that the 1991 agreement on the CFA goes against the provisions in the Joint Declaration and the Basic Law. Therefore, the Democratic Party cannot agree with any Bill which is not in line with the Joint Declaration and the Basic Law. Therefore, any such Bill tabled for discussion by this Council will be subject to proposed amendments moved by the Democratic Party.

The Democratic Party reiterates that if we were to accept that agreement which is in breach of the Joint Declaration and the Basic Law, then no guarantee or legal provisions could ever inspire public confidence and a sense of security. The Honourable Moses CHENG said that people were always arguing over the ratio of 4:1. I hope Mr Moses CHENG will listen to our arguments clearly. The public and the Hong Kong Law Society are not arguing over whether the ratio should be 4:1, 3:2 or 5:0. We are only saying that there should be no fixed ratio in order to maintain flexibility. Please do not attempt to shift the focus. The Honourable TAM Yiu-chung said that the real intention of some people is to increase the number of overseas judges and to relocate the CFA to London. The Democratic Party is not going to take on Mr TAM as if the remark were meant for the Party. But we really feel that it is essential to retain the flexibility of the CFA. We are not aiming at increasing the number of overseas judges or fixing the number of overseas judges for every case. We feel that the number of judges should be increased where necessary, but, where it is unnecessary to have overseas judges, even five local judges will be perfectly all right. Let me quote Mr TAM as saying that Director LU Ping has mentioned that an expatriate judge having served in Hong Kong for a period of one year can be deemed a Hong Kong local judge within the terms of the 1991 agreement. Mr TAM thought that this could enhance the flexibility. I would label this proposition self-contradicting. In view of the fact that we are not discussing the number of overseas judges required but we are only requesting that the CFA should be able to exercise its own discretion with regard to that ratio, Mr TAM's proposition cannot really help resolve the problem.

Lastly, if the report in *Eastern Express* were true, an extremely dangerous precedent would be set. When I first read the report, I initially thought that this might be the idea of the Preliminary Working Committee (PWC) members or some ultra-leftists, but the report stated that it seemed to be the official standpoint of the Chinese side as revealed by sources close to the Sino-British Joint Liaison Group. If that is the official standpoint of the Chinese side, be it the standpoint of the Ministry of Foreign Affairs, the Hong Kong and Macao Affairs Office or the State Council, I hope that everyone of those who will be meeting, having dialogue with or in any way contacting the Chinese side in the near future — including the PWC members, Hong Kong Affairs Advisers, Hong Kong Regional Affairs Advisers, and community or business leaders — will remind the Chinese side that if that logic or that thinking develops, it will seriously jeopardize the stability and prosperity of Hong Kong. I hope that they can really try to lobby the Chinese side to give of its best.

I share the Honourable CHEUNG Man-kwong's comments on and advice to the Chief Secretary. I hope that she will not think that we are maliciously attacking her. As a possible Special Administration Region Chief Executive candidate, she should have firm confidence in upholding the interests of both Hong Kong and China, apart from having dynamism and verve. Most important of all, she should have a base line and the distinction between right and wrong, moral and immoral is a base line. Otherwise, she will never get the public's support.

MR WONG WAI-YIN (in Cantonese): Mr President, I would like to make a short speech about my personal feelings on the progress of the establishment of the Court of Final Appeal (CFA) during the past three years or so.

Many of my colleagues, and even the Chief Secretary, have just stressed that we have to establish the CFA before 1997. They have also emphasized that time is pressing because it must be established in July 1996 if we want to have it before 1997. Otherwise, there would be no CFA. Recently, the Government tends to use words tainted with threatening connotation whenever it is trying to persuade Members of this Council. In fact, I believe Members of this Council, as well as the people of Hong Kong, are cherishing a hope that the CFA can be established at the earliest opportunity. As a matter of fact, the CFA is important to all of us. It is not just the business sector which is eagerly hoping for its establishment, as claimed by the Honourable NGAI Shiu-kit. Certainly, it is not. I believe all my colleagues in this Council and also the public would like to have it because it is a symbol of confidence. However, the most important thing is what kind of CFA that we want. We do not want a CFA for sake of showing off. Instead, we need a CFA which can really bring its functions to the full play.

According to a news report today, which has been mentioned by a few of my colleagues, Beijing has suggested that the British Hong Kong Government has to fulfill two conditions: firstly, the CFA should hear cases concerning economic issues only and should not hear cases concerning constitutional matters; and secondly, Beijing should have the final jurisdiction over all cases. Should it disagree with any decision of the CFA, it can overrule it and that is final. I have read in Chinese history that an empress held court from behind a screen. Now what Beijing asked for seems to let herself hear trials from behind a screen. This is the first time I heard of such a thing. It seems that the word “final” in the name CFA has now become “midway”, which means that it can hear cases only up to the middle part and the final trial is left with Beijing. It seems that the CFA has moved to Beijing. Do we want a puppet court which is subject to the instructions of Beijing? Do we want a CFA which is in breach of the Sino-British Joint Declaration and the Basic Law, or a court in which people have no confidence? Of course, we do not want such a CFA. So, although early establishment is desirable, the most important thing is to ensure that the CFA will bring its functions to the full play.

Mr President, in late 1991 we debated on this issue which has become a heated topic again recently. The manifestations of the Law Society as well as some lawyers make me believe that public confidence in the Law Society and some lawyers has been seriously defeated. People’s confidence in certain lawyers has also been seriously undermined. When the general meeting of the Law Society was held, it was alleged that the Society, in order to “turn wheel” had made “undercover transaction” with the Government; lawyers were asked to vote by open ballot and bosses of some solicitors’ firms required lawyers under them to hand in proxies to them. What a surprise that the lawyers would do such things! How can people’s confidence in our judicial system and our

lawyers be maintained? Perhaps these lawyers feel that Hong Kong is only a small market, the loss of which is not important. On the contrary, the market of China is important and one must be far-sighted. If so, I will be much more disappointed. In fact, the people have pinned their hope and expectation on the Legislative Council. They hope we can do justice and express people's heart-felt wishes. If we cannot argue strongly in just grounds, are we any different from chickens? At the time when a debate was held in late 1991, the Honourable Simon IP was the director. Now the Government has become the producer, the Honourable Jimmy McGREGOR has become the director and Mr Simon IP has become a big clown. Later, when Members vote, we can see how many have "turned wheel".

Mr President, what else can I say in facing such ridiculous and ugly side of human nature? Finally, I would like to end my speech with two lines of a poem written by DU Fu: "The willow catkins sway widely in the wind, the frivolous peach blossoms drift along in the stream." Mr President, the northerly wind is blowing again now and we will see willow catkins and peach blossoms swaying in the wind, filling up the sky again.

With these remarks, I support the Honourable Martin LEE's amendment.

MR ANDREW WONG (in Cantonese): Mr President, my speech will be very simple. I just want to give a clear account of my stand in the voting to follow.

I oppose the Honourable McGREGOR's motion and I will support the Honourable Martin LEE's amendment. If Mr Martin LEE's amendment is not carried, I will support Mr Moses CHENG's amendment. I will not support either of the Honourable Simon IP's two amendments. Later on I will explain why I make such decisions. If neither Mr Martin LEE's amendment nor Mr Moses CHENG's amendment are passed, I will at the end of the day vote against Mr McGREGOR's original motion or the motion as amended by Mr Simon IP.

I just want to read out part of my speech as recorded in the Hansard of 4 December 1991 which is the second last paragraph on page 692 of the Chinese version of the Hansard. It reads: "Here, I would like to put forward a proposal which is flexible and does not differ greatly from the present agreement (the 1991 agreement). I have said of this proposal in an RTHK programme. I am of the view that the four permanent judges of the Court of Final Appeal (including the President of the Court) may, each time (in every case) before the Court sits or before the commencement of the Legal Session, select five judges (including non-permanent local judges or visiting overseas judges, which means, under the leadership of the President, the other four do not have to be permanent judges) to constitute the Court of Final Appeal; or the four permanent judges (including the President) may select any four judges ..... together with the President (they may all be overseas judges) to constitute the Court of Final Appeal to hear a case or cases within a Legal Session."

This arrangement can be said to constitute the Court of Final Appeal (CFA) based on the four-to-one ratio but cases are not necessarily heard by this CFA. Instead, a case or cases within a Legal Session may, depending on need, be heard before a court constituted of the President and three permanent judges together with a fifth judge chosen by the former four judges from among two local or overseas judges. I consider this arrangement feasible and also flexible. It is better than the 4:1 or 3:2 arrangements.

I just want to briefly speak on Mr Simon IP's amendment. First, if a provision is to be incorporated in the Letters Patent — I believe that the Honourable Ms Anna WU has already pointed this out — it would be highly unlikely that any case would be litigated to such a level as to reach the CFA within these two years. More importantly, if the CFA is to decide its own legitimacy, there may be a conflict of interests. Therefore, I think that it would appear to be unworkable. For this reason, I cannot support Mr Simon IP's amendment.

Mr President, finally, I would like to point out that some speeches made just now has gone too far and I hope that no one will say that again. My last speech was rather long. I even spoke in a manner as if it was a lecture hall here. I hope that Members will believe him. Even if Members do not believe him, Members can still give him the benefit of the doubt. He is not necessarily a bad person; he may not have bad intentions; he does things having regard to a smooth transition for Hong Kong and the continuation of the rule of law here.

Mr President, these are my remarks.

ATTORNEY GENERAL: Mr President, there are few current issues, if any, that are of more importance to our legal system and to the rule of law than the establishment of the Court of Final Appeal. The vigorous and passionate debate this afternoon and this evening bears eloquent testimony to that. The Chief Secretary has spoken earlier of the overwhelming need to establish the Court as soon as possible. The speeches today have demonstrated that there is clear consensus in this Council on that point.

There is also a clear consensus that the Court must be established in alignment with the Joint Declaration and the Basic Law. However, there is agreement now, as there was in December 1991, in a previous motion on this subject, as to whether the CFA should also be consistent with the agreement reached in the Joint Liaison Group in September 1991. Before I address the arguments against that agreement, let me make it quite clear that the Hong Kong Government cannot responsibly ignore or advise this Council or the community to treat as non-existent an international agreement binding on the two sovereign powers responsible for our transition.

Those who disagree with the 1991 JLG agreement, rely on two main arguments. The first is that they consider the four-plus-one composition of the Court, provided for in the JLG agreement, a poor composition. They would like the Court to have greater flexibility to invite overseas judges to sit on the Court. That may be so. But the inescapable fact is that the JLG agreement cannot be renegotiated as we have made plain on more than one occasion. Moreover, the four-plus-one 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 CFA. It will enable the Court to benefit from the experience of eminent overseas judges in particular cases, and will assist in maintaining the links between our own legal system and other common law jurisdictions. There is no merit in rejecting the JLG agreement simply because some would prefer the Court to be able to invite more than one overseas judge to hear any particular case.

Several Members have commented on the quality of the judges of the CFA, by way of comparison with the judges of our present Court of Appeal. The remarks may be regarded by some as being somewhat derogatory. I strongly deprecate any remarks which may have the effect of cheapening or devaluing the Court of Appeal. Such remarks are inappropriate since they may have the effect of lowering the public's confidence in our courts. Some Members have pointed out that the judges of the CFA are likely to be drawn from the Court of Appeal. They suggest that the absence of a CFA should not therefore create any problem as the Court of Appeal will simply act as the highest appellate court. Mr President, this argument is seriously flawed. In other common law jurisdictions, it is usual for the judges of the highest court to be drawn from the court below, so that judges in the Privy Council are drawn from the English Court of Appeal. That does not mean that the jurisdictions could simply do without the highest court. The strength of the judiciary in any jurisdiction depends not only on the quality of its judges, but also on the system of appeal. The existence of an appellate court above the first court of appeal makes it possible for points of law of public importance be identified precisely, for the legal arguments about them to be fully refined, and for the second appellate court to reach a decision that creates a binding precedent for lower courts including the first court of appeal. It is therefore quite wrong to suggest that the Court of Appeal would be an adequate substitute for a CFA.

#### *Legality of JLG agreement*

The second objection to the four-plus-one composition is based on the assertion that it is inconsistent with the Joint Declaration and the Basic Law. Were this so, it would indeed be wrong to implement the JLG agreement. The Administration and this Legislative Council should on no account support any breach of those vital documents. But what is the basis for the assertion of such a breach?

*Arguments against*

First, some rely on the use of the plural “judges” in the Joint Declaration and the Basic Law and say that the four-plus-one agreement does not allow “judges”, but only one judge, to sit on the Court. This is a superficially attractive argument, but it is wrong. The provision in the Joint Declaration and Basic Law is to be interpreted as meaning that in the cases that it hears the Court may invite overseas judges. The four-plus-one formula satisfies this meaning. Under that formula, the Court can invite overseas judges (in the plural) to sit on the Court, albeit not more than one for each case. Even Professor WADE, whose opinion was relied upon by opponents of the four-plus-one formula in December 1991, concedes this point which Mr Simon IP has pointed out. And since he pointed it out some time ago, I would repeat it for you. In his latest opinion, Professor WADE says this:

“While I see the force of the argument based on the use of the word “judges” in the plural in Article 82 [of the Basic Law], I do not think it is conclusive, since it would be natural to use the generic plural so as to leave the number of overseas judges open, to be prescribed by a further law under Article 83, and the plural need not necessarily mean a plurality on any one occasion.”

A second argument used to impugn the legality of the four-plus-one composition is a reference to the “spirit” of the Joint Declaration and the Basic Law. Mr President, as any lawyer knows, when a person relies on the “spirit” of a document, it is a clear indication that he or she is on weak ground and cannot rely on any express provision that assists his or her argument. In the case of the CFA, we are told that the “spirit” of the Joint Declaration and the Basic Law is the high degree of autonomy granted to the Hong Kong Special Administrative Region, plus the guarantee of judicial independence and of continued links with the rest of the common law world. It is then argued, by some, that the four-plus-one formula is in breach of this spirit. But there is absolutely nothing in the four-plus-one formula that prejudices Hong Kong’s high degree of autonomy, judicial independence or continued links with other common law jurisdictions. The argument based upon the spirit of the Joint Declaration and the Basic Law therefore has no substance.

A third argument against the four-plus-one formula is that the JLG has no power to amend the Joint Declaration. This argument depends, of course, on the assumption that the four-plus-one formula is not consistent with the Joint Declaration, an assertion which I have already demonstrated to be false.

Mr President, on analysis, the arguments that the four-plus-one formula is inconsistent with the Joint Declaration and the Basic Law prove to be ill-conceived. May I remind Members that the JLG agreement was entered into by representatives of the two Governments that signed the Joint Declaration. Let me repeat and emphasize what the Chief Secretary said earlier in this debate, that it would have been unthinkable, inconceivable for any government to inter into the JLG agreement unless it was satisfied that it was fully consistent with the Joint Declaration.

*Arguments in favour*

Recently, the British Government has taken the unusual step of issuing a statement, approved by Ministers, setting out its reasons why the four-plus-one formula is not inconsistent with the Joint Declaration and the Basic Law. These are as follows.

Both the Joint Declaration and the Basic Law are, in respect of the CFA, framework provisions which are intended to be fleshed out by more detailed legislative provisions. In particular they leave the detailed composition and workings of the CFA to be defined at a later date. They do not specify, for example, the number of judges who are to sit in the CFA. It does not follow that all such matters are left to the unfettered discretion of the CFA itself. It is clearly contemplated that they will be the subject of further legislative provision. Let me remind Members that Article 83 of the Basic Law provides that:

“The structure, powers and functions of the courts of the Hong Kong Special Administrative Region at all levels shall be prescribed by law.”

The British Government’s statement also rejects the argument that there is any special significance in the use of the word “judges” (in the plural) in the Joint Declaration and the Basic Law. I have already dealt with that point. The statement also refers to the Vienna Convention on the Law of Treaties.

Article 31 of the Vienna Convention codifies customary international law for the interpretation of treaties. This applies to the Joint Declaration, since it is an international agreement, registered (under Article 102 of the United Nations Charter) with the United Nations Secretariat. Article 31(3)(a) of the Vienna Convention provides that, in interpreting a treaty, there shall be taken into account, together with the context:

“any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions.”

The Joint Declaration is an international treaty, and the JLG agreement is a subsequent agreement between the parties to that declaration. Those parties, Britain and China, clearly interpret the Joint Declaration in a way that permits the four-plus-one composition.

As I have said, the Vienna Convention applies to the Joint Declaration which provides in section III of Annex I for the establishment of the CFA. Article 82 of the Basic Law is virtually identical to that provision in the Joint Declaration. It sets out the same general principle about the composition of the Court, leaving the precise scope of the power to invite overseas judges to be defined by implementing legislation. Article 82 of the Basic Law was designed to implement the provision in the Joint Declaration, and it should therefore be interpreted in the same way.

### *Conclusion*

The assertion that the JLG agreement is in breach of the Joint Declaration and the Basic Law is therefore not correct. As the motion before this Council suggests, it is perfectly possible to establish the CFA in alignment with the Joint Declaration and the Basic Law and in general conformity with the JLG agreement of September 1991. In fact, the establishment of the Court must be achieved in this manner in order for the Court to be able to survive the transfer of sovereignty.

### *The Proposal to amend the Letters Patent*

The Honourable Simon IP has proposed that, prior to the enactment of the CFA Bill, the Government should consider seeking the incorporation of a provision in the Letters Patent containing the relevant wording of Article 82 of the Basic Law. I have to advise Members that there is no merit in this proposal.

As a matter of law, there is no need to amend the Letters Patent in order for the CFA to be enacted in Hong Kong. This legislature already has the necessary power. The only purpose of the proposal is, as Mr IP has explained, such that the Bill, if enacted, would be subject to the new provision in the Letters Patent. This would provide an opportunity for a challenge to be made in our courts in respect of the constitutionality of the four-plus-one composition of the Court set out in the legislation.

I do not need to remind Members that for nearly four years, there has been a heated debate within the legal profession of Hong Kong as to whether or not the four-plus-one composition of the Court is consistent with Article 82 of the Basic Law. We in the Administration and the British Government are confident that it is. Mr IP in effect suggests that the Administration should have the courage of its convictions and allow its view to be tested in the courts. But the real question is not one of blind courage, but rather of wisdom and the public interest. Is it wise to establish a CFA in such a way that the constitutionality of its composition is immediately open to challenge in the courts?

Let me set out for Members what that means. If it were so established, any party to an appeal to the CFA, and any other person with a sufficient interest to do so, could challenge the composition of the Court. An application could be made to the High Court for a declaration as to the validity of the legislation and for an injunction to prevent the CFA from exercising its jurisdiction. Whatever the decision of the High Court, the losing party would have a right of appeal to the Court of Appeal, and then there could be an appeal to the CFA. The CFA would be asked to decide on the lawfulness of its own composition! If it were to decide it was not lawfully constituted, then it follows logically that its own decision would be invalid! If it were to decide that it was lawfully constituted, the proceedings before the Court could be heard only after months of devastatingly embarrassing uncertainty about the Court's legality. Is this the sort of legal quagmire that this Council is prepared to devise? Is that in the public interest?

It has been suggested that courts are frequently asked to decide on their own jurisdiction. But those jurisdictional questions are completely different from the one now being considered. Courts are sometimes asked to decide whether they have jurisdiction over a particular case. They may occasionally be asked to decide whether a particular tribunal was properly constituted. For example, a few years ago the courts had to decide whether a magistrate had been lawfully appointed. But in such a situation, a higher court was deciding on the lawfulness of a lower court. In the case of the CFA, there will be no higher court which could decide the issue. I know of no precedent, in any jurisdiction, for deliberately establishing a CFA in a way that is designed to make its composition open to legal challenge.

Mr President, the CFA will be at the apex of our legal system. The eyes of the world will be upon it, including those who need to decide whether to invest in Hong Kong, do business here, or have their disputes litigated here. We need the Court to build up its international reputation as soon as possible. We need the rule of law to be buttressed by a court that is strong and free from any legal uncertainties. But that would not happen if Mr IP's proposal were adopted.

*Conclusion*

Mr President, several Members have referred to a certain newspaper article which appeared today. Members will not be surprised if I say that I do not intend to comment on newspaper articles. The particular article to which Members referred purports to give an account of proceedings in an expert group of the JLG, which gives me the additional opportunity to remind Members that the proceedings of the JLG are confidential. But I can understand the concern that Members have expressed, their deep concern. In response, I would like to remind them that both the Joint Declaration and the Basic Law clearly state that the HKSAR will be vested with independent judicial power, including that of final adjudication, and that the common law system will be maintained. Clearly, Mr President, any proposal that breaches the provisions of the Joint Declaration and the Basic Law would be unacceptable to the Government, the British Government, and I am sure, the Chinese Government.

Mr President, I have dealt with the legal issues at some length in order to assure Members that the arguments for opposing the 1991 JLG agreement have no force. The real issue for this Council is that described by the Chief Secretary. There can be no question at all that it is overwhelmingly in the public interest for the CFA to be set up before 1997, and on the basis of the 1991 JLG agreement which provides the only assurance for avoiding a judicial vacuum and uncertainty.

Support for Mr McGREGOR's motion will be a powerful re-affirmation by this Council of its commitment to the rule of law of which the CFA is the most potent symbol. I support Mr McGREGOR's motion and strongly urge Members to do the same.

PRESIDENT: Mr Martin LEE has given notice to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I propose to call on him to move his amendment now.

MR MARTIN LEE moved the following amendment to Mr Jimmy McGREGOR's motion:

“To delete”, having considered the present situation regarding the establishment of a Court of Final Appeal and having regard to the most recent comments and views of members of the Hong Kong Law Society, the Bar Association of Hong Kong and others concerned with this matter,” and “and in conformity with the agreement reached in 1991 between the Governments of China and Britain on its composition”.”

MR MARTIN LEE: Mr President, I move that Mr Jimmy McGREGOR's motion be amended as set out under my name in the Order Paper.

*Question on Mr Martin LEE's amendment proposed.*

PRESIDENT: Mr Jimmy McGREGOR, do you wish to speak? You have a total of five minutes to speak on all the amendments.

MR JIMMY McGREGOR: Yes, Mr President, I would like to speak, in the totality of the information that has been given to us and the views expressed.

Mr CHEUNG Man-kwong referred to forests. I would say that, I would remind him that there are no trees, no branches, leaves, flowers or fruit without strong roots in the first place. Without CFA roots, you may have a legal desert, Mr President.

It seems to me that Members of the Liberal Party and the Democratic Party have for once joined together and climbed up in this case on a fence which divides the positive and the negative. In effect, they are sometimes saying we do not know what to do, so we shall not do anything. It seems sad that this is so. This Council is vested with the responsibility of taking action on matters of great importance. We have done so many times in the past. We have given a lead to the people of Hong Kong on many such matters. We have often expressed divided views, but very seldom have we said that we dare not take a view for or against. By doing so I think we betray the people of Hong Kong. They need leaders, not fence-sitters. They need decisions, not quavering and nervous posturing.

Although I doubt if this Council has the courage and the sense of public responsibility to put its weight behind the Sino-British 1991 agreement on the Court of Final Appeal, I must say that not to do so may be to deny Hong Kong a Court of Final Appeal before 1997. That will lie at the door of this Council. Those whom we serve may say: shame on you.

It seems very clear that the 4:1 formula is, by agreement between Britain and China, sacrosanct. It cannot be changed. Do Councillors not understand this? If we do not accept 4:1, then there will not be a Court of Final Appeal. In life, almost everything is subject to compromise. We cannot always have everything we want. We sometimes have to accept something which is less than perfect, yet still workable.

However this motion is decided, I would urge the Government to bring the draft legislation to this Council as soon as possible, and hopefully with the approval of China, and in time to have it passed before the end of this Session. That is the least the Government can do for the people of Hong Kong.

I suspect that Members' minds are already made up, some of them on party lines. So I will simply say, Members, vote according to your conscience. Thank you.

*Question on Mr Martin LEE's amendment put.*

*Voice vote taken.*

PRESIDENT: Council will proceed to a division

PRESIDENT: Will Members please proceed to vote?

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

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Dr LEONG Che-hung, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Mr WONG Wai-yin, 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, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Simon IP, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Philip WONG and Dr TANG Siu-tong voted against the amendment.

Mr CHIM Pui-chung abstained.

THE PRESIDENT announced that there were 22 votes in favour of the amendment and 23 votes against it. He therefore declared that the amendment was negatived.

MR MOSES CHENG moved the following amendment to Mr Jimmy MCGREGOR's motion:

“To delete “and in conformity with the agreement reached in 1991 between the Governments of China and Britain on its composition”.”

MR MOSES CHENG: Mr President, I move that Mr Jimmy McGREGOR's motion be amended as set out under my name in the Order Paper.

*Question on Mr Moses CHENG's amendment proposed.*

PRESIDENT: Mr McGREGOR, do you wish to speak on Mr CHENG's amendment? You have two minutes 10 seconds out of the original five minutes.

MR JIMMY McGREGOR: No, Mr President, I simply wish to say that I hope very much that Members will think carefully about this and vote with me.

*Question on Mr Moses CHENG's amendment put.*

*Voice vote taken.*

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

MR JIMMY McGREGOR: Division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Mr WONG Wai-yin, 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 NGAI Shiu-kit, Mr LAU Wong-fat, Mrs Peggy LAM, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Simon IP, Dr Philip WONG and Dr TANG Siu-tong voted against the amendment.

Mr Peter WONG and Mr CHIM Pui-chung abstained.

THE PRESIDENT announced that there were 33 votes in favour of the amendment and 11 votes against it. He therefore declared that the amendment was carried.

MR SIMON IP: Mr President, I move that Mr Jimmy McGREGOR's motion as amended by Mr Moses CHENG be further amended as set out under my name in the Order Paper. Mr President, I ask that they be voted upon separately.

PRESIDENT: Yes, I have been considering this, Mr IP, and I do not think it would be appropriate or in order to split the voting because if the voting were to be split, you would in effect be moving two amendments to the motion, as amended, as it happens. But the effect of splitting the vote on a motion to amend would be to enable the mover to move two amendments and indeed, the options that would be available to Members, were the voting to be split, would be three: they could accept both limbs; accept (1), reject (2); or reject (1), accept (2). That would not be a satisfactory way of proceeding. But it is open to you to drop either (1) or (2) or put them both together.

MR SIMON IP: Mr President, in that case I would drop (2).

PRESIDENT: You would drop (2)?

MR SIMON IP: And I would proceed with paragraph (1).

PRESIDENT: Yes Mr McGREGOR.

MR JIMMY MCGREGOR: Mr President, I do challenge that because by adopting one out of two alters the complexion of the two. You cannot take the alternate parts or the separate parts, one of which depends upon the other, one of which relates to the other, and give the complexion of the amendment a particular look. If you take away a part of it, or you leave a small part of it, it would be open to all of us to have three or four or five different possibilities in an amendment in future and get rid of four and finish with one. I do ask you, Mr President, if you would consider this matter again.

PRESIDENT: Well, all Mr IP is doing is now to amend by adding the rider: “provided agreement is reached by the JLG before the Bill is presented to this Council”. That would be a motion to amend that would be in order and I would take the vote accordingly. But I do wish to make it clear to Members that the motion to amend by Mr Simon IP is now restricted to the first proviso only.

MR SIMON IP moved the following amendment to Mr Jimmy MCGREGOR’s motion as amended by Mr Moses CHENG:

“To add after the last word the following -

“, provided that agreement is reached by the Joint Liaison Group on the terms of the draft Court of Final Appeal Bill currently being discussed by the Joint Liaison Group before it is presented to this Council.”.”

*Question on Mr Simon IP’s revised amendment to Mr Jimmy MCGREGOR’s motion as amended by Mr Moses CHENG proposed and put.*

*Voice vote taken.*

THE PRESIDENT said he thought the “Noes” had it.

MR SIMON IP: I claim a division.

RESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mrs Peggy LAM, Mrs Elsie TU, Mr Peter WONG, Mr Simon IP, Dr Philip WONG and Dr TANG Siu-tong voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

Mr CHIM Pui-chung and Mr Eric LI abstained.

THE PRESIDENT announced that there were 8 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Mr Jimmy McGREGOR, do you wish to reply generally? You have three minutes 27 seconds out of your original 15 minutes.

MR JIMMY McGREGOR: Mr President, I might take the 27 seconds. So far as I can see, we are now left more or less, as some of the newspapers predicted, in the position that we were at the beginning. We have all been striving to reach an agreement. Hong Kong should reach an agreement with China. We are all concerned that the CFA will be set up in due course as quickly as possible. It seems to me now that after hours of debate and years of consideration, we have now come back more or less to square one. I do believe that we will find, and I do hope that we will find the solution. I would urge the Government to do its very best to seek agreement with China, to make sure that the arrangement is acceptable to both Governments, to the Hong Kong Government, and finally to this Council.

Thank you, Mr President.

*Question on Mr Jimmy McGREGOR's motion, as amended by Mr Moses CHENG, put and agreed to.*

**ADJOURNMENT AND NEXT SITTING**

**PRESIDENT:** In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 10 May 1995.

*Note:* The short titles of the Bills/Motion listed in the Hansard, with the exception of the Inland Revenue (Amendment) (N0.2) Bill 1995, Public Entertainment and Amusement (Miscellaneous Provisions) Bill 1995, Estates Duty (Amendment) Bill 1995, Disability Discrimination Bill, Protection of Trading Interests Bill and Hong Kong Arts Development Council Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

**WRITTEN ANSWERS****Annex I****Written answer by the Secretary for Home Affairs to Dr TANG Siu-tong's supplementary question to Question 4**

In the last five years, the Committee on the Promotion of Civic Education has, through the Community Participation Scheme, sponsored four Basic Law-related projects at a total cost of about \$230,000. The projects are:

- a handbook introducing the Basic Law produced by the Hong Kong Federation of Education Workers (1990-91 - \$46,500);
- an Exhibition and Competition on the Basic Law organized by the Methodist Church, Ap Lei Chau Youth Centre (1990-91 - \$9,000);
- an Exhibition, Quiz and Carnival on the existing political system and Basic Law organized by the Friends of Scouting (1993-94 - \$48,000); and
- the production of video tapes by the School of Continuing Education, Hong Kong Baptist University to promote the Basic Law among teachers and education workers (1995-96 - \$120,000).

Any registered organization may apply to the Community Participation Scheme. Project themes should centre around the rule of law, human rights, equal opportunities and political development including the Basic Law. The Committee employs a marking system to evaluate the merits and likely effectiveness of proposals. Guidance notes are provided to applicants to assist them in the development of proposals.

**Annex II****Written answer by the Secretary for the Civil Service to Dr Samuel WONG's supplementary question to Question 5**

A list of the Commissioners for Transport since 1981 is as follows for information:

<i>Name</i>	<i>Grade</i>	<i>Period</i>
A T Armstrong-Wright	Administrative Officer	1987-1982
Peter F Leeds	Administrative Officer	1982-1987

**WRITTEN ANSWERS** — *Continued*

<i>Name</i>	<i>Grade</i>	<i>Period</i>
James SO Yiu-cho	Administrative Officer	1987-1989
Gordon SIU Kwing-chue	Administrative Officer	1989-1992
Rafael HUI Si-yan	Administrative Officer	1992-1995
Mrs Lily YAM Pui-ying	Administrative Officer	from July 1995

I should add that Peter LEEDS was a Senior Executive Officer before being appointed as a Chief Transport Officer in 1971. He rose to become Deputy Commissioner for Transport in 1979. Upon becoming Commissioner for Transport, he filled an Administrative Officer post and was formally promoted to the rank of Administration Officer Staff Grade B1 on 1 July 1983.

**Annex III****Written answer by the Secretary for Home Affairs to Mr LEE Wing-tat's supplementary question to Question 6**

I would like to confirm that the pledge indeed covers both members and advisers.