OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 26 July 1995

The Council met at Nine 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 MARTIN LEE CHU-MING, Q.C., J.P.

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

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

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

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

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

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

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

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

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

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

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

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

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

DR THE HONOURABLE LAM KUI-CHUN

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

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

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

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

THE HONOURABLE LEE CHEUK-YAN

ABSENT

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

IN ATTENDANCE

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

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

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

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

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

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

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

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

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

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

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

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

MRS SHELLEY LAU LEE LAI-KUEN, J.P.
SECRETARY FOR HEALTH AND WELFARE

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

THE DEPUTY SECRETARIES GENERAL
MR RAY CHAN YUM-MOU AND MISS PAULINE NG MAN-WAH

PAPERS

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

Subject

Subsidiary Legislation	*L.N. No.*
Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 1995	325/95
Waste Disposal Ordinance (Amendment of Schedules) Notice 1995	326/95
Insurance Companies (Determination of Long Term Liabilities) Regulation	327/95
Insurance Companies (Margin of Solvency) Regulation	328/95
Motor Vehicles Insurance (Third Party Risks) (Amendment) Regulation 1995	329/95
Pleasure Grounds (Urban Council) (Amendment) (No. 2) Bylaw 1995	339/95
Animals and Plants (Protection of Endangered Species) (Exemption) (Amendment) Order 1995	340/95
Animals and Plants (Protection of Endangered Species) Ordinance (Replacement of Schedules) Notice 1995	341/95
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 4) Order 1995	342/95
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 5) Order 1995	343/95
Trade Marks Ordinance (Amendment of Schedule) Order 1995	344/95

Smoking (Public Health) (Notices) (Amendment) Order 1994 (L.N. 558 of 1994) (Commencement) Notice 1995 .... 345/95

Pneumoconiosis (Compensation) Appeal Rules 346/95

Trainee Solicitors (Amendment) (No. 2) Rules 1995 .... 347/95

Hong Kong Royal Instructions 1917 to 1993 (Nos. 1 and 2) - Ending of the 1994-95 Session of the Legislative Council of Hong Kong Notice 1995 .... 348/95

Hong Kong Royal Instructions 1917 to 1993 (Nos. 1 and 2) – Dissolution of the Legislative Council of Hong Kong Order 1995 .... 349/95

Legislative Council (Date of General Election) Notice 1995 .... 350/95

Electoral Provisions (Miscellaneous Amendments) Ordinance 1995 (60 of 1995) (Commencement) Notice 1995 .... 351/95

Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation (L.N. 320 of 1995) (Commencement) Notice 1995 .... 352/95

Sessional Papers 1994-95

No.117 — Sir David Trench Fund for Recreation Trustee's Report 1994-95

No.118 — Regional Council Revised Estimates of Revenue and Expenditure for 1995-96

No.119 — School Medical Service Board Annual Report for the year ended 31 March 1995

No.120 — Sir Robert Black Trust Fund Annual Report for the year 1 April 1994 to 31 March 1995

No.121 ― Revisions of the 1995-96 Estimates approved by the Urban Council during the first quarter of the 1995-96 financial year

No.122 ― Report of the Public Accounts Committee on Report No. 24 of the Director of Audit on the Results of Value for Money Audits July 1995 PAC Report No. 24

No.123 ― Second Revised Codicil to the Paper "Scope of Government Audit in Hong Kong – "Value for Money" Studies"

No.124 ― Hong Kong Trade Development Council Annual Report 1994-95

ADDRESS

Report of the Public Accounts Committee on Report No. 24 of the Director of Audit on the Results of Value for Money Audits July 1995 PAC Report No. 24

Second Revised Codicil to the Paper "Scope of Government Audit in Hong Kong - "Value for Money" Studies"

MR PETER WONG: Mr President, on behalf of the Public Accounts Committee, I have pleasure in tabling today the Committee's Report No. 24 and the Second Revised Codicil to the Paper "Scope of Government Audit in Hong Kong - "Value for Money" Studies".

The Committee's Report No. 24 responds to the Director of Audit's Report on the value for money audits tabled in this Council on 26 April 1995. The Director's Report covers a total of 11 subjects and the Committee have examined them all and heard evidence from altogether 40 witnesses before arriving at our conclusions and recommendations which have been set out fully in the PAC Report tabled today.

I would like to highlight a few issues which are of particular concern to the Committee. On the subject relating to the Fire Services Department, the Committee have noted that although the Director of Audit's review focuses on the inspection of places of public assembly and the issue of Fire Services Certificates, it has actually revealed a much broader and long-standing problem concerning the licensing of food establishments. The Committee are alarmed at the situation that many restaurants have started to operate whilst they are still in the process of applying for the requisite licences, allegedly because of the delay of the departments concerned in processing their licence applications. We strongly disapprove such illegal practices although we are sympathetic with operators' difficulties. In the interest of public safety, we urge restaurant operators to immediately discontinue these illegal practices and we also call on the licensing authorities to favourably consider the request of the trade that the normal processing time for restaurant licences should be kept within 60 days. As there are so many parties involved in the licensing process, I do not need to say how important co-ordination has to be and in this case the responsibility of the licensing authorities, that is, the Urban and Regional Councils, is evident. We welcome the Director of Regional Services' commitment to undertake the overall co-ordination in the licensing of food establishments within the jurisdiction of the Regional Council, but I must say we are disappointed with the Director of Urban Services' response and the passive perception of his co-ordinating role in the whole matter. We sincerely hope that the two licensing authorities, through their respective executive arms, that is, the Urban Services Department and the Regional Services Department, will assume a more proactive co-ordinating role, and we also look forward to the early implementation of the provisional licensing system with a view to resolving this long-standing problem.

The Committee has also reviewed the problem of road openings which had been a subject of the PAC's investigation at the commencement of this Legislative Council term. We were then hopeful that the lane rental trial, an experiment borrowed from the United Kingdom, might throw light on this particular problem. We are disappointed that the trial has taken an unduly long time to complete and many of the findings are but known facts which frankly do not need a trial to find out. With hindsight, we cannot help but conclude that if the Administration has had examined carefully details of the United Kingdom experiment before trying it out in Hong Kong, we would have saved much time and money. Whilst noting the various measures being taken to reduce the incidence of delays in the completion of utility works, we recommend that the Administration should seriously examine the Japanese common utility ducts system and consider introducing, as a matter of policy, such system as a standard provision for all new trunk roads in Hong Kong. We must bear in mind that it is not only the frustration and inconvenience caused to the public by the repeated and multiple road excavations, but also the enormous economic and social costs to the community brought about by the traffic congestion caused by road excavations.

I would also like to highlight the Committee's concern on the briefing out system of the Legal Department. In the Director of Audit's Report, it is suggested that briefing out is very expensive and that the amount of briefing out work should be reduced to the minimum. The Committee take a slightly different view and on this point we concur with the Attorney General that there are good public interest reasons for maintaining the briefing out system. Moreover, from the latest figures provided by the Legal Department, it is apparent that the costs of briefing out varied at different court levels and that it is not necessarily more expensive than undertaking those cases in house. However, we are surprised that although the briefing out system has been introduced for over 30 years, there appears to be neither a clear policy nor any written guidelines governing its operation. We are also very disappointed with the defensive attitude taken by the Attorney General at the public hearing defending the payment of maximum fees as standard fees in every standard briefing-out case having no regard to the fact that this is a violation of the authorized scale approved by the Finance Committee and that the Legal Department has since 1 April this year changed its practice by assessing fees. We are extremely concerned that the Legal Department's act was not only ultra vires, but also more importantly caused a disparity in the payment of briefing out fees between the Legal Department and the Legal Aid Department. Such disparity in payment of fees in the past had obviously put the Legal Aid Department in a disadvantageous position when competing with the Legal Department for counsel and this is contrary to the principle that fairness and equity require both the prosecution and the defence to be accorded legal representation of broadly the same quality. We understand that a working party has been set up to conduct a comprehensive review of the briefing out system. We hope that the review is not a course of delaying action but will truly help to revamp the system to enable it to stand up to public scrutiny.

Mr President, when I tabled the PAC Report No. 23 in February this year, I informed Members about the new arrangements adopted by the Committee whereby PAC Members no longer enjoy the privilege of receiving advance copies of the Director of Audit's reports but to be supplied with the reports at the same time as other Members of the Council. I am happy to report that the new arrangements have worked well and we intend to have them implemented on a permanent basis. Today, I would also like to inform Members of some further changes to the arrangements which are related to the submission of the Director of Audit's reports to the Legislative Council. In accordance with the Revised Codicil to the Paper entitled "Scope of Government Audit in Hong Kong - "Value for Money" Studies" and tabled in the Council, the Director of Audit shall report his findings on value for money studies twice a year and the one issued in October each year shall be combined with his annual report on the accounts of the Hong Kong Government. Following a recent review and having regard to international practice, the Director of Audit has proposed to split the combined report issued in October into two reports, one on the accounts of the Hong Kong Government, that is, regularity audit, and the other on the results of value for money audits. This change will take effect in the Director of Audit's

next submission in October this year, and all the changes in the arrangements relating to the Director of Audit's reports which I have just mentioned have been incorporated in the Second Revised Codicil tabled today.

I would also like to mention briefly the Committee's recent deliberations on the subject of accountability of public organizations, in particular a proposal of empowering the Director of Audit in conducting value for money audits of major public organizations, including the two railway corporations. Members have advanced different views for and against such a proposal. I do not wish to go into details of the arguments on both sides as they have been conveyed to the Administration in writing and copied to all Members of the Council for information. I would, however, like to urge the Administration to give serious consideration to the matter and review the Government's position having regard to the different views expressed by Members of the Committee.

This is the last occasion that I address this Council as Chairman of the Public Accounts Committee. I wish to take this opportunity to thank my colleagues for their support during the past years. On behalf of the Committee, I would also like to thank the Director of Audit for the assistance and many services which he and his staff have offered to us. Of course, we have been blessed by a succession of excellent Secretariat staff to service the Committee as well as receiving the helpful and timely advice of the Legal Adviser. It has been a privilege to serve on the Public Accounts Committee for the past seven years and I shall be watching with interest the development of the roles of the Director of Audit and the Public Accounts Committee in the years to come. We must not forget that our jobs are to ensure that the Hong Kong Government spends its money wisely.

Thank you, Mr President.

WRITTEN ANSWERS TO QUESTIONS

Environmental Protection of Sha Lo Tung

1. MR PETER WONG asked: *In view of the fact that the Government has endorsed the environmental objectives of the 1992 Convention on Biological Diversity, will the Government inform this Council what active steps will be taken to conserve and protect the habitats and biological diversity in Sha Lo Tung which is generally accepted as a site of unique natural resources?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, Sha Lo Tung is mainly privately owned. It was a village area until the late 1970s when most of the villagers moved overseas or relocated to the urban areas. Undisturbed since, wildlife and plants colonized the abandoned fields and streams. Most of the species found there are not unique to this site and can also be found in other areas. The valley's ecological value lies mainly in the stream courses which serve as the habitats of a diverse dragonfly community. The Agriculture and Fisheries Department (AFD) has been working on a proposal to designate these stream courses as Sites of Special Scientific Interest (SSSI).

The Sha Lo Tung Valley is the site of a proposed development. As required of all major development proposals in Hong Kong, the proposal in Sha Lo Tung is subject to the Environmental Impact Assessment (EIA) procedures. It will not be allowed to proceed until and unless the EIA is completed and all environmental concerns ─ including the protection of the stream courses ─ have been satisfactorily addressed.

We will continue to monitor the situation at Sha Lo Tung. The Water Supplies Department takes water samples regularly from the stream courses and has found no pollution. AFD has found no evidence of any species protected under the Wild Animals Protection Ordinance being affected by the villagers' recent earthwork. The earthwork has stopped since government departments, led by the Planning, Environment and Lands Branch, met the villagers on 28 June 1995.

Dental Training and Wastage

2. DR LAM KUI-CHUN asked: *Will the Administration inform this Council of the following statistics concerning the dental profession:*

(a) the current admission rate of the territory's Dental School;

(b) the admission rate of the specialist training positions in the Dental School in the past three years; and

(c) the wastage rate of dental officers in the Civil Service due to retirement or emigration in the past three years?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) The actual intake of students on the Bachelor degree programme in Dental Surgery at the University of Hong Kong (HKU) in 1994-95 was 50. The planned intake for 1995-96 is also 50.

(b) Specialist training in dentistry at HKU takes the form of postgraduate training. HKU at present offers two taught postgraduate programmes in dental surgery. The student enrolments for the two programmes in the 1992-95 triennium are as follows:

	1992-93 (fte)*	*1993-94 (fte)*	*1994-95 (fte)*
Postgraduate Diploma in Dental Surgery	10	10	11
Master in Dental Surgery	19	19	24

* full time equivalent

(c) The wastage rates of dental officers in the Civil Service due to retirement, emigration or other non-specified reasons over the past three years are tabulated below:

			Wastage	
Year	*Strength as at 1 January of the year*	*Retirement No. (Rate)*	*Emigration No. (Rate)*	*Other reasons No. (Rate)*
1992	181	3 (1.66%)	1 (0.55%)	11 (6.08%)
1993	182	2 (1.10%)	-	6 (3.30%)
1994	192	6 (3.12%)	-	2 (1.04%)

International Private Leased Circuits

3. MR TAM YIU-CHUNG asked (in Chinese): *Regarding the decision of the Telecommunications Authority that the Hong Kong Telecom International must supply international private leased circuits to paging companies, will the Government inform this Council whether it will, for the sake of safeguarding the job security of local workers, endeavour to prevent paging companies from making use of international private leased circuits as a pretext to move their operation centres to neighbouring regions, so as to prevent tens of thousands of operators in the paging industry from becoming into unemployment?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, the decision made by the Telecommunications Authority (TA) that Hong Kong Telecom International (HKTI) has an obligation to provide international private leased circuits to paging companies was in response to a request by a number of paging companies for a regulatory ruling under HKTI's licence.

The radio paging service industry currently employs about 9 000 people in Hong Kong. The Government is aware of the concerns of the employees of paging companies and has conducted studies on the issue. The result of our analysis indicated that it is unlikely, at current cost structure and operating conditions in the neighbouring regions, that there would be a mass migration of paging operator services outside Hong Kong. Due to keen competition in the paging market, in addition to the cost consideration, a paging company has to take into account other competitive factors, such as the risk of relying on a long-distance circuit to provide service, the availability of other technical and service backup support, and its ability to control the quality of service provided by an external operation centre, in deciding whether to relocate its operation centre outside Hong Kong. To discourage paging companies from making use of international private leased circuits as a pretext to move their operation centres to the neighbouring areas, the TA has made clear that he will monitor closely the quality of service provided by paging companies and should it appear to him that service standards to customers have deteriorated, following a relocation of operations outside Hong Kong, he will take appropriate action in accordance with the licence conditions.

Abolition of First Asylum Policy

4. MISS EMILY LAU asked (in Chinese): *As Hong Kong has been troubled by the problem of Vietnamese boat people (VBP) for many years and there is no indication of a complete solution to the problem in the near future, will the Government inform this Council:*

(a) whether consideration will be given to abolishing the first asylum policy and at the same time adopting the established screening procedures to determine the status of the VBP who have come to Hong Kong seeking political asylum;

(b) of the deliberations and conclusions of the Geneva Conference held in 1994 and 1995 on the issue of "the abolition of the first asylum policy"; and

(c) whether the abolition of the first asylum policy required the approval of the British Government?

SECRETARY FOR SECURITY: Mr President,

(a) Vietnamese migrants arriving in Hong Kong are granted first asylum. If they claim to be refugees, they are screened to determine whether they should be granted refugee status. We have no plans in hand to change these arrangements.

(b) At the meeting of the Fifth Steering Committee of the International Conference on Indochinese Refugees held in February 1994 in Geneva, it was agreed that Vietnamese arriving in first asylum countries after 14 February 1994 should be treated in accordance with national legislations and internationally accepted practices. Insofar as screening procedures are concerned, our current arrangements are already in accordance with these conditions. The decision of the Fifth Steering Committee was reaffirmed at the Sixth Steering Committee meeting held in March this year.

(c) Decisions regarding Vietnamese migrants in Hong Kong are basically made by the Hong Kong Government, but policies formulated by the Hong Kong Government involving external relations require the approval of the British Government. Accordingly, any decision made by the Hong Kong Government to modify or abolish the existing first asylum policy would require approval from the British Government.

Civic Education for Young People

5. DR CONRAD LAM asked (in Chinese): *A recent research report reveals that young people in the territory are far less concerned about politics, people's livelihood and social issues than their counterparts in Guangzhou and Beijing. In this connection, will the Government inform this Council:*

(a) if it knows of the reasons for the apathy of young people in the territory towards political and social affairs;

(b) of the achievements by the Government in the field of civic education over the years; and what criteria have been adopted to assess the achievements in civic education in the past;

(c) whether the Government will review the present policy on, civic education and its direction; if so, when the review will be conducted; if not, why not; and

(d) whether the Government will enhance the civic education provided to young people; if so, what specific methods will be adopted and when they will be implemented; if not, why not?

SECRETARY FOR HOME AFFAIRS: Mr President, Hong Kong has many committed and dedicated young people who actively participate in political and community activities. However, as the research report and our own studies reveal, there is also a tendency among young people in Hong Kong to take for granted the freedoms that they enjoy.

Over the last decade, the Government, through the Committee on the Promotion of Civic Education (CPCE), has placed great emphasis on promoting the concepts of the rule of law, representative government and human rights. Our success in developing political awareness in young people is illustrated by the fact that some 70% of those aged between 18 and 20 have registered as voters.

Civic education themes are reviewed annually. Building on the core elements of the rule of law, representative government and human rights, this year, our programmes and activities will pay particular attention to equal opportunities, rights of the child and the Basic Law.

Civic education for young people begins at school. The Curriculum Development Council and Education Department are presently reviewing the guidelines on teaching civic education in our schools and expect to release their proposals for public consultation this Autumn.

The CPCE already directs much of its efforts to reaching young people. Two teaching kits for secondary school students have been produced, one on human rights and the other on the rule of law. A new teaching kit is being prepared for primary school students. The purpose is to make students aware of their rights and responsibilities and to encourage their participation in community activities.

Economic Growth of Hong Kong

6. MR ALLEN LEE asked (in Chinese): *As it is the general perception of the public that the economy of the territory is slowing down, will the Government inform this Council:*

(a) whether it has any concrete measures to boost the economy, so as to avoid the closing down of more businesses; and

(b) whether it is confident that the annual economic growth of the territory will reach the estimated level?

SECRETARY FOR FINANCIAL SERVICES: Mr President,

(i) Although the retail and restaurant sectors are in the midst of a cyclical adjustment, a number of other sectors in the economy are doing well. The performance on the trade front is particularly impressive. Our domestic exports grew by about 8% in real terms in the first five months of this year, in stark contrast to the decline of 2% just last year. The growth rate in real terms of our re-exports, which has been consistently robust for many years, accelerated from 14% last year to about 18% in the first five months of this year. Concurrently, exports of services, particularly on offshore trading and the various services supporting merchandise trade, should have continued to rise significantly. Locally, investment spending has remained robust, underpinned by a strong absorption of machinery and equipment as well as intensive work on the new airport and related projects.

(ii) The good export performance and the strong growth in fixed asset investment should provide the key impetus to overall economic growth for the rest of the year, offsetting the slow-down in consumer spending. We are of the view that, in overall terms, the economy should still be able to attain respectable growth this year.

(iii) Our current forecast of real GDP growth for 1995 is 5.5%. Notwithstanding the increased downside risks, we believe this forecast is still broadly in order. A regular update of our short-term economic forecast will be carried out in August. Results will be announced towards the end of August, together with the publication of the Half-yearly Economic Report 1995.

(iv) We are doubtful about the merits of seeking to artificially stimulate the economy, especially at a time of relatively high inflation. The Government's main role continues to be to provide an environment which is highly conducive to business. Market opportunities, which are not lacking in Hong Kong, in fact constitute the most effective direct economic stimulus. As to the pressures of resources and costs on businesses, the moderation of the labour market and the property market in recent periods should have an alleviating effect, thereby rendering an indirect economic stimulus.

Second Runway at Chek Lap Kok Airport

7. MR MARTIN BARROW asked: *Regarding the plans for the second runway at Chek Lap Kok Airport, will the Government inform this Council:*

(a) *on what basis and under what criteria a decision will be made on the second runway;*

(b) *how the actual Kai Tak traffic over each of the past five years compares with the original forecast (1989-1994);*

(c) *whether there is a revised forecast for each of the next 10 years (1995-2004) and how this compares with the forecast done when decision was made to delay the building of the second runway;*

(d) *whether the Government plans to consult the travel and tourism industry on the timing of the building of the second runway;*

(e) *how many months it will take to complete the second runway after a decision is made; and*

(f) *whether the Government will take into account the economic cost of delay when deciding on the timing of the building of the second runway?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, in accordance with the Memorandum Of Understanding Concerning The Construction Of The New Airport At Hong Kong and Related Questions (MOU), the British side will consult the Chinese side within the Airport Committee before the Hong Kong Government proceeds with any major airport project other than those in the Annex to the MOU. Such projects will only be initiated if the two sides have reached a common view concerning them. The second runway is not included under the Annex to the MOU. A decision on the timing of the second runway for the new airport will take into account factors such as the forecast air traffic demand, capacity of the first runway, time required for the construction and commissioning of the second runway and the financial and economic implications involved.

Certain air traffic forecasts for specified years were included in the New Airport Master Plan Study drawn up between 1990 and 1992. These forecast figures are being updated and examined by the Administration in consultation with the Provisional Airport Authority. No final conclusions have yet been reached.

The Administration is always prepared to listen to the views of the travel and tourism industries on any issues related to the development of the new airport, including the timing for the construction of the second runway. We are aware of the desire of the travel and tourism industries and airlines to see the early commissioning of the second runway.

Kindergarten Subsidy Scheme

8. MR TIK CHI-YUEN asked (in Chinese): *Regarding the Kindergarten Subsidy Scheme which will be introduced in September this year and the raising of the entry qualification for child care worker, will the Government inform this Council\:*

(a) *whether the proposed pay for kindergarten teachers will be adjusted according to the recently announced pay increase for civil servants, as is the case with child care workers;*

(b) *what is the estimated total amount of Government's financial commitment, taking into account the fact that the number of kindergartens applying to join the Kindergarten Subsidy Scheme to date is lower than expected;*

(c) *whether, in view of the unsatisfactory response to the Scheme, the Government will consider reviewing immediately the details of the Scheme, including revising the upper limit of school fees; and*

(d) *what effect the raising of the entry qualification for child care workers will have on the fees charged by child care centres?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) We do not intend to adjust the recommended pay scale following the recent salary revision for the Civil Service. Unlike subvented child care centres, kindergartens are operated by the private sector, and pay adjustments are matters within the discretion of the operators themselves.

(b) The total subsidy payable under the Kindergarten Subsidy Scheme is estimated to be $45 million for the 1995-96 school year. This figure is based on the information submitted by kindergartens which have applied to join the Scheme in the 1995-96 school year. The estimate is subject to revision in September 1995 when the actual enrolment is known.

(c) The Government will review the Kindergarten Subsidy Scheme in early 1996, taking account of the operational experience gained after the implementation of the Scheme in September 1995. In the review, the Government will consider, among other things, whether the cut-off point should be revised.

(d) At this stage, we are not able to provide information on the effect of raising entry qualifications for child care workers on the fees charged by child care centres. This is because the annual fee assessment exercise for individual child care centres will not be completed until next month. The approved fee for aided child care centres is set at the break-even fee as assessed by the Social Welfare Department. The impact will therefore depend on the financial position of individual child care centres. A Fee Assistance Scheme is in place to provide financial assistance to needy families to meet the child care centre fees.

Monopoly of Gas Company

9. MR WONG WAI-YIN asked (in Chinese): *According to the findings in a recent report of the Consumer Council, the Hong Kong and China Gas Company is the only public utility company in the territory which is not subject to any profit control. It is also pointed out in the report that the company monopolizes the market and faces no competition, resulting in the interests of the consumers being ignored. In view of this, will the Government inform this Council:*

(a) of its response to the above-mentioned findings; and

(b) whether a regulatory mechanism will be set up to safeguard the interests of the consumers; if so, what the details are; if not, why not?

SECRETARY FOR ECONOMIC SERVICES: Mr President, the Consumer Council has published its report "Assessing Competition on the Domestic Water Heating and Cooking Fuel Market" on 6 July 1995. The objective of the study is to examine the market competitiveness and trade practices in the domestic water heating and cooking fuel supply industry. The Government will examine very carefully the recommendations in the report and a full response will be finalized by the end of this year. In the meantime, we welcome comments from the public and interested parties.

Structural Safety of Public Housing Blocks

10. DR HUANG CHEN-YA asked (in Chinese): *Will the Government inform this Council whether it is aware of the investigations being carried out by the Hong Kong Housing Authority and the Hong Kong Housing Society to identify structural problems in public housing estates of different ages under their management; if so, how many estate blocks have been investigated in the past three years, and how many have been found to be in need of repair because of concrete spalling and corroded steel bars problems; and what percentages they represent in estate blocks of various ages?*

SECRETARY FOR HOUSING: Mr President, the Government monitors the maintenance and repair programmes of both the Housing Authority and the Housing Society.

Over the past three years, the Housing Authority has inspected the structural safety of 609 housing blocks built before 1981. Of these, 140 needed repair as a result of varying degrees of concrete spalling and corrosion of steel reinforcing bars.

The Housing Society inspects all its 162 housing blocks annually, and refers those which need further investigation to structural consultants. In the past three years, structural consultants inspected 29 blocks, all of which required varying degrees of repair for concrete spalling.

All the blocks were found to be structurally safe.

The number of blocks inspected for structural safety expressed as a percentage of the total number of blocks of the same age is shown in the table below:

Age of block	*% of blocks inspected by Housing Authority*	*% of blocks inspected by Housing Society*
11-20 years	60	47
21-30 years	100	45
over 30 years	100	30

Voting by Electors Temporarily Away from Hong Kong

11. MR LEE CHEUK-YAN asked (in Chinese): *Will the Government inform this Council:*

(a) *whether it has any plan to safeguard the right to vote of those electors who happen to be abroad on business or for pleasure on election day; and*

(b) *whether it will consider following other countries' practice so that those electors who are abroad are able to vote at the local British consulates?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Administration is mindful of the need to take practical steps to ensure that electors are not deprived of the opportunity to vote because of some extraneous circumstances. Indeed, during a review of the electoral arrangements in 1992, we have looked into the desirability and feasibility of providing some form of absentee voting arrangement for electors who were temporarily away from Hong Kong on polling day. We concluded that the introduction of absentee voting for this category of electors was not justified in view of the cumbersome administrative arrangements and the potential for abuse. This conclusion was shared by the Legislative Council Select Committee on Legislative Council Elections. The Select Committee's report was endorsed by this Council in July 1992. We do not detect any changes in circumstances since then which would justify re-opening this issue.

We therefore have no plan at present to adopt arrangements which would enable electors who are abroad to vote in person at designated venues in the countries where they are staying.

Lift Breakdowns in Public Housing Estates

12. MR WONG WAI-YIN asked (in Chinese): *Will the Government inform this Council:*

(a) *of the monthly statistics on lift breakdowns in each of the public housing estates and Home Ownership Scheme estates in the last three years;*

(b) *of the general causes of the breakdowns and the average number of days needed to repair each breakdown;*

(c) *of the number of lift contractors who are responsible for the installation and maintenance of lifts in public housing estates and Home Ownership Scheme estates, together with statistics on the breakdown of lifts serviced by each of the contractors in the past three years; and*

(d) *what measures have been put in place to reduce the chances of lift breakdowns?*

SECRETARY FOR HOUSING: Mr President, monthly statistics on lift breakdown in public rental housing and Home Ownership Scheme estates in the last three years are at Annexes A to C.

The general causes of lift breakdown may be attributed mainly to equipment failure and vandalism. Depending on the seriousness of the fault to be corrected, the average repair time varies from less than two hours for minor faults which make up the majority of such breakdown, to not more than two days for general repairs and replacement of minor parts. Major overhaul and replacement work may take up to two weeks, but they constitute about 2% of breakdown incidents.

There are currently 10 lift installation contractors and 12 lift maintenance contractors. Statistics on lifts serviced by each contractor, together with the breakdown rate, are at Annex D.

The following measures are adopted by the Housing Department to reduce the frequency of lift breakdown:

(a) lift maintenance contractors are required to carry out statutory safety tests, weekly servicing work, and repair and replacement work when required;

(b) Housing Department staff inspect all lifts on a quarterly basis. Defects discovered are reported, and maintenance contractors are instructed to take follow-up action; and

(c) lift equipment is periodically modified and upgraded to enhance operational reliability and safety.

These measures have effectively reduced the frequency of lift breakdown from an average of one per lift per month in the early 1980s to 0.35 per lift per month in 1994-95.

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1992 to March 1993)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
AP LEI CHAU	30	0.43	0.17	0.33	0.47	0.27	0.20	0.37	0.37	0.13	0.10	0.40	0.10
NEW HOUSING DEPARTMENT HQ	27	0.22	0.11	0.19	0.19	0.15	0.26	0.19	0.07	0.11	0.11	0.04	0.11
BUTTERFLY	25	0.56	0.76	1.04	0.96	0.40	0.52	0.44	0.36	0.32	0.60	0.64	0.56
CHEUNG CHING	29	0.24	0.28	0.24	0.14	0.24	0.24	0.34	0.24	0.17	0.41	0.34	0.07
CHEUNG FAT	19	0.42	0.37	0.16	0.16	0.26	0.26	0.16	0.26	0.16	0.26	0.37	0.26
CHEUNG HONG	57	0.51	0.47	0.63	0.49	0.58	0.75	0.53	0.75	0.42	0.44	0.49	0.47
CHOI HUNG	26	0.94	1.19	1.20	0.85	0.55	0.58	0.65	0.88	0.54	0.00	0.54	0.42
CHOI HA ESTATE	20	0.35	0.45	0.10	0.30	0.30	0.25	0.25	0.30	0.20	0.20	0.35	0.15
CHEUNG HANG ESTATE	26	0.69	0.35	0.23	0.31	0.31	0.46	0.42	0.15	0.27	0.08	0.35	0.42
CHUN SHEK	15	0.27	1.07	0.40	0.80	0.27	0.60	0.80	0.47	0.53	0.67	0.33	0.20
CHAK ON	12	0.33	0.50	0.75	0.75	0.83	0.58	0.58	0.67	0.58	0.42	0.83	0.33
CHEUNG ON	53	0.87	0.74	0.55	0.49	0.57	0.75	0.60	0.79	0.85	1.06	1.19	0.51
CHEUNG SHAN	10	0.20	0.20	0.40	0.40	0.20	0.10	0.20	0.60	0.50	0.10	0.20	0.00
CHEUNG SHA WAN	10	0.20	0.00	0.10	0.10	0.10	0.10	0.20	0.10	0.30	0.30	0.10	0.20
CONVERTED TAI WO HAU	49	0.27	0.53	0.22	0.59	0.31	0.43	0.35	0.43	0.29	0.45	0.47	0.10
CHAI WAN (1)	9	0.00	0.44	0.44	0.56	0.00	0.11	0.11	0.11	0.00	0.11	0.00	0.00
CHEUNG WAH	36	0.39	0.53	0.36	0.22	0.31	0.39	0.17	0.28	0.22	0.22	0.25	0.17
CHOI WAN	67	0.49	0.36	0.48	0.48	0.49	0.49	0.55	0.36	0.21	0.43	0.60	0.28
CHOI YUEN	32	0.38	0.53	0.44	0.56	0.34	0.28	0.41	0.53	0.47	0.34	0.59	0.28
CHUK YUEN (NORTH)	48	0.29	0.35	0.21	0.42	0.54	0.44	0.40	0.42	0.31	0.46	0.46	0.35
CHUK YUEN (SOUTH)	39	0.97	0.67	0.44	0.64	0.92	0.72	0.41	0.54	0.41	0.44	0.79	0.46
FU HENG	43	0.60	0.70	0.51	0.51	0.37	0.40	0.47	0.26	0.28	0.49	0.49	0.40
FUK LOI	8	0.88	0.38	0.50	0.88	1.25	1.50	0.63	0.88	0.38	0.63	1.63	0.50
FU SHAN	8	0.88	1.63	1.00	1.13	1.13	0.63	0.88	1.13	0.75	1.38	0.50	1.00
FU SHIN	39	0.69	0.85	0.90	0.69	0.62	0.74	0.79	0.82	0.56	0.51	0.59	0.46
FUNG TAK ESTATE	39	0.90	1.28	0.41	0.85	0.69	0.49	0.31	0.90	0.56	0.00	0.59	0.49
FUNG WAH	12	0.58	0.25	0.33	0.75	0.83	0.42	0.67	0.42	0.33	0.50	0.25	0.42
HIN KENG	51	0.71	0.55	0.49	0.29	0.27	0.47	0.24	0.51	0.55	0.49	0.37	0.31
HONG LEE COURT	6	0.33	1.17	0.83	0.50	0.67	0.17	0.00	0.17	0.50	0.33	0.50	0.50
HING MAN	21	0.62	0.48	0.95	0.57	0.57	0.57	0.76	0.52	0.62	0.57	0.52	0.48
HO MAN TIN	19	0.32	0.42	0.84	0.74	0.74	0.68	0.42	0.42	0.53	0.42	0.53	0.84
HENG ON	46	0.70	0.59	0.70	0.67	0.63	0.93	0.72	1.17	1.02	0.89	1.11	0.52
HING TIN	19	0.68	0.21	0.32	0.79	0.53	0.42	0.37	0.37	0.21	0.79	1.05	0.42
HING WAH (1)	10	1.30	0.70	1.30	1.10	0.80	0.50	0.60	0.90	0.40	0.40	0.90	0.00
HING WAH (2)	16	0.25	0.56	0.50	0.69	0.50	0.69	0.94	0.88	0.63	0.25	0.56	0.88
KO CHIU ROAD	3	1.67	0.33	0.67	0.33	0.33	0.67	1.00	1.00	0.33	0.33	0.33	0.00
KWAI FONG	10	0.30	0.70	0.50	0.40	1.00	0.50	0.70	0.50	0.80	0.60	0.70	0.40
KWONG FUK	39	0.26	0.21	0.23	0.31	0.13	0.31	0.33	0.26	0.28	0.26	0.54	0.41
KWAI FONG REDV	26	1.00	1.00	0.14	0.64	0.68	0.23	0.27	0.55	0.64	0.42	0.46	0.42

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1992 to March 1993)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
KWAI HING	8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KWAI HING REDV 1	16	0.00	0.38	0.25	0.25	0.50	0.38	0.25	0.38	0.75	1.06	1.00	0.38
KING LAM ESTATE	37	0.62	0.43	0.49	0.78	0.76	1.03	0.84	0.84	0.41	0.57	0.73	0.41
KWAI SHING (EAST)	32	0.31	0.22	0.38	0.16	0.19	0.03	0.13	0.22	0.28	0.31	0.22	0.25
KWAI SHING EAST EXTENSION	9	0.56	1.11	0.33	0.44	0.44	0.78	0.67	0.44	0.78	0.22	0.33	0.78
KIN SANG ESTATE	25	0.12	0.04	0.08	0.36	0.20	0.12	0.16	0.28	0.08	0.12	0.04	0.24
KWAI SHING (WEST)	43	0.60	0.42	0.65	0.63	0.65	0.44	0.42	0.65	0.44	0.47	0.49	0.28
KWONG TIN ESTATE	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.33	1.50
KWONG YUEN	38	0.26	0.45	0.21	0.61	0.32	0.45	0.34	0.58	0.37	0.26	0.32	0.24
KAI YIP	27	0.26	0.41	0.56	1.26	1.00	0.44	0.52	0.48	0.52	0.63	0.48	0.78
LAI ON	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LUNG CHEUNG COURT	20	0.00	0.10	0.10	0.05	0.05	0.00	0.05	0.00	0.10	0.00	0.10	0.00
LEI CHENG UK REDV	36	0.22	0.36	0.53	0.36	0.11	0.22	0.31	0.39	0.28	0.08	0.31	0.22
LEI TUNG	52	0.73	0.17	0.25	0.33	0.52	0.48	0.38	0.54	0.48	0.56	0.67	0.35
LOK FU ESTATE	13	0.33	0.11	0.11	0.00	0.11	0.46	0.62	0.46	0.31	0.23	0.23	0.08
LOK FU RED.	21	0.36	0.52	0.52	0.48	0.76	0.95	0.43	0.29	0.43	0.71	0.52	0.29
LUNG HANG	32	0.59	0.53	0.66	0.94	0.41	0.41	0.50	0.44	0.41	0.34	0.25	0.28
LAI KING	28	0.36	0.36	0.61	0.68	0.86	0.57	0.61	0.39	0.25	0.61	0.50	0.79
LEUNG KING	52	0.15	0.27	0.44	0.27	0.08	0.19	0.10	0.17	0.13	0.17	0.08	0.19
LAI KOK	19	0.26	0.32	0.63	0.26	0.37	0.21	0.11	0.53	0.16	0.42	0.53	0.21
LEI MUK SHUE (I)	30	0.37	0.17	0.47	0.20	0.20	0.20	0.17	0.33	0.27	0.40	0.30	0.23
LEI MUK SHUE (II)	22	0.18	0.05	0.00	0.32	0.09	0.41	0.18	0.41	0.18	0.36	0.55	0.41
LONG PING	63	0.54	0.40	0.41	0.60	0.44	0.46	0.48	0.43	0.21	0.30	0.25	0.41
LAM TIN (I)	34	0.42	0.13	0.29	0.53	0.21	0.50	0.32	0.21	0.26	0.32	0.56	0.29
LAM TIN (II)	16	0.38	0.33	0.72	0.40	0.32	0.12	0.20	0.94	0.63	0.50	0.25	0.31
LAM TIN (III)	5	0.50	0.72	0.60	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LAI YIU	18	0.17	0.17	0.22	0.28	0.22	0.39	0.17	0.11	0.11	0.17	0.06	0.28
LOK WAH (NORTH)	25	0.48	0.40	0.40	0.52	0.44	0.80	0.80	0.28	0.20	0.76	0.20	0.16
LOK WAH (SOUTH)	36	0.33	0.42	0.58	0.53	0.69	0.72	0.72	0.53	0.50	0.42	0.58	0.58
LEK YUEN	22	0.73	0.64	0.55	0.64	0.23	0.50	0.55	0.23	0.45	0.23	0.36	0.23
MODEL HOUSING	2	2.00	0.00	0.00	0.50	1.50	1.50	1.00	0.50	1.00	0.00	0.50	1.00
MEI LAM	29	0.55	0.34	0.48	0.34	0.59	0.28	0.59	0.48	0.41	0.45	0.69	0.41
MEI TUNG	4	0.50	0.25	0.00	0.50	0.50	0.25	0.00	0.00	0.00	0.00	0.00	0.00
MA TAU WAI	9	0.89	0.44	1.22	1.67	0.78	0.78	0.89	1.11	0.56	0.89	0.44	0.78
NAM CHEONG	24	0.25	0.04	0.04	0.08	0.46	0.17	0.08	0.13	0.04	0.04	0.08	0.08
NORTH POINT	20	1.00	0.13	0.93	0.79	0.17	0.44	0.38	0.30	0.35	0.35	0.50	0.15
NAM SHAN	21	0.52	0.38	0.76	0.62	0.43	0.57	0.43	0.71	0.57	0.67	0.86	0.86
LOWER NGAU TAU KOK (I)	19	1.11	0.74	0.79	0.47	0.53	0.68	0.68	0.79	0.89	0.84	1.47	0.63
LOWER NGAU TAU KOK (II)	19	0.42	0.11	0.42	0.47	0.74	0.37	0.37	0.53	0.21	0.58	0.68	0.21

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1992 to March 1993)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
NGAN WAN	4	0.25	0.00	0.25	0.00	0.25	0.50	0.25	0.00	0.00	0.00	0.50	0.00
OI MAN	34	0.35	0.47	0.53	0.50	0.29	0.29	0.41	0.47	0.41	0.29	0.65	0.32
ON TING	37	0.35	0.30	0.51	0.54	0.22	0.35	0.35	0.22	0.24	0.24	0.22	0.08
POK HONG	40	0.57	0.40	0.57	0.63	0.65	0.70	0.63	0.50	0.55	0.47	0.35	0.33
PO LAM	39	0.56	0.41	0.36	0.28	0.26	0.36	0.18	0.23	0.33	0.26	0.18	0.15
PING SHEK	20	0.35	0.60	0.70	0.25	0.35	0.40	0.15	0.40	0.40	0.35	0.20	0.40
PAK TIN (I)	3	1.33	1.00	0.67	1.33	0.33	0.33	0.00	0.33	0.33	0.00	0.00	0.33
PAK TIN (II)	20	0.15	0.15	0.35	0.15	0.15	0.25	0.15	0.35	0.10	0.10	0.15	0.05
KWUN TONG (NO.2 QUARTERS)	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00
LOK FU STAFF QUARTER	1	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	0.00
SUN CHUI	46	0.39	0.41	0.50	0.28	0.30	0.35	0.17	0.37	0.33	0.20	0.43	0.22
SHUN LEE	26	0.42	0.50	0.38	0.54	0.50	0.19	0.27	0.38	0.42	0.62	0.50	0.27
SAN FAT	6	0.17	0.50	0.33	2.33	0.50	0.67	0.50	0.50	0.50	0.50	1.00	1.00
SHA KOK	35	0.40	0.37	0.37	0.11	0.34	0.23	0.26	0.23	0.17	0.11	0.17	0.11
SHAN KING	58	0.52	0.60	0.90	0.64	0.76	0.76	0.81	0.64	0.55	0.83	0.79	0.83
SHEK KIP MEI	22	0.27	0.36	0.55	0.41	0.36	0.55	0.18	0.32	0.32	0.59	0.27	0.32
SHEK LEI RED. PHASE 1	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SHEK LEI (I)	11	0.45	0.45	0.45	0.45	0.64	0.55	0.45	0.18	0.45	0.18	0.27	0.64
SHEK LEI (II)	30	0.33	0.33	0.37	0.40	0.47	0.47	0.67	0.40	0.30	0.53	0.67	0.40
SHEK LEI EXTENSION	25	1.48	0.68	0.84	0.64	0.72	0.76	0.72	0.40	0.28	0.68	0.40	0.80
SAU MAU PING (I)	16	0.63	0.88	0.44	0.44	0.63	0.44	0.38	0.69	0.88	0.69	0.19	0.63
SAU MAU PING (II)	25	0.24	0.84	0.48	0.88	0.60	0.48	0.60	0.64	0.52	0.48	0.40	0.44
SAU MAU PING (III)	22	0.16	0.24	0.16	0.12	0.55	0.32	0.55	0.27	0.05	0.23	0.18	0.32
SAU MAU PING (I) REDV	4	0.75	0.75	0.75	0.50	0.50	1.00	0.25	0.50	0.50	1.25	0.25	0.75
SHUN ON	16	0.69	0.94	0.56	0.94	0.63	0.81	0.63	1.00	0.38	0.50	0.25	0.44
SHATIN PASS	9	0.56	0.44	0.33	0.33	0.56	0.00	0.89	0.00	0.33	0.11	0.67	0.11
SHEK PAI WAN	16	0.94	0.69	0.50	0.44	1.25	0.38	0.38	0.31	0.69	0.56	0.31	0.50
SHUI PIN WAI	13	0.15	0.08	0.00	0.00	0.15	0.08	0.15	0.08	0.08	0.08	0.00	0.23
SAM SHING	12	0.58	0.42	0.42	0.33	0.33	0.33	0.83	1.33	0.42	0.83	0.92	0.67
SIU SAI WAN	46	0.67	0.46	0.54	0.41	0.43	0.37	0.30	0.46	0.17	0.20	0.24	0.35
SHUN TIN	48	0.33	0.15	0.29	0.50	0.56	0.19	0.42	0.21	0.21	0.29	0.25	0.31
SUN TIN WAI	28	0.46	0.89	0.54	0.61	0.75	0.82	0.39	0.36	0.36	0.50	0.64	0.50
SO UK	30	0.53	0.40	0.50	0.47	0.53	0.53	0.50	0.43	0.50	0.27	0.50	0.43
SAI WAN	6	0.83	0.67	0.83	1.00	0.50	0.50	1.33	1.17	0.83	0.50	0.33	0.33
SHEK WAI KOK	52	0.35	0.25	0.23	0.40	0.29	0.35	0.29	0.25	0.37	0.17	0.17	0.21
SHEK YAM	33	0.33	0.27	0.48	0.33	0.39	0.12	0.12	0.39	0.27	0.27	0.24	0.21
TAI PING	16	0.25	0.19	0.38	0.19	0.31	0.25	0.19	0.13	0.00	0.19	0.06	0.44
TSZ CHING	18	0.64	0.36	0.71	0.57	0.50	0.57	0.43	0.44	0.11	0.11	0.22	0.17
TSING YI	25	0.40	0.32	0.52	0.52	0.76	0.88	0.36	0.64	0.28	0.44	0.24	0.52

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1992 to March 1993)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
TAI HING	48	0.17	0.08	0.23	0.13	0.08	0.15	0.08	0.15	0.13	0.08	0.21	0.10
TAI HANG TUNG REDV	15	0.33	0.33	0.53	0.67	0.20	0.33	0.27	0.53	0.53	0.20	0.47	0.80
TIN KING ESTATE	25	0.40	0.24	0.52	0.40	0.44	0.80	0.80	0.64	0.44	0.52	0.36	0.40
TSZ LOK	1	0.00	0.25	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TSUI LAM	39	0.44	0.23	0.56	0.31	0.23	0.36	0.26	0.23	0.15	0.31	0.33	0.18
TSZ MAN	6	0.33	0.83	0.50	0.33	0.17	0.17	0.83	0.17	0.33	0.67	1.00	1.33
TSZ OI	8	0.08	0.08	0.08	0.13	0.25	0.25	0.13	0.00	0.13	0.13	0.13	0.00
TSZ ON	19	0.47	0.16	0.05	0.32	0.00	0.21	0.00	0.37	0.00	0.26	0.00	0.05
TSUI PING	58	0.24	0.45	0.31	0.43	0.36	0.29	0.31	0.26	0.17	0.26	0.45	0.28
TIN PING	45	0.71	0.84	0.40	0.42	0.71	0.40	0.27	0.29	0.29	0.42	0.51	0.31
TIN SHUI ESTATE	42	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TSUI WAN	24	0.29	0.38	0.38	0.29	0.29	0.33	0.04	0.33	0.33	0.21	0.50	0.38
TUNG TAU (I)	12	1.00	0.33	0.83	0.83	0.58	0.67	0.58	0.33	0.25	0.00	0.50	0.75
TAK TIN ESTATE	41	0.38	0.68	0.73	0.83	0.24	1.02	0.32	0.32	0.12	0.15	0.32	0.07
TUNG TAU RED. I	14	0.50	0.50	0.00	0.50	1.00	0.00	1.50	2.00	0.00	0.00	0.50	0.07
TUNG TAU RED. II	48	0.69	0.38	0.50	0.21	0.46	0.44	0.69	0.60	0.73	0.00	0.46	0.56
TAI WO HAU	3	0.33	0.33	0.33	1.00	0.33	0.33	0.00	0.33	1.33	0.00	0.00	1.00
TAI WO	52	0.42	0.42	0.40	0.37	0.48	0.73	0.50	0.58	0.50	0.31	0.38	0.56
TAI YUEN	39	0.49	0.41	0.67	0.54	0.46	0.46	0.46	0.18	0.33	0.33	0.44	0.33
TIN YIU	50	0.00	0.62	0.81	0.88	0.34	0.38	0.13	0.28	0.25	0.31	0.16	0.18
UN CHAU STREET	34	0.15	0.21	0.32	0.12	0.32	0.50	0.24	0.32	0.26	0.41	0.47	0.35
UPPER NGAU TAU KOK	39	0.41	0.54	0.36	0.77	0.49	0.49	0.38	0.64	0.59	0.41	0.33	0.36
UPPER WONG TAI SIN	18	0.28	0.50	0.33	0.61	0.44	0.61	0.39	0.33	0.17	0.56	0.50	0.22
VALLEY ROAD	14	0.14	0.43	0.14	0.86	0.21	0.14	0.50	0.29	0.57	0.57	0.57	0.14
WAH FU (I)	19	0.11	0.37	0.16	0.26	0.21	0.16	0.37	0.26	0.11	0.26	0.58	0.11
WAH FU (II)	26	0.77	0.54	0.69	0.96	1.23	0.92	0.65	1.08	0.50	0.85	0.58	0.81
WO CHE	39	0.41	0.49	0.59	0.69	0.62	0.44	0.46	0.41	0.28	0.41	0.77	0.38
WONG CHUK HANG	37	0.35	0.35	0.22	0.27	0.35	0.19	0.27	0.41	0.32	0.32	0.41	0.51
WU KING	24	0.17	0.29	0.42	0.29	0.21	0.58	0.29	0.21	0.25	0.46	0.21	0.17
WAH KWAI	32	0.41	0.31	0.59	0.34	0.63	0.47	0.28	0.44	0.16	0.13	0.19	0.38
WO LOK	6	1.17	0.83	2.33	2.00	1.17	1.33	1.00	1.17	1.00	1.50	0.83	0.50
WAH MING ESTATE	43	0.81	0.47	0.49	0.60	0.70	0.88	0.88	0.86	0.72	1.21	0.77	0.42
LOWER WONG TAI SIN REDV 1	47	0.23	0.34	0.32	0.28	0.26	0.32	0.19	0.23	0.17	0.34	0.06	0.19
LOWER WONG TAI SIN REDV 2	23	0.52	0.35	0.43	0.43	0.65	0.30	0.26	0.35	0.26	0.30	0.04	0.17
LOWER WONG TAI SIN RED. 5	2	0.00	0.00	1.50	0.00	0.00	0.00	0.00	0.00	0.50	1.00	0.00	0.00
WAN TSUI	29	0.79	0.45	0.34	0.48	0.83	1.00	0.45	0.83	0.55	0.59	0.55	0.45
WANG TAU HOM	56	0.11	0.13	0.20	0.21	0.07	0.09	0.07	0.18	0.13	0.05	0.02	0.11
WAN TAU TONG	18	0.75	0.50	0.83	0.33	0.33	1.17	0.92	0.61	0.50	0.33	0.61	0.22
YUEN LONG	13	0.15	0.23	0.38	0.77	1.15	0.46	0.23	0.54	0.46	0.62	0.54	0.23

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1992 to March 1993)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
YAU OI	67	0.30	0.31	0.30	0.28	0.46	0.21	0.19	0.31	0.24	0.18	0.31	0.24
YIU ON	43	0.53	0.23	0.44	0.40	0.33	0.56	0.60	0.44	0.53	0.28	0.30	0.37
YUE WAN	10	0.40	0.10	0.20	0.50	0.90	0.50	0.40	0.70	0.20	0.20	1.00	0.40
CHUN SHING FACTORY	10	1.30	2.40	1.40	2.10	2.90	1.70	1.60	1.80	2.00	1.40	1.50	1.60
HOI TAI FACTORY	10	0.80	0.80	0.50	0.20	0.40	0.10	0.60	1.10	0.70	0.40	0.60	1.00
KWAI ON FACTORY	4	1.50	1.50	0.75	0.50	0.75	0.50	1.00	0.75	0.75	0.50	0.50	0.50
SUI FAI FACTORY	10	1.60	0.70	0.80	0.60	0.60	0.60	0.50	0.70	0.40	0.40	0.20	0.90
SHUN KEI FACTORY	1	0.00	3.00	2.00	3.00	0.00	0.00	0.00	1.00	1.00	2.00	0.00	0.00
SHEK KIP MEI FACTORY	2	1.00	2.50	1.00	1.00	2.50	1.50	3.50	2.50	2.50	2.00	0.50	2.00
WANG CHEONG FACTORY	7	0.43	0.14	0.29	0.43	0.43	0.43	0.29	0.71	0.71	0.71	0.71	2.29
YIP ON FACTORY	12	0.25	0.08	0.25	0.25	0.25	0.33	0.50	0.42	0.50	0.17	0.17	0.33

BREAKDOWN RATE OF H.A. LIFTS (at HOS)

(Period from April 1992 to March 1993)

COURT	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
CHING WAH COURT	30	0.63	0.43	0.27	0.43	0.27	0.30	0.60	0.73	0.43	0.50	0.47	0.43
CHING LAI COURT	1	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	3.00	2.00	0.00
CHUN MAN COURT	4	0.50	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.75	0.00	0.25
CHING NGA COURT	6	0.00	0.17	0.17	0.17	0.17	0.17	0.50	0.33	0.17	0.00	0.33	0.17
CHOI PO COURT	24	0.42	0.42	0.58	0.58	0.46	0.58	0.46	0.71	0.42	0.29	0.54	0.25
CHING SHING COURT	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.00	0.00	0.00
CHING TAI COURT	28	0.04	0.14	0.07	0.18	0.04	0.11	0.07	0.00	0.00	0.11	0.00	0.11
CHUN WAH COURT	4	0.75	0.50	1.25	0.50	0.50	0.25	0.50	0.50	0.25	0.00	0.75	1.75
FUNG CHUEN COURT	6	1.00	0.83	0.67	0.00	0.00	0.17	0.00	0.00	0.00	0.00	0.00	0.00
FU KEUNG COURT	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
FUNG SHING COURT	18	0.56	0.50	0.61	0.33	0.94	0.72	0.11	0.17	0.44	0.28	0.39	0.17
HONG NGA COURT	2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HONG PAK COURT	3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HONG TIN COURT	9	1.89	0.89	0.33	0.67	0.78	0.89	1.00	1.44	0.89	0.56	0.11	0.56
HONG WAH COURT	20	0.20	0.20	0.20	0.20	0.20	0.45	0.15	0.15	0.05	0.10	0.00	0.10
KA TIN COURT	18	0.17	0.17	0.39	0.17	.44	0.17	0.33	0.33	0.11	0.28	0.50	0.67
KAM HAY COURT	12	1.08	0.42	0.08	0.50	0.25	0.58	0.75	0.75	0.58	0.50	0.75	0.17
KING NGA COURT	8	0.00	0.00	0.00	0.00	0.00	0.00	0.38	0.00	0.00	0.00	0.00	0.00
KWONG LAM COURT	18	0.50	0.44	0.17	0.50	0.33	0.22	0.17	0.22	0.33	0.39	0.17	0.17
KA LUNG COURT	16	0.25	0.06	0.13	0.19	0.00	0.13	0.44	1.00	0.56	0.00	0.00	0.00
KING MING COURT	12	0.50	0.67	0.75	1.33	0.58	1.17	0.92	0.25	0.67	0.67	0.42	0.67
KING TIN COURT	18	0.50	1.00	0.44	0.67	0.44	0.78	0.61	0.44	0.67	0.44	0.78	0.39
KAM ON COURT	12	0.33	0.25	0.08	0.58	0.75	0.50	0.00	0.67	0.17	0.25	0.50	0.42
KING SHAN COURT	18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.06	0.00	0.00
KAI TAI COURT	12	0.17	0.17	0.08	0.25	0.08	0.25	0.25	0.50	0.08	0.17	0.00	0.00
KAM YING COURT	2	1.82	1.10	1.17	1.13	0.97	1.03	0.90	1.00	0.50	0.00	0.00	1.00
LOK NGA COURT	18	0.28	0.33	0.17	0.22	0.33	0.17	0.56	0.33	0.22	0.06	0.33	0.00
LUNG POON COURT	41	0.11	0.16	0.16	0.00	0.03	0.08	0.05	0.05	0.02	0.22	0.34	0.05
MING NGA COURT	18	0.11	0.06	0.06	0.06	0.00	0.00	0.00	0.00	0.06	0.06	0.00	0.06
MAY SHING COURT	18	0.00	0.06	0.00	0.22	0.06	0.11	0.00	0.00	0.06	0.06	0.06	0.06
ON KAY COURT	13	0.62	0.85	0.85	1.08	0.31	1.08	0.62	0.69	0.15	0.46	0.23	0.38
ON SHING COURT	6	0.33	0.00	0.00	0.17	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00
PANG CHING COURT	18	0.17	0.17	0.17	0.17	0.33	0.33	0.00	0.00	0.00	0.00	0.00	0.00
PO LAI COURT	6	0.00	0.00	0.17	0.17	0.00	0.00	0.17	0.17	0.33	0.00	0.00	0.00
PO NGA COURT	18	0.06	0.17	0.17	0.06	0.06	0.33	0.56	0.11	0.00	0.22	0.17	0.11
SIU HONG COURT	63	0.37	0.35	0.49	0.56	0.54	0.40	0.49	0.57	0.40	0.38	0.33	0.27
SIU HEI COURT	30	1.07	1.10	0.43	0.47	0.70	0.43	0.63	0.60	0.63	0.30	0.33	0.40
SIU LUN COURT	16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.31
SIU ON COURT	20	0.00	0.05	0.00	0.10	0.10	0.15	0.00	0.25	0.15	0.00	0.00	0.05

BREAKDOWN RATE OF H.A. LIFTS (at HOS)

(Period from April 1992 to March 1993)

COURT	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/92	05/92	06/92	07/92	08/92	09/92	10/92	11/92	12/92	01/93	02/93	03/93
SIU SHAN COURT	36	0.11	0.03	0.00	0.00	0.00	0.06	0.00	0.03	0.03	0.11	0.06	0.00
SHAN TSUI COURT	17	0.29	0.06	0.12	0.12	0.12	0.35	0.00	0.00	0.00	0.06	0.18	0.35
SUI WO COURT	39	0.05	0.03	0.03	0.00	0.03	0.00	0.00	0.00	0.00	0.05	0.10	0.00
TIN MA COURT	30	0.57	0.20	0.30	0.60	0.27	0.37	0.37	0.17	0.40	0.37	0.47	0.13
TING NGA COURT	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TAK NGA COURT	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TIN YAU COURT	18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
WANG FUK COURT	25	0.08	0.12	0.16	0.08	0.08	0.12	0.04	0.68	0.32	0.04	0.44	0.12
YAT NGA COURT	12	0.08	0.08	0.00	0.08	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
YEE CHING COURT	9	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.11
YUE FAI COURT	12	0.25	0.00	0.08	0.08	0.17	0.08	0.00	0.08	0.25	0.00	0.17	0.00
YEE TSUI COURT	9	0.33	0.00	0.00	0.22	0.00	0.33	0.00	0.00	0.00	0.00	0.00	0.00
YEE KOK COURT	14	0.00	0.00	0.00	0.07	0.21	0.14	0.00	0.14	0.14	0.29	0.14	0.21
YUET LAI COURT	8	0.13	0.00	0.00	0.13	0.00	0.13	0.00	0.00	0.38	0.00	0.25	0.00
YIN LAI COURT	1	1.00	1.57	0.71	0.86	0.57	0.00	0.71	1.14	1.00	0.00	0.00	0.00
YUE TIN COURT	21	0.43	0.14	0.00	0.38	0.14	0.24	0.19	0.10	0.00	0.00	0.24	0.19
YUE ON COURT	23	0.09	0.17	0.13	0.00	0.04	0.00	0.09	0.04	0.09	0.09	0.04	0.00
YUK PO COURT	24	0.00	0.04	0.00	0.00	0.04	0.00	0.04	0.00	0.00	0.00	0.04	0.04
YAN TSUI COURT	6	0.00	0.17	0.00	0.33	0.00	0.00	0.17	0.00	0.00	0.00	0.00	0.17

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1993 to March 1994)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
AP LEI CHAU	30	0.07	0.17	0.23	0.13	0.53	0.10	0.17	0.17	0.33	0.27	0.67	0.23
NEW HOUSING DEPARTMENT HQ	27	0.00	0.00	0.04	0.00	0.04	0.04	0.67	0.04	0.04	0.07	0.19	0.15
BUTTERFLY	25	0.84	0.16	0.68	0.84	0.56	0.48	0.48	0.64	0.40	0.60	0.64	0.52
CHEUNG CHING	29	0.14	0.21	0.59	0.31	0.24	0.38	0.14	0.38	0.34	0.07	0.14	0.31
CHEUNG FAT	19	0.32	0.32	0.53	0.37	0.11	0.58	0.16	0.21	0.32	0.11	0.53	0.26
CHEUNG HONG	57	0.61	0.75	0.93	0.47	0.60	0.65	0.56	0.70	0.47	0.46	0.54	0.46
CHOI HUNG	26	0.38	0.12	0.35	0.46	0.42	0.50	0.23	0.27	0.31	0.19	0.08	0.15
CHOI HA ESTATE	20	0.25	0.35	0.30	0.40	0.25	0.25	0.35	0.45	0.20	0.35	0.75	0.50
CHEUNG HANG ESTATE	38	0.19	0.38	0.46	0.54	0.15	0.12	0.23	0.35	0.12	0.50	0.34	0.26
CHUN SHEK	15	0.80	0.73	0.87	0.47	0.47	0.33	0.67	0.20	0.80	0.47	0.73	0.53
CHAK ON	12	0.83	0.58	0.75	0.67	0.83	0.25	0.42	0.75	0.00	0.17	0.75	0.33
CHEUNG ON	53	0.40	0.38	0.47	0.51	0.58	0.85	0.58	0.60	0.62	0.45	0.47	0.23
CHEUNG SHAN	10	0.40	0.50	0.40	0.10	0.20	0.20	0.30	0.20	0.40	0.20	0.00	0.20
CHEUNG SHA WAN	10	0.10	0.10	0.10	0.10	0.10	0.00	0.00	0.10	0.00	0.00	0.10	0.30
CONVERTED TAI WO HAU	49	0.45	0.31	0.73	0.49	0.49	0.41	0.51	0.22	0.20	0.39	0.35	0.35
CHAI WAN (1)	9	0.11	0.11	0.11	0.11	0.00	0.22	0.00	0.00	0.00	0.00	0.11	0.00
CHEUNG WAH	36	0.36	0.42	0.31	0.58	0.36	0.42	0.44	0.31	0.31	0.33	0.28	0.31
CHOI WAN (1)	49	0.57	0.35	0.37	0.65	0.39	0.41	0.47	0.29	0.33	0.39	0.41	0.33
CHOI WAN (2)	18	0.17	0.28	0.33	0.22	0.22	0.28	0.11	0.22	0.06	0.17	0.06	0.06
CHOI YUEN	32	0.47	0.47	0.41	0.47	0.41	0.44	0.22	0.38	0.38	0.38	0.47	0.59
CHUK YUEN (NORTH)	48	0.52	0.29	0.44	0.60	0.23	0.71	0.33	0.40	0.33	0.31	0.31	0.29
CHUK YUEN (SOUTH)	39	1.10	0.64	0.72	0.64	0.49	0.56	0.56	0.54	0.49	0.72	0.92	0.51
FU HENG	43	0.28	0.56	0.44	0.28	0.28	0.40	0.30	0.30	0.21	0.44	0.19	0.14
FUK LOI	8	1.00	0.88	0.88	1.38	1.88	0.75	0.00	1.50	0.50	1.13	0.63	0.38
FU SHAN	8	1.13	1.13	1.00	1.13	0.75	2.00	1.75	1.13	1.38	0.88	1.25	1.50
FU SHIN	39	0.67	0.62	0.74	0.46	0.51	0.46	0.51	0.51	0.44	0.62	0.49	0.44
FUNG TAK ESTATE	39	0.54	0.51	0.54	0.77	0.69	0.49	0.54	0.41	0.33	0.67	0.62	0.51
FUNG WAH	12	0.17	0.08	0.25	0.67	0.25	0.58	0.58	0.25	0.42	0.58	0.50	0.58
HIN KENG	51	0.47	0.37	0.53	0.92	0.80	0.63	0.45	0.69	0.82	1.22	1.16	1.08
HONG LEE COURT	6	0.17	0.67	0.50	0.17	0.17	0.17	0.33	0.33	0.00	0.00	0.17	0.00
HING MAN	21	0.43	0.24	0.52	0.29	0.29	0.62	0.52	0.05	0.33	0.43	0.33	0.38
HO MAN TIN	19	0.68	0.89	0.47	0.42	0.79	0.58	0.42	0.89	0.26	0.47	0.68	0.63
HENG ON	46	1.04	0.72	0.91	0.91	0.43	1.07	0.50	0.65	0.65	0.74	0.78	0.57
HING TIN	19	0.37	0.21	0.53	0.42	0.42	0.79	0.63	0.26	0.63	0.68	0.63	0.42
HAU TAK ESTATE	44	0.00	0.00	0.17	0.08	0.33	0.29	0.21	0.54	0.34	0.50	0.36	0.16
HING WAH (1)	10	1.40	0.30	0.20	0.50	0.20	0.30	0.20	0.70	0.10	0.00	0.20	0.00
HING WAH (2)	16	0.44	0.63	1.00	0.88	0.25	0.25	0.63	0.31	0.44	1.19	0.63	0.69
KO CHIU ROAD	3	0.67	0.67	0.67	1.00	1.00	1.00	2.00	0.67	1.67	0.33	1.00	0.67
KWAI FONG	10	1.00	1.10	0.80	1.60	0.90	0.40	0.50	1.10	0.40	0.70	1.60	0.80

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1993 to March 1994)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
KWONG FUK	39	0.41	0.36	0.28	0.33	0.51	0.49	0.36	0.41	0.62	0.28	0.41	0.72
KWAI FONG REDV	26	0.69	0.85	0.85	0.65	0.58	0.58	0.46	0.42	0.46	0.85	0.46	0.65
KWAI HING REDV 1	16	1.13	0.63	0.75	0.56	0.13	0.38	0.38	0.81	0.38	0.38	0.88	0.50
KING LAM ESTATE	37	0.46	0.65	0.70	0.73	0.51	0.35	0.22	0.51	0.46	0.41	0.38	0.30
KWAI SHING (EAST)	26	0.19	0.34	0.16	0.44	0.25	0.09	0.47	0.19	0.31	0.23	0.19	0.38
KWAI SHING EAST EXTENSION	9	0.56	0.44	1.00	0.67	0.56	0.56	0.89	0.56	0.67	0.67	0.56	1.11
KWAI SHING EAST RED.	10	0.00	0.00	0.00	0.00	0.00	0.50	0.30	0.70	1.20	1.00	1.00	1.80
KIN SANG ESTATE	25	0.32	0.04	0.16	0.16	0.20	0.16	0.16	0.24	0.00	0.08	0.04	0.08
KWAI SHING (WEST)	43	0.44	0.37	0.58	0.72	0.95	0.74	0.65	0.42	0.26	0.56	0.37	0.42
KWONG TIN ESTATE	24	0.83	0.67	1.00	0.21	0.33	0.75	1.17	0.88	0.67	0.92	0.54	0.54
KWONG YUEN	38	0.47	0.34	0.42	0.47	0.26	0.63	0.58	0.37	0.42	0.39	0.32	0.34
KAI YIP	27	0.81	0.26	0.19	0.30	0.19	0.33	0.26	0.15	0.56	0.26	0.30	0.48
LAI ON	16	0.17	0.13	0.33	0.40	0.27	0.33	0.06	0.06	0.13	0.19	0.44	0.50
LUNG CHEUNG COURT	20	0.10	0.05	0.10	0.05	0.10	0.00	0.00	0.05	0.05	0.00	0.15	0.00
LEI CHENG UK REDV	36	0.44	0.33	0.25	0.31	0.19	0.33	0.36	0.33	0.75	0.44	0.19	0.31
LEI TUNG	52	0.63	0.71	0.77	0.81	0.58	0.65	0.58	0.44	0.48	0.52	0.48	0.42
LOK FU ESTATE	13	0.15	0.46	0.23	0.31	0.08	0.15	0.15	0.15	0.31	0.15	0.00	0.31
LOK FU RED.	21	0.14	0.62	0.67	0.43	0.33	0.48	0.43	0.38	0.57	0.24	0.52	0.33
LUNG HANG	32	0.34	0.44	0.38	0.47	0.72	0.72	0.41	0.63	0.50	0.38	0.41	0.31
LAI KING	28	0.54	0.71	0.93	0.43	0.50	0.50	0.25	0.36	0.39	0.57	0.61	0.18
LEUNG KING	52	0.21	0.15	0.42	0.40	0.17	0.33	0.42	0.21	0.21	0.12	0.02	0.08
LAI KOK	19	0.26	0.11	0.32	0.26	0.16	0.42	0.32	0.26	0.21	0.26	0.16	0.32
LEI MUK SHUE (I)	30	0.20	0.63	0.23	0.30	0.23	0.13	0.07	0.10	0.23	0.47	0.27	0.27
LEI MUK SHUE (II)	22	0.45	0.45	0.45	0.18	0.36	0.59	0.64	0.45	0.27	0.23	0.23	0.18
LEE ON	33	0.00	0.00	0.00	0.00	0.00	0.00	0.03	0.12	0.33	1.09	0.85	0.27
LONG PING	63	0.29	0.54	0.49	0.33	0.27	0.59	0.17	0.38	0.54	0.32	0.51	0.49
LAM TIN (I)	34	0.65	0.41	0.65	0.35	0.29	0.38	0.59	0.65	0.38	0.71	0.32	0.62
LAM TIN (II)	16	0.38	0.56	1.19	1.06	0.50	1.25	1.13	0.69	0.25	0.19	0.19	0.25
LAI YIU	18	0.22	0.17	0.61	0.22	0.22	0.28	0.17	0.56	0.11	0.11	0.06	0.28
LOK WAH (NORTH)	25	0.20	0.04	0.16	0.24	0.28	0.24	0.16	0.16	0.28	0.44	0.52	0.48
LOK WAH (SOUTH)	36	0.61	0.58	0.39	0.69	0.50	0.64	0.39	0.28	0.47	0.47	0.42	0.33
LEK YUEN	23	0.32	0.32	0.45	0.41	0.32	0.48	0.35	0.70	0.48	0.48	0.57	0.30
MODEL HOUSING	2	1.00	0.50	2.50	0.00	0.50	0.00	0.50	0.50	1.00	1.00	1.00	0.00
MA HANG ESTATE	8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MEI LAM	29	0.38	0.48	0.45	0.48	0.45	0.41	0.59	0.48	0.28	0.45	0.28	0.14
MEI TUNG	4	0.25	0.50	0.50	0.25	0.50	0.75	0.25	0.25	0.50	0.50	0.00	0.00
MA TAU WAI	9	0.11	0.33	0.11	0.00	0.67	0.56	0.44	0.56	0.33	1.22	0.44	0.44
NAM CHEONG	24	0.13	0.17	0.25	0.21	0.08	0.04	0.17	0.17	0.29	0.17	0.25	0.21
NORTH POINT	20	0.20	0.55	0.60	0.45	0.35	0.70	0.65	0.20	0.15	0.25	0.50	0.35

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1993 to March 1994)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
NAM SHAN	21	0.48	0.76	0.43	0.57	0.43	0.52	0.76	0.33	0.19	0.19	0.33	0.43
LOWER NGAU TAU KOK (I)	19	0.84	1.00	0.95	0.32	0.32	0.47	0.32	0.26	0.26	0.21	0.16	0.37
LOWER NGAU TAU KOK (II)	19	0.58	0.47	0.79	0.21	0.47	0.42	0.74	0.42	0.68	1.00	0.63	0.68
NGAN WAN	4	0.00	0.75	0.50	0.00	0.25	0.00	0.00	0.25	0.00	0.25	0.00	0.00
OI MAN	34	0.71	0.44	0.38	0.21	0.29	0.71	0.68	0.76	0.68	0.79	0.97	0.65
ON TING	37	0.22	0.24	0.43	0.38	0.27	0.46	0.35	0.43	0.41	0.24	0.22	0.38
ON YAM ESTATE	22	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.18
POK HONG	40	0.45	0.20	0.45	0.28	0.33	0.28	0.30	0.45	0.40	0.40	0.60	0.25
PO LAM	39	0.15	0.26	0.38	0.08	0.23	0.31	0.46	0.33	0.13	0.21	0.28	0.36
PING SHEK	15	0.20	0.20	0.40	0.47	0.47	0.20	0.40	0.30	0.60	0.10	0.20	1.20
PAK TIN RED.	4	0.00	1.00	1.00	0.50	1.25	1.25	0.50	3.50	2.50	1.50	1.25	0.75
PAK TIN (I)	3	1.33	0.00	0.00	0.67	0.00	0.00	0.00	0.33	0.33	0.33	0.00	0.00
PAK TIN (II)	23	0.20	0.05	0.30	0.10	0.20	0.25	0.25	0.13	0.09	0.17	0.09	0.26
KWUN TONG (NO.2 QUARTERS)	1	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LOK FU STAFF QUARTER	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SUN CHUI	46	0.22	0.22	0.33	0.46	0.50	0.48	0.67	0.43	0.43	0.65	0.63	0.46
SHUN LEE	26	0.46	0.19	0.38	0.38	0.27	0.23	0.42	0.62	0.54	0.35	0.77	0.69
SAN FAT	6	0.33	0.33	0.00	0.17	0.67	0.33	0.00	0.50	0.17	0.17	1.33	0.83
SHA KOK	35	0.31	0.31	0.17	0.31	0.09	0.26	0.17	0.26	0.14	0.26	0.26	0.34
SHAN KING	58	0.67	0.97	0.81	0.93	0.60	0.98	0.71	0.47	0.66	0.41	0.67	0.72
SHEK KIP MEI	22	0.18	0.45	0.36	0.23	0.36	0.18	0.41	0.23	0.36	0.27	0.27	0.41
SHEK LEI RED. PHASE 1	1	1.00	0.00	1.00	1.00	1.00	0.00	1.00	2.00	1.00	0.00	0.00	1.00
SHEK LEI (I)	10	0.55	0.36	0.80	0.90	0.70	0.40	0.50	0.40	0.30	0.40	0.50	0.10
SHEK LEI (II)	30	0.53	0.43	0.83	0.37	0.40	0.47	0.27	0.70	0.40	0.47	0.57	0.30
SHEK LEI EXTENSION	25	0.68	0.48	0.80	0.64	0.72	0.64	1.00	0.32	0.40	1.04	0.48	0.64
SAU MAU PING (I)	16	0.44	0.31	0.75	0.50	0.38	0.56	0.25	0.38	0.19	0.13	0.56	0.31
SAU MAU PING (II)	25	0.36	0.48	0.84	0.60	0.64	0.64	0.56	0.44	0.52	0.16	0.60	0.24
SAU MAU PING (III)	22	0.27	0.23	0.14	0.32	0.14	0.00	0.23	0.23	0.00	0.23	0.36	0.09
SAU MAU PING (I) REDV	12	0.50	0.25	0.75	2.00	1.75	1.25	0.25	0.08	0.08	0.58	0.92	0.83
SHUN ON	16	0.50	0.69	0.75	0.31	0.44	0.25	0.56	0.38	0.44	0.63	0.63	0.56
SHATIN PASS	9	0.33	0.33	0.11	0.33	0.22	0.67	0.11	0.44	0.22	0.56	0.33	0.56
SHEK PAI WAN	16	0.38	0.25	0.75	0.38	0.31	0.50	0.50	0.63	0.56	0.44	0.69	1.44
SHUI PIN WAI	13	0.23	0.00	0.00	0.08	0.15	0.00	0.15	0.15	0.23	0.15	0.31	0.15
SAM SHING	12	0.92	0.58	0.42	0.17	0.58	0.92	0.75	0.17	0.25	0.33	0.25	0.67
SIU SAI WAN	64	0.37	0.23	0.23	0.39	0.64	0.56	0.42	0.38	0.27	0.31	0.19	0.16
SHUN TIN	48	0.38	0.21	0.44	0.42	0.54	0.35	0.46	0.48	0.35	0.44	0.63	0.40
SUN TIN WAI	28	0.36	0.25	0.36	0.71	0.54	0.50	0.54	0.71	0.39	0.43	0.54	0.57
SO UK	30	0.53	0.33	0.47	0.60	0.33	0.30	0.50	0.73	0.33	0.50	0.40	0.60
SAI WAN	6	1.00	0.33	1.00	0.33	0.17	0.17	0.33	0.33	0.33	0.50	0.17	0.00

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1993 to March 1994)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
SHEK WAI KOK	52	0.21	0.13	0.38	0.21	0.15	0.29	0.27	0.35	0.15	0.25	0.19	0.17
SHEK YAM	33	0.36	0.64	0.39	0.52	0.12	0.30	0.21	0.55	0.36	0.27	0.18	0.27
TAI PING	16	0.44	0.38	0.19	0.38	0.19	0.19	0.31	0.38	0.25	0.25	0.19	0.38
TSZ CHING	18	0.67	0.33	0.56	0.39	0.33	0.44	0.39	0.28	0.17	0.44	0.50	0.44
TSING YI	25	0.36	0.44	0.56	0.88	0.76	0.72	0.68	0.64	0.48	0.56	0.68	0.60
TAI HING	48	0.23	0.06	0.08	0.08	0.15	0.19	0.23	0.27	0.19	0.17	0.02	0.25
TAI HANG TUNG REDV	15	0.13	0.40	0.53	0.33	0.40	0.47	0.40	0.60	0.33	0.20	0.40	0.67
TIN KING ESTATE	25	0.36	0.36	0.32	0.72	0.24	0.24	0.44	0.36	0.36	0.72	0.40	0.44
TSUI LAM	39	0.67	0.54	0.46	0.54	0.36	0.49	0.54	0.31	0.28	0.54	0.44	0.59
TSZ MAN	18	0.33	0.17	0.33	0.83	1.00	0.50	0.00	0.00	0.50	0.67	0.17	0.44
TSZ OI	8	0.25	0.25	0.00	0.00	0.00	0.38	0.00	0.50	0.50	0.25	0.13	0.38
TSZ ON	10	0.00	0.00	0.10	0.10	0.10	0.10	0.00	0.10	0.10	0.00	0.10	0.00
TSUI PING	59	0.17	0.26	0.41	0.26	0.17	0.17	0.15	0.24	0.37	0.24	0.24	0.10
TIN PING	45	0.42	0.42	0.58	0.56	0.67	0.58	0.78	0.47	0.67	0.44	0.53	0.42
TIN SHUI ESTATE	74	0.07	0.16	0.05	0.02	0.05	0.09	0.02	0.07	0.00	0.01	0.05	0.00
TSUI WAN	24	0.17	0.33	0.50	0.38	0.67	0.46	0.67	1.00	0.67	0.38	0.58	0.33
TUNG TAU (I)	10	0.42	1.00	0.58	0.42	0.33	0.64	0.90	0.90	0.50	0.70	0.10	0.80
TAK TIN ESTATE	43	0.32	0.34	0.24	0.22	0.32	0.37	0.44	0.41	0.10	0.28	0.30	0.26
TUNG TAU RED. I	14	1.00	0.50	0.86	0.36	0.36	0.86	0.21	0.21	0.50	0.36	0.50	0.21
TUNG TAU RED. II	48	0.60	0.54	0.44	0.42	0.35	0.42	0.54	0.46	0.50	0.52	0.31	0.23
TAI WO HAU	3	0.67	0.67	0.00	0.00	0.33	2.00	1.67	0.33	0.33	0.00	0.00	0.67
TAI WO HAU REDV	18	0.00	0.00	0.11	0.06	0.61	1.44	0.78	0.78	0.61	0.44	0.33	0.17
TAI WO	52	0.54	0.63	0.63	0.48	0.42	0.37	0.52	0.46	0.29	0.31	0.44	0.40
TAI YUEN	39	0.54	0.62	0.62	0.49	0.67	0.77	0.51	0.44	0.49	0.44	0.56	0.26
TIN YIU	74	0.24	0.30	0.18	0.27	0.38	0.16	0.19	0.07	0.08	0.22	0.12	0.16
UN CHAU STREET	34	0.47	0.41	0.59	0.56	0.59	0.12	0.15	0.21	0.32	0.15	0.32	0.24
UPPER NGAU TAU KOK	39	0.64	0.90	0.51	0.74	0.23	0.44	0.51	0.36	0.21	0.44	0.28	0.31
UPPER WONG TAI SIN	18	0.50	0.11	0.44	0.50	0.39	0.44	0.17	0.39	0.11	0.33	0.33	0.50
VALLEY ROAD	14	0.86	0.71	0.86	1.00	1.14	0.36	0.21	0.00	0.07	0.29	0.07	0.36
WAH FU (I)	15	0.32	0.21	0.47	0.13	0.73	1.07	1.91	0.36	0.73	1.45	1.00	0.53
WAH FU (II)	23	0.73	0.50	0.61	0.87	0.52	0.48	0.55	0.40	0.15	0.50	0.65	0.26
WO CHE	39	0.36	0.38	0.92	0.46	0.41	0.56	0.59	0.67	0.41	0.38	0.64	0.46
WONG CHUK HANG	37	0.54	0.54	0.73	0.46	0.76	1.05	0.70	0.68	0.59	0.41	0.81	0.38
WU KING	24	0.29	0.25	0.29	0.58	0.38	0.38	0.29	0.42	0.29	0.79	0.42	0.33
WAH KWAI	32	0.84	0.44	0.34	0.66	0.22	0.22	0.22	0.31	0.38	0.25	0.31	0.19
WO LOK	6	1.33	2.50	1.17	0.33	0.67	0.83	0.83	0.50	1.00	1.17	1.17	0.50
WAH MING ESTATE	43	0.42	0.60	0.70	0.33	0.35	0.58	0.63	0.63	0.58	0.47	0.35	0.42
LOWER WONG TAI SIN REDV 1	47	0.11	0.13	0.38	0.15	0.26	0.19	0.34	0.26	0.28	0.21	0.19	0.17
LOWER WONG TAI SIN REDV 2	23	0.52	0.30	0.13	0.35	0.48	0.87	0.30	0.39	0.26	0.30	0.74	0.22

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1993 to March 1994)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
LOWER WONG TAI SIN RED. 5	2	0.00	0.00	0.00	0.50	0.50	0.50	0.00	0.50	0.50	0.00	0.50	0.50
WAN TSUI	29	0.59	0.79	0.83	0.45	0.62	1.10	0.90	0.72	0.59	0.45	0.62	0.41
WANG TAU HOM	72	0.11	0.16	0.08	0.10	0.15	0.19	0.18	0.13	0.14	0.10	0.11	0.07
WAN TAU TONG	18	0.39	0.22	0.44	0.33	0.28	0.50	0.22	0.61	0.44	0.44	0.22	0.61
YUEN LONG	13	0.38	0.46	0.31	0.38	0.31	0.23	0.15	0.15	0.31	0.46	0.23	0.38
YAU OI	67	0.22	0.28	0.13	0.19	0.37	0.24	0.30	0.36	0.30	0.16	0.28	0.30
YIU ON	43	0.30	0.44	0.40	0.26	0.16	0.40	0.23	0.56	0.23	0.16	0.28	0.33
YIU TUNG	24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.04	0.00
YUE WAN	10	0.20	0.50	1.00	0.80	0.50	0.50	0.10	0.40	0.80	0.70	0.70	0.40
CHUN SHING FACTORY	10	1.60	1.20	1.30	2.30	2.30	1.20	2.30	1.70	1.20	2.20	0.80	2.90
HOI TAI FACTORY	10	0.60	0.80	0.40	0.10	0.70	1.30	0.80	0.60	0.30	0.40	0.80	1.00
KWAI ON FACTORY	4	1.00	0.25	0.25	0.50	0.00	0.75	0.25	0.25	0.25	0.25	0.00	0.00
SUI FAI FACTORY	10	0.70	0.50	0.60	0.50	0.90	0.30	0.70	0.40	0.60	0.40	0.10	0.30
SHUN KEI FACTORY	1	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	2.00	2.00	0.00
SHEK KIP MEI FACTORY	2	0.00	1.00	1.00	1.00	1.50	0.00	0.00	0.50	0.00	0.00	0.00	0.00
WANG CHEONG FACTORY	7	1.29	0.57	0.29	0.71	0.71	0.71	1.29	1.43	0.71	1.43	1.29	0.57
YIP ON FACTORY	12	0.50	0.75	0.50	0.67	0.33	0.58	0.33	0.50	0.50	0.50	0.58	0.67

BREAKDOWN RATE OF H.A. LIFTS (at HOS)

(Period from April 1993 to March 1994)

COURT	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
CHING WAH COURT	30	0.60	0.30	0.23	0.20	0.07	0.33	0.13	0.17	0.27	0.47	0.23	0.63
CHING LAI COURT	1	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CHUN MAN COURT	4	0.75	0.75	0.00	0.25	0.00	0.25	0.25	0.25	0.00	0.00	0.00	0.00
CHUNG MING COURT	20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.25	0.25	0.10	0.35	0.20
CHING NGA COURT	6	0.50	0.17	0.00	0.17	0.00	0.17	0.00	0.00	0.17	0.00	0.17	0.33
CHOI PO COURT	24	0.29	0.17	0.42	0.17	0.13	0.17	0.38	0.13	0.33	0.04	0.17	0.25
CHING SHING COURT	6	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.33
CHING TAI COURT	28	0.07	0.11	0.00	0.00	0.00	0.07	0.00	0.04	0.04	0.00	0.00	0.04
CHUN WAH COURT	4	0.50	0.50	0.50	0.25	0.25	0.00	0.50	0.75	0.50	0.00	0.75	0.25
FU KEUNG COURT	6	0.00	1.17	0.67	0.33	0.17	1.17	0.50	0.50	0.17	0.00	0.00	0.00
FUNG SHING COURT	18	0.39	0.11	0.17	0.28	0.11	0.28	0.39	0.61	0.56	0.50	0.67	0.11
HONG NGA COURT	18	0.00	0.00	0.00	0.00	0.00	1.55	1.40	3.25	0.95	0.55	0.25	0.44
HONG PAK COURT	19	0.00	0.00	2.97	2.55	1.48	1.00	1.29	0.23	0.35	0.47	0.26	0.05
HONG TIN COURT	9	1.00	1.22	0.56	1.00	0.44	0.44	0.33	1.11	0.78	1.11	1.22	0.56
HONG WAH COURT	20	0.05	0.05	0.05	0.00	0.00	0.05	0.10	0.00	0.05	0.20	0.05	0.05
KA TIN COURT	18	0.61	0.06	0.56	0.33	0.11	0.33	0.28	0.44	0.44	0.17	0.11	0.11
KAM HAY COURT	12	0.58	1.25	0.33	0.42	0.17	0.67	0.58	0.33	0.42	0.33	0.08	0.50
KING NGA COURT	8	0.00	0.13	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KAM LUNG COURT	16	0.00	0.13	0.69	0.69	0.81	0.38	0.44	0.63	0.63	0.63	0.19	0.50
KING MING COURT	12	1.67	0.75	0.58	1.00	0.67	0.42	0.50	0.50	0.67	0.17	0.50	0.08
KING TIN COURT	18	0.72	0.61	0.44	0.67	0.44	0.50	0.72	0.44	0.61	0.50	0.17	0.28
KAM ON COURT	12	0.17	0.42	0.83	0.42	0.42	0.58	0.83	0.33	0.33	0.08	0.08	0.17
KING SHAN COURT	18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KAI TAI COURT	12	1.00	0.00	0.00	0.17	0.08	0.08	0.00	0.00	0.17	0.08	0.08	0.00
KAI TSUI COURT	12	0.00	0.00	0.00	0.00	0.00	0.00	0.08	0.00	0.00	0.67	0.00	0.00
KWAI HONG COURT	8	0.00	0.00	0.00	0.50	0.63	0.75	0.75	0.75	0.75	1.88	0.38	0.13
KWAI YIN COURT	8	0.00	0.00	0.00	0.00	3.88	4.75	3.50	2.50	0.25	0.00	0.75	1.13
KAM YING COURT	2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.50	0.00
LOK NGA COURT	18	0.50	0.17	0.22	0.33	0.17	0.50	0.28	0.17	0.33	0.22	0.28	0.39
LUNG POON COURT	37	0.15	0.20	0.17	0.12	0.15	0.22	0.27	0.12	0.05	0.11	0.24	0.08
LUNG YAN COURT	4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.25
MING NGA COURT	18	0.00	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MAY SHING COURT	18	0.11	0.00	0.00	0.00	0.06	0.22	0.11	0.11	0.06	0.00	0.00	0.06
ON KAY COURT	13	0.31	0.15	0.62	0.46	0.23	1.23	0.85	0.69	1.77	0.92	0.85	0.62
ON SHING COURT	6	0.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00
PO HEI COURT	4	0.00	0.00	0.00	0.00	0.00	0.00	0.75	0.75	3.50	3.25	1.75	2.00
PO LAI COURT	6	0.17	0.00	0.00	0.00	0.00	0.17	0.00	0.00	0.00	0.00	0.00	0.17
PO NGA COURT	18	0.00	0.06	0.17	0.00	0.17	0.00	0.06	0.00	0.00	0.00	0.00	0.00
SIU HONG COURT	63	0.40	0.29	0.56	0.48	0.54	0.38	0.44	0.54	0.62	0.27	0.35	0.27

BREAKDOWN RATE OF H.A. LIFTS (at HOS)

(Period from April 1993 to March 1994)

COURT	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)											
		04/93	05/93	06/93	07/93	08/93	09/93	10/93	11/93	12/93	01/94	02/94	03/94
SIU HEI COURT	30	0.20	0.30	0.23	0.57	0.43	0.33	0.37	0.83	0.57	0.43	0.60	0.37
SIU LUN COURT	16	0.19	0.13	0.00	0.44	0.00	0.50	0.06	0.13	0.00	0.00	0.00	0.00
SIU ON COURT	20	0.10	0.30	0.25	0.30	0.10	0.15	0.20	0.15	0.20	0.15	0.25	0.20
SIU SHAN COURT	36	0.03	0.03	0.08	0.03	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SHAN TSUI COURT	17	0.00	0.00	0.00	0.29	0.12	0.12	0.12	0.24	0.47	0.18	0.35	0.06
SUI WO COURT	39	0.08	0.03	0.03	0.08	0.08	0.03	0.10	0.05	0.03	0.00	0.00	0.00
TIN MA COURT	30	0.43	0.43	0.40	0.33	0.07	0.30	0.43	0.37	0.27	0.33	0.30	0.63
TAK NGA COURT	6	0.67	0.17	0.00	0.17	1.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TIN OI COURT	12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.00	0.08
TIN WANG COURT	18	0.22	0.11	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TIN YAU COURT	23	0.00	0.06	0.06	0.00	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00
WANG FUK COURT	25	0.08	0.16	0.32	0.64	0.24	0.20	0.08	0.20	0.24	0.16	0.16	0.52
YAN SHING COURT	28	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.71	0.36	0.32	0.14
YEE CHING COURT	9	0.00	0.22	0.33	0.33	0.33	0.33	0.11	0.11	0.33	0.56	0.67	0.00
YUE FAI COURT	12	0.17	0.00	0.17	0.00	0.00	0.25	0.33	0.17	0.00	0.08	0.25	0.25
YEE TSUI COURT	9	0.00	0.00	0.11	0.22	0.11	0.22	0.22	0.00	0.11	0.11	0.00	0.11
YEE KOK COURT	14	0.36	0.50	0.43	0.43	0.14	0.14	0.71	0.43	0.71	0.57	0.57	0.21
YUET LAI COURT	8	0.38	0.00	0.00	0.13	0.00	0.13	0.00	0.25	0.00	0.00	0.13	0.00
YIN LAI COURT	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00
YU MING COURT	12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
YUE TIN COURT	21	0.10	0.14	0.05	0.10	0.19	0.14	0.14	0.33	0.24	0.33	0.10	0.48
YEE NGA COURT	20	0.00	0.00	0.00	0.00	0.30	0.55	0.85	0.60	0.60	0.75	0.40	0.00
YUE ON COURT	23	0.00	0.00	0.00	0.00	0.04	0.00	0.09	0.00	0.00	0.00	0.00	0.00
YUK PO COURT	24	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.04	0.00
YAN TSUI COURT	6	0.33	0.00	0.00	0.17	0.50	0.17	0.00	0.00	0.00	0.17	0.00	0.17

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1994 to May 1995)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)													
		04/94	05/94	06/94	07/94	08/94	09/94	10/94	11/94	12/94	01/95	02/95	03/95	04/95	05/95
AP LEI CHAU	30	0.33	1.00	0.40	0.10	0.20	0.30	0.17	0.20	0.23	0.57	0.47	0.23	0.30	0.27
NEW HOUSING DEPARTMENT HQ	27	0.11	0.15	0.04	0.04	0.44	0.15	0.04	0.04	0.07	0.07	0.07	0.07	0.11	0.07
BUTTERFLY	25	0.00	0.48	0.48	1.24	0.96	0.76	0.48	0.40	0.40	0.40	0.64	0.52	0.40	0.28
CHEUNG CHING	29	0.55	0.21	0.28	0.24	0.21	0.34	0.07	0.59	0.28	0.34	0.24	0.41	0.34	0.24
CHEUNG FAT	19	0.47	0.11	0.47	0.32	0.37	0.26	0.32	0.21	0.32	0.37	0.26	0.21	0.37	0.11
CHEUNG HONG	57	0.49	0.70	0.63	0.60	0.75	0.56	0.58	0.79	0.67	0.70	0.54	0.44	0.65	0.60
CHOI HUNG	26	0.08	0.19	0.42	0.58	0.50	0.23	0.12	0.19	0.19	0.04	0.15	0.19	0.38	0.15
CHOI HA ESTATE	20	0.15	0.20	0.25	0.20	0.15	0.40	1.00	0.15	0.50	0.35	1.10	0.30	0.65	0.30
CHOI FAI ESTATE	12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CHEUNG HANG ESTATE	38	0.26	0.34	0.45	0.37	0.53	0.13	0.13	0.34	0.18	0.21	0.29	0.37	0.42	0.18
CHUN SHEK	15	0.33	0.47	0.40	0.47	0.40	0.53	0.47	0.53	0.73	0.80	0.53	0.33	0.73	0.40
CHAK ON	12	0.17	0.33	0.08	0.17	0.25	0.17	0.75	0.08	0.33	0.42	0.50	0.33	0.67	0.75
CHEUNG ON	53	0.23	0.62	0.43	0.36	0.28	0.42	0.51	0.51	0.34	0.72	0.43	0.43	0.40	0.49
CHEUNG SHAN	10	0.20	0.10	0.20	0.20	0.00	0.20	0.10	0.30	0.30	0.00	0.20	0.00	0.10	0.30
CHEUNG SHA WAN	10	0.10	0.00	0.10	0.00	0.10	0.10	0.10	0.10	0.10	0.20	0.10	0.20	0.20	0.20
CONVERTED TAI WO HAU	49	0.29	0.41	0.57	0.16	0.39	0.27	0.22	0.33	0.22	0.20	0.24	0.27	0.29	0.24
CHAI WAN (1)	9	0.11	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CHEUNG WAH	36	0.50	0.33	0.39	0.19	0.61	0.53	0.42	0.58	0.61	0.33	0.36	0.31	0.47	0.58
CHOI WAN (1)	49	0.53	0.35	0.35	0.55	0.45	0.51	0.41	0.43	0.33	0.39	0.55	0.22	0.35	0.29
CHOI WAN (2)	18	0.00	0.11	0.06	0.28	0.06	0.11	0.11	0.28	0.06	0.00	0.11	0.00	0.22	0.00
CHOI YUEN	32	0.34	0.34	0.44	0.19	0.16	0.19	0.38	0.59	0.13	0.25	0.34	0.22	0.34	0.44
CHUK YUEN (NORTH)	48	0.08	0.23	0.29	0.31	0.40	0.25	0.50	0.50	0.33	0.50	0.50	0.25	0.29	0.25
CHUK YUEN (SOUTH)	39	0.59	0.85	0.44	0.67	0.36	0.56	0.74	0.67	0.56	0.56	0.56	0.33	0.54	0.38
FU HENG	43	0.30	0.23	0.14	0.21	0.12	0.21	0.30	0.30	0.21	0.16	0.19	0.16	0.28	0.09
FUK LOI	8	0.63	1.00	1.25	0.38	0.75	0.00	0.75	0.75	0.25	0.88	0.25	0.38	0.38	0.38
FU SHAN	8	1.25	0.75	1.38	1.13	0.88	0.75	0.50	1.00	0.88	0.75	0.75	0.75	1.38	0.88
FU SHIN	39	0.64	0.54	0.79	0.49	0.46	0.46	0.49	0.90	0.59	0.92	0.56	0.38	0.54	0.44
FUNG TAK ESTATE	39	0.54	0.33	0.56	0.44	0.21	0.26	0.23	0.41	0.31	0.36	0.33	0.44	0.64	0.79
FUNG WAH	12	0.33	0.58	0.92	0.58	1.08	0.67	0.33	0.50	0.08	0.50	0.67	0.17	0.33	0.67
HIN KENG	51	0.82	0.57	0.39	0.51	0.39	0.35	0.51	0.47	0.16	0.37	0.33	0.35	0.37	0.14
HONG LEE COURT	6	0.33	0.00	0.00	0.33	0.50	0.17	0.33	0.33	0.17	0.17	0.00	0.33	0.67	0.17
HING MAN	21	0.19	0.29	0.43	0.29	0.38	0.33	0.29	0.52	0.38	0.48	0.67	0.43	0.57	0.33
HO MAN TIN	19	0.53	0.58	0.58	0.26	0.53	0.53	0.16	0.42	0.00	0.37	0.37	0.84	0.47	0.32
HENG ON	46	0.54	0.48	0.70	0.72	0.72	0.54	0.67	0.50	0.43	0.46	0.59	0.33	0.43	0.65
HING TIN	19	0.68	0.63	0.53	0.53	0.95	1.16	0.63	0.53	0.68	0.63	0.84	0.58	0.42	0.68
HAU TAK ESTATE	44	0.43	0.50	0.50	0.41	0.18	0.30	0.41	0.41	0.09	0.11	0.02	0.18	0.14	0.14
HING WAH (2)	16	0.25	0.81	0.44	0.38	0.50	0.94	0.31	0.31	0.31	0.63	0.00	0.19	0.38	0.13
KA FUK ESTATE	5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.50	2.40
KO CHIU ROAD	3	0.67	0.33	1.00	0.67	0.67	0.00	0.67	0.67	0.67	0.33	0.00	0.33	0.67	0.67
KWAI FONG	10	0.90	0.90	0.90	0.40	0.50	0.40	0.90	0.50	0.90	0.40	1.00	0.90	1.30	0.60
KWONG FUK	39	0.77	0.79	0.56	0.85	0.41	0.41	0.49	0.26	0.21	0.26	0.13	0.23	0.23	0.21
KWAI FONG REDV	27	0.54	0.77	0.77	0.69	0.35	0.38	0.27	0.27	0.38	0.27	0.54	0.33	0.52	0.26
KWAI HING REDV 1	16	1.06	0.81	0.50	0.31	0.44	0.31	0.56	0.44	0.69	0.31	0.38	0.56	0.56	0.44
KING LAM ESTATE	37	0.62	0.43	0.49	0.49	0.43	0.51	0.46	0.51	0.57	0.65	0.51	0.57	0.51	0.78

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1994 to May 1995)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)													
		04/94	05/94	06/94	07/94	08/94	09/94	10/94	11/94	12/94	01/95	02/95	03/95	04/95	05/95
KWAI SHING (EAST)	4	0.19	0.15	0.12	0.06	0.12	0.18	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KWAI SHING EAST EXTENSION	9	0.78	0.89	0.44	1.33	0.67	1.22	0.89	1.33	1.78	2.11	1.67	1.89	1.33	1.00
KWAI SHING EAST RED.	10	1.30	1.30	0.90	0.50	1.00	0.50	0.60	0.30	0.30	0.80	0.10	0.30	0.30	0.20
KIN SANG ESTATE	25	0.12	0.12	0.08	0.12	0.04	0.04	0.08	0.16	0.08	0.00	0.00	0.08	0.32	0.08
KWAI SHING (WEST)	43	0.67	0.70	0.37	0.35	0.44	0.56	0.28	0.44	0.33	0.33	0.47	0.23	0.30	0.37
KWONG TIN ESTATE	24	0.83	0.58	0.54	0.46	0.33	0.54	1.08	0.67	0.25	0.58	0.50	0.46	0.33	0.21
KWONG YUEN	38	0.42	0.55	0.68	0.29	0.34	0.26	0.55	0.42	0.39	0.21	0.47	0.45	0.45	0.42
KAI YIP	27	0.59	0.33	0.33	0.33	0.59	0.30	0.44	0.63	0.48	0.44	0.48	0.56	0.30	0.41
KO YEE ESTATE	10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.38	0.13	0.30	0.20	0.30	0.10
LAI ON	16	0.31	0.25	0.19	0.06	0.38	0.13	0.25	0.38	0.25	0.00	0.25	0.19	0.50	0.06
LUNG CHEUNG COURT	20	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	0.00	0.00	0.00	0.00	0.00
LEI CHENG UK REDV	36	0.31	0.33	0.22	0.25	0.22	0.33	0.25	0.22	0.08	0.25	0.19	0.17	0.22	0.36
LEI TUNG	52	0.50	0.54	0.46	0.37	0.21	0.27	0.35	0.37	0.31	0.44	0.29	0.35	0.50	0.29
LOK FU ESTATE	46	0.23	0.23	0.31	0.15	0.15	0.54	0.08	0.14	0.16	0.16	0.32	0.16	0.20	0.33
LOK FU RED.	21	0.52	0.14	0.24	0.29	0.43	0.29	0.38	0.67	0.19	0.19	0.24	0.43	0.19	0.00
LUNG HANG	32	0.22	0.78	0.63	0.25	0.34	0.50	0.44	0.44	0.44	0.31	0.22	0.25	0.38	0.31
LAI KING	28	0.36	0.57	0.64	0.71	0.93	0.29	0.29	0.39	0.46	0.39	0.46	0.39	0.57	0.57
LEUNG KING	52	0.17	0.13	0.25	0.15	0.25	0.27	0.15	0.15	0.29	0.17	0.17	0.12	0.31	0.19
LAI KOK	19	0.11	0.32	0.21	0.05	0.11	0.05	0.16	0.26	0.16	0.26	0.21	0.21	0.32	0.11
LEI MUK SHUE (I)	20	0.23	0.43	0.17	0.10	0.07	0.10	0.03	0.23	0.14	0.10	0.10	0.00	0.10	0.10
LEI MUK SHUE (II)	23	0.18	0.00	0.27	0.41	0.32	0.32	0.05	0.45	0.41	0.36	0.09	0.65	0.61	0.43
LEE ON	33	0.79	0.36	1.06	0.55	1.00	1.09	1.12	0.64	0.73	0.73	0.73	0.64	0.70	0.97
LONG PING	63	0.30	0.57	0.65	0.70	0.83	0.87	0.51	0.59	0.37	0.43	0.56	0.49	0.48	0.46
LAM TIN (I)	24	0.41	0.53	0.47	0.44	0.29	0.54	0.42	0.33	0.29	0.38	0.25	0.42	0.42	0.42
LAM TIN (II)	13	0.00	0.67	1.33	0.00	0.31	0.08	0.15	0.23	0.31	0.54	0.15	0.69	0.38	0.92
LAI YIU	18	0.11	0.22	0.17	0.50	0.28	0.22	0.28	0.11	0.39	0.17	0.06	0.33	0.50	0.22
LUNG TIN ESTATE	7	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LOK WAH (NORTH)	25	0.20	0.40	0.20	0.12	0.08	0.24	0.12	0.20	0.20	0.16	0.60	0.36	0.64	0.60
LOK WAH (SOUTH)	36	0.31	0.39	0.50	0.44	0.33	0.36	0.31	0.19	0.17	0.31	0.89	0.69	0.44	0.42
LEK YUEN	23	0.13	0.61	0.30	0.35	0.61	0.74	0.52	0.57	0.35	0.22	0.39	0.52	0.57	0.30
MODEL HOUSING	2	2.00	0.00	0.00	0.00	2.00	0.00	5.00	2.00	1.00	1.00	0.00	0.00	1.00	0.00
MA HANG ESTATE	8	0.00	0.00	0.13	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.13	0.00	0.13
MEI LAM	29	0.48	0.34	0.28	0.34	0.45	0.52	0.28	0.31	0.17	0.31	0.24	0.34	0.31	0.52
MEI TUNG	4	0.50	0.25	0.25	0.25	0.50	0.50	0.50	0.00	0.25	0.25	0.00	0.50	1.50	0.25
MA TAU WAI	9	0.56	0.33	0.44	0.78	1.00	0.11	0.11	0.11	0.67	0.78	0.67	1.33	0.56	0.78
NAM CHEONG	24	0.21	0.08	0.17	0.17	0.21	0.04	0.08	0.08	0.08	0.08	0.17	0.29	0.21	0.17
NORTH POINT	20	0.30	0.30	0.05	0.25	0.55	0.65	0.30	0.35	0.20	0.00	0.25	0.00	0.20	0.25
NAM SHAN	21	0.43	0.52	0.57	0.24	0.38	0.57	0.38	0.43	0.38	0.33	0.48	0.62	0.62	0.33
LOWER NGAU TAU KOK (I)	19	0.11	0.21	0.32	0.26	0.11	0.00	0.26	0.21	0.26	0.21	0.32	0.37	0.74	0.63
LOWER NGAU TAU KOK (II)	19	0.37	0.21	0.47	0.47	0.42	0.79	0.32	0.74	0.37	0.79	0.47	0.53	0.21	0.21
NGAN WAN	4	0.00	0.25	0.25	0.00	0.00	0.00	0.75	0.25	0.00	0.00	0.25	0.00	0.25	0.25
OI MAN	29	0.74	0.41	0.41	0.29	0.35	0.44	0.41	0.47	0.47	0.26	0.59	0.53	0.74	0.55
ON TING	37	0.30	0.46	0.41	0.00	0.27	0.49	0.27	0.41	0.27	0.30	0.24	0.22	0.30	0.46
ON YAM ESTATE	52	0.68	0.77	0.64	0.91	0.59	0.64	0.86	0.86	0.23	0.50	0.38	0.47	0.29	0.54

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1994 to May 1995)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)													
		04/94	05/94	06/94	07/94	08/94	09/94	10/94	11/94	12/94	01/95	02/95	03/95	04/95	05/95
POK HONG	40	0.53	0.33	0.55	0.42	0.47	0.45	0.15	0.33	0.42	0.17	0.28	0.15	0.25	0.45
PO LAM	39	0.21	0.33	0.15	0.31	0.21	0.36	0.26	0.36	0.13	0.05	0.33	0.26	0.23	0.23
PING SHEK	20	1.60	0.80	1.13	1.73	2.00	0.53	0.20	0.30	0.60	0.40	0.70	0.25	0.25	0.15
PAK TIN RED.	4	0.25	0.75	2.25	1.50	1.00	2.00	1.00	0.75	0.25	1.00	0.75	0.25	0.00	0.50
PAK TIN (II)	23	0.09	0.13	0.30	0.35	0.22	0.17	0.13	0.13	0.04	0.00	0.22	0.17	0.09	0.22
KWUN TONG (NO.2 QUARTERS)	1	0.00	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
LOK FU STAFF QUARTER	1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SUN CHUI	46	0.59	0.67	0.70	0.76	0.59	0.46	0.52	0.35	0.48	0.30	0.61	0.48	0.48	0.46
SHUN LEE	26	1.19	0.92	0.42	0.27	0.54	0.46	0.38	0.50	0.23	0.23	0.50	0.58	0.46	0.54
SAN FAT	6	0.17	0.17	1.50	0.67	1.17	0.83	0.33	0.17	0.50	0.33	0.33	0.33	0.33	0.50
SHA KOK	35	0.23	0.26	0.17	0.46	0.49	0.51	0.26	0.14	0.09	0.14	0.06	0.11	0.20	0.06
SHAN KING	58	0.36	0.71	0.69	0.41	0.45	0.55	0.60	0.45	0.48	0.71	0.62	0.60	0.64	0.48
SHEK KIP MEI	22	0.23	0.14	0.27	0.32	0.23	0.32	0.05	0.23	0.14	0.14	0.09	0.14	0.18	0.18
SHEK LEI RED. PHASE 1	1	0.00	1.00	0.00	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SHEK LEI (I)	18	0.60	0.30	1.00	0.20	1.00	0.20	0.44	0.39	0.28	0.28	0.22	0.17	0.22	0.39
SHEK LEI (II)	42	0.43	0.30	0.47	0.27	0.37	0.20	0.53	0.12	0.14	0.10	0.14	0.12	0.14	0.12
SHEK LEI EXTENSION	25	1.32	1.28	0.60	0.92	0.60	0.52	0.40	0.88	0.92	0.44	0.80	0.76	0.36	0.44
SAU MAU PING (I)	16	0.19	0.38	0.13	0.50	0.38	0.44	0.81	0.56	0.38	0.06	0.19	0.31	0.44	0.25
SAU MAU PING (II)	25	0.20	0.24	0.60	0.84	0.68	1.00	1.44	0.48	0.68	0.24	0.92	0.60	0.68	0.48
SAU MAU PING (III)	22	0.18	0.18	0.18	0.09	0.05	0.23	0.18	0.18	0.18	0.09	0.05	0.05	0.14	0.14
SAU MAU PING (I) REDV	12	0.42	0.75	0.42	0.33	0.50	1.00	0.75	0.67	0.92	0.50	0.42	0.42	0.00	0.33
SHUN ON	16	1.19	0.50	0.75	0.38	0.25	0.25	0.44	0.50	0.50	0.50	0.31	0.38	0.38	0.19
SHATIN PASS	9	0.22	0.44	0.33	0.56	0.33	0.33	0.33	0.00	0.11	0.22	0.44	0.56	0.44	0.56
SHEK PAI WAN	16	0.88	0.63	0.81	0.38	0.44	0.81	0.88	0.88	0.50	0.88	0.75	0.63	0.38	0.69
SHUI PIN WAI	13	0.08	0.46	0.08	0.00	0.46	0.23	0.08	0.08	0.31	0.15	0.15	0.08	0.08	0.38
SAM SHING	12	0.58	0.42	0.75	0.83	0.58	0.50	0.33	0.50	0.92	0.58	0.33	0.25	0.33	0.08
SIU SAI WAN	64	0.13	0.20	0.33	0.19	0.14	0.17	0.11	0.13	0.11	0.13	0.09	0.14	0.16	0.19
SHUN TIN	48	0.44	0.56	0.27	0.67	0.54	0.56	0.58	0.79	0.35	0.42	0.25	0.21	0.25	0.40
SUN TIN WAI	28	0.50	0.46	0.57	0.43	0.29	0.32	0.68	0.39	0.18	0.61	0.64	0.39	0.32	0.25
SO UK	32	0.77	0.33	0.73	0.53	0.43	0.27	0.57	0.27	0.37	0.60	0.50	0.33	0.66	0.25
SAI WAN	6	0.50	0.17	0.33	0.17	0.50	0.50	0.83	0.33	0.33	0.17	0.50	0.33	0.17	0.33
SHEK WAI KOK	52	0.29	0.17	0.19	0.10	0.29	0.13	0.21	0.15	0.25	0.13	0.10	0.08	0.23	0.13
SHEK YAM	29	0.33	0.33	0.39	0.24	0.18	0.21	0.15	0.28	0.31	0.21	0.38	0.24	0.28	0.24
TAI PING	16	0.50	0.56	0.69	0.50	0.31	0.25	0.19	0.38	0.31	0.31	0.31	0.38	0.50	0.56
TSZ CHING	30	0.61	0.61	0.17	0.33	0.67	0.67	0.56	0.94	0.89	0.67	0.00	0.50	0.28	0.23
TSING YI	25	0.48	0.36	0.36	0.48	0.32	0.32	0.36	0.48	0.12	0.36	0.36	0.32	0.20	0.28
TAI HING	48	0.02	0.23	0.23	0.15	0.15	0.25	0.29	0.33	0.35	0.13	0.17	0.42	0.23	0.35
TAI HANG TUNG REDV	15	0.40	0.53	0.33	0.87	0.33	0.60	0.33	0.40	0.27	0.27	0.33	0.33	0.13	0.27
TIN KING ESTATE	25	0.28	0.48	0.68	0.40	0.60	0.64	0.28	0.36	0.44	0.92	0.44	0.16	0.60	0.48
TSUI LAM	39	0.62	0.51	0.69	1.03	0.64	0.87	0.28	0.38	0.31	0.33	0.46	0.41	0.56	0.49
TSZ MAN	24	0.50	0.21	0.04	0.21	0.17	0.08	0.29	0.21	0.33	0.13	0.00	0.83	0.96	0.33
TSZ OI	8	0.00	0.13	0.38	0.13	0.00	0.25	0.13	0.13	0.25	0.13	0.00	0.13	0.00	0.00
TSZ ON	10	0.10	0.10	0.10	0.10	0.20	0.20	0.00	0.00	0.00	0.00	0.00	0.00	0.10	0.10
TSUI PING	63	0.31	0.20	0.05	0.15	0.25	0.14	0.29	0.90	0.29	0.30	0.35	0.56	0.49	0.59

BREAKDOWN RATE OF H.A. LIFTS (at Rental Estates)

(Period from April 1994 to May 1995)

ESTATE/FACTORY	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)													
		04/94	05/94	06/94	07/94	08/94	09/94	10/94	11/94	12/94	01/95	02/95	03/95	04/95	05/95
TIN PING	45	0.44	0.44	0.49	0.62	0.40	0.71	0.53	0.58	0.56	0.60	0.47	0.47	0.38	0.42
TIN SHUI ESTATE	74	0.04	0.07	0.07	0.04	0.03	0.01	0.03	0.08	0.09	0.08	0.09	0.07	0.03	0.04
TSUI WAN	24	0.54	0.75	0.46	0.92	0.38	0.63	0.71	0.63	0.25	0.33	0.29	0.50	0.29	0.54
TUNG TAU ESTATE	74	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.24
TUNG TAU (I)	10	0.90	0.60	0.50	1.00	0.58	0.25	0.42	1.00	0.42	0.42	0.42	0.17	0.25	0.00
TAK TIN ESTATE	43	0.16	0.19	0.37	0.35	0.53	0.33	0.33	0.40	0.26	0.35	0.37	0.63	0.49	0.60
TUNG TAU RED. I	14	0.43	0.36	0.43	0.36	0.36	0.21	0.50	0.21	0.29	0.36	0.21	0.36	0.29	0.00
TUNG TAU RED. II	48	0.23	0.44	0.44	0.67	0.42	0.50	0.40	0.44	0.21	0.54	0.54	0.38	0.31	0.00
TAI WO HAU	3	0.00	0.00	0.00	0.00	0.00	0.00	0.67	0.33	0.33	0.33	0.67	0.33	0.33	0.00
TAI WO HAU REDV	18	0.67	0.83	0.06	0.33	0.61	0.44	0.28	0.33	0.56	0.17	0.50	1.56	1.33	0.83
TAI WO	52	0.40	0.56	0.44	0.37	0.48	0.37	0.46	0.62	0.33	0.46	0.54	0.33	0.35	0.58
TAI YUEN	39	0.72	0.62	0.74	0.62	0.46	0.69	0.62	0.67	0.54	0.31	0.51	0.18	0.38	0.26
TIN YIU	74	0.23	0.16	0.18	0.08	0.07	0.09	0.14	0.20	0.08	0.24	0.14	0.19	0.30	0.27
UN CHAU STREET	16	0.38	0.31	0.56	0.25	0.75	0.06	0.13	0.19	0.13	0.00	0.13	0.19	0.06	0.06
UPPER NGAU TAU KOK	39	0.41	0.51	0.41	0.38	0.56	0.33	0.82	0.46	0.15	0.15	0.51	0.44	0.15	0.21
UPPER WONG TAI SIN	18	0.61	0.67	0.67	0.56	0.50	0.39	0.83	0.50	0.22	0.28	0.44	0.28	0.56	0.72
VALLEY ROAD	14	0.50	0.14	0.36	0.43	0.36	0.29	0.43	0.07	0.07	0.14	0.43	0.43	0.50	0.21
WAH FU (I)	19	0.25	0.75	0.92	0.92	0.70	0.38	0.08	0.77	0.56	0.31	0.44	0.50	0.28	0.37
WAH FU (II)	26	0.65	0.60	0.65	0.30	0.45	0.52	0.35	0.65	0.39	0.91	0.83	1.13	0.57	0.58
WO CHE	39	0.69	0.79	1.08	0.49	0.44	0.74	0.49	0.59	0.49	0.62	0.49	0.36	0.46	0.28
WONG CHUK HANG	37	0.43	0.86	0.46	0.27	0.76	0.78	1.00	0.78	1.11	0.73	0.86	0.73	1.24	0.89
WU KING	24	0.00	0.46	0.17	0.29	0.21	0.42	0.29	0.21	0.42	0.21	0.29	0.38	0.13	0.29
WAH KWAI	32	0.31	0.13	0.47	0.19	0.59	0.25	0.22	0.38	0.41	0.56	0.53	0.41	0.59	0.50
WO LOK	6	1.17	1.33	2.00	1.17	1.67	1.00	1.17	0.67	0.83	2.33	1.50	1.83	1.00	1.33
WAH MING ESTATE	43	0.33	0.40	0.28	0.35	0.37	0.42	0.26	0.30	0.21	0.19	0.30	0.47	0.33	0.23
LOWER WONG TAI SIN REDV 1	44	0.21	0.26	0.30	0.34	0.47	0.21	0.36	0.19	0.26	0.49	0.26	0.09	0.34	0.18
LOWER WONG TAI SIN REDV 2	56	0.35	0.30	0.17	0.30	0.30	0.26	0.39	0.13	0.22	0.23	0.12	0.24	0.16	0.14
LOWER WONG TAI SIN RED. 5	2	0.00	0.00	0.00	1.00	3.50	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.50	0.00
WAN TSUI	29	0.76	0.79	0.45	0.38	0.34	0.41	0.38	0.62	0.45	0.34	0.52	0.38	0.48	0.48
WANG TAU HOM	72	0.06	0.18	0.04	0.21	0.18	0.11	0.07	0.08	0.04	0.07	0.10	0.04	0.14	0.03
WAN TAU TONG	18	0.39	0.33	0.61	0.44	0.78	0.39	0.33	0.44	0.50	0.17	0.50	0.28	0.11	0.17
YUEN LONG	13	0.46	0.46	0.46	0.31	0.46	0.85	0.46	0.54	0.31	1.15	0.54	0.23	0.15	0.62
YAU OI	67	0.00	0.28	0.45	0.10	0.40	0.30	0.37	0.30	0.28	0.30	0.37	0.28	0.40	0.42
YIU ON	43	0.26	0.35	0.30	0.21	0.33	0.42	0.88	0.44	0.14	0.16	0.49	0.40	0.58	0.37
YIU TUNG	47	0.00	0.08	0.20	0.20	0.58	0.58	0.65	0.68	0.18	0.26	0.38	0.59	0.56	0.45
YUE WAN	10	0.00	0.30	0.40	0.70	0.50	1.00	0.90	0.90	0.40	0.50	0.10	0.10	0.20	0.70
CHUN SHING FACTORY	10	1.10	1.50	1.50	0.90	1.40	1.40	0.50	1.20	1.30	1.20	0.60	0.50	1.00	0.90
HOI TAI FACTORY	10	0.40	0.70	1.10	1.60	0.80	0.40	0.50	0.90	0.90	0.40	0.30	0.60	0.50	0.60
KWAI ON FACTORY	4	0.50	0.75	1.50	0.25	0.75	0.25	0.50	0.50	0.75	0.00	0.25	1.25	0.75	1.00
SUI FAI FACTORY	10	0.20	0.40	0.70	0.20	0.30	0.90	0.30	0.10	0.20	0.20	0.30	0.20	0.10	0.20
SHUN KEI FACTORY	1	0.00	0.00	1.00	1.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	1.00	0.00
SHEK KIP MEI FACTORY	2	0.00	0.00	0.00	0.50	1.50	0.00	1.00	0.00	0.00	0.00	0.00	0.50	0.00	0.00
WANG CHEONG FACTORY	7	0.57	0.57	0.57	0.43	1.29	0.71	1.29	1.14	0.00	1.14	0.57	0.43	0.71	0.57
YIP ON FACTORY	12	0.50	0.83	0.42	0.50	1.08	0.33	0.17	1.42	0.50	0.42	0.33	0.33	0.75	0.83

BREAKDOWN RATE OF H.A. LIFTS (at HOS)

(Period from April 1994 to May 1995)

COURT	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)													
		04/94	05/94	06/94	07/94	08/94	09/94	10/94	11/94	12/94	01/95	02/95	03/95	04/95	05/95
CHING WAH COURT	30	0.53	0.33	0.47	0.67	0.60	0.57	0.40	0.83	0.53	0.17	0.23	0.37	0.40	0.53
CHING LAI COURT	1	0.00	0.00	0.00	0.00	0.00	2.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00
CHUN MAN COURT	4	0.00	0.00	0.00	0.00	0.25	0.00	0.00	0.50	0.00	0.00	0.25	0.25	0.25	0.00
CHUNG MING COURT	20	0.05	0.05	0.05	0.70	1.25	0.25	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CHING NGA COURT	6	0.17	0.33	0.83	0.00	0.17	0.17	0.17	0.00	0.00	0.00	0.00	0.33	0.00	0.17
CHOI PO COURT	24	0.29	0.13	0.08	0.08	0.13	0.08	0.00	0.08	0.00	0.04	0.04	0.08	0.13	0.00
CHING SHING COURT	6	0.00	0.33	0.50	0.00	0.33	0.33	0.00	0.67	0.17	0.17	0.17	0.17	0.83	0.83
CHING TAI COURT	28	0.04	0.07	0.04	0.00	0.11	0.04	0.00	0.00	0.11	0.07	0.04	0.00	0.04	0.00
CHUN WAH COURT	4	0.75	0.25	0.00	0.00	0.25	0.00	0.25	0.75	0.50	0.50	0.25	0.00	0.00	0.00
FUNG SHING COURT	18	0.17	0.17	0.28	0.22	0.17	0.61	0.06	0.22	0.11	0.00	0.44	0.17	0.61	0.39
HONG NGA COURT	18	0.44	1.44	2.06	0.72	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HONG PAK COURT	3	0.33	0.67	0.33	1.33	0.00	0.00	0.33	0.00	0.00	0.67	1.00	0.33	0.00	1.00
HONG TIN COURT	9	0.22	0.22	0.00	0.67	0.33	0.11	0.11	0.22	0.11	0.00	0.00	0.00	0.00	0.00
HONG WAH COURT	20	0.00	0.00	0.05	0.05	0.15	0.00	0.05	0.00	0.00	0.00	0.00	0.00	0.05	0.20
KA SHING COURT	24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KA TIN COURT	18	0.22	0.33	0.28	0.06	0.11	0.06	0.28	0.33	0.28	0.28	0.17	0.39	0.17	0.28
KAM HAY COURT	12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KAM LUNG COURT	16	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KING MING COURT	12	0.83	0.50	0.58	0.17	0.75	0.33	0.33	0.50	0.42	0.08	0.33	0.17	0.42	0.25
KING TIN COURT	18	0.56	0.22	0.22	0.56	0.22	0.39	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KAM ON COURT	12	0.50	0.50	0.25	0.25	0.58	0.42	0.33	0.42	0.25	0.25	0.25	0.00	0.25	0.08
KO CHUN COURT	12	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KING SHAN COURT	18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KAI TAI COURT	12	0.08	0.17	0.08	0.08	0.00	0.25	0.08	0.00	0.00	0.00	0.08	0.00	0.08	0.17
KAI TSUI COURT	12	0.00	0.08	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KWAI HONG COURT	12	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KWAI YIN COURT	8	1.13	0.63	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
KAM YING COURT	2	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.50	0.00	0.50	0.00	0.50	0.00	1.00
LOK NGA COURT	18	0.17	0.11	0.28	0.06	0.11	0.17	0.06	0.06	0.06	0.11	0.11	0.28	0.06	0.11
LUNG POON COURT	41	0.22	0.17	0.12	0.10	0.07	0.20	0.24	0.17	0.15	0.05	0.22	0.07	0.17	0.10
LUNG YAN COURT	4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MING NGA COURT	18	0.00	0.00	0.06	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.17	0.06
MAY SHING COURT	18	0.17	0.00	0.06	0.11	0.06	0.00	0.11	0.11	0.22	0.06	0.00	0.11	0.11	0.11
ON KAY COURT	13	0.46	0.62	0.92	0.62	0.23	0.23	1.08	0.69	0.46	1.08	1.23	0.69	0.92	1.00
ON SHING COURT	6	0.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PO HEI COURT	4	2.50	0.75	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PO LAI COURT	6	0.33	0.00	0.00	0.17	0.00	0.00	0.17	0.00	0.17	0.33	0.17	0.33	0.00	0.33
PO NGA COURT	18	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.11	0.00	0.17	0.22
SIU HONG COURT	63	0.17	0.29	0.49	0.30	0.35	0.49	0.43	0.62	0.48	0.46	0.24	0.30	0.33	0.48
SIU HEI COURT	30	0.40	0.53	0.47	0.23	0.47	0.30	0.20	0.70	0.33	0.23	0.43	0.47	0.50	0.23
SIU LUN COURT	8	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
SIU ON COURT	20	0.10	0.30	0.10	0.00	0.10	0.15	0.15	0.15	0.20	0.10	0.15	0.05	0.25	0.05
SIU SHAN COURT	36	0.00	0.06	0.00	0.00	0.00	0.03	0.00	0.03	0.06	0.00	0.00	0.00	0.03	0.00
SHAN TSUI COURT	17	0.12	0.53	0.00	0.06	0.00	0.29	0.06	0.24	0.18	0.06	0.18	0.18	0.12	0.24

BREAKDOWN RATE OF H.A. LIFTS (at HOS)

(Period from April 1994 to May 1995)

COURT	NO. OF LIFT	BREAKDOWN RATE (NO. OF BREAKDOWNS PER LIFT PER MONTH)													
		04/94	05/94	06/94	07/94	08/94	09/94	10/94	11/94	12/94	01/95	02/95	03/95	04/95	05/95
SUI WO COURT	39	0.03	0.00	0.08	0.00	0.00	0.00	0.00	0.00	0.08	0.05	0.05	0.03	0.05	0.00
TUNG CHUN COURT	12	0.00	0.00	0.00	0.00	0.00	0.58	1.00	0.67	0.83	0.42	0.08	0.33	0.33	0.33
TIN MA COURT	30	0.23	0.37	0.30	0.30	0.27	0.40	0.40	0.53	0.40	0.60	0.30	0.07	0.33	0.20
TIN OI COURT	12	0.17	0.25	0.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TSZ ON COURT	6	0.00	0.00	1.33	1.50	1.67	1.33	0.67	0.17	0.00	0.00	0.00	0.00	0.00	0.00
WANG FUK COURT	25	0.44	0.44	0.32	0.36	0.48	0.20	0.24	0.68	0.28	0.20	0.20	0.20	0.08	0.04
YAN SHING COURT	28	0.39	0.14	0.04	0.21	0.07	0.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
YUE FAI COURT	12	0.08	0.00	0.00	0.00	0.08	0.17	0.17	0.08	0.08	0.08	0.25	0.00	0.00	0.00
YEE TSUI COURT	9	0.11	0.00	0.00	0.22	0.11	0.11	0.11	0.22	0.00	0.00	0.00	0.00	0.33	0.00
YEE KOK COURT	14	0.14	0.71	0.21	0.64	0.00	0.29	0.07	0.21	0.14	0.21	0.29	0.07	0.14	0.00
YUET LAI COURT	8	0.13	0.25	0.00	0.00	0.00	0.13	0.13	0.13	0.00	0.00	0.00	0.00	0.00	0.00
YIN LAI COURT	1	0.00	0.00	0.00	0.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00
YU MING COURT	12	0.00	0.08	0.58	1.00	0.17	0.08	0.25	0.83	0.17	0.00	0.00	0.00	0.00	0.00
YUE TIN COURT	21	0.29	0.33	0.48	0.38	0.29	0.24	0.14	0.48	0.48	0.24	0.19	0.29	0.19	0.38
YUE ON COURT	23	0.00	0.04	0.17	0.00	0.04	0.00	0.13	0.13	0.00	0.04	0.00	0.04	0.00	0.09
YUK PO COURT	24	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.13	0.04	0.00	0.00	0.00	0.04	0.00
YAN TSUI COURT	6	0.17	0.00	0.00	0.00	0.17	0.17	0.00	0.00	0.00	0.00	0.17	0.17	0.00	0.00

Annex D

Lift Breakdown Records in the Past three years
on a Contractor Basis (1992-93 to 1994-95)

Year	Type	*Contractor*	*Hitachi*	*Otis*	*GEC*	*Kone*	*Goldstar*	*Schindler*	*Chevalier*	*Shan On*	*Fujitec*	*CKP**	*Ryoden*	*Brightness**
1992-93	Rental	Total no. of lift	379	787	565	384	9	489	335	407	348	38	337	0
		Total no. of B.D.	777	3 968	2 856	2 303	94	2 500	2 017	2 199	2 060	153	1 848	0
		B.D. Rate (per lift per month)	0.17	0.42	0.42	0.50	0.87	0.43	0.50	0.45	0.49	0.34	0.46	NA
	H.O.S.	Total no. of Lift	72	255	125	204	30	31	0	22	75	0	88	0
		Total no. of B.D.	51	809	366	573	236	103	0	53	277	0	179	0
		B.D. Rate (per lift per month)	0.06	0.26	0.24	0.23	0.66	0.28	NA	0.20	0.31	NA	0.71	NA
1993-94	Rental	Total no. of lift	427	798	681	450	12	582	372	413	366	38	307	0
		Total no. of B.D.	860	2 034	2 973	2 331	51	3 122	2 026	2 231	1 899	278	1 559	0
		B.D. Rate (per lift per month)	0.17	0.21	0.36	0.43	0.35	0.45	0.45	0.45	0.43	0.61	0.41	NA
	H.O.S.	Total no. of lift	72	231	172	232	2	81	4	6	75	0	88	0
		Total no. of B.D.	40	737	843	896	2	126	13	28	225	0	213	0
		B.D. Rate (per lift per month)	0.05	0.27	0.41	0.31	0.08	0.13	0.27	0.39	0.25	NA	0.20	NA
1994-95	Rental	Total no. of lift	436	830	702	462	13	581	391	398	378	30	263	8
		Total no. of B.D.	887	3 569	2 855	2 480	64	2 889	2 211	2 178	1 869	286	1 085	37
		B.D. Rate (per lift per month)	0.17	0.36	0.34	0.45	0.41	0.41	0.47	0.46	0.41	0.79	0.34	0.39
	H.O.S.	Total no. of lift	72	225	88	176	2	47	4	6	75	0	100	0
		Total no. of B.D.	33	520	178	650	4	118	14	6	236	0	250	0
		B.D. Rate (per lift per month)	0.04	0.19	0.17	0.31	0.17	0.21	0.29	0.08	0.26	NA	0.21	NA

* For lift maintenance work only B.D. Rate = Breakdown Rate H.O.S = Home Ownership Scheme

Growth Rate of Gross Domestic Product

13. MR HUANG CHEN-YA asked (in Chinese): *According to the economic forecasts released by the Government on 26 May 1995, the growth rate in real terms of the Gross Domestic Product (GDP) this year is estimated to stand at 5.5%. In this connection, will the Government inform this Council:*

(a) of the forecast growth rate for 1995 after discounting the 80% growth rate of expenditure on machinery and equipment in the public sector; and

(b) what percentage the government investment in the new airport project is estimated to represent in the GDP of 1995?

SECRETARY FOR SECURITY: Mr President,

(a) Public sector expenditure on machinery and equipment accounted for only a very small proportion of the GDP. In 1994, this proportion was 0.4%. This component of expenditure is forecast to rise by 80% in real terms in 1995, due to envisaged substantial purchases of capital goods for the government operations and for the infrastructural projects. Coupling these two figures, the direct contribution to GDP growth rate in 1995 brought about by the forecast growth in this particular component is reckoned to be around 0.3 percentage point.

On the face of it, if the growth in this component were completely discounted, the forecast GDP growth rate for 1995 would become around 5.2%. However, there is a further factor involved. A predominant part of the machinery and equipment bought by the Government is known to be imported. Hence, if the growth in this component were to be discounted, the corresponding imports would have to be discounted as well. The net result, after taking into account the import factor, would be that the end effect on the forecast GDP growth rate should be much smaller than 0.3 percentage point, possibly virtually nil.

(b) For the financial year 1995-96, government investment in the airport and related projects, including expenditure from the Capital Works Reserve Fund, and equity injections into the Provisional Airport Authority and the Mass Transit Railway Corporation, amounts to about $32 billion. This represents about 3% of the forecast level of GDP in 1995.

Delayed Provision of Footbridge Cover

14. MR SZETO WAH asked (in Chinese): *At a meeting which I held with the Mass Transit Railway Corporation (MTRC) and the relevant Government departments regarding the provision of cover for the two footbridges connecting Lower Ngau Tau Kok Estate and Kowloon Bay MTR station, the MTRC agreed to bear part of the building costs of the cover while the departments concerned undertook to carry out the building work and set the dates for the commencement and completion of the project. However, there has been no sign of any work being carried out long after the work was due to commence. I have enquired about the progress and been given a new commencement date. In this connection, will the Government inform this Council of:*

(a) the reasons for the delay of the project;

(b) the exact date for the commencement of the work; and

(c) the date of completion of the project?

SECRETARY FOR TRANSPORT: Mr President,

(a) When the Highways Department first drew up the works programme for the provision of covers on the two footbridges, it was envisaged that construction could be undertaken by their term maintenance contractor. However, in developing the detailed design, it became clear that the contractual arrangements would need to take into account the requirement to provide adequate pedestrian facilities during construction, as well as safety measures to protect both pedestrians using the footbridges and the traffic below. Given the scope of the project, it was decided that it would be more appropriate to invite tenders so that the necessary contract conditions could be clearly specified. This has resulted in some delay. However, the tender procedures have now been completed.

(b) The scheduled date for commencement of works is 31 July 1995.

(c) It is expected that the project will be completed by the end of January 1996.

Promotion of Computer Knowledge

15. MR JAMES TO asked (in Chinese): *With information technology becoming more readily available, industry and commerce nowadays rely heavily on computers in the conducts of business, and computer networks have also become important person-to-person, company-to-company and international communication channels. In this regard, will the Government inform this Council:*

(a) what measures it has taken to promote computer knowledge and its usage, particularly in educating the public how to access and use the information available from databases worldwide through computer networks; and

(b) how much resources it plans to allocate for enhancing the knowledge of computer networks and its usage among the young people, so as to keep them abreast of the development of present-day society and have more opportunities to communicate with the international community?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) Hong Kong enjoys one of the most advanced and sophisticated telecommunications networks in the world. It can support the most advanced communication and computer services available, allowing companies and the general public to have access to databases worldwide. To promote the knowledge of computer and encourage its usage among the public, the Government has set an example by using computer networks in its services.

Many government departments have in recent years taken active steps to automate their operations, including the use of computer communication networks and access to databases where particular applications require them. Where such applications have interfaces with the public, the departments concerned will publish information on the availability of these facilities and their usage. Examples are:

- the bilingual laws information system which allows private legal practitioners access to Hong Kong ordinances, selected constitutional documents and subsidiary legislation using the information/law service provided by a local service company;

- a Land Registry Direct Access Service which enables customers to make, from their offices, on-line searches of the computerized land registers;

- access to the Regional Council's library catalogue through telephone lines (scheduled to be available by the end of 1995);

- interactive telephone response systems, implemented in several government departments, which allow the public to make enquiries to databases of departments concerned and to obtain various application forms.

In addition to the above, through Tradelink, a joint venture company formed between the Government and the private sector, a Community Electronic Trading Service will be launched in 1996. The objective of this service is to promote the use of Electronic Data Interchange and the concept of electronic commerce by over 100 000 small and medium size businesses in Hong Kong.

(b) Over the past decade, the Government has invested over $200 million in the school education service to help enhance the knowledge of computer networks and its usage among young people. Of this amount, about $110 million is being spent between 1993-94 and 1995-96 on providing every student in a computer practical class access to his own computer.

The subject of computer literacy, which covers the basic idea of computer networking, is taught in Secondary I to III classes. More computer subjects, which cover various types of networks and their operation, are provided in senior secondary and Sixth Form classes. Students gain hands-on experience in accessing computer networks in the sixth form computer classes.

In 1992, the Education Department launched a Sixth Form Computer Subjects Project to help schools introduce the computer subject at Advanced-Supplementary and Advanced levels. Each school joining this project has been provided with additional computer facilities including 31 sets of computers, a Modulator/Demodulator (MODEM) and other relevant hardware and software for accessing computer networks. So far, 77 schools have joined the project and another 48 schools will join this September.

Outside the curriculum, students of 23 schools have access to computer networks through participating in programmes provided by the City University of Hong Kong and the Chinese University of Hong Kong. Through these programmes, students are able to practise computer communications skills with other users of the networks, both local and overseas.

Local tertiary and technical education institutions also offer computer science degree and sub-degree programmes as well as computer courses of various levels for students of other disciplines. Some of these institutions have also established extensive computer networking facilities for general use by students in campus.

Potentially Hazardous Installations

16. REV FUNG CHI-WOOD asked (in Chinese): *Up to December 1993, the hazard assessments, planning studies and action plans in respect of 11 potentially hazardous installations (PHIs) in the territory had not yet been completed. In this connection, will the Government inform this Council:*

(a) whether any PHIs other than the 11 mentioned above have been built since then, if so, how many;

(b) of the 11 PHIs and new PHIs (if any), how many have gone through the three processes mentioned above; and when will the remaining PHIs be expected to complete these processes; and

(c) whether there are any PHIs which require certain action plans such as the provision of additional safety devices or relocation?

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

(a) Since December 1993, no new PHI has been built or put into operation.

(b) Of the 11 PHIs referred in the question, the Shell Industrial Liquefied Petroleum Gas (LPG) Store in Sham Tseng has completed the hazard assessment (HA), planning study (PS) and action plan (AP). Of the remaining 10 PHIs, HA, PS and AP are in process, and are expected to be completed later this year or in early 1996.

(c) In addition to the above, three PHIs (Government explosives depot on Stonecutters Island, LPG store in Butterfly Estate and LPG store in Kwong Fuk Estate) will be relocated. Another PHI (LPG/air mixing plant in Tuen Mun Area 16) will be de-commissioned in September 1995.

Parent-School Co-operation and Communication

17. MR TIK CHI-YUEN asked (in Chinese): *As more emphasis is being placed on co-operation and communication between parents and schools, teachers often arrange gatherings with parents and invite them to participate in extra-curricular activities as well. In this connection, will the Government inform this Council whether the current pre-service and in-service training provided to teachers includes courses on training teachers how to enhance cooperation and communication with parents; if so, what the details are; if not, what the reasons are and whether the Government has any plan to organize such courses in the near future?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, a wide range of topics/modules relating to communication and co-operation between parents and schools are included in the current pre-service and in-service training courses. Details are as follows:

(a) *Pre-service training*

Course(s)	*Topic(s)*
Full-time Bachelor of Education Programme (The Chinese University of Hong Kong)	- Guidance Programmes for Students with Learning Difficulties - Introduction to Guidance and Counselling in - Primary Schools - Home, School and Community Relations - Sex Education in Primary Schools
Full-time Bachelor of Education Programme (University of Hong Kong)	- Children with learning difficulties
Certificate of Education Programme (Hong Kong Institute of Education)	- Role of the Teacher - Fundamental Principles of Education - Understanding the Hong Kong Educational Context - Human Development (Childhood and Adolescence) - Classroom Teaching Skills (interactive and inter-personal skills) - Developing and Maintaining Productive Human Relationship in School - Human Dynamics - Culture and Society - Personal Social Education - Life Skills

(b) *In-service training*

Course(s)		*Topic(s)*
Part-time Bachelor of Education Programme (The Chinese University of Hong Kong)	-	Guidance Programmes for Students with Learning Difficulties
	-	Introduction to Guidance and Counselling
	-	Primary Schools
	-	Home, School and Community Relations
	-	Sex Education in Primary Schools
Part-time Bachelor of Education Programme (University of Hong Kong)	-	Children with learning difficulties
	-	Supports systems
	-	Early childhood special education
	-	Giftedness
	-	Transition from school
	-	The teacher as manager
	-	Schools and the family
Bachelor of Education In-service Programme (Hong Kong Baptist University)	-	Home-School Relationship
	-	Parent Education
Bachelor of Education Programme (Open Learning Institute of Hong Kong)	-	Child Development and Classroom Learning
	-	Education and Society
Initial and refresher teacher training courses for in-service teachers (Hong Kong Institute of Education)	-	Role of the Teacher
	-	Fundamental Principles of Education
	-	Understanding the Hong Kong Educational Context
	-	Human Development (Childhood and Adolescence)
	-	Classroom Teaching Skills (interactive and inter personal skills)
	-	Developing and Maintaining Productive Human
	-	Relationship in School
	-	Human Dynamics
	-	Culture and Society
	-	Personal Social Education
	-	Life Skills

Course(s)		*Topic(s)*
Certificate Courses for Guidance Teachers and for Discipline Teachers (Education Department)	-	Home school relationships and co-operation
	-	Consultative services for parents and teachers
	-	Communicating and interviewing parents
	-	Helping parents develop positive attitudes and basic skills in disciplining their children
	-	Positive communication between parents and the school
Refresher Training Course (Graduate) and Principal Graduate Master/Mistress Course (Education Department)	-	Home School Co-operation
School Administration courses for school heads and senior teacher (Education Department)	-	Different roles of teachers and heads
	-	Inter-personal communications
	-	Handling complaints
	-	Working with people
Seminars/Teacher Development Sessions/ Workshops run by the Education Department	-	Understanding students from single parent families (for secondary school teachers)
	-	Working with parents (for secondary school teachers)
	-	Orientation programme for Primary I pupils and their parents
		Effective communication with parents (for primar school teachers)

Delivery of Legal Services

18. MISS EMILY LAU asked: *The Consultation Paper on Legal Services issued by the Attorney General Chambers (AGC) does not appear to have dealt with the interface between the Attorney General's Chambers, the Judiciary, the Legal Aid Department and the legal profession, which interface is a key factor in ensuring that legal services are properly co-ordinated and managed. In view of this, will the Administration inform this Council whether there are plans to review the current arrangement in order to enhance the effectiveness and efficiency of the delivery of legal services?*

ATTORNEY GENERAL: Mr President, at present, there are many channels of communication through which issues requiring co-ordination can be discussed. These include:

(1) Court Users Committees in respect of civil proceedings, criminal proceedings and proceedings before tribunals;

(2) the Standing Committee on Legal Aid;

(3) the Judicial Studies Board;

(4) the Legal Practitioners' Liaison Committee;

(5) ad hoc working parties and committees, such as the Working Party on Judiciary Administration, the committee on Computer Assisted Listing, and the Steering Committee on the Use of Chinese in Courts;

(6) consultation by the Administration on proposed new legislation affecting the legal system; and

(7) informal contacts between the institutions referred to in the question.

These many channels of communication are considered to be an effective way of co-ordinating legal services. If new problems emerge, they can either be dealt with through existing channels or by creating new committees or working parties. There are no plans to review these arrangements.

Premature Retirement of Senior Civil Servants

19. DR LAM KUI-CHUN asked (in Chinese): *According to the information provided by the Civil Service Branch, 70% of the civil servants who retired prematurely in 1994/95, did so for reason of emigration. In this connection, will the Government inform this Council whether it has information to show that the monthly pension received by a senior civil servant at the assistant directorate level who retires with a service period of between 20 to 25 years is higher than the monthly remuneration of comparable senior civil servants in the major destinations of the territory's emigrants (such as United States, Australia and Canada), resulting in more senior civil servants opting for premature retirement?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, a senior civil servant at the assistant director level, who retires prematurely under the Old Pension Scheme after 20 to 25 years of service, could receive a commuted pension gratuity of $1.7 million or $2.1 million and a monthly pension of $30,000 or $37,000 respectively if he decided to commute the maximum 25% allowable.

We do not have comparative rank and salary equivalent statistics for civil servants in the United States, Canada and Australia and we are therefore unable to provide any comparison between Hong Kong Civil Service pensions and salaries in the countries requested.

We do not believe that there is any correlation between the pensions of retired senior Hong Kong civil servants and the pay of senior civil servants in these countries nor that this is a factor influencing premature retirements from Hong Kong. In 1994-95, only five directorate officers' premature retirement was approved on migration/family separation grounds.

Council for the AIDS Trust Fund

20. DR CONRAD LAM asked (in Chinese): *Regarding the operation of the Council for the AIDS Trust Fund, will the Government inform this Council:*

(a) whether the Council for the AIDS Trust Fund will consult the Advisory Council on AIDS (ACA) when it considers the priority of each project, bearing in mind that resources are limited and that one of the terms of reference of the ACA is to advise the Government on the policy relating to the control and prevention of AIDS; if not, why not;

(b) of the procedures adopted, and the time required, by the Council for the AIDS Trust Fund for examining and approving applications for funds; and

(c) whether the Government will consider appointing ACA members into the Council for the AIDS Trust Fund, so as to enhance communication between the two Councils; if so, when such arrangement will be made; if not, why not?

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Council for the AIDS Trust Fund is appointed by the Governor. The Secretary for Health and Welfare is a member of the Council for the AIDS Trust Fund as well as receiving the advice of, and being represented on, the Advisory Council on AIDS (ACA). the Council for the AIDS Trust Fund considers the disbursement of ex gratia payments and project grants on the recommendation of its three subcommittees, each of which has a member who is also a member of the ACA. Whilst we believe that the present interface between the ACA and the Council for the AIDS Trust Fund is satisfactory, we shall continue to monitor the situation and will consider strengthening the relationship between the two bodies as appropriate.

The procedures adopted by the Council for the AIDS Trust Fund in dealing with applications have all along been intended to allow the maximum flexibility and responsiveness. Where urgent applications are received and a meeting cannot be held, such applications are dealt with wherever possible by circulation. The time required for examination and approval thus varies depending on the urgency of the application. However, generally at least one month is required from receipt of an application to approval and disbursement of the funds.

We are currently reviewing the arrangements for applications. Whilst the present flexibility is well-intentioned, it often poses a strain on the secretariat. Feedback from applicants suggests that many would prefer a more rigid and well-publicized schedule of meetings with clear deadlines for applications.

MOTIONS

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE CHIEF SECRETARY moved the following motion:

"That with effect from a day to be appointed by the Governor by notice in the Gazette -

(1) the functions of payee exercisable by the Registrar of the Supreme Court by virtue of -

(a) section 23 of the Bills of Sale Ordinance (Cap. 20);

(b) regulation 2 of the Bills of Sale (Fees) Regulations (Cap. 20 sub. leg.);

(c) sections 5(2) and 29(2) of the Legal Practitioners Ordinance (Cap. 159);

(d) rules 4(1) and 8(1) of the Admission and Registration Rules (Cap. 159 sub. leg.); and

(e) Schedules 1 and 3 pursuant to rule 3 of the Legal Practitioners (Fees) Rules (Cap. 159 sub. leg.),

be transferred to the Judiciary Administrator;

(2) section 23 of the Bills of Sale Ordinance (Cap. 20) be amended by repealing "Registrar" and substituting "Judiciary Administrator";

(3) regulation 2 of the Bills of Sale (Fees) Regulations (Cap. 20 sub. leg.) be amended by repealing "Registrar" where it first appears and substituting "Judiciary Administrator";

(4) sections 5(2) and 29(2) of the Legal Practitioners Ordinance (Cap. 159) be amended by repealing "Registrar" where it last appears and substituting "Judiciary Administrator";

(5) rules 4(1) and 8(1) of the Admission and Registration Rules (Cap. 159 sub. leg.) be amended by repealing "Registrar" where it last appears and substituting "Judiciary Administrator";

(6) items 1, 3 and 5 in Schedule 1 to the Legal Practitioners (Fees) Rules (Cap. 159 sub. leg.) and items 2 and 3 in Schedule 3 to those Rules be amended by repealing "Registrar" and substituting "Judiciary Administrator";

(7) the functions exercisable by the Registrar of the Supreme Court by virtue of regulation 2 of the Control of Obscene and Indecent Articles Regulations (Cap. 390 sub. leg.) be transferred to the Judiciary Administrator;

(8) regulation 2 of the Control of Obscene and Indecent Articles Regulations (Cap. 390 sub. leg.) be amended by repealing "Registrar" and substituting "Judiciary Administrator"."

She said: Mr President, I move the motion standing in my name on the Order Paper.

In July 1994, Members approved the creation of one permanent post of Judiciary Administrator at D8 level, to take over from the Registrar, Supreme Court as the controlling officer and administrative head of the Judiciary. As Members know, Ms Alice TAI Yuen-ying has taken up the appointment as the Judiciary Administrator.

Consequent upon the appointment of the Judiciary Administrator, it is necessary to transfer to her the former functions of the Registrar in connection with fees and charges and their proper collection, as provided for in section 23 of the Bills of Sale Ordinance; regulation 2 of the Bills of Sale (Fees) Regulations; section 5(2) and 29(2) of the Legal Practitioners Ordinance; rules 4(1) and 8(1) of the Admission and Registration Rules; items 1, 3 and 5 in Schedule 1 and items 2 and 3 in Schedule 3 to the Legal Practitioners (Fees) Rules; and regulation 2 of the Control of Obscene and Indecent Articles Regulations.

The transfer of functions in these Ordinances, Regulations and Rules now requires the approval of this Council by resolution, in accordance with section 54A of the Interpretation and General Clauses Ordinance.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE CHIEF SECRETARY moved the following motion:

> "That the Legal Aid in Criminal Cases (Amendment) (No. 2) Rules 1995, made by the Chief Justice on 10 July 1995, be approved."

She said: Mr President, I move the motion standing in my name on the Order Paper.

On 11 January, the Administration issued to Members a Legislative Council Brief on the legal aid legislation. Members were informed that the Governor in Council had agreed that the Legal Aid in Criminal Cases (Amendment) (No. 2) Rules 1995 should be made by the Chief Justice after the Legal Aid (Amendment) Bill 1995 had passed into law. Subsequently, the Bill was passed by this Council on 14 June and received the assent of the Governor on 15 June, and the Chief Justice made the Legal Aid in Criminal Cases (Amendment) (No. 2) Rules 1995 on 10 July.

As explained in the Legislative Council Brief we issued to Members on 11 January, the Legal Aid in Criminal Cases (No. 2) Rules 1995 apply to the provision of criminal legal aid by the Legal Aid Department at the District Court level and above. These provide that this Director of Legal Aid may charge the new contribution rate as recommended by the Working Group which conducted a comprehensive legal aid policy review between February 1992 and July 1994, and they also clarify the effect of the issue of a legal aid certificate. These Rules were put to the Bills Committee to study the Legal Aid (Amendment) Bill 1995 and have had the support of the Members of the Bills Committee.

In accordance with sections 9 and 9A of the Criminal Procedure Ordinance, the Chief Justice has made the Legal Aid in Criminal Cases (Amendment) (No. 2) Rules 1995. These Rules now require the approval of this Council by resolution.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE ATTORNEY GENERAL moved the following motion:

"That the Criminal Procedure (Record of Bail Proceedings) Rules, made by the Chief Justice on 6 July 1995, be approved."

He said: Mr President, I move the resolution standing in my name in the Order Paper. The resolution is to the effect that the Criminal Procedure (Record of Bail Proceedings) Rules, made by the Chief Justice on 6 July 1995, be approved.

The Criminal Procedure (Amendment) Ordinance 1994 introduced a statutory right to bail and incorporated the law of bail into a single, comprehensive code. The Ordinance included a new provision requiring a record of all bail proceedings to be maintained in such manner and form as may be prescribed by rules and orders, and the record to be made available to an accused person and to counsel and solicitors to such extent and on such terms as may be prescribed.

The Chief Justice has now made rules providing for those matters. The rules provide that the record of bail proceedings should consist of a summary of all matters relevant to the proceedings, including any application for bail, the grounds of such application, the grounds of any objection to bail, the decision of the court, and the reasons for that decision. The rules also provide that the rules may be kept wholly or partly by computer, and that an

extract of the record, in the form prescribed in the Schedule to the rules, shall be made available to the accused person and to counsel and solicitors engaged in the proceedings.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

TRADING FUNDS ORDINANCE

THE SECRETARY FOR WORKS moved the following motion:

"That -

(a) the assets comprising the public sewerage systems and sewage disposal facilities under the control of the Director of Drainage Services on 31 March 1995 as set out in the document titled "Inventory of Public Sewerage Systems and Sewage Disposal Facilities as at 31 March 1995" kept by the Director of Drainage Services ("the assets") be appropriated to the Sewage Services Trading Fund established by resolution of this Council on 9 March 1994 (L.N. 155 of 1994);

(b) the assets shall not be disposed of unless the approval of the Financial Secretary has first been obtained."

He said: Mr President, I move the motion standing in my name in the Order Paper.

On 11 March last year, in accordance with sections 3, 4 and 6 of the Trading Funds Ordinance, the Sewage Services Trading Fund was established in the Drainage Services Department.

The Sewage Services Trading Fund manages and accounts for the operation of sewage services. This involves a number of key tasks, in particular, the timely implementation of the High Priority Programme of capital works urgently needed to reduce pollution in the Harbour, and the administration of the new charges to cover the cost of operating sewage services.

Following the passing into law of the charging scheme for sewage services on 1 April this year, the Sewage Services Trading Fund became responsible for the collection of charges and the proper use of the revenue to fund the operating costs of providing sewage services. These services include the maintenance and operation of public sewerage systems and sewage disposal facilities, as well as the billing and collection of charges for sewage services levied in accordance with the Sewage Services Ordinance.

For the Sewage Services Trading Fund to be fully functional under the provisions of the Trading Funds Ordinance and in line with the trading fund concept, it is necessary for the Director of Drainage Services as general manager of the trading fund to have stewardship of the public sewerage systems and sewage disposal facilities. This will allow the general manager to maximize the efficiency of asset management. It is to this end that I move this resolution to appropriate to the Sewage Services Trading Fund those assets which were operational at the time of the introduction of the scheme of charging for sewage services.

A detailed inventory of the assets to be appropriated is held by the Director of Drainage Services in his capacity as the general manager of the Sewage Services Trading Fund under section 6(2) of the Trading Funds Ordinance. This inventory is described in the resolution, which also provides that the assets cannot be disposed of without the prior approval of the Financial Secretary.

In future years, additional sewerage assets will be funded by the Government from the Capital Works Reserve Fund. I will introduce, on an annual basis, further resolutions for approval by this Council to appropriate these assets at cost when they are commissioned. These assets will then be depreciated in accordance with normal practice, but only where the assets are to be replaced out of the resources of the trading fund.

With the appropriation of assets, the Sewage Services Trading Fund will be on a firm footing with the general manager being able to provide an efficient and effective service to the public, government departments and other public bodies. I shall continue to report regularly to this Council on the operation of the trading fund.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR HOUSING moved the following motion:

"That the Housing Ordinance (Cap. 283) be amended -

(a) in section 26(1) by repealing "of $20,000" and substituting "at level 5";

(b) in section 26 (2) by repealing "$200,000" and substituting "$500,000";

(c) in section 27 by repealing "of $10,000" and substituting "at level 4";

(d) in section 27A by repealing "$200,000" and substituting "$500,000";

(e) in section 28(1) by repealing "of $2,000" and substituting "at level 3";

(f) in section 28(2) by repealing "of $2,000" and substituting "at level 3";

(g) in section 29 by repealing "of $2,000" and substituting "at level 3".

He said: Mr President, I move the motion standing in my name in the Order Paper, which seeks approval for increasing the fines in the Housing Ordinance to restore their real value.

Section 100A(1) of the Interpretation and General Clauses Ordinance provides that the Legislative Council may, by resolution, amend any ordinance so as to increase the amount of any fine specified in that ordinance.

The Criminal Procedure (Amendment) (No. 2) Ordinance last year has introduced a standard scale of fines, with six levels, for statutory penalties not exceeding $100,000. These levels of fine may be increased from time to time by a single order by the Governor in Council to reflect the effect of inflation in order to preserve the deterrent effect of the penalties.

Since the standard scale has not taken into account past inflation, a review of existing fines under the Housing Ordinance is necessary. We have completed the review. We now propose to increase the fines under five sections, namely, 26(1), 27, 28(1), 28(2) and 29, to the appropriate levels on the standard scale as indicated. Two other sections, namely, 26(2) and 27A, fall outside the standard scale. They deal with the more serious offences of giving false information in the purchase of subsidized home ownership flats and their unlawful alienation. We propose to increase the fines absolutely from $200,000 to $500,000, also to reflect the effect of inflation up to 1994.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

PHARMACY AND POISONS ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE moved the following motion:

> "That the Pharmacy and Poisons (Amendment) (No. 2) Regulation 1995, made by the Pharmacy and Poisons Board on 26 June 1995, be approved."

She said: Mr President, I move the motion standing in my name in the Order Paper that the Pharmacy and Poisons (Amendment) (No. 2) Regulation 1995 be approved.

The Pharmacy and Poisons Ordinance and its subsidiary legislation regulate, inter alia, the registration of pharmaceutical products.

The amendment Regulation, which was made by the Pharmacy and Poisons Board on 26 June 1995, seeks to clarify the procedures and requirements involved in changing the particulars of registered pharmaceutical products.

Currently, details such as the names and composition of pharmaceutical products are particularly required to be registered before these products are permitted to be sold or distributed. If approved, the amendment Regulation will make it clear that change of particulars of registered pharmaceutical products will be permitted only if the change does not affect the safety, efficacy and quality and does not involve those particulars which affect the identity of the products. The change, therefore, needs to be approved before it can be effected and before the product with changed particulars can be sold or distributed.

Such an arrangement is important for the proper control of pharmaceutical products because any change made to the particulars may affect the nature of the pharmaceutical products.

The amendment Regulation also seeks to add the identity card number, of a purchaser of pharmaceutical products including cough medicines as one of the required entries in the poisons book recording sales.

The purpose of this amendment is to facilitate the keeping of a fuller record when certain products such as cough medicines are sold. We believe that this arrangement will also help to discourage drug abuse by requiring potential drug abusers to disclose their identify card numbers.

If the amendment is approved, we will ensure through appropriate publicity arrangements that the public, the profession and pharmaceutical associations concerned are aware of this new requirement and its scope, as well as the reasons for its introduction.

We will also continue to liaise with the pharmaceutical association over relevant details of this new requirement.

Mr President, I beg to move.

Question on the motion proposed.

DR LAM KUI-CHUN: Mr President, at a time when drug abuse is rampant, a motion to reduce accessability to drug abuse is welcomed. However, if promoted in full hue and cry without taking heed of the fall-out effect of the livelihood of practising pharmacists, this motion can be overdone. The problem lies in long selected inclusion of the entire Part I, First Schedule of the Poisons List under the purview of the motion. While only a tiny part of the drugs in Part I, Schedule I is prone to abuse, the motion requires registration of a purchaser's identity card number with each transaction for all 67 drugs in the Schedule.

Some of the non-abuse drugs include hyocine butyl-bromide which is used for abdominal pain. One never goes high on this drug. Its overdose results in blurring of vision and dryness of mouth, a very unpleasant experience. Nobody will abuse a drug like this. Another one, Faktu, is a small meltable suppository used for haemorrhoids. It has no systemic action on the body. To abuse a meltable suppository one has to be really desperate even if he is gay.

The Administration should understand that a man in the street in Hong Kong at present is reluctant to show his identity card unless it is to a person with obvious authority such as a police officer. The practising pharmacist in a private pharmacy is generally considered by the public as only a helpful store-keeper. He has great difficulty convincing his client to produce his identity card. I am told that when requested to even sign their names in a record book for receipt of drugs, some customers simply walk off. Sale of many drugs in Part I, First Schedule of the Poisons List forms the bread and butter of the practising pharmacist. It is important that a motion aims to reduce accessability of abused drugs does not hit the non-abuse drugs which form the private pharmacist's livelihood.

I have already communicated to the Government that this motion should be restricted to abusable drugs. Before separating the abusable form the non-abusable drugs putting forth this motion to this Council is premature. I urge the Administration to honour its pledge in the third paragraph of the Secretary's motion, that is, to continue to liaise the pharmaceutical associations over the relevant details of the new requirement.

I have suggested to the Government and the practising pharmacists that for the new requirement, Part I, First Schedule be separated into two lists and to restrict registration of identity card numbers to that which contains only abusable drugs.

Mr President, with that reservation, I support the motion.

MR MICHAEL HO (in Cantonese): Mr President, I support the motion which seeks to tighten up the control of drugs. However, while the stepping-up of control is welcomed, I wish to point out that in the initial consultation, the Government only approached the Pharmacy and Poisons Board for its views. No full and effective consultation of the people in the pharmacy profession was made. What I mean by "effective" is that there are only three pharmacists on the Pharmacy and Poisons Board while many practising pharmacists, including the other several professional organizations of the profession, were not given any chance to be consulted before the Bill was presented for discussion. We can see from the Government's paper that the proposal concerned has already obtained the support and endorsement of the Pharmacy and Poisons Board. In fact, when I learned about this, considerable strong response was expressed within the profession that when the Pharmacy and Poisons Board was consulted, the views of the pharmacy profession were obviously not fully and effectively collected.

The motion consists of two parts. The first part requires that pharmacists install certain receptacles in their dispensaries, in which Part I poisons should be conspicuously locked up. In this connection, strong views were expressed by the profession. I wish to convey my thanks to the officers of the Health and Welfare Branch for their prompt action by holding a meeting with the pharmacy organizations a few days after receipt of their views, at which some operational issues were solved. They were indeed ready to accept advice. The second part is about the registration of the identity card numbers of people who purchase Part I poisons from pharmacists. As far as this is concerned, the pharmacy profession hopes that the Government will first of all strengthen publicity, because the lack of adequate publicity would likely give rise to clashes between the pharmacists and the purchasers. If the public were not aware of the legal requirement, clashes would probably be inevitable.

At the same time, as Dr the Honourable LAM Kui-chun just mentioned, there are in fact many non-abusable drugs in Part I poisons. To include these drugs in the schedule is by no means our major motive in putting forth this motion. In so doing, I feel we have virtually done something which is unnecessary. It would also bring about some additional undue procedures to the profession in the sale of drugs.

Mr President, I sincerely hope that after the motion is passed, the Government would as soon as possible confirm the many operational details with the pharmacy profession before the legislation formally comes into effect, so that the motion will bring about the desired effect without creating any undue procedures.

Lastly, Mr President, I wish to put forth a comment and that is, I in fact do not believe that registration of the purchasers' identity card numbers would really deter drug abuse. Nevertheless, Mr President, since the Government has put up such a proposal, I feel we should not raise objection and I too, am willing to support it so that it may be implemented. However, I do hope that the Government would conduct a comprehensive review soon to ascertain the effect. I also hope that the Government would review the list of Part I poisons and the schedules of the Pharmacy and Poisons Ordinance.

These are my remarks.

MR STEVEN POON: Mr President, I would like to declare that my wife is a registered pharmacist. She may or indeed may not benefit from the motion.

Thank you.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I thank Dr the Honourable LAM Kui-chun and the Honourable Michael HO for their comments. I am aware that the Practising Pharmacists Association of Hong Kong has expressed the view that the requirement covers two broad ranges of substances. Having reviewed a number of counter proposals, I am satisfied that the proposal as it stands in the Order Paper is appropriate in the context of current exercise. However, in view of the concerns expressed by the Honourable Members, I will ask the Pharmacy and Poisons Board to review the list of substances in the First Schedule. And I reiterate my earlier assurance that we will continue to liaise closely with the Practising Pharmacists Association over details of the amendment Regulation and will arrange suitable publicity to explain the reasons for the amendment Regulation.

Question on the motion put and agreed to.

SECURITY AND GUARDING SERVICES ORDINANCE

THE SECRETARY FOR SECURITY moved the following motion:

"That the notice, as annexed to this Motion, which specifies the criteria that a person must satisfy before the Commissioner of Police may, under section 14 of the Security and Guarding Services Ordinance, issue to him a permit to do security work, be approved under section 6(3) of that Ordinance.

SECURITY AND GUADING SERVICES ORDINANCE (Chapter 460)

(Notice under section 6(1)(b)(i))

Criteria for Issuing a Security Personnel Permit

Take notice that, pursuant to section 6(1)(b)(i) of the Security and Guarding Services Ordinance, the Security and Guarding Services Industry Authority hereby specifies the following criteria for issuing a permit under the said Ordinance. The criteria specified below in relation to a particular type of security work must be satisfied by a person before the Commissioner of Police may issue to him a permit under the said Ordinance to do that type of security work.

(A) Guarding Work Restricted to a 'Single Private Residential Building' (See Note 1)

(a) Age

(i) The applicant must be 18 years of age and above on the date of application.

(ii) If the applicant or permit holder is 70* years of age or above, he/she must produce a medical certificate (see Note 2) issued by a registered medical practitioner to certify that he/she is fit to undertake the duties required every two years.

(b)	Fitness	The applicant must be of good health and is physically fit to perform the job. A medical certificate (see Note 2) issued by a registered medical practitioner may be required if the Commissioner of Police reasonably considers necessary.
(c)	Good Character	The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.
(d)	Certification of Employment by Prospective Employer	On his/her first application for a permit, the applicant must produce a a letter of employment from the prospective employer (see Note 4).

* With effect from 1.6.2001, this age criterion will be lowered to 65.

(B) Guarding Work for all Types of Premises and Properties

(a)	Age	The applicant must be 18 years of age or above. The upper age limit for engaging in this type of security work is 65 years.
(b)	Fitness	The applicant must be of good health and physically fit to perform the job. A medical certificate (see Note 2) issued by a registered medical practitioner may be required if the Commissioner of Police reasonably considers necessary.
(c)	Good Character	The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.
(d)	Certification of Employment by Prospective Employer	On his/her first application for a permit, the applicant must produce a letter of employment from the prospective employer (see Note 4).

(C) Guarding Work, the Performance of which Requires the Carrying of Arms and Ammunition

(a)	Age	The applicant must be 18 years of age or above. The upper age limit for engaging in this type of security work is 55 years.
(b)	Fitness	The applicant must be of good health and physically fit to perform the job. A medical certificate (see Note 2) issued by a registered medical practitioner may be required if the Commissioner of Police reasonably considers necessary.
(c)	Good Character	The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.
(d)	Certification of Employment by Prospective Employer	On his/her first application for a permit, the applicant must produce a letter of employment from the prospective employer (see Note 4).
(e)	Arms Licence	The applicant must possess a valid arms licence for the arms used on duty issued by the Commissioner of Police.

(D) Installation, Maintenance and/or Repairing of a Security Device and/or Designing (for any particular premises or place) a System Incorporating a Security Device

(a)	Age	The applicant must be 18 years of age or above.
(b)	Proficiency	The applicant shall have received appropriate training or can demonstrate the capability and proficiency (see Note 5) in the skills/technique required in performing his/her job.

(c) Good Character — The applicant must be of good character having regard to his employment history, criminal records (see Note 3) and other relevant factors.

(d) Certification of Employment by Prospective Employer — On his/her first application for a permit, the applicant must produce a letter of employment from the prospective employer (see Note 4).

Notes

(1) A single private residential building means an independent structure:

(a) covered by a roof and enclosed by walls extending from the foundation to the roof; and

(b) used substantially for private residential purpose; and

(c) with only one main access point.

(2) A standard medical certificate form is available from the Licensing Office of the Royal Hong Kong Police Force. Physical items subject to medical check include eyesight, mental state, balance and co-ordination, and hearing.

(3) The Commissioner of Police shall consider the nature of the criminal offence committed by the applicant and may refer the application to the Security and Guarding Services Industry Authority for decision. No person who is convicted of a criminal offence will normally be granted a permit if he/she is:

(a) within 2 years of release from a term of imprisonment; or

(b) on probation or bound over.

(4) All watchmen currently registered under the Watchmen Ordinance are exempted from this requirement.

(5) The applicant shall attach copies of certificate of relevant technical training, or record of employment showing his/her experience in this type of security work.

Mrs Miriam LAU Kin-yee
Chairman
for and on behalf of the Security
and Guarding Services Industry Authority"

He said: Mr President, I move the motion standing in my name on the Order paper.

Under section 6(3) of the Security and Guarding Services Ordinance, the criteria that a person must satisfy before the Commissioner of Police may issue a permit to him for engaging in security work, require the approval of this Council.

Mr President, the criteria for the permit are determined by an independent Security and Guarding Services Industry Authority set up under the Ordinance. The Authority, which is chaired by the Honourable Mrs Miriam LAU, has set out four categories of security work for the purpose of issuing permits, namely:

(a) guarding work restricted to "Single Private Residential Buildings" only;

(b) guarding work for all types of premises and properties;

(c) guarding work, the performance of which requires the carrying of arms and ammunition; and

(d) the installation, maintenance and repairing of a security device and designing a security device system for any particular premises or place.

The Authority has ensured that all of the proposed criteria ensure that the person is fit and proper for the relevant type of security work. The criteria include age, good health, good character, proficiency in the job, the requirement to hold a valid arms licence and recommendations by prospective employers. Different criteria may apply to different types of security work.

Members may recall that last year, during discussion of the Security and Guarding Services Bill at the Bills Committee of this Council, some Members were concerned that if a fixed upper age limit was imposed on all permit applicants, a considerable number of elderly watchmen would lose their jobs. Moreover, some Members argued that, since the responsibilities of watchmen in "single private residential buildings" were less demanding, in physical terms, than those in large housing and commercial complexes or industrial buildings, the former type of watchmen should not be subject to a fixed upper age limit. To address Members' concern about the possible difficulties facing elderly watchmen if an

upper age limit was imposed across the board, and given the generally sedentary nature of security duties in single private residential buildings, we agreed to propose to the Authority that there should not be a fixed age limit for security personnel working in such buildings. Rather, when such security personnel reach a certain age, they should be required to pass a regular medical examination to show that they are still fit to undertake their duties.

The Authority fully recognizes the concern of the Bills Committee about the impact of an upper age limit for security personnel. On the other hand, it is mindful of the need to upgrade the standard of security services. Taking into account these two factors, the Authority now proposes that, as an exception, there should not be a fixed upper age limit for security personnel working in "single private residential buildings". However, when they reach the age of 70, they must pass a biennial medical examination in order to continue to work as watchmen in these buildings. Actually, the Authority considers that 65 years should be the appropriate age criterion for a medical examination in order to upgrade the service standard of this category of security work. However, in order to minimize the impact on the employment prospect of existing elderly watchmen in single private residential buildings, the Authority proposes the age criterion of 70 as a transitional arrangement, and lowering it to 65 after five years.

Some Members of the Legislative Council Subcommittee formed to study this motion were concerned that employment opportunities for the elderly watchmen would still be very limited. It appears that they may have some misunderstandings about the definition of "single private residential buildings". I would therefore like to draw Honourable Members' attention to the definition set out in the notice. A "single private residential building" is defined as an independent structure that is covered by a roof and enclosed by walls extending from the foundation to the roof, which is used substantially for private residential purpose, and has only one main access point. There is no limit on the number of households that these buildings may house, but the requirement of one main access point would ensure that these buildings can be adequately guarded by elderly watchmen. This definition applies even to individual blocks of large housing complexes.

Some Members of the Subcommittee were also concerned about the upper age limit of 65 for Category B work, that is to say, guarding work for all types of premises and properties. I trust Honourable Members would bear in mind that the purpose of the Ordinance is to improve the standards of security services which the public are entitled to expect. Security work under category B is very diverse. It covers all types of guarding work such as that in large commercial complexes, hotels, banks, shopping arcades, industrial buildings, and so on. Security personnel engaging in this type of work, generally require greater alertness, vigilance, and physical fitness than security personnel working in single private residential buildings. An upper age limit for Category B work is, therefore, necessary in order to ensure that these guards are capable of carrying out their duties.

The Authority has also laid down other criteria. The prescribed medical examination will include tests on eyesight, hearing, mental state and balance and co-ordination, to ensure that only applicants who are medically fit for the work will be issued a permit. The Commissioner of Police will also assess the applicants' employment history and criminal record, to ascertain whether he is of good character. Those who are required to carry arms and ammunition in performing their work must hold a valid arms licence issued by the Commissioner of Police. The proficiency criterion applies only to those handling security devices, who are required to provide a certificate of relevant training or a record of relevant work experience. Recommendations by prospective employers are not required for registered watchmen or those who are currently working in the security industry.

I understand also that during the discussion at the Subcommittee meeting, one Honourable Member was concerned that the checking of an applicant's employment record by the police for good character assessment might be unfair to the applicant, as some unscrupulous employers might deliberately give poor reference to employees whom they disliked. I can assure Honourable Members that employment record refers only to whether the applicant has been rejected for an application for a permit or has his permit revoked. The police are not interested in an applicant's performance appraisal record. Moreover there are other safeguards in the Ordinance. Under section 26 of the Ordinance, any person who is aggrieved by the decision of the Commissioner on a permit application may appeal to the Administrative Appeals Board.

To conclude, I would like to reiterate that the purpose of the proposed permit criteria is to upgrade the standard of service of the security industry. The criteria strike a good balance between upgrading the services of the security industry and addressing Members' concern about the employment prospects of elderly watchmen. The Authority will monitor closely the impact of the criteria and make adjustments to the criteria as appropriate. Any such amendments will need to be laid before this Council for approval.

Mr President, with these remarks, I urge Members to support this motion.

Question on the motion proposed.

MRS MIRIAM LAU (in Cantonese): Mr President, I would first of all declare my interests. I am the Chairman of the Security and Guarding Services Industry Authority (the Authority).

The spirit of the Security and Guarding Services Ordinance (the Ordinance) is to regulate the service quality of organizations providing security services and the security personnel, so as to safeguard the rights and benefits of consumers while at the same time introducing gradual improvement by balancing the interests of the industry and the public, taking into account the actual operating situation of the industry. The first and foremost task facing the Authority after its establishment in June this year was to lay down the criteria for the issue of security personnel permits. Towards this end, the Authority held six meetings and consulted the Police and the industry. As the Chairman of the Authority, I must stress that the proposed criteria before the Council today are based on the above-mentioned spirit of legislation. Different sets of criteria have been determined according to the various type of security work so as to ensure that the post applicants are suitable and competent for the jobs.

In developing the criteria, the Authority had the following major considerations:

(1) *Comments of the Bills Committee on Security and Guarding Services Ordinance of the Legislative Council on the upper age limit*

The Authority was well aware of the grave concern the Bills Committee had on the criteria concerning the upper age limit. This issue was raised when the Bill was being considered last year. The Authority proposed that no upper age limit should be imposed on security personnel working in single private residential buildings, but these people might be asked to go through a medical examination on a biennial basis once they reach a certain age (say, 70). It was after careful deliberation that the Authority put forth the proposal. We accepted that physical requirements for the security work of these buildings were less stringent than those for the other types of guards, such as guards of industrial and commercial organizations or armed guards. Accordingly, special waiver of the upper age limit was allowed on the condition that the post holders must pass a medical examination of their competency so as to make sure that they can meet the job requirements. The Authority is of the opinion that the existing proposal concerning upper age limit is in fact in conformity with the view expressed by the Bills Committee then.

(2) *Views of the industry*

In making recommendations to the Authority, the Security Association and the Hong Kong Association of Property Management Agencies strongly demanded that more stringent criteria be laid down by restricting the definition of "single private residential building" to a building with no more than 20 domestic units with about 100 occupiers. In other words, people aged above 65 could work as guards only in this type of small building. The Authority appreciated the aspiration of the industry to enhance the quality of its security guards, but considered that improvement should be introduced gradually to avoid too drastic a change to the way of management of private residential buildings. Accordingly, the definition of "single private residential building" laid down by the Authority does not impose any restriction on the number of flats, while the scope of security work and the physical requirements of guards are based on the residential use and the existence of only one single exit of the building. The spirit of such a definition is not to encourage holders of type A permits, that is, people aged above 65, to work in large private estates. Nevertheless, there is no harm in recruiting type A permit holders to take care of the security work within the premises while leaving the inspection of other public areas such as podiums, gardens, carparks and so on to type B permit holders if residents of these private estates so wish. As consumers, the residents should have the right of choice.

(3) *The problem of unemployment*

In its efforts to upgrade the service quality of the security industry, the Authority was mindful of the actual social situation in Hong Kong. Hiring the aged as watchmen has been a well-established practice and little did we hope that these old folks who are still physically capable should suddenly be thrown out of employment. At the same time, we believed that our proposed criteria would not bring about considerable increase in unemployment because of the following reasons. The number of unemployed estimated by the trade unions has in fact far exceeded the actual figure.

Firstly, most of the residential buildings in Hong Kong fall into the category of "single private residential building" and as long as they pass the medical examination, guards reaching the age of 70 may continue to assume type A security work in these premises.

Secondly, those who are taking up type B work, that is, guards of the various industrial and commercial premises, may switch to single private residential buildings once attaining the age of 65.

Moreover, the Authority will, in accordance with section 33 of the Ordinance, advise the 110 000 holders of watchman permit to apply for the new permit by batches. The entire process will take about five years, with the more senior ones being handled at the last stage. During the transition, permit holders aged above 65 may still take up type B security work.

I must emphasize that the onus of the Authority is not to guarantee that all security workers my retain their present job or position but to set up an examination system to ensure that these people are physically fit and capable of carrying out their duties. We cannot force ourselves to accept the situation in which a person is allowed to take up a job he is not competent for simply because this would cause unemployment. Nevertheless, the impact on the employment of aged watchmen has already been reduced to the minimum through the above arrangements.

At a meeting of the Subcommittee set up to consider the motion, the Honourable LEE Cheuk-yan recommended the lifting of the upper age limit for type B security work, meaning that people aged above 65 who have passed the physical examination should be allowed to work as guards in all industrial and commercial premises, shops, gold and jewellery shops, banks and so on. This recommendation was considered unacceptable by the Authority. As I just mentioned, it was already an exception not to impose upper age limit on guards of single private residential buildings. Such an exception was specially granted by the Authority because it was believed that the security work of single private residential buildings was on the whole less demanding in terms of physical fitness. Coupled with the restriction of one major exit, this should enable aged guards to handle the job efficiently. Waiving the upper age limit for type B security work would be an exception within exception. The public expect the Authority to improve the quality of the security industry, thereby providing protection for their personal safety and properties. Further relaxation of the upper age limit would be regarded as a retrogression by the public and it is likely that the industry would be greatly disappointed. This would run counter to the spirit of the Ordinance in improving the security service.

I must reiterate that the proposed criteria were the result of the Authority's full deliberation and careful balance of the interests of the security sector and consumers. If the criteria are approved, the Authority may upgrade the quality of the security personnel of the industry through the following measures:

Firstly, to ensure the guards' capability and efficiency through laying down requirements on employment and physical examination as well as standards on good conduct and skilfullness of the job;

Secondly, to bring within regulation the large number of people who are now working as guards without permits. Non-permit holders will be prosecuted;

Thirdly, to step up supervision of security guards through police task force. Anyone who is found to be neglectful of his duties will have his permit cancelled;

Fourthly, to liaise with the industry and vocational training council on the promotion of training for security personnel;

Fifthly, to encourage and assist the industry in preparing a code of practice for security guards; and

Sixthly, to promote publicity on the spirit of the Ordinance, procedures on the issue of permits and the importance of security work among members of the public, especially building management committees, owners' corporations, mutual aid committees and so on.

Mr President, the proposed criteria presented to the Council today and the above areas of work of the Authority will be subject to regular review to seek improvement in the light of actual experience. The next task of the Authority is to draft the conditions for issue of licence to security and guarding services companies in a bid to perfect the monitoring mechanism. The Authority plans to begin to accept applications for guard permits and company licences at the end of this year, with the grace period expiring at the end of May 1996. If the proposed criteria were not approved, the process of licence issue would be greatly delayed, making it impossible for the applications to be handled before the expiry of the grace period. This would definitely give rise to confusion and possibly result in operation without licence. This is hardly something we want to see.

Mr President, with these remarks, I earnestly beseech Members to support the motion.

MR WONG WAI-YIN (in Cantonese): Mr President, a Subcommittee under my chairmanship was formed in 14 July 1995 to study the resolution. The Subcommittee has held one meeting with the Administration and has also received a written submission from the Security Association after the meeting. The Subcommittee has divided views on whether to support or object the motion because there are different opinions on whether an upper age should be set for security personnel on guarding work in respect of all types of premises and properties, that is, type B of the security work annexed to the motion.

The Honourable LEE Cheuk-yan and I hold the view that no upper age limit should be set in the legislation for type B security personnel because we believe that the emphasis should rest on their physical fitness and work attitude instead of on age. The security company should be given the discretionary power to employ a security personnel of and above the age of 65 as long as he has passed a medical examination and such examination will be made at the age of 65 and after on a biennial basis.

However, the Honourable Mrs Miriam LAU, who is also speaking on behalf of the Security and Guarding Services Industry Authority in her capacity as the Chairman of this Authority, expresses the view that there is a need to spell out the upper age limit in order to regulate and improve the quality of service of the security industry which is the spirit of the Ordinance. The Subcommittee has noted that the age criterion of 65 is taken for type B security work because the same criterion is adopted by a majority of security companies for their security personnel. The Subcommittee also notes that the Security and Guarding Services Industry Authority intends to review all criteria annexed to the motion one year after their implementation.

The Subcommittee cannot come to a consensus about this issue and in the end the parties for and against it have agreed that the motion should be debated by Honourable Members today.

There are several other issues which the Subcommittee has discussed. I shall briefly mention two of them. Firstly, the Subcommittee has noted that the age criterion for biennial medical examination for type A guarding work restricting to a single private residential building will be lowered from 70 years old to 65 years old in five years' time and the rationale is to tie in with the proposal that 65 is the upper age limit for security personnel for type B security work. The ultimate objective for lowering the age criterion is to improve the quality of service of the security industry.

Secondly, the Subcommittee has discussed the issue of employment history being regarded as one factor for determining whether an applicant for security personnel permit is of good character. It also notes this is already an existing requirement under the Watchmen Ordinance, and the Security and Guarding Services Ordinance has provided a safeguard by having allowed an appeal channel against the decision of the Commissioner of Police for refusing to issue a security personnel permit. However, Mr LEE Cheuk-yan is still concerned that this may provide an opportunity for the employer to threaten an employee with a bad performance report if the employee complains against the employer for non-compliance of his obligations under the Employment Ordinance, for example, denying the employee paid leave to which he is entitled. As time was running short, we were unable to discuss this issue with the Police at a meeting with only Security Branch officers present. Therefore, Mr LEE Cheuk-yan will discuss with the Police to directly follow and handle it. Mr LEE Cheuk-yan will be separately pursuing the issue.

Mr President, as the Chairman of the Subcommittee, I have tried to give a fair version of what have been discussed during the meeting. Now in the capacity as a Member of the Democratic Party, I would like to put forth my view and that of the Democratic Party in respect of the Ordinance.

Regrettably, such a resolution is being put forth near the close of the Legislative Council session. As a result we only have one chance to hold discussion with the relevant government authorities and we are unable to meet the relevant Security Association for consultation. Also, we are unable to discuss many issues. Last year, when this Security and Guarding Services Bill was tabled at this Council, I was elected Chairman of the Bills Committee. It can be said that the speeches by the Secretary for Security and Mrs Miriam LAU just now have stated some of the conclusions by the then Bills Committee. However, I would like to make a few clarifications here.

Firstly, the major concern of the then Bills Committee was that once the Bill was passed, it was tantamount to issuing a blank cheque to the now Security and Guarding Services Industry Authority in that it could set some criteria on which the Legislative Council would have no say. Therefore, the Government finally agreed to table it in the form of subsidiary legislation and resolution to this Council for examination. As the Government stressed then that the future Security and Guarding Services Industry Authority which has come into being now would be an independent management authority, it did not want to see the then Bills Committee to set some detailed criteria for that independent management authority though the Government at that time shared the Councillors' worries, that is the worries that some old watchmen would become unemployed as a result of the passage of the Bill or the criteria passed today. Thus, we reached a consensus at that time. Our concensus was that when the future management authority laid down the criteria, the 70-year-old personnel would be allowed to continue with this kind of work so long as they had a medical examination on a biennial basis and passed the medical examination.

In addition, during our discussion at that time, we suggested that apart from taking single private residential buildings as a determining factor, the most explicit and clear way would be to take work nature as a criterion. If the work nature requires the personnel to be armed for escort and guarding duties, the Bills Committee and the Democratic Party agree that there should be more rigid control in place. However, as for some buildings which just employ watchmen to keep watch and no further security duties are involved, we are of the view that this type of security personnel should not be subject to rigid control and the buildings should be allowed to employ those watchmen. The then suggestion also hoped that the Government and the management authority which has come into being now would take work nature as the criterion. As the Government repeatedly stressed that it did not want the then Bills Committee to pre-empt the criteria laid down by the independent authority, we at that time therefore only agreed to put forth some suggestions for

consideration by the future management authority (which has come into being now). However, though they are suggestions, it was our consensus at that time that the Bills Committee and the Government would come to a consensus. Regrettably, the criteria put forth today obviously cannot fully implement the consensus reached between the Bills Committee and the Government. At present, the management authority sets 65 as the upper age limit for the type B security personnel and the age criterion for medical examination for type A security personnel would be lowered from 70 to 65 in five year's time. These two points are different from the decision made by the then Bills Committee. I feel very sorry in this respect.

As the Legislative Council could not amend this resolution, our choice is to either support or oppose it. If we veto the relevant criteria, it will be referred back to the management authority chaired by Mrs Miriam LAU because only it has the right to make the amendment. Then it will be passed back to this Council for examination and passage. Thus, as the Democratic Party cannot accept that the upper age limit provision in the Bill was made aftering accepting the suggestion of the management authority, the Democratic Party has no alternative but to oppose this resolution today hoping that it would be passed back to the management authority for re-deliberation and then to this Council for passage. Though Mrs Miriam LAU in her speech just now stressed that if this Council vetoes this resolution today, the relevant licensing work would be delayed, I believe that this is not the responsibility of this Council but that of the Government. Why did the Government, as it always does, pass the Bill or resolution to this Council at so late a stage and then before we are able to fully discuss it, ask us to pass such a bill that cannot fully take care of the benefits of all parties?

Therefore, Mr President, the Democratic Party will vote against it.

MR LEE CHEUK-YAN (in Cantonese): Mr President, I would like to ask Councillors to oppose the above motion in the attempt to urge the Security and Guarding Services Industry Authority to re-define the licensing criteria for security personnel.

Before I put forth my reasons, I would like to talk about my feelings. Just as what was said in a radio programme "Same Day in the Past", every time it came to the last sitting of a Legislative Council session, there was always a discussion about the "rice bowls" of workers. I remember at the final sitting of the Legislative Council session on 17 July 1991, there was an Ordinance about the certificate of origin by which the knit sewing procedure was allowed to be done in the Mainland. I said at that time that such an act would surely smash the rice bowls of the workers. Facts show that four years later, Hong Kong workers were unable to find any more knit sewing work. That happened at the last Legislative Council sitting four years ago. At this being the last Legislative Council sitting this year,

our discussion is also related to the "rice bowls" of the workers. I hope that the Honourable Mrs Miriam LAU would not say that I have exaggerated the influence of it all. I agree that the impact this time would surely not be as grave as that four years ago because the elderly security personnel could at least do type A work. However, to some extent, this definitely would affect the elderly or old aged personnel in the security and guarding industry.

I would like to put forth my reasons for objection in two ways. Firstly on the ground of justifications. In this respect, I personally feel that the management authority is under the assumption that the performance of the elderly personnel is certain to be bad. It is this assumption that leads to the setting of an upper age limit. I would like to ask you all whether this assumption is correct. Is the service of elderly people definitely poor? Should the quality of service be judged from the age angle or assessed from a more important perspective of physical fitness? Frankly speaking, I think that I may not be as fit as many elderly security personnel aged 65 and above. I am not qualified for such work but they are competent for it and have been doing it all the time. Why should we put limitations on them? In fact, medical examination is the only scientific assessment basis and age should not be taken as a criterion. This is the first reason why I object to setting 65 as the upper age limit for this type of security work. I am of the view that only physical examination should be taken as the criterion.

As for the second reason, the Government and the industrial and commercial sectors always mention "free market" operation and it should be of no exception this time. Why do we not let the free market make the decision? What puzzles me is that just now Mrs Miriam LAU in relaying the opinions of the Security Association said that the requirements were not strict enough. At present the Security Association is responsible for recruiting the security personnel and if they see the need for more stringent requirements, they could let the employers decide whether or not to employ the elderly security personnel. Why is limit set by legislative means? Why are legislative means needed to limit the age of the personnel employed by the employers? If the employers think that people at the age of 65 and above are still competent and their service is satisfactory, why do wenot let them continue to employ them? Why is there a need to resort to legislative means instead? I think that this is the second area that is not proper as far as justifications are concerned. I think that in this matter the employer should be given a free hand to make his own decision. If the employer's decision leads to poor service, the residents could always make a complaint. Now, even though there is legislative control, there is no guarantee that those employees below the age of 65 would provide good service because I always think that age should not be taken as a criterion.

From the second angle, I hope that you would view it from the social humanitarian point of view. By a conservative estimate, there are at present about 20 000 security personnel over the age of 65. Will the criterion have no effect on these people over the age of 65 at all? In fact, even if arrangements are made for them to do type A work, all personnel over the age of 65 would be confined to type A work, meaning they cannot work in factory buildings, banks or shopping malls as "watchmen". They are then confined to work in the single private residential buildings. When more than 20 000 people all try to seek work in those buildings, can they find jobs? Also, if all these 20 000 more people are confined to do this type of work, you can imagine the great impact it has on the wage level. As the scope is limited, the supply will increase and wages will be forced to go on a down turn. If the scope of work is limited in this way, 20 000 people presently in post will be affected. Let us not forget that of the 20 000 people, those who are now around 60 will be stopped from continuing with their jobs on reaching the age of 65. There is one more problem which I do not know how to explain. Take for instance someone who is at present 63 years old. After two years, he could not work any more. Theoretically, he is not entitled to any compensation. Even if his case is treated as dismissal, he would still not be entitled to long service pay because one must complete five years' service before one is entitled to it. As the employee cannot obtain a permit, the case could not be treated as dismissal. I am not sure whether it can be treated as dismissal in these circumstances. This is also a grey area. However, we are not going to discuss about this today. The issue of dismissal needs further deliberation in the future. But, this would have influence on those people who are now over 60 but below 65 years of age because if they could not obtain the required permits, they have to stop work at that age. In that way, another employment outlet for the elderly employees is blocked.

In addition, I would like to talk about another humanitarian issue. For people over the age of 65, we all know that apart from social security allowance, nothing else is offered in Hong Kong. As there is no retirement scheme or retirement protection, they have to continue working. If Hong Kong has a perfect retirement scheme, why do we want our elderly people to go out and work? We do not want to see this and I personally do not want elderly people to work. The problem is that we have no retirement scheme now. Even if we pass the Mandatory Provident Fund Scheme today (not the old age allowance scheme), how long will it take to put it into effect? This is of no use to the present generation of old people. On one hand we have no retirement scheme and on the other hand we resort to legislative measures to block the employment outlet for the old people. Can this be considered as a reasonable measure? If the old age allowance scheme is implemented, I would not say any more. I would then say that it is not too much a problem because it has little effect on them. But there is nothing now and it is a major problem with tremendous effects. Thus I hope that you, on the basis of the two reasons and the two humanitarian grounds I just mentioned, will vote against it together.

Finally, I think that if the service is to be improved, focus should not be placed on age but on the improvement of the work conditions and the training system so that people, irrespective of their age, would have good attitudes and could provide good quality service. If the work conditions are good, the employees would have the drive to perform better. If the conditions of work of this industry continue to be as harsh as what they are now ― we all know that the conditions of work of this industry are very harsh ― I do not believe that the quality of service can be improved. Therefore, I hope that the way to better service is not directed at age but the improvement of the conditions of work and training. Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, I mainly want to put forth my views on some points.

Firstly, when we examined the Bill, many meetings were held to discuss whether there should be an upper age limit. At present there is no upper age limit for type A permits but that for type B permits is set at age 65. In fact this is against the consensus we reached then. If we really want to improve the service, I hope that a transitional period should be allowed so that those security personnel working in commercial buildings or the so-called single private residential buildings can continue to work until they can work no more ― I do not know whether I should say until they pass away. Then this Ordinance can be enforced. This is a transitional period and is humanitarian treatment. I agree that the quality of service should be enhanced and improved, but when the Bill was passed, 99% of our focus was placed on armed security work and the professional security personnel employed by security companies.

The second point has to do with the choice of the members of the public which I would like to share with you. The Security Association asked the Councillors to vote in opposition because it thought that the requirements were not strict enough. We see it differently. The part that they think is too lax is considered too stringent by us. However, I would like to remind you that in fact, not all single buildings employ their security personnel through the security companies and many security personnel are employed by the owner corporations and the committee members of the buildings who are elected by the "one owner one vote" system. In fact, many corporations told me that if an upper age limit is set, then the corporations will be forced to dismiss many very good in-service watchmen, even though they are physically fit and maintain a very good relation with the owners and residents. After the dismissal of these watchmen, they will have to recruit new watchmen and that will surely affect them. I think that when making the choice, can we, as what the Honourable LEE Cheuk-yan said, take their physical fitness or their past performance as the criteria? Even other factors can be considered. For example, a watchman is relatively older but he has worked in the same building for years and has accumulated some useful experience like he can recognize every face, no matter they are old or new residents of the building. In view of his experience, can someone else replace him? A new watchman has got to start getting to know the residents. Would that be better than before? Also, the old

watchman knows the other problems in the building well. We can say that during his patrol duties up and down the building, he has left many foot prints in the building. Will the quality of service be improved by replacing him? Time is needed for service to be improved. If an upper age limit is set for type B security work, it will not necessarily bring good results.

The third point is about the point Mr Lee Cheuk-yan just mentioned. I would like to provide some analysis by myself from the legal point of view. If an upper age limit at the age of 65 is really set for type B security work, then security personnel who cannot get permits would have to resign voluntarily because they are not recognized by law and no one would continue employing them. In that case, they may be unable to get long service pay. If they are unable to meet certain requirements, they are regarded as resigning voluntarily. This would be even worse. They would lose their seniority as well as the workmen's welfare they accumulated in the past years. I do hope that we would take extra care in this respect.

I think that the best way is for Councillors to vote against this motion. After that, I hope that the Security and Guarding Service Industry Authority would consider the requirements for type B permits. Our consensus reached at the Bills Committee is that even when security personnel reach the age of 65, they should be allowed to continue to work so long as they pass the medical examination. If more lenient terms can be considered to allow the security personnel who have already obtained the permit to continue with the exemption, that would be an acceptable way that balances the interest of all parties concerned during the transitional period. Also, that would surely improve the quality of service as a whole in the long run. Remember, enhancement of the quality of service cannot be achieved in a day.

MRS SELINA CHOW (in Cantonese): I heard the Honourable LEE Cheuk-yan say just now that what we are discussing today concerns the "rice bowls" of the workers. Certainly, what we are discussing is related to the "rice bowls" of the workers. But this is not the main issue. Our main issue is to improve the standard of security services, and this is our objective. If it affects the workers' "rice bowls" in any way, we should naturally be concerned. Of course, we cannot allow large numbers of workers to go hungry because of this issue. That is why when the matter was reviewed by the Bills Committee, of which I myself am a member, we had already taken into consideration this social problem that may arise. When deliberating this issue, we had also considered whether security guards over the age of 65 should be strictly prohibited from doing this kind of work. After careful deliberation, we came up with different opinions. On the one hand, we wanted to raise the standard of service and on the other, we wanted to take into account the actual situation. That is why we came up with the two kinds of permits — permits A and B — which we have now. These two kinds of permits were designed with the actual situation in mind. More important, they take into account the interests of those citizens who are being

protected. This is very important. It is because if this question had not been on our minds, the entire Bill and even the entire discussion today would not have been necessary. If we did not pay any attention whatsoever to the standard and requirements, any person would have been capable of doing the job.

There seemed to be some mention just now, though not explicitly, that the current limit on age is somewhat discriminating. I feel that whenever we make any comment, we should do so in an objective and unbiased manner. In the case of security work, when we talk about the two criteria of age and health, I am sure Members will agree that these are important considerations. When we urge the Government to increase social welfare for the elderly, for those over the age of 60, not to say 65 ─ even the Liberal Party had brought this up many times before ─ and as long as we think it necessary to increase the amount of welfare benefit, we give our all-out support. But if we look at the issue from another angle, when we say that the lives and property of our citizens have to be protected, should we not consider the interests of the citizens who are being protected? Hence, we cannot talk about everything in the same breath and speak only from our own perspective when it is easier to do so.

Something that Mr LEE Cheuk-yan said just now makes me worried. He said that we must be more open on this issue because there is no old age pension scheme now. In his view, since there is no pension security for the elderly, we must be more open and allow them to find employment in this field. As far as I can see, the type A permit has already achieved this end to a certain extent. In other words, when employees reach the age of 70, they will be gradually laid off. But as long as they pass a physical examination they can keep their jobs. This is already giving them a way out. However, there are other jobs that have higher security requirements and standards. These call for a fixed standard that sets the retirement age at 65 and requires a type B permit. Such a measure is certainly reasonable and takes into account the interests of both parties.

Earlier on, a colleague asked why holders of type A permits are allowed to work only in single residential buildings. Why not all buildings? Why are they not allowed to undertake any kind of watchman duty? We are not talking about watchman work alone. When it involves a housing estate, a large housing development, we are talking about professional security service and patrol duties. As everyone knows, the larger a housing estate, the greater attraction it has for criminals and the more serious the crime situation is. Hence the higher standard that is required of its security staff. That is why I feel that everyone should already be aware of this question regarding types A and B permits as it was already discussed in the Bill stage. The motion before us today is not going too far at all. Members were heard to say just now that the Democratic Party thinks it is too strict and the Security Association thinks it is too lax, so they are all against the motion. In my opinion, if some say it is too strict and some say it is too lax, perhaps we are just right, because people always see things from different angles. From the employment angle,

people want no control, but a free market instead. But is this the kind of free market that they want? And yet these same Members sing a different tune when debating old age pension or welfare for the elderly. They want the Government to enact legislation in every instance.

I hope the Security Association will set its mind at ease after listening to the remarks of the Secretary for Security on the question of buildings today. In fact, our objective is the same as theirs. What we aim to do is to improve the standard of security work and make it more professional while taking into consideration the problem of employment. I hope Members will support this motion and, starting from now, work to improve the standard of this profession. This also conforms to the spirit of the Bills Committee when the Bill was being studied. I feel that the Democratic Party's opposition runs counter to this spirit.

MR ROGER LUK (in Cantonese): Mr President, I am also a member of the Bills Committee on the Security and Guarding Services Bill. Members may perhaps recall a serious traffic accident in Wong Tai Sin yesterday in which several elderly pedestrians were killed when a green route public light bus lost control on the road. I heard on the radio on the way from work last night that a District Board Member had placed a desk across the road and publicly took the Government to task for not taking the necessary steps to prevent the accident such as installing safety barriers in the middle of the road or providing other safety measures. He appealed for signatures from Members and the public to support his demands from the Government. Someone called the radio station to say that this was like "dispatching soldiers after the bandits have left". If the District Board Member knew that public safety would be jeopardized, he should have demanded the installation of safety barriers long ago. To talk about it after something has happened is only trying to score points. I find the caller's remarks pretty fair.

Today we are talking about the age limit for types A and B permits which has been the subject of deliberation by the Bills Committee for a long time and the decision on which was finally won by the Bills Committee. There were only two kinds of licenses back then. The members of the Bills Committee insisted on having two types of permits, A and B. Seen from a certain angle, this permit is very lenient. The type A permit is applicable to any one of the single buildings in a large housing estate. However, we have no way of absolutely prohibiting a security company from employing a 65-year-old or 70-year-old to carry out patrol duties. There are, in fact, problems in the actual enforcement. But we must also look at the matter from a more lenient perspective. If we tighten control through legislation all at once at this present stage, we will be faced with the problem of shortage of watchmen in many buildings. Our problem then is having watchmen or none at all. If they can do their job well and achieve a standard of security that is acceptable, we hope to improve the standard in stages and, at the same time, achieve the aim of this legislation. This is precisely the spirit of this legislation. We are now merely trying to put this spirit into practice. However, if we go round and round in circles by bringing up again to the

discussion table what has already been decided on and if we go farther and farther away from the main issue under discussion, I can only think of four words that best describe this situation ─ "getting out of control".

Thank you, Mr President.

PRESIDENT: Mr TO, you do not have a second speech, of course, but what is your point?

MR JAMES TO (in Cantonese): Mr President, can I respond to some of the earlier remarks with reference to the understanding of the motion? I am not repeating my previous views. I have some new points to make in response to the points raised by Members after my speech.

PRESIDENT: No, you cannot, Mr TO, it is only if you have been misunderstood that you can ask to correct any misunderstanding. But you cannot have a second speech or make new points.

MR JAMES TO (in Cantonese): Mr President, there is a point of clarification regarding my earlier remarks. I am not raising any new points, Mr President, I wish to clarify ......

PRESIDENT: Mr TO, have you been misunderstood?

MR JAMES TO (in Cantonese): I have been misunderstood. What I wanted to say just now is that on the matter of allowing the public to have a choice, I have been misunderstood. The Honourable Mrs Selina CHOW mentioned that we must protect the interests of the public. I only wish to make it clear that since the public themselves have the right to choose the watchmen they wish to employ, and if the candidate that turns up for the interview is found to be over the age of 65, whether the candidate is in good health or not and whether the candidate is eventually hired or not for whatever reason, the right of choice ultimately rests with the public. They have the right to choose whomever they want to protect themselves. That is why I feel that the quality of service will not be affected simply because the upper limit on age ─ for type B work, that is ─ has been removed by law.

DR YEUNG SUM (in Cantonese): Mr President, the Honourable Mrs Selina CHOW just now quoted the Honourable LEE Cheuk-yan as saying that the elderly must continue to work because there is no old age pension. Mrs CHOW stressed that the lives and property of the public must be protected. On the subject of protecting the public's lives and property, I am sure everyone will stand on the side of Mrs Selina CHOW. How can anyone not agree that the lives and property of the public must be protected?

What I wish to say is that I have listened carefully to Mr LEE Cheuk-yan's remarks. He only said that we should not have any age limit that is laid down by law and that if the staff is found to be capable of doing the job well after going through a physical examination, he should be allowed to keep the job. Those who pass a physical examination are naturally capable of working and protecting the lives and property of the public. This, in my opinion, is a very important point but was not mentioned by Mrs Selina CHOW in her speech. Thank you, Mr President.

SECRETARY FOR SECURITY: Mr President, I have listened very carefully to the Honourable Members' views on the proposed security personnel permit criteria. Let me stress three points in reply.

First, the proposed criteria strike a good balance between the need to upgrade the standard of service of the security industry and Members' concern, or some Members' concern, about the employment prospects of elderly watchmen.

Secondly, it is certainly not the intention nor the effect of the criteria that deprives existing watchmen of their employment prospects, nor do we intend to introduce drastic changes to the security industry. Let me illustrate with one example in response to the concerns expressed by some Honourable Members. We estimate that amongst the 17 500 or so watchmen who are over the age of 65, we estimate that 4 388 are in the security workforce but are not at present working in single private residential buildings. However, these 4 300 or so registered watchmen will not be immediately affected because the Security and Guarding Services Ordinance provides for, on top of a grace period until June next year, a transitional period for existing registered watchmen to apply for new permit. The Authority intends that this transitional period should last for five years and this will buffer any immediate impact on existing registered watchmen. Moreover, after this transitional period, this group of watchmen can still apply to work in single private residential buildings if they can pass the required medical examination.

Thirdly, I should stress that in drawing up the criteria, the Authority has fully taken into account the concerns of the Bills Committee and the criteria now proposed adequately address the concerns of the Bills Committee.

Mr President, the Ordinance has been passed for some time now. We really ought now to put it into full operation as soon as possible. The time for endless debate should now be over. Without the approval of this Council on this motion, there will be unnecessary and possibly indefinite delay in our efforts to upgrade the service standard of the security industry to protect the lives and property of the citizens' homes they serve.

I therefore strongly urge Members to support this motion. Thank you, Mr President.

Question on the motion put.

Voice vote taken.

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

Mr WONG Wai-yin claimed a division.

PRESIDENT: Council will proceed to a division. The division bell will ring for one minute.

PRESIDENT: Would Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, 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 Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr Roger LUK voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, 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 and Mr LEE Cheuk-yan voted against the motion.

Mr CHIM Pui-chung abstained.

THE PRESIDENT announced that there were 32 votes in favour of the motion and 22 votes against it. He therefore declared that the motion was carried.

INLAND REVENUE ORDINANCE

THE SECRETARY FOR THE TREASURY moved the following motion:

> "That Part II of Schedule 6 to the Inland Revenue Ordinance be amended by adding -
>
> "9. The Council of Europe Social Development Fund."."

He said: Mr President, I move the resolution standing in my name in the Order Paper.

To enhance Hong Kong's status as an international financial centre and to encourage the development of our capital market, Members approved amendments to the Inland Revenue Ordinance in 1992 to exempt from profits tax the profits arising from Hong Kong dollar-denominated debt instruments issued by specified multilateral agencies with top credit ratings. In addition, Members also approved amendments to the Stamp Duty Ordinance to exempt such instruments from stamp duty. Schedule 6 to the Inland Revenue Ordinance specifies the agencies which are so exempt. The Ordinance also provides that this Council may make additions to the list of exempt institutions by resolution.

The first four multilateral agencies exempted were the Asian Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation and the European Investment Bank. The exemption was later extended to four other multilateral agencies. They are the European Bank for Reconstruction and Development, the Inter-American Development Bank, the Nordic Investment Bank and the European Company for the Financing of Railroad Rolling Stock. By late June 1995, the amount of Hong Kong dollar debt securities issued by these exempt institutions stood at HK$12.4 billion, representing about 7.5% of the total Hong Kong dollar debt paper outstanding.

I now propose to add the Council of Europe Social Development Fund (CEF) to the list. Like the existing eight exempt institutions, CEF is a supranational agency with top credit ratings. It has indicated interest in issuing Hong Kong dollar-denominated debt instruments. We can enhance the attractiveness of these instruments to investors by granting them similar exemption from profits tax and stamp duty. This would contribute to the expansion of the Hong Kong capital market. It would also further promote Hong Kong's development as an international financial centre.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

BILLS

Second Reading of Bill

PRESIDENT: We have 13 public bills for resumption of Second Reading debate. The normal practice has been for all the Bills to pass through this stage before we proceed to the Committee stage. If this practice were to be followed at this last sitting of the term, we would almost certainly not get to the Committee stage of any of the Bills until tomorrow as the debate on some of the Bills is expected to be extensive. I have therefore accepted the recommendation of the House Committee that we should take all the outstanding stages of one Bill before going on to the next Bill. This would have the advantage of enabling Members to debate the Committee stage amendments of each Bill while the debate on the principles at the Second Reading of that Bill is still fresh in their minds. The same procedure will apply to the 11 Private Member's Bills. We will now resume the Second Reading debate on the Hong Kong Court of Final Appeal Bill.

HONG KONG COURT OF FINAL APPEAL BILL

Resumption of debate on Second Reading which was moved on 14 June 1995

Question on Second Reading proposed.

MR SIMON IP: Mr President, the Bill before us seeks to establish, on 1 July 1997, the Court of Final Appeal to replace the Judicial Committee of the Privy Council as the ultimate appellate tribunal for Hong Kong. Members of this Council are well aware of the background and the circumstances leading to the introduction of this Bill.

The Bills Committee has held nine meetings in three weeks, It has received representations from the Law Society of Hong Kong and the Hong Kong Bar Association. It has discussed with the Administration exhaustively all queries raised and has received a number of papers from the Administration which very helpfully answered Members' questions. The Bills Committee appreciated from the outset that there would be divergent views and has, therefore, not attempted to reach a common view on the issues. As the Chairman of the Bills Committee, I shall now highlight the major areas discussed during our deliberations.

The inclusion in the Bill of "acts of state such as defence and foreign affairs" in accordance with the third paragraph of Article 19 of the Basic Law was a contentious issue. The Committee considered whether that phrase can be construed in a way that is consistent with the common law; whether the courts of the future Special Administrative Region (SAR) will be able to rule an act to be an act of state; and under what circumstances might an interpretation from the Standing Committee of the National People's Congress be necessary. The fact that the Bill incorporates only the third paragraph of Article 19 and not the second paragraph as well was also of concern to some Members. The Administration responded at length on all these points. In a nutshell, the Administration's argument was that since the Basic Law will become the law of Hong Kong on 1 July 1997, whether or not the Bill includes the formulation of "acts of state" as in Article 19 of the Basic Law and whether it incorporates the whole or only part of Article 19 will make no difference whatsoever in terms of domestic law. In the Administration's opinion, the fact that Article 19 defines "acts of state" beyond matters of defence and foreign affairs is not inconsistent with the common law position. Certain common domestic acts of the British Government cannot be challenged in the courts. The Administration considers that in most cases the courts of the HKSAR will determine whether or not an act is an act of state. The courts will be required to seek an interpretation from the Standing Committee under Article 158 only if they need interpret a provision of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and the judgement of the Court is not appealable.

Another concern of the Bills Committee was the proposal to set up the Court of Final Appeal on 1 July 1997. To some Members, the delayed establishment did not accord with the declared intention of the Administration to set up the Court before 1 July 1997. Other Members queried the competence of the present Legislature to enact a Bill, the commencement of which will be on a date after the change of sovereignty. The Administration assured the Bills Committee that the current legislature is competent to enact the law which only comes into operation after 30 June 1997. In the Administration's view, once a Bill is enacted, it becomes an Ordinance, whether or not it has been brought into operation. There is, thus, no doubt, according to the Administration, that the CFA Bill, if enacted, will become an Ordinance and will fall within the meaning of the phrase "laws previously in force in Hong Kong" under Articles 8 and 18 of the Basic Law which provide that those laws will remain laws of the HKSAR.

On the question of adaptation, the Administration explained that there is no legal difficulty in the fact that the Bill as drafted includes terminology that will not be appropriate after 30 June 1997. This Bill, if enacted, will be adapted, as will all other Ordinances under the general adaptation of laws programme.

Mr President, needless to say, the composition of the Court in hearing appeals, the well-known 4:1 formula, was another focal point in the Bills Committee. Some Members criticized the inflexibility of the formula and argued that it violated the Joint Declaration and the Basic Law, which provide that the CFA may as required invite judges from other common law jurisdictions to sit on it. The Bar echoed this view and objected to the 4:1 formula. The Law Society, on the other hand, was of the view that Article 82 being framed in general terms and the 4:1 formula was therefore consistent with it. The Administration again emphasized its position that the 4:1 composition was perfectly consistent with the provisions of the Joint Declaration and the Basic Law.

The Bills Committee also discussed the merits of providing for a "leapfrog" provision in the Bill to allow appeals to go directly from the court of first instance to the CFA, without first being heard by the Court of Appeal. Some Members considered that there were good reasons for including a leapfrog provision in the Bill. The Bar took the same view. The Administration, however, considered it preferable to follow existing procedures that apply to appeals to the Privy Council. At present, there is no leapfrog procedure for appeals from Hong Kong to the Privy Council, and the introduction of such a procedure would be a novel development. Further, in the Administration's view, the CFA would benefit from further distillation of legal arguments by the Court of Appeal on important points of law.

The criteria for civil and criminal appeals to the CFA were also considered by the Bills Committee. One of them has attracted much discussion. The current threshold for appeals to the Privy Council in civil cases as of right is $500,000. The Bill proposes to adjust that figure for inflation to $1 million. Members differed in their views on whether there should be a monetary threshold at all for a right of appeal and if so, what it should be. Notwithstanding the different views of Members on many issues, the Bills Committee shared a common concern on the transitional arrangements for Privy Council appeals. The Administration explained that the British Government has given an assurance to accord priority to Hong Kong appeals in the months immediately prior to 1 July 1997. The Bill provides that appeals to the Privy Council which have not been disposed of on or before 30 June 1997 should proceed in the CFA. The Administration assured Members that the preparatory work for the establishment of the CFA will be done after enactment of the Bill to ensure that the CFA will be operational on 1 July 1997.

Finally, at the suggestion of the Bills Committee, the Administration has agreed to a number of technical drafting improvements to the Bill. On behalf of the Bills Committee, I would like to thank both the Administration and my colleagues for their co-operation to enable a careful and thorough scrutiny of the Bill to be completed within such a short time.

Mr President, I should now like to turn to my personal views. In the motion debate in this Council in December 1991, I urged that flexibility of the CFA to invite overseas judges should be restored through re-negotiation between Britain and China. I sought greater flexibility then and I have sought greater flexibility ever since three and a half years have gone by and there has been no change. Both sovereign powers have refused to re-negotiate that part of the agreement. Instead, they have now agreed upon detailed implementation as set out in the Bill before us.

The options now facing us are very clear. It seems to me there are only three:

First, we can reject this Bill outright. However, what would that achieve apart from uncertainty as to when, how and what court will be set up after 1997? That uncertainty will undoubtedly affect public confidence in the judicial system of Hong Kong and it surely cannot be to our advantage. Those who opt for this route will take Hong Kong up a blind alley.

Second, the Bill can be amended as has been proposed by both Mr Allen LEE and by Mr Martin LEE by deleting reference to the 4:1 composition and by bringing the Ordinance into operation before 1997. If these amendments are passed, we are told the Government is likely to withdraw the Bill. Even if it did not, any court so set up in this way will be demolished in 1997 as it would have been unilateral action by Hong Kong in disregard of the detailed agreement reached between the two sovereign powers. In my mind, there is absolutely no point in setting up a court in 1996 that would be dismantled in a year or less and would precipitate a worsening of relations between China, Britain and Hong Kong. Those who opt for this route will lead Hong Kong up a dead-end street.

Third, the Bill can be passed with only minor technical amendments agreed by the Government. This would substitute certainty for uncertainty and ensure that we will have a court in 1997 that would operate much in the same way as the Judicial Committee of the Privy Council does now. Those who opt for this route will lead Hong Kong out of the tunnel and into the light with a clear destination ahead.

We should put aside our different opinions on the interpretation of Article 82 of the Basic Law and accept that there is no "cut and dried" answer. Even Professor Sir William WADE, in his second opinion, said that 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. The validity of the provisions of the Ordinance can be tested against Article 82 of the Basic Law when the Basic Law and the CFA Ordinance come into effect concurrently on 1 July 1997.

The CFA itself could determine whether the 4:1 composition is compatible with the Basic Law. If the answer is "yes, it is compatible", then the ground for objecting to the composition is removed and if the answer is "no, it is not compatible", then the more liberal wording of the Basic Law would prevail thereby permitting greater flexibility on the Court to invite overseas judges to sit on it. That would be the rule of law in action.

Mr President, the words I have just spoken may have a familiar ring to them. That is because I used them on 3 May during the debate moved by Mr Jimmy McGREGOR seeking this Council's endorsement to the setting up of a court in accordance with the 1991 Agreement. Mr Jimmy McGREGOR's motion was defeated by an amendment moved by Mr Moses CHENG on behalf of the Liberal Party which again rejected the 1991 Agreement. On that occasion, I voted against both Mr CHENG's amendment and Mr Martin LEE's amendment because it seems to me they did not offer any solutions, merely more opinions. I put forward a proposal of my own, the crux of which was to adopt the 1991 Agreement and let the CFA itself rule upon its constitutionality pursuant to the overriding provisions of the Basic Law. But sadly, Mr President, on that occasion, politics were high on the agenda; solutions were not.

Some superficial analysts on my proposal poured scorn and sarcasm on it describing it as absurd. They were instantly dismissive of it. They said it was simply not possible for the Court to rule upon its own constitutionality. My detractors, Mr President, on that occasion, to my surprise, included the Attorney General, from whom I had expected a more considered and thoughtful approach. I do not wish to argue the point again here and now. May be later. I merely want to point out that by a twist of fate, the situation we now find ourselves in, if Bill is passed, is precisely that which I proposed in the last debate; that is that come July 1997, the constitutionality of the CFA can be determined by the CFA itself having regard to the provisions of the Basic Law. I am supported in this view by serious analysts, including the Legislative Council's own Legal Adviser, Mr Jonathan DAW; Senior Law Lecturer, Dr Nihal JAYAWICKRAMA; and Sir William DALE, the Director of the Institute of Advanced Legal Studies of the University of London. All their opinions are available to anyone interested in the subject.

Mr President, earlier I mentioned that we have only three choices, a blind alley, a dead-end street or a tunnel with some light at the end of it. The choice seems to me to be obvious. That choice is fortified by the safeguard. I have just mentioned that this CFA itself can rule on its own constitutionality according to the basic Law.

I therefore support the Bill.

REV FUNG CHI-WOOD (in Cantonese): Mr President, pursuant to Standing Order 30(1), I now move that the Second Reading debate on the Court of Final Appeal Bill be adjourned.

Mr President, the Honourable Allen LEE had originally intended to move an amendment to delete a clause in the Court of Final Appeal Bill regarding the date of validity of the Bill. However, Mr President, you did not approve the amendment because it involves Government expenditure. This Bill will most likely not come into effect until 1 July 1997 and there is still time for Council to further deliberate on it. The Democratic Party would like to adjourn the Second Reading debate on the Bill as there were only three weeks to scrutinize the Bill, which was too much of a rush. This is a significant and controversial Bill. We hope Council will be given more time to study it. The Honourable Martin LEE will further elaborate on this subject. I hope Honourable Members will support my motion.

PRESIDENT: Under Standing Order 30, a Member may move without notice that the debate be adjourned and thereupon the President shall propose the question on that motion. I do now so propose and I would ask Members to please keep their speeches relevant to the motion to adjourn.

Question on the motion proposed.

MR MARTIN LEE: Mr President, originally there would be an amendment by the Honourable Allen LEE to delete clause 1(2) of this Bill so there is no requirement to postpone the coming into operation of the Ordinance until after 30 June 1997. My party would have been extremely happy to support that, but unfortunately it was blocked by objection from the Government, and it has now been ruled out of order by you, Mr President.

Now, if this motion to adjourn were defeated, then in due course I would be moving on behalf of the Democratic Party a different amendment to clause 1(2), which will read: "This Ordinance shall come into operation on a day to be appointed by resolution of the Legislative Council." But that would only mean that even if all the amendments which I will be proposing at Committee stage were to be approved by the Committee and passed later on by this Council into law, it would mean, unfortunately, that the resolution I have in mind can only be moved after the summer vacation, that is, by the incoming legislature to be constituted in September.

The net result is that we can no longer, by Mr Allen LEE's original amendment, force the Government to take immediate steps to set up the Court of Final Appeal upon the passage of this Bill as amended. So, therefore, we have time and we do not want that, but we have no option now, because Mr Allen LEE's proposed amendment has been ruled out of order.

Now, the resolution, therefore, which, on my amendment would bring the Ordinance into operation, can only be moved at the earliest in October. But if my proposed amendment is also defeated then we are met by the original clause 1(2) which stipulates very clearly that this Bill, when passed into an Ordinance, will not come into operation until after 30 June 1997. Therefore, there is plenty of time for the Government to prepare the setting up of this Court of Final Appeal. The question then is, why this indecent haste?

Members will remember that before this Bill was gazetted there was, in its earlier incarnation, another Bill, which was only presented to the Chinese side for consideration and subsequently it was presented to the two legal professional bodies, and of course I revealed the contents of that Bill to the press and the Attorney General has strongly attacked me for it. I do not feel shameful for that disclosure, because I believe it is in the public interest to have that Bill before them as soon as possible.

But that is history. The point I am seeking to make, Mr President, is that the Chinese side has got months to look at this Bill, or rather the earlier incarnation thereof. They got plenty of time to discuss with the British Administration at the JLG level. But after the Bill was gazetted, we, the Bills Committee, had only three short weeks to deliberate on the many controversial provisions of the Bill. We had nine meetings. I attended every one of them from start to finish, except during one of those meetings towards the end I had to answer a call of nature, Mr President, and when I came back I found to my horror the meeting was already adjourned because there was a lack of quorum after I left. But, other than that I stayed there for every minute of those nine meetings. There was one aborted meeting and we had to wait for half an hour when we still could not find a quorum, double the time that we normally would wait for Members to emerge for our Bills Committees.

I am saying this because I feel, I have felt throughout the deliberations at every meeting of the Bills Committee, that we were being rushed. There were times that the Administration, and this happened very frequently, had to prepare papers for Members and they did a very good job. Mr Bob ALCOCK is here, and I will pay him this compliment. They have been working very hard to give us papers. But in spite thereof the papers were still wrong when we took hold of them for the first time, wrong from the photostating machine. We had no time to read them very often. We had to consider them immediately, and the most notice we had, I suppose, would be about 24 hours. We struggled very hard under a very diligent Chairman, Mr Simon IP, and I have to say, Mr President, that after these nine meetings I cannot feel confident, in spite of my legal training, that we have covered every possible point with the sort of attention that a Bill of this nature deserves.

Then I ask, why must we pass that Bill into law today, this being the last sitting of this Council in this Session? And some of our Honourable Members, and it is not just one or two of them, will indeed retire from politics in that they have announced that they will not seek re-election. Should we not wait until the new legislature is formed in a few months' time? After all, that would be a legislature which has more representativeness than this one, I regret to say, because that legislature would be constituted by elected Members only. Of course, the three Official Members will no longer be there. I do not know whether that is one of the reasons why they want to hurry it through this Session. But there is no reason why we cannot defer a matter of such importance, a matter of such great public importance to the incoming legislature in October.

Mr President, there is another point which I feel very strongly about, and that is, as far as this Bill is concerned, which is the result of negotiations and deliberations and many, many concessions made by the Hong Kong Government, we have started a very dangerous precedent of legislating through the JLG. I can understand the JLG sitting down and ironing out differences so that they would arrive at the end of the day a certain agreement. But not over amendments to a Bill, surely, because amendments are peculiarly the job of this Council, and how can we give a veto to the Chinese Government? Indeed, Mr President, had this been already the year 1998, there is no reason why the Central Government should be allowed to interfere with amendments the Members of this Council may like to make. There is nothing in the Basic Law which allows that and indeed the Basic Law respects the independence of the legislature. So, why are we starting such a dangerous precedent even before 1997?

So, I do not like this legislating through the JLG a single bit, but at least to be logical, I would expect our Government to say, alright, Mr LEE and other Members, you have some reasonable amendments to propose. Now, to pursue their own logical approach to this conclusion, they should at least approach their Chinese counterparts at the JLG and say, can we agree? Now, for example, there are a number of amendments I will be seeking to make (that is, if this motion to adjourn is defeated) which clearly would be in the interests of the public. For example, Mr Simon IP just mentioned this threshold of a million dollars. Why is it that a case involving a million dollars or above would give the litigants an automatic right of appeal to the Court of Final Appeal, whereas if the amount of money involved is $999,999 then you cannot? Now, such an amendment, therefore, clearly would be of interest to Members and yet, of course, our Government says, no, hands off, because we have not consulted China and you must not amend it, otherwise you will risk the

consequences of the Government withdrawing the Bill, I suppose, or the Governor not giving his assent to it if it is so amended.

I would, therefore, say, Mr President, that if the Government wants to legislate at the JLG level (something which I oppose) at least they should be logical about it. So, what do we have here, Mr President? We are asked to be the rubber-stamps of the Chinese Government, of the British Government, of the Hong Kong Government, We are expected to endorse everything they present to us. Oh, yes, with some tiny amendments which will be moved by our very courageous Attorney General. I say "courageous" because he might not even have the consent of the JLG. So, we are going to be rubber-stamps. But not real rubber-stamps, I regret to say. They want us to be instant rubber-stamps because they want us to be rubber-stamps today. They want us to chop, chop, chop everything that they present to us today. I resent this, Mr President, and I ask all my honourable colleagues who do not want to be treated as instant rubber-stamps but who want to be given the respect that legislators deserve, that real legislators deserve, to support this motion to adjourn.

MR RONALD ARCULLI: Mr President, I can understand the strength of feeling that Mr Martin LEE has expressed in terms of the CFA Bill. After all, we have heard him on the same note since 1991 and indeed I particularly share a not too dissimilar sentiment because I was one of the ones spoke out against the original 1991 Agreement. That having been said, I think we need to look not so much at the past and dwell for too long, because if we do we would run into the mistake of perhaps of bringing Hong Kong unwittingly for the best of intentions in the world to a grounding halt. It has already been said by one fairly well-known international commentator when the agreement was announced in June this year that it is all over for Hong Kong. The last thing we need today is for this Council to vote in favour of an adjournment because that adjournment will bring us into uncertainty. And in my respectful and humble view, uncertainty is the last thing we need over the next 706 days, I believe, before we revert to China. In terms of the reason for the motion to adjourn, I can accept and I can understand most of what Mr LEE has said, but I cannot understand Rev FUNG by bringing Mr Allen LEE's amendment to clause (1) as being the reason for the reason to adjourn. So I think in terms of the adjournment of this Bill, I would urge Honourable Members and my colleagues to vote against it. If you disagree with the Bill, with or without amendment, vote against it. If you agree with it, vote in favour of it. Voting for an adjournment is in my respectful view voting for nothing.

Thank you, Mr President.

MR SIMON IP: Mr President, I would just like to make a few brief points as Chairman of the Bills Committee.

The first point is that it was the House Committee that agreed unanimously without any dissenting voice that this Bill should be given top priority and it was on that basis that the schedule for our various meetings were fixed and in the event we held nine meetings and many many hours of deliberations. In my opinion, no stone was left unturned, every single clause of the Bill was looked at in great depth. Many questions were asked, some of which were, in my opinion, now in retrospect, very peripheral. But nevertheless we have performed our legislators' duties by enquiring into all of them. And we were lucky to have a very diligent and conscientious team from the Administration who were able to provide written answers to us on almost every single point within a short space of time which we then have the benefit of studying outside meeting of the Bills Committee. So, Mr President, I feel that we have looked at this Bill back to front, upside down as carefully and thoroughly as any Bills Committee could have done. Although the period of time we had was short. Nevertheless, it was very concentrated and there was a lot of working though, and I would hate to see that Members of the Bills Committee would have wasted three weeks and endless hours of work of looking into this Bill. If it was simple to adjourn it now and as far as the amendments are concerned I see Mr LEE himself has put in something like 60 amendments and surely I cannot imagine he could have put in that many amendments without having given the Bill the greatest of thought before he proposes his amendments. So. Mr President. I would strongly object to the motion to adjourn.

MISS EMILY LAU (in Cantonese): Mr President, I speak in support of Rev the Honourable FUNG Chi-wood's motion.

The Honourable Simon IP was right. He reminded us that the House Committee had unanimously agreed to give top priority to this Bill. But I think Honourable Members will remember that the Legal Adviser had asked, in the papers handed to us in June, whether there was any need to look at this Bill in such haste. There were still a great number of Bills in the Legislative Council waiting to be studied, the Legal Adviser said, and if we spent time on this Bill, we would have no time for the other Bills. In fact, we have already put aside many Bills which should have been reviewed.

Frankly speaking, this Bill will not come into effect until 1997 even if it is passed today. I am sure Mr Simon IP agrees with me on this point and has mentioned it at different stages. We do not understand the need for such haste, having to call nine meetings in three weeks. Many Members were often unable to attend the meetings as they were already busily engaged in attending the meetings of other Bills Committees. To rush a Bill through in a short matter of three weeks, a Bill that will not be implemented until some 700 days later, is something, I am sure, that many of us do not understand. As it was necessary to hold nine meetings (one of which could not even be called successfully) in three weeks, many Members did not have a chance to deliberate on the Bill at all.

Some things do require immediate attention, such as last year's Western Harbour Crossing Bill. The Bills Committee also had a hard time with so many meetings. But it was understood that there was a need to deal with the matter at once. However, in the case of this present Bill, we worked very hard on something that will not come into effect until 700 days or so from now. Are we not toiling in vain for other people's benefit? The Administration had always impressed upon us the importance of this matter. The earlier the Court of Final Appeal is set up, the better. But when China said no, it cannot be set up until 1997, the Government changed its tune. What was said to be a very important matter is not really that important afterall. Those who broke faith with the public included not only the Governor, but also the Chief Secretary, and even the Chief Justice. What everyone said then seems to amount to nothing now. What is most important, in my opinion, is that if the Bill does not come into effect until some 700 days from now, and if Members feel that they do not have enough time to look at it, why must it have to be passed in such a hurry? The only answer I can think of is that the Government feels that there may be enough votes to see it through the Legislative Council this session. Members who sit on Council in the coming session, be they directly elected or indirectly elected, may not give the Government enough votes to pass the Bill if they choose to rally together because they do not feel that the Bill is in the direct interests of Hong Kong. This may be the reason why the Government insists on going ahead. The same is true for the Mandatory Provident Fund Schemes Bill which will be presented to Council shortly. The Government thinks there will be enough votes this time and wants to go through with it quickly. It was mentioned by the Government just now, and also by a colleague, that the passage of the Bill will open up a bright future for our business community. A bright future is surely important. But our business community is not that naive. The Bill may be passed in this session, but there will be amendments in the coming session. They should not think that once a Bill is passed, it will be cast in stone and will never be changed. Indeed, I find the Government most naive.

Mr President, I think this Council deserves some respect from the Government. If this Bill were tabled according to the normal schedule, I am sure we would need at least six to nine months, or even a year, to deliberate on it because it is a Bill of utmost complexity and significance. To demand that the job be completed in a mere three weeks is, in my opinion, most unfair to Members. And the most important question is: When will the Bill be implemented? Not until 1997. Why all this haste now?

I speak in support of Rev FUNG Chi-wood's motion.

MRS ELSIE TU: Mr President, I will speak very shortly. I think we are all very familiar with the contents of this Bill. The main points have been discussed in 1991. If Members now do not know how they are going to vote, they never will know. We can go on discussing forever another 700 days, and I think some Members will never change their minds. So I cannot see any purpose in going on discussing and I oppose the adjournment.

MR FREDERICK FUNG (in Cantonese): I do not support the proposed adjournment for several reasons.

First of all, I think it is a common practice in the western world for two countries to arrive at an agreement, through representatives, which is then passed to their respective parliaments for deliberation. For example, the well-known "Maastricht Treaty", that is, Europe's "Maasstricht Treaty", was arrived at after negotiations among the representatives of the different countries. The representatives then returned to their respective countries and the agreement was submitted to their parliaments or put through a referendum to decide if it would be passed. When the agreement was submitted to the governments of the different countries, the choice before them was to accept or reject the agreement. It would be rather difficult to make individual amendments to the agreement because the agreement was arrived at after deliberations by the countries involved. Hence to amend the agreement would pose certain difficulties. Regardless of whether the decision is made through parliament or through a referendum, the question is to decide whether to support or oppose the agreement after considering its merits and demerits and whether it is favourable or unfavourable to one's country.

As a matter of fact, that we are deliberating on the Court of Final Appeal Bill here today is, to a certain extent, an indication of our need to decide whether to support this Bill. Although we have no choice (meaning we cannot make any amendment), we still have one choice: to accept or reject the Bill. To accept or reject this Bill is the decision we have to make today. This could well be rubber-stamping, but we have two stamps to choose from: the stamp saying "no" and the stamp saying "yes". These are the two so-called rubber stamps we have today.

Thirdly, if the House Committee thought this Bill was important enough to deserve priority treatment, we have only ourselves to blame for the poor attendance at the nine meetings. We have already agreed that this was an important Bill that should be given priority. Why did we have such poor attendance and even an aborted meeting? The reason could be that at one point it was considered a priority issue and at another time, priority was not thought to be necessary. In any case, the decision of the House Committee should be an overriding decision. As we agree that this Bill is important and must be given priority treatment so that it can be discussed during this session, I will respect the decision of the House Committee.

Fourthly, I totally agree with the Honourable Miss Emily LAU's remarks just now. She said that amendments are possible in future. To pass the Bill today is no big issue. If we find that we do not like it later on, we can always propose amendments. We can make amendments to whichever part that is not agreeable, the only exception being anything that has to do with Government finances. Therefore, in my opinion, whether this Bill is passed or defeated without any amendment today does not really matter. If it is defeated, there will not be any need for amendment. If it is passed without amendment, there will always be a chance to amend it in future. I do not see why we should worry so much. After all, we still have some 700 days to amend it.

Fifthly, "vote", in fact, is a mutual thing. The Government is now counting the votes while other people are, actually, doing the same. This is a common factor.

Such being the case, due to the five reasons just mentioned, I think it is pointless to have any further delay. Show your support if you are in favour of it, and express your disapproval if otherwise.

MR JIMMY McGREGOR: Mr President, I rise to oppose any proposal to delay consideration of this important Bill. I have to say that in 1991, when we first discussed this matter, when it first came under consideration in this Council and when a decision was made not to support the agreement between Britain and China, the entire legal profession provided a view ─ it was to my recollection almost without disagreement within the legal profession ─ and many of us on that basis supported the proposal not to support the agreement, and so it has continued down through the years. We have now seen over the last several years a distinct shift in the position of the legal profession. We have had many

discussions in this Council. The issue has been extensively debated, not only in this Council but through the press and in other ways, through fora, and I do not think it can be said that any of one of us is unaware of the principal issues in this Bill which we really have to consider as important today, and which will be important for Hong Kong come 1997.

It seems to me, Mr President, that we have had four years to think carefully about the position, since we became aware during those four years that there was, as I said at the last debate in this Council, a black and white situation in regard to principal attempts to amend this Bill. We either accept the agreement between the two sovereign governments in regard to the principal issues in the Bill or we will not have a Court of Final Appeal at 1997. Perhaps that is acceptable to some Members. I am perfectly sure it is not acceptable to the majority of Members in this Council.

I had to change my view as we went along since in 1991 I listened very carefully to the legal profession. When the legal profession speaks with one voice I listen very carefully to that voice since I am not a legal practitioner and I am not a legal expert. I listened very carefully that time and I followed the advice solidly given by the legal profession. Since that time, as I say, we have had a very great, a very substantial debate and a very great shift of position within the legal profession. That left me, and I think it left many other Councillors, with the ability to decide basically for ourselves, not on the issue of the legality but on the issue of the requirement that Hong Kong shall need to have a full judicial system which can be respected around the world, which will lead to continued support for Hong Kong in the investment sector by businessmen not only here but overseas, and on which the entire territory's success depends.

Mr President, I have to also point out that in the Bills Committee, which was asked to consider this Bill at a very rapid pace, it is a fact that many of the Bills Committee Members for one reason or another did not give high priority to this Bill, did not in fact attend meetings. Mr Martin LEE is perfectly correct. He attended all the meetings. I disagreed with him on many points and at the end of it I think I was left with the conclusion that many Members who should have attended these meetings did not do so, and I am not simply referring to Members of the Bills Committee. If people outside, if Councillors outside the Bills Committee had very distinct and strong views about this matter they could perfectly easily have attended these meetings, giving it the high priority which the House Committee gave it, and come to their conclusions and make their points and seek to persuade us one way or another. At least put on record their views. Some, a good many of the Councillors, did not choose to do so.

So we listen now to the proposal that we should delay further hearing of this Bill. Mr President, in my view this issue has been discussed over a long period of time in every possible detail. I do believe that most of us have already made up our minds as to how we are going to vote, at least on the principal issues like the 4:1 formula and the timing, and I think that in that case we should come to it today, and I therefore strongly oppose any attempt to delay further consideration of this Bill.

MRS SELINA CHOW (in Cantonese): Mr President, we, the Liberal Party, absolutely will not support any proposals for delay. I believe that this point was clearly made by the Honourable Ronald ARCULLI a moment ago. This is a time to make decisions, whether the decisions are of support, opposition or amendment. This is in line with the wishes and the interests of the people of Hong Kong. We should confirm now and we should not prolong any further such uncertainties.

I would like to talk about the reasons for the delay proposed by the Honourable Martin LEE not long before. One of his reasons is very queer. He said he had based on the veto by the President of the amendment proposed by the Honourable Allen LEE to say that we needed more time. In fact, these are two totally different matters "with utterly no relations", for Mr Allen LEE's amendment aimed at establishing the Court of Final Appeal before 1 July 1997, whereas the Democratic Party suggested to delay a decision on whether to establish CFA. In such case, how can they use Mr Allen LEE's amendment as a pretext and reason for supporting their proposal of delay? This is entirely illogical. It is hoped that you can see through this being totally a game instead of a very affirmative and convincing argument. It is hoped that you will oppose proposals of delay.

Thank you, Mr President.

MR JAMES TO (in Cantonese): Mr President, I only wish to respond to the viewpoints raised by a number of Honourable Members a moment ago.

First of all, it is about the argument just now mentioned by the Honourable Mrs Selina CHOW. If she does not understand, perhaps I can explain to her once. The Democratic Party means that if there is an approval for Honourable Allen LEE to propose his amendment about the operative date and his amendment may probably be passed, we could at least have a ground to presume that in case Mr Allen LEE's amendment is passed, we would probably pass this Bill today, thus enabling us to establish the Court of Final Appeal (CFA) tomorrow. We therefore feel that many things can be commenced tomorrow. The question is, should Mr Allen LEE's amendment be voted down, that is, out of order, it would be totally groundless for us to say that we could establish CFA tomorrow or as early as possible by 1997. In view of the above, a time gap gives us more time to raise many specific proposals.

In the Bills Committee, the Administration holds the logic that it cannot accept the amendments because there has not been any discussion with the Chinese side. The Administration did not say that definitely it could not be amended like this or amendments were not desirable. They did not say so, but they said that there had not been any discussion with the Chinese side. According to their logic, this comes out to be that there can be discussions again and it is not necessarily that the Chinese side will not agree. For instance, matters such as setting the threshold for appeals of right can be discussed again because they are technical problems.

Secondly, many Honourable Members have mentioned that the Honourable Martin LEE said once a meeting had been "aborted". I wish to tell you that at that time the Honourable Miss Emily LAU and I were attending a meeting of another Committee, where only three persons, that is Miss Emily LAU, another Honourable Member and I, just forming a quorum, were attending. If we left, that meeting would no longer have a quorum. Of course, you may say that let another Committee meeting be "aborted" since the House Committee agrees that this Bills Committee has been given top priority. However, the question is, another Bills Committee led by the Secretary for Home Affairs, Mr Michael SUEN earnestly hoped that we would give approval as early as possible and we met night and day merely for endorsing that bill. The Administration is also self-contradictory. Frankly speaking, only eight to 10 Members attend meetings frequently and one single Member has to attend a number of meetings at the same time. Even though I did not attend a meeting, at least Mr Martin LEE could express my views on my behalf. However, who would express the views of Miss Emily LAU on her behalf? She is all by herself, without belonging to any political party. Can we ignore independent Members? The Administration, for the purpose of endorsing bills rapidly, has no alternative but to say that all the bills are vital and each of the subsequent large number of Bills Committees is important. Nevertheless, we do not have enough rooms for holding meetings at the same time, yet we are required to form a quorum barely. Is this the attitude of a responsible Administration?

Thirdly, the Honourable Frederick FUNG just now cited the Maastricht Treaty as an example. I think this example and the delay in debate which we are discussing are two different issues. Of course, even if we delay, there will still be the stamps of "approval" and "disapproval". As Mr FUNG has said, there are two sides of a rubber stamp. You have to bear in mind that the Maastricht Treaty is an agreement among countries. However, for Hong Kong, though this is an agreement between China and Britain, in fact, as Mr Martin LEE just now stated, this law will still be a local law even after 1997. However, it is the Sino-British Joint Liaison Group which enacts future legislation. As a result, it is totally different from the Maastricht Treaty of which the consent of the Congresses of the countries concerned had to be sought.

Moreover, Mr Frederick FUNG said that the "votes apply to the present and the future, so they are counted and will be counted. What is different may be that obviously the next term of the Legislative Council will be a fully-elected one with no appointed Councillors which will be stronger than the current one because of its marked representativeness. I have to reiterate that after the September election, the Legislative Council at that time can use the Agreement on the CFA as a touchstone for indirect referendum. At that time, the Councillors elected may take this as a question in the course of the election to enable the public to make a decision on it by voting, so as to decide by an indirect referendum and in a democratic and fair way and to see if the public will accept it. They will influence their representatives on accepting, not accepting or amending this Bill in September. Therefore, the present and the future votes are not the same.

In addition, the Honourable Mrs Elsie TU just now said that we knew about all the viewpoints or principal bill in 1991. I wish to tell Mrs Elsie TU that in 1991, we did not have this Bill and in that year, we discussed nothing but the "4:1" issue. However, a large part of the amendments we propose are on detailed technical issues including the "acts of state", which we really did not know at that time. I hope you understand that at that time we did not know all the things. Therefore, there have been only two to three questions from 1991 up to now. The most recent developments over the past few months were not considered at that time.

With these remarks, I support the motion.

MRS ELSIE TU: Mr President, in what Mr TO said, I will clarify one point.

PRESIDENT: Sorry, have you been misunderstood, Mrs TU?

MRS ELSIE TU: Yes, Mr TO said that we knew about the Bill in 1991. I did not say that. I said we knew the main issues.

MR JAMES TO (in Cantonese): I am not talking about that Bill. I am only talking about the many things happened over the recent few months which we did not know in 1991, particularly the amended provisions.

PRESIDENT: I am sorry. We would have to put an end to it.

MR ALFRED TSO (in Cantonese): Mr President, I oppose a delay in debate proposed by Rev the Honourable FUNG Chi-wood. I agree to what the Honourable Simon IP, the Chairman of the Bills Committee, just now stated. In fact, both the Bills Committee and the Honourable Members of this Council have looked into details the contents of the Bill concerned and we have already made good preparations. I also agree to what the Honourable Ronald ARCULLI stated that a decision on delaying the voting is tantamount to a meaningless voting. Why do we not face the reality by making an early decision?

I wish to correct two points in the remarks just now made by the Honourable Emily LAU. She said that members of the business community were fully aware of the situation that there was the so-called question of confidence in social stability. As a matter of fact, I think she may not have a good grasp of the thinking of the business sector and many other people from all walks of life. Both Hong Kong and other countries in the world attach great importance to political stability and the stability of the social system. Many people from various sectors, particularly those from the business sector, indicated the importance of the legal system and the Court of Final Appeal (CFA) to Hong Kong in future and their hope to have a clear-cut outcome as soon as possible. This Bill is a final decision produced through an agreement between China and Britain. If this Council considers it worthwhile to support the Agreement concerned and endorse the contents of the present Bill, this will be an indicator which will have a very important and positive bearing on Hong Kong's stability and the investment made by many businessmen.

The second point she stated is that the Administration rashly tabled this Bill probably in a view that there would be enough votes this time for passing the Bill in this term. I do not rule out the possibility that this may be the opinion of the Administration. Nonetheless, you should understand that in fact the Administration tabled those Bills before the Legislative Council by basing on the so-called executive-led principle. so as to allow us to make a decision. We have all along been psychologically prepared and have made all the arrangements for handling them in this session.

Thirdly, in fact we are fully aware of the intention of the Democratic Party and some people for seeking a delay in passing this Bill. They hope that they will have enough votes for amending this Bill in the next session. Is their intention of amending the Bill in the next session the same as the assumed intention of the Administration to pass the Bill in this year because it has enough votes? In view of the above, please do not say this is "the pot calling the kettle black" or "the kettle calling the pot black".

Under such circumstances, I think that we would rather deal with the amendments concerned today so that the whole Bill would become a statutory system for members of the public and people from all walks of life to follow.

Thank you, Mr President.

PRESIDENT: I would remind Members that we do have a very long Order Paper. I would discourage any speeches which are simply going to be repetitive of points already made and I can indeed stop speeches that are repetitive. So, with that caution, would Members please exercise a discretion when asking to speak? Does any Member wish to speak?

MR JAMES TO (in Cantonese): Mr President, I hold divergent views on what you just now said and I wish to seek a ruling.

PRESIDENT: What do you wish to seek?

MR JAMES TO (in Cantonese): Mr President, my understanding is like this: the speech of every Honourable Member represents his/her own viewpoints. Even though the viewpoints repeat those expressed by certain Members a moment ago, he has to be accountable to his constituents. In view of the above, I do not understand the reason for Mr President to say that he has no right to speak if his speech repeats the viewpoints of another Member. Even if all 50 Members favour one viewpoint, we can speak about this viewpoint because we have to be accountable to the constituents and the constituency I represent is different from that of another Member.

PRESIDENT: Standing Order 34, Mr James TO. Does any Member wish to speak?

MR STEVEN POON (in Cantonese): I would not repeat the viewpoints already stated by many people. I nevertheless wish to point out that many Honourable Members intend to delay the discussion of this Bill in the hope that in future they can make amendments as they wish. In fact, there are some misunderstandings.

Mr President, all of us know that the future is not what we can control. There are already lots of opinions indicating that there will be a provisional legislature to be established before 1 July 1997, in particular the Preliminary Working Committee has been discussing the issue. In accordance with the Basic Law, we shall establish the Court of Final Appeal (CFA) on 1 July 1997. If it is the CFA which is spelt out in the Basic Law, it is believed the Provisional Legislature (if established before 1997) will handle this issue should there be no Sino-British agreement. In view of the above, we cannot say that we will still have a chance to discuss this matter next year. In my opinion, if we make a decision

today this issue will be considered by us instead of other people and as a result, we can control our future. I hope that you will vote down this motion of a delay in debate.

Thank you, Mr President.

MR WONG WAI-YIN (in Cantonese): Mr President, I rise to speak in support of the motion moved by Rev the Honourable FUNG Chi-wood.

As Legislative Council Members, our most important job is of course to enact legislation through deliberations and debates to pass every ordinance which has an impact on all the people of Hong Kong. Though we know that some ordinances of particular importance should be given priority, this does not mean that other ordinances are unimportant. Basically speaking, every ordinance has a bearing on the entire 6 million population of Hong Kong. Very often, the Administration, upon the ending of a session, tables many bills for us to deliberate in the last several weeks. I, as a Legislative Councillor, naturally hope to join more Bills Committees to express my opinion. Unfortunately, I am only one single person and there are only 24 hours a day. Even if we can work for 18 hours a day, time is still limited. In case of conflicts, at least I am unable to join the Bills Committees to consider these two most important Bills. Many Honourable Members say they have to join eight committees at the same time. I also encounter the same difficulties and I am not going to repeat this here.

Mr President, regarding the Court of Final Appeal (CFA) Bill, the attitude of the Administration is extremely regrettable. Even setting matters such as the Administration's "shifting of its position" aside, at least the attitude adopted by Administration towards Members or the Bill makes me very unhappy. For many bills, the Administration very often urges Members to endorse them unamended saying that time is running short. As for this CFA Bill, I believe that no one here will say time is pressing. All of us know that CFA will not be established until 1 July and it seems that the Administration has agreed to establish it on 1 July and Members are not allowed to make amendments in this area. In the past, the Administration requested us to pass bills quickly on the ground that time was running short. Now since there is enough time, why should we be required to give approval so quickly?

It is quite right that we have had two motion debates on the CFA issue in the Legislative Council and the arguments have already been expressed. However, as the Honourable James TO just now said, at that time we only debated on the major principle of the 4:1 ratio of judges instead of the present consideration and discussion of every single clause and wording on the thick booklet of the Bill. I always say that the Legislative Council is just like a big stage with people coming in and out, with roles of good guys, bad guys and clowns. In fact, some of our colleagues have changed their roles.

Finally, Mr President, I would like to make it simple by saying that during the two occasions when the Honourable Simon IP was speaking in representation of the Bills Committee and himself, I sat behind him and I of course saw his distinct moves. At the early stage of his speech, he already put his left hand into his left pocket and then took it out again from time to time as if there was a key in the pocket. At the last five to six minutes, he already repeated the action of putting his left hand into his pocket every 10 to 20 seconds. It seems that Mr Simon IP made such trifle moves subconsciously without noticing them. Actually, was it because of his uneasiness, anxiety or nervousness that he made such subconscious moves? Or, was it because of his eagerness to have the Bill passed that he, unaware of the moves, put his left hand into the left pocket time and again? Actually, how many colleagues, like Mr Simon IP, are moving their left hands with subconscious uneasiness?

Thank you, Mr President.

MR TAM YIU-CHUNG (in Cantonese): Mr President, of course I sometimes favour a delay. However, I oppose a delay in debate on the Court of Final Appeal (CFA) Bills.

The speeches just now delivered by Members from the Democratic Party, from that of their party leader to that of the Honourable WONG Wai-yin, were unconvincing and on insufficient grounds. I also respect the ruling just now made by Mr President that since today's agenda is too long, if every Member acts like Mr WONG Wai-yin to describe some trifle moves and make lengthy remarks, I think we may not be able to go through all the items up to 30 July.

Mr President, I will not be "long-winded" and I oppose the motion of a delay.

ATTORNEY GENERAL: Mr President, I oppose this motion. I am bound to ask questions: What is further delay going to achieve? What purpose does it serve?

What you see before us is well-known, well-debated, exhaustively debated, there are no new arguments and no new arguments are going to appear in the future, no blinding in sights, no flashes, no road to Damascus revelations. The Bills Committee has conducted extensive examination of this Bill, clause by clause. The 40-plus Committee stage amendments that this Council will later on debate are an adequate test to the diligence of Members in examining this Bill. Delay will implede the smooth transition in our judicial system; further delay to our efforts to establish the court, something that some of us have been working for well over seven years. We cannot even begin to make a start in the great many practical arrangements until the Bill is enacted. We have been asked the question of why the indecent haste.

Mr President, the people of Hong Kong have lived with uncertainty over the Court of Final Appeal for far too long. For those who would seek delay, what do they have to offer the people of Hong Kong? What message are they sending to this community? Further delay, further uncertainty, what interest does that serve? No, Mr President, today is the day to end uncertainty. Today is the day to strike a blow for rule of law in Hong Kong. This is not a day for further delay. That would create grave uncertainty, deep anxiety. That would be a serious body blow to confidence in this community and to those overseas.

I oppose this motion.

Question on the motion put.

Voice vote taken.

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

Rev FUNG Chi-wood claimed a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, 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, Dr David LI, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry

TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK and Mr Alfred TSO voted against the motion.

THE PRESIDENT announced that there were 18 votes in favour of the motion and 39 votes against it. He therefore declared that the motion was negatived.

PRESIDENT: We will now resume the Second Reading.

MR ALLEN LEE (in Cantonese): Mr President, regarding the establishment of the Court of Final Appeal (CFA) by the future Hong Kong Special Administrative Region (SAR), both China and Britain began talks on the issue in as early as 1988, that is, the talks last a considerably long period of time of seven years. Though during the period various sectors have expressed different views, there are nevertheless two unarguable major principles to which people from all walks of life in Hong Kong agree. Firstly, the sooner the establishment of CFA, the more beneficial it is to Hong Kong; and secondly, on the premise of taking the situation of Hong Kong into consideration, there should be flexibility in the appointment of CFA judges. The Liberal Party has all along expected an early establishment of CFA so as to have a smooth transition of the local judicial system. When both the Chinese and British sides announced an agreement on this issue earlier, originally we were going to accept this agreement with excitement. However, we were disappointed when we looked at the contents of the Agreement, for it did not embrace the above-mentioned two basic principles. In other words, there is an agreement, but we still think that things can be done more perfect and more in line with the expectations of the people of Hong Kong. To fulfil a legislator's duty, I therefore propose an amendment so that the people of Hong Kong will have a better CFA.

Recently, many people have lobbied me not to propose the amendment and persuaded me not to oppose the CFA Bill raised by the Administration in accordance with the Sino-British Agreement. Up to now, I still cannot understand why people think that we should not fight for the best arrangements at pains beforehand and would rather give up. I also do not understand the reason for some people to raise amendments and oppose the Bill. I wish to solemnly declare that the Liberal Party has made no attempt to oppose the Bill or the Agreement. I believe that as a Member safeguarding the interests of the people of Hong Kong, it is of utmost importance to try every effort tostrive for the best positive result for Hong Kong and we cannot shirk our responsibility for this. Mr President, I find it queer that the expectations of some lobbists for the CFA are in line with our belief. Take the recent lobbying letter jointly signed by 11 Queen's Counsels as an example. In the letter, they clearly stated that they also expected CFA to be established and operative before 1997 so as to consolidate its reputation and powers, and they also expected CFA, in appointing judges, could be flexible in handling the appointments of overseas judges. As they have had such

expectations since 1991, definitely they should not think that our amendment is not in line with their idea.

The first point which I want to amend is to have CFA established in Hong Kong as soon as possible before 1997. Mr President, yesterday when I visited Beijing, I got the news that you had vetoed my amendment of changing the date of the establishment of CFA from 1 July 1997 to the date of the operation of this Bill. Today, before the meeting, you clarified that the reason for your veto was that it would incur government expenses because of my amendment. Mr President, though I respect your decision, I find it regrettable that CFA cannot be established as early as possible. The second thing that I want to amend is to adopt a flexible method for the appointment of CFA judges. In fact, in the provisions of the Basic Law on CFA, there is no mention of the proportion of overseas judges, and only Article 82 of the Basic Law spells out that CFA may as required invite judges from other common law jurisdictions to sit on it. As a result, instead of putting the focus on the fact that there is no mention of the ratio of overseas judges in the Basic Law, we should focus on whether we should invite overseas judges according to the needs at the time. My amendment therefore copes with the needs, and no one has told me that this is not in line with the Basic Law. Owing to the above reason. I propose an amendment in the hope of exercising flexibility in the arrangement of the appointment of overseas judges.

Now I would like to talk about the opinion of the Liberal Party on the amendments proposed by the Honourable Martin LEE. We cannot agree to the first point made in Mr LEE's amendments. Should Mr LEE's amendments be passed, the establishment of CFA would be decided by this Council by resolution. This will give rise to uncertainties regarding the date of establishment. What is more important, CFA may be established after 1 July 1997 probably because of the various arguments in the Legislative Council. This is absolutely not the wishes of the people of Hong Kong. Moreover, there may be judicial vacuum probably because of the delay and the Liberal Party will never allow this. As for Clause 16. Mr Martin LEE's amendments explicitly vest the power of appointing CFA judges to one single person, that is the Chief Justice, and give constraints to the criteria of appointment. As this runs counter to the Liberal Party's opinion of exercising flexibility to appoint the best CFA judges and have the most choices, we cannot support it.

Mr President, I hope that all of us will make the greatest efforts to enable the people of Hong Kong to have the most desirable CFA. The Liberal Party also indicates that if my amendment is unfortunately voted down, we will still support this Bill because we are of the opinion that an agreement is better than none. We nevertheless consider that an amendment to the Bill will bring about a better CFA in future. We will not oppose the establishment of CFA, for we think that it is not for the well-being of the people of Hong Kong to oppose the establishment of CFA and oppose this Bill.

Mr President, these are my remarks.

MR MARTIN LEE: Mr President, at the pinnacle of any judicial system, it is essential to have the most learned, the most respected and the most trusted jurists sitting in the court to command the respect of both lawyers and lay people alike. The highest court in the land then is the final arbiter of justice. It is the court that hears the most difficult and important points of law and its word is final and binding on all lower courts.

I explained the importance of these principles to the Chinese side as early as May 1983. That was Mr LI Ju-sheng. I discussed how an independent judiciary was the key stone to the success of Hong Kong's legal system, and how replacing our present Court of Final Appeal ― the Judicial Committee of the Privy Council ― with a court of comparable stature was the only way to maintain confidence in our legal system, and this was to be achieved by inviting, as required, foreign common law judges to sit on its bench.

"As required", Mr President, in that context, in my view should be interpreted as to mean that in the early stages of the establishment of the Court of Final Appeal, it would be necessary and more desirable from Hong Kong's point of view to invite more overseas judges to sit on that court, and when there are more local talents to be groomed, then we could reduce on the number of overseas judges.

All these objectives were in my view enshrined in the Joint Declaration which gives full flexibility to that Court to decide how many overseas judges to invite. But in 1991, the Joint Liaison Group (JLG) handed to Hong Kong a surprise secret deal. In violation of the Joint Declaration, it agreed to constrain the Court's composition to the infamous 4:1, or what is worse, 5:0 ratio of local to overseas judges. This Council quickly and soundly rejected their deal on a motion moved by Mr Simon IP, hoping that the two Governments would take into account the strong feelings of the people of Hong Kong and come back to us with the top quality Court of Final Appeal that we were promised. We were wrong. Instead, the British and Chinese sides had yet again treated the people of Hong Kong with contempt by concluding another deal behind our backs. But this time it is even worse.

The two sovereigns are actually trying to legislate to dictate the contents of our laws for us in an area that should be left to the people of Hong Kong. The Court of Final Appeal has nothing to do with defence or foreign affairs. It is a local matter and as such should be left to the people of Hong Kong.

What we have witnessed since the two Governments signed their deal in early June is nothing less than a complete derailing of our constitution. The Administration has made the mockery of this Council's law-making powers, using intense lobbying to turn as many Members as possible into a rubber stamp who bow their honourable heads whenever they are told there is agreement with China.

First, we were informed that certain provisions in the Court of Final Appeal Bill are off to limits because they are part of the Sino-British deal. Touch those clauses, the Administration says, and the Bill will be withdrawn. Then the Bill which was rammed through its Bills Committee so quickly that Honourable Members could barely catch their breath. I heard with some interest and surprise that various Members said they had thoroughly understood all the points. I asked them to put their hands on their hearts and asked them, have they really read even all my proposed amendments.

But what about our role as legislators? What about our constitutional duty to act in the best interests of Hong Kong? How dare the Administration and JLG use these irresponsible methods to intimidate legislators? Shameful tactics, I say, yet how effective on some of my colleagues on the Bills Committee whose only roles seem to be insisting that the Chairman shut me up. In the very short time that Members had to examine the Bill, my Democratic Party colleagues and I worked quickly to uncover its many difficulties. But I can tell you, Mr President, I cannot be sure at all that we have not overlooked others.

In fact, the Bill is so problematic that the Bar Association has called upon this Council to reject the Bill if unamended. Yes, there were 11 Queen's Counsels who signed the letter urging us to pass it. But there are 35 of the Queen's Counsels who did not sign that letter, and there are 450 members of the Bar, more than that, who did not join them. The Bar Association is represented by the Bar Council and the Bar Council came to see us during one of our meetings and urged us not to pass this Bill if it remains unamended.

Whilst my colleagues and I will discuss the Bill's troubles in greater detail during the Committee stage, I would like to mention the three major areas that we will be seeking to amend: the commencement date, the composition of the Court and acts of state.

I now ask Honourable Members to take a careful look at the choices available to them today. The first choice is to follow the Government. The Administration is telling you to rubber-stamp its Sino-British agreement and approve the Court of Final Appeal Bill as it stands, subject to the Attorney General's technical amendments. It argues that the Bill removes uncertainty as well as the so-called judicial vacuum. But what certainty? Mr Simon IP talked about coming out of the tunnel into light. I would say coming out from the tunnel into darkness.

Let us look at the truth of the situation, and I am sorry to say that it is not the pretty picture that we all wanted so very badly to see. The truth, Honourable Members, is that if we enact this Court of Final Appeal Bill unamended, we give to Hong Kong nothing but a useless court that we will not even see before 1997. Mr President, I use the word "useless" advisably. For a Court of Final Appeal consisting of five local judges or at best four local judges plus one overseas judge is but an enlarged version of the present Court of Appeal. Indeed, the Hong Kong Human Rights Monitor in a statement published yesterday said, "Such a court serves no useful purpose unless its judges are substantially more skilled and learned than those of the present Hong Kong Court of Appeal. The existence of the court, far from adding stability, will just add costs and delay to the process of going to law." There is a strong body of opinion at the Bar now, including one member of the Court of Appeal (who should remain nameless), who could well be sitting on this Court of Final Appeal when it is set up, saying to me in private, "why do we need a Court of Final Appeal if they are to be made of local judges?" And in approving this worthless court of Hong Kong, we will have to pay a terrible price, the opportunity to legislate a better Court of Final Appeal Bill.

The second choice is to approve our amendments at the Committee stage. Honourable Members may instead choose to pass the amendments I have tabled. I believe they will produce a solid and credible Court of Final Appeal comparable to the Privy Council.

Some have pointed out that if any of my key proposals are passed, Hong Kong would be left with nothing because I have targetted the clauses that the two Governments have labelled "off-limits". Indeed, the Attorney General has seen in its 22 July letter to Honourable Simon IP to call my amendments "wrecking amendments" even though they bring the Bill into line with the Joint Declaration. How absurd! Although I am getting used to it now. I wonder whether he would turn the Joint Declaration a "wrecking treaty" because adherence to its provisions would destroy the JLG agreement.

Now, if my amendments do pass, as I hope they will, the JLG would have learned a good lesson: Do not ignore the sentiments and wishes of the Hong Kong people including Honourable Members. The Joint Declaration says that all local affairs are for Hong Kong people to determine, and only defence and foreign affairs are under the sole discretion of the sovereign. The Court of Final Appeal is wholly a local matter and so it would be entirely proper for this Council to enact a bill establishing the best Court of Final Appeal possible, whether or not we have the JLG's blessing. But even if the Administration does withdraw the amended Bill from this Council, then the "wrecking" would not have come from me or my colleagues, but perhaps a wrecking Attorney General or a wrecking Governor who may not give his assent to it. We would only be doing our job and doing it well.

The third choice is to vote the Bill down, which in the circumstances Members may think it the best way forward. This would not be an abdication of responsibility, as the Administration might argue, but an informed decision based on the belief that an important matter like the Court of Final Appeal deserves more careful and considered thought, and of course, if we were to vote it down, it does not mean that there will be no court because we would then expect and call upon the Administration to present another Bill to this Council, one that accords with the Joint Declaration and the Basic Law.

Mr President, I therefore urge Honourable Members to support my amendments to the Bill and that of the Liberal Party in the alternative during the Committee stage. If they do not pass, they may ask you to vote down the Bill and this worthless court so that we will still have a chance to build a credible Court of Final Appeal.

Mr President, my colleagues and I will not be turned into a rubber-stamp, not by Britain, not by China, and not by this Administration. We will do our job as legislators and fight for the best Court of Final Appeal possible under the Joint Declaration. It is high time that we, the representatives of the people of Hong Kong, told our public servants and their diplomat friends in the JLG what it is that Hong Kong wants and not the other way round.

MRS ELSIE TU: Mr President, I do not intend to argue on the interpretation of the Court of Final Appeal, as worded in the Joint Declaration and Article 19 of the Basic Law. There is no point in trying to convince people whose minds are closed to all interpretations except their own, especially if those interpretations are based on political prejudices.

Besides, the Court of Final Appeal will have no impact on the vast majority of the population who never make it to that Court, and who do not understand anything about it. It is unfortunate that some have misinformed the Hong Kong people that, passing this Bill, will destroy the rule of law in Hong Kong. It will not affect the system of law at present based in Hong Kong. How many people know what the Privy Council is, where it is now, or what it does? So why sow alarmism in the minds of the people who will not in any way be affected by this Court, but whose livelihood may be affected if this scaremongering damages our economy?

In my seven years as representative of the Urban Council Functional Constituency, I have never been asked to voice the Urban Council's views on matters outside its jurisdiction; on the contrary, I have always been told to vote according to conscience on any ultra vires issues. However, last week my functional constituency was pushed into debating the Court of Final Appeal, and eventually they suspended Standing Orders to do so. The result was, by a majority of two, the Bill today was upheld against proposed

amendments similar to those that will be raised by a political party here today. I am glad to be able speak for my constituency, as I have always done in the past, in voting for the Bill.

I have some sympathy with the younger members of the Urban Council who sought to defeat the Bill, because they have been led to believe that the passing of the Bill means doomsday. It does not mean doomsday. I hope that those younger members, as well as the young people of Hong Kong, will not listen to frightening tales about doomsday, because they are based on deep-rooted prejudices, which cannot be sustained as history moves on.

This Bill may not be all that we would like to see, but it is not the end of the world. One thing is certain, and it is that if we vote down this Bill, it will mean the end of co-operation with China to make the Court operable in July 1997, and that would be detrimental to Hong Kong. Mr Martin LEE has gone on record in the press as saying that if his party gets a majority of seats in this Council in September, he will move a Private Member's Bill to achieve his purposes. He is apparently dissatisfied with the recent improving relation between Hong Kong and China, and would perhaps like to see Hong Kong once more thrown into disarray. Surely we have enough problems with our ailing economy, our unemployed, our influx of illegal and imported overseas workers, and many other urgent issues such as the needy elderly and our neglected handicapped children, without turning Hong Kong again into a battleground with China on political issues that very few people are interested in anyhow.

We have only two years left until 1997. Can we not see aside our disagreements, and unite to strengthen our economy, and to prepare to stand together to make the period after 1997 a success, by making sure that the Joint Declaration and the Basic Law are carried out in full, including the promise of full democracy by successive steps in 1999, 2003 and beyond. By unity and co-operation, I feel that we can reach this goal; but by constant mistrust and bickering, our hopes of reaching that goal are minimized, if not totally destroyed.

Mr President, I would like to ask my colleagues to give the Hong Kong people a break from all the political confrontation, so that we may unite and make the next two years, and all the years that follow 1997, stable and prosperous both economically and politically.

Mr President, I support the Bill now and may I add that I did not oppose it in 1991 because at that time it seemed to me ambiguous so I abstained. I consider that at this point in time, it will be irresponsible to vote against the Bill or try to make unobtainable amendments or even to abstain and therefore I urge my fellow colleagues to support the Bill. Thank you.

DR LEONG CHE-HUNG: Mr President, I rise to speak on the CFA Bill and since Miss Elsie TU has spoken on her constituency, I also take this opportunity to present to this Council the findings of the recent referendum I conducted on the mass members of my constituency. Basing on their views, I would so vote as we come to the Committe stage.

The referendum was done for two obvious reasons. Firstly, the CFA is such an important issue, on which the rule of law and the confidence of the international community on Hong Kong depends. It is not just to set up a Court of Final Appeal that counts but rather a Court of Final Appeal that Hong Kong people will approve that matters.

Secondly, the whole issue of the CFA and the Bill has been argued or been discussed for some over five years. During which time, numerous meetings were held between the two sovereign states and a secret agreement emerged. During this time, two Legislative Council motion debates were conducted and although the results were consistent, the Government, unfortunately, never gave it a second glance. During this time, many people and organizations have changed then in response to China's demand and Britain's deviations.

In the final analysis, whist I have stood firm in my position, it would be central for me to fathom the views of my constituents.

Questionnaires were sent to all members of my constituency. In the referendum, the background of the CFA was enunciated followed by two sets of unbiased questions on, firstly, whether they would accept the setting up of the Court of Final Appeal on "the day following 30 June 1997", or whether they would like to see it set up before 30 June 1997.

Secondly, it asked whether it would be acceptable to them to see a composition of the Court of Final Appeal to include at most one judge from another common law jurisdiction or whether they like to see some degree of flexibility. Mr President, a total of some 8 751 questionnaires were forwarded. The response was, unfortunately, not overwhelming as expected and only 6% responded up to yesterday.

The result of those responded, however, shows some very clear results. Some 72% rejected the fact that the CFA will be set up on a date after 30 June 1997. While some 78% feels that a Court of Final Appeal should be set up well before 1997. Of course, there are some 9% who responded by saying that does not matter when, while there are some 4% who feels that it is meaningless anyway to set up the Court of Final Appeal irrespective of what date it is going to be set up from.

On the composition of the Court, some 75% wanted a flexible component in the same way as passed in the two motion debates of the Council. Mr President, yes, some have criticized that the return rate of some 6% was poor. This, I do agree. But on my part, however, given the fact that there are those who responded while others have not, it will be irresponsible for me to reflect their views. It is, however, Mr President, very obvious, notwithstanding the volume of response obtained, that there is a overwhelming wish from my constituents to improve the Bill to the best protection of the interest of the Hong Kong at large. And it is on that basis that I will be casting my vote at the Committee stage.

MR JIMMY McGREGOR: Mr President, I want to make it very clear that although there have been times in the past when I and my constituents, at least reflected by the General Committee of the Chamber, have been at odds with each other in quite important issues, on this issue, I think, there is no disagreement whatsoever. The Court of Final Appeal is seen by the Hong Kong General Chamber of Commerce, and I am sure all of its members, to be of extreme importance. I think the Chamber fully recognizes the issue before us, how it is constructed, what it means in terms of foreign interest in Hong Kong, foreign participation in Hong Kong, the rule of law in Hong Kong and the judicial system in Hong Kong.

The issues come down to the three mentioned by Mr Martin LEE: the 4:1 formula; the timing; and acts of state, the definition of acts of state. The issue is also one, as I understand it ─ I may be wrong from what some of the other Members say ─ which we have a situation where two sovereign governments have agreed a position which cannot, insofar as they are concerned, be altered in material issues within the agreement, and these three particular points are all points which are not able to be changed except on the basis that we do not have a Bill and we do not have a Court of Final Appeal set up now, taking effect from 1 July 1997.

It would be something like running a football team. It would be very, very helpful if you could have all the very best players in the world. You would have the best football team. You would win the league, you would win the cup every year. Unfortunately, that is not the way football or anything else ever works. You cannot have everything perfect. You cannot have everything exactly that you want. And what sometimes you have to do, and all is the same, is a matter of compromise, of seeing in all the circumstances what is best, what is the best arrangement to make and coming to some conclusion that although it may not be entirely what you want, it is acceptable insofar as it goes, and I think we have come to that position now clearly with the Court of Final Appeal.

I wonder whether — I am not sure — my good friend, Dr LEONG Che-hung has asked his constituents whether they would favour a particular choice — yes or no — to the Court of Final Appeal being established. Black or white, as I keep saying in this Council. I have been taken to task for making this point, but it does seem to me that we are facing that exact situation. All the discussion today will not matter. In the final analysis, a vote will be taken. We will have a Court of Final Appeal Bill which will set the Court of Final Appeal up as from 1997 or we will not. It does not seem to me that we face any particular choice in between these two stark factors, black or white, yes or no.

So, it does seem to me, Mr President, that each of us has to in his own mind, now that we are going to discuss it we are going to debate it throughout the day and we will take point by point by point, when these points come up, when these amendments come up, consider that background. If we agree a particular amendment which these two sovereign governments do not accept, I have to say, it would seem to me that we will not have a Court of Final Appeal. It is as simple as that, perhaps as stark as that. So, it seems to me, Mr President, that at this stage that is the responsibility which we had and which I pointed out to the Bar Association group who came to make their position clear to the Bills Committee. I asked the Bar Association Chairman. "Do you accept that what you are proposing to us, that this Bill is not acceptable, that what you are therefore proposing to us in striking down the Bill or modifying it in a certain way, do you accept the consequences of that decision, were we to take it?" And the answer was, as far as I could understand it, yes. That would mean we would not have a Court of Final Appeal. That is what each and every Member of this Council has to decide today: whether or not we will have a Court of Final Appeal, yes or no, black or white.

So, Mr President, I do believe that in the light of what is in the interests of the people of Hong Kong, and we all use this phrase repeatedly, here is a stark choice. Here is the issue which is above all others since it is the rule of law in Hong Kong which has extreme importance. It is the centre of the operation of society and gives authority to the entire system of government in Hong Kong, and this is, as Mr Martin LEE said, the apex of it. Do we have the apex or do we not? This, it seems to me is the critical question that we must ask ourselves, and as a matter of fact, establish whether or not we represent, or try to represent, the feelings of the people of Hong Kong.

Mrs Elsie TU has said perfectly properly that a vast number of people in Hong Kong simply do not understand the basic arguments. Except one thing they do understand, I am sure, is that the rule of law must continue with a high degree of efficiency and a high degree of protection for the people of Hong Kong, and I am sure they understand that position.

This is not an argument that is going to be determined as to whether the niceties of words, whether we can alter words to meet the requirements of individual Members with their amendments. We are actually facing a situation where we have one or the other, yes or no. If they understood that situation, if that was put in all the surveys carried out to the people here, I am perfectly sure you would get one answer: that we do want and we should have a Court of Final Appeal by whatever means, whether it meets the entire requirements of everybody or not. If it is acceptable in terms of what it offers, then I would say it has to be accepted.

Mr President, I simply repeat my statement earlier on, that I strongly propose and I hope that the majority of Members in this Council will, when the debate is finished, accept the need for a Court of Final Appeal whether or not it meets all their requirements. It may meet most of them. Thank you, Mr President.

MISS CHRISTINE LOH: Thank you, Mr President. When the Sino-British Joint Declaration was published in 1984 and Britain agreed to return Hong Kong to China, we were told that nothing significant would change in Hong Kong's way of life when 1997 came. Now it seems clear enough that a very great deal may change and not necessarily for the better. There are well-founded concerns in Hong Kong for the maintenance of locally-based institutions and for the rule of law.

The notion of "one country, two systems" is central to the Joint Declaration. A key element is the continuation of the common law here and the independence of the Judiciary. The rule of law matters a very great deal. Every opportunity should be taken to strengthen and perfect the rule of law.

The highest priority should be placed upon maintaining the integrity of what I might call the supply side of the law, that is, in the provision of legislation and judges. The need here is to ensure that Hong Kong arrives at 1997 with a court and legal system capable of delivering quality, transparent and impartial justice, despite what may prove disorientating political changes.

Back in 1991, the essential disagreement over the Court of Final Appeal was that this Council and the Hong Kong public wanted a Court that would enjoy the flexibility to invite common law judges from outside Hong Kong to join its Bench whenever it seemed desirable to do so, precisely as was promised in the Joint Declaration. Britain and China arrived at a decision that the Court should be set up before 1997 but outside judges can play no more than a token role in the Court, whatever the circumstances.

My first point is that all Hong Kong was asking for then was that the terms of the Joint Declaration repeated in the Basic Law be observed. Now Britain and China have entered into another agreement, not only that it gives no more flexibility on inviting overseas judges to join the Court's Bench, but also that the Court would not be set up until after 1997. The Hong Kong Government has the audacity to point its finger at this Council to say that if we had accepted the 1991 agreement that we would not have a worse position before us today. Its argument now is: take it or leave it. If you do not accept this agreement, albeit far from ideal, what you might get in future could be very much worse. This, Mr President, is an outright threat.

It may amuse you to know of a conversation I had yesterday with a member of the Administration. This member denied that my suggestion that it was a threat was a threat. This official said that it was merely a fact. In the end, we ended the conversation by agreeing that it was a threatening fact.

The second point I want to make is that clause 4(2) of the Bill, that the Court shall have no jurisdiction over acts of state such as defence and foreign affairs, is not an innocuous provision. The Administration argues that it is only repeating what is already in Article 19 of the Basic Law and therefore has no additional legal impact. Mr President, I urge you to take note of two points. Firstly, it is unclear how acts of state will be interpreted in future by the Standing Committee of the National People's Congress, which is more familiar with concepts of socialist legality than common law principles. The Administration admits, and I quote from one of its many background papers presented to the Bills Committee: "The precise scope of Article 19 will need to be settled after the transfer of sovereignty." As such, Hong Kong people are right to have focused on the meaning of "acts of state" now and also during the Basic Law drafting process some years ago.

Secondly, even if we accept the Administration's argument that clause 4(2) does not make things any worse, I would like to ask why China wanted this section in the Bill at all. Why does China insist on this provision then? It is obviously not enough for the Administration to say, as it has, that Britain has come to an international agreement with China on the Court, and that requires the British side to include the Basic Law formulation of "acts of state" in the Bill otherwise Britain will have broken the agreement. What the debate over the meaning of "acts of state" has shown us all is that maintaining the rule of law in Hong Kong, as Hong Kong understands it, could be very difficult, and there is little indication so far that China is prepared to really allow the common law system to flourish and be expanded here.

I said earlier on that the supply side of the rule of law relates to laws and the judicial structure. The demand side relates to the presumption amongst the public at large that the law exists as a guarantee of their rights and freedoms. The public wants the rule of law to belong to them directly under the law, not as a thing which is granted or manipulated by a government. It is in this light that I hope China will look at our fears about how "acts of

state" will be interpreted and respect that Hong Kong people want to follow the common law and not some Socialist-Marxist interpretation.

I believe the various amendments being made today are made in the spirit of holding the Administration to the promise that Hong Kong people thought was made to them back in 1984. The Joint Declaration is a most important document because it was based on a series of unambiguous promises made to this community that people were willing to give it their cautious support.

Mr President, you spoke most eloquently on 15 October 1984 in this Council when you asked that, while the Joint Declaration had much in it to commend, whether it was what the people of Hong Kong really wanted. I would like to paraphrase you, and ask today that, despite the fact that Britain and China have come to an agreement on the Court of Final Appeal, is this package of proposals what the people of Hong Kong really want? Mr President, you said then that the people of Hong Kong "look to Britain to negotiate for them, and for a while Britain persevered. But how hard did Britain try on their behalf?" You also said that you were not persuaded that she did all in her power for Hong Kong. "She went to the negotiating table with one arm tied behind her back." These sentiments are apt still today in this debate on the Court of Final Appeal.

Mr President, you also pointed out then that with this self-inflicted disability Britain got the best deal available. You went on to say that it was "the best of a bad deal." And you could not see the occasion then as one for rejoicing. Today I feel very much like you did back in 1984.

Mr President, you also had foresight. You asked back in 1984 that, while you welcomed the provision which would permit judges from other common law jurisdictions to be invited to sit on the Court of Final Appeal, "When the time comes, will they be so recruited and invited?" Indeed we now have the answer, and sadly it seems to be "no".

I have weighed up the Administration's argument that if we do not support the Bill then the unknown could be very much worse. I worry about this a great deal. Even if I were to give this argument its due weight, I simply have not managed to bring myself to support the Bill because it is simply not good enough for Hong Kong. Like you did back in 1984, Mr President, I therefore cannot endorse the agreement on the Court of Final Appeal or commend it to the people of Hong Kong. Thus, if the amendments should fail, I shall abstain from voting on the motion. If the Bill passes, I urge that Hong Kong makes every effort to ensure it will work after 1997, but it will require Hong Kong to amend part of the Basic Law in order to better maintain the rule of law here. It will also require Hong Kong to make every effort to get the best, the fairest of legal minds to sit on the committee of the Basic Law which will advise the Standing Committee of the National People's Congress on how to interpret the Basic Law.

MR TAM YIU-CHUNG (in Cantonese): Mr President, as for the establishment of the Court of Final Appeal (CFA), it has been my persistent stand to establish it as early as possible in accordance with the Sino-British Joint Declaration, the Basic Law and the Sino-British Agreement. Due to reasons well known to everybody, it was impossible to establish the CFA in 1993. The fact before us is, should the CFA Bill be passed today, technically speaking, the CFA would be operative at the end of 1996 or early 1997 at the earliest. It is therefore more or less acceptable even if this ordinance will not come into operation until 1 July 1997.

The greatest advantage of passing the CFA Bill today is to let the people of Hong Kong and international investors see clearly how the CFA of the Hong Kong Special Administrative Region (SAR) will be composed of, what kind of judges will sit on the CFA and how the CFA will operate. These are the keystones of the rule of law of the future SAR. If we get answers to such questions today, the uncertainties of the future will be removed. On the contrary, a rejection to pass the Bill on the part of the Legislative Council today is tantamount to a refusal to remove future obstacles for the people of Hong Kong and an enhancement of the opportunities of an emergence of variables.

Some Members worry that the inclusion of the provisions in paragraph 3 of Article 19 of the Basic Law in the Bill will allow the Chinese Government to weaken the SAR's power of final adjudication with its interpretation of "acts of state". As a matter of fact, such a saying has over-simplied the issue. From the legal point of view, in a case heard by CFA, while one party points out that a certain fact in the case is an act of state, as a matter of procedures, the Chief Executive or Central officials cannot rashly make a judgement by saying that those matters are within or outside the scope of acts of state. Paragraph 3 of Article 19 of the Basic Law spells out: "Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government."; and Article 158 also stipulates: "The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law."

Regarding the query raised by some people as to whether the Committee will adjudicate an act is an act of state according to the spirit of common law, it is obviously a question of law. Since it is a question of law, Article 8 of the Basic Law is applicable under this situation. Article 8 of the Basic Law spells out: "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region." Moreover, half of the members of the 12-member Committee for the Basic Law of the SAR are Hong Kong people, including those from the legal profession. So, the Committee, in adjudicating whether the facts in a case are acts of state in relations to defence or foreign affairs, should take the concept of common law into full consideration. Furthermore, Article 19 also spells out: "The courts of the Hong Kong Special Administrative Region

shall have no jurisdiction over acts of state such as defence and foreign affairs." The phrase "such as" includes the spirit of common law because acts of state are not confined to the level of defence and foreign affairs. They also include the present acts of Britain of appointment of the Governor of Hong Kong and grant of honours and the future act of the Central Government of appointment of the Chief Executive of the SAR. I also support defining the judicial scope of the CFA of the SAR according to the spirit of common law. Moreover, the Basic Law, upon its operation on 1 July 1997, will override all the existing laws and any laws that contravene the Basic Law will become invalid. As a result, the inclusion in this Bill the formulation of the provisions of the Basic Law does not signify any additional constraints to the judicial powers of the SAR. I therefore cannot see any special reasons for opposing the whole Bill because of this provision.

As for the ratio of judges, I have indicated my stand in a number of the previous debates. In short, it is reasonable to set the ratio between local and overseas judges as 4:1 and this does not contravene the Basic Law. Both the Sino-British Joint Declaration and the Basic Law make no mention of the ratio between local and overseas judges. Though Article 82 of the Basic Law states that the CFA may as required invite judges from other common law jurisdictions to sit on it, the phrase "as required" intends to maintain definite flexibility for the SAR Government to invite overseas judges so as to improve the quality of the CFA. I consider that the present definition of local judges is quite loose. Even expatriates who have served as judges in the SAR for one year will be regarded as local judges. I think this is in line with the original intention without contravening the Basic Law. I therefore consider the limitations to the ratio of judges stated in the Bill acceptable.

Mr President, earlier, the Governor and the Honourable Martin LEE talked a lot about the "Cradock" disease or amnesia as far as the CFA issue was concerned. They insisted that their own opinions were the most accurate or in line with the spirit of law. Of course, I have my own stand on the question of the CFA, and I already gave an explanation a moment ago. However, I will not reject other people's opinion because of my own views. On the contrary, I will take other people's viewpoints as reference. As the saying goes, "advice from others may help one overcome one's shortcomings." At present, a number of opinion polls, consuls from other countries, foreign chambers of commerce, and even a dozen of Queen's Counsels familiar with common law have indicated their support of the CFA Bill. Are the opinions of all of them biased? I also know that Mr Martin LEE has religious belief. I therefore wish to remind Mr LEE of a lesson from the Bible: "knowledge puffs up."

With these remarks, I support the Bill

MR FREDERICK FUNG (in Cantonese): Mr President, taking a comprehensive look at the judicial systems of different countries in the world, we can easily see that no country has ever allowed a place under its control to have its own court of final appeal, so Hong Kong can be regarded as a unique and exceptional case in this respect. As a regional government with such power, we should treasure it. In the past, the final appeal procedures were carried out in Britain. In view of this, while establishing the Court of Final Appeal (CFA), Hong Kong should be persistent in having the common law system which has been all along adopted in the territory remain unchanged.

At present, Hong Kong law cases, subsequent to appeals, are ultimately submitted to the British Privy Council for consideration. After 1997, only by moving the entire principle and spirit of the operation of the Privy Council to Hong Kong can the development of the local judicial system maintain the original common law system. It is of paramount importance to do so. We do not want to see that after 1997, the Mainland judicial system, that is, the operational mode of the Mainland legal system, replacing our existing common law system of the Privy Council which has all along been adopted by us. I therefore consider that there should be absolute persistence in maintaining common law.

In my opinion, the Agreement reached by both the Chinese and British sides this time, apart form the establishment of the CFA, also has two political implications. First, I believe that as a result of the Agreement, the local fundamental legal system and members of the judiciary can take a through train straddling 1997, an implication which is equivalent to the Beijing visit by the Chief Secretary, Mrs Anson CHAN on the smooth transition of civil servants. One is for the transition of the judicial system and personnel and the other is for the transition of the administrative system and staff. Second, the Agreement reached this time was made on a co-operation basis between the Chinese and British sides with the participation of the Hong Kong Government in designing and establishing the CFA. In my opinion, if there is no co-operation between the Chinese and British sides and the Hong Kong Government does not play any role in designing the CFA system, in future, the Chinese side would unilaterally base on the Basic Law to establish a CFA for the people of Hong Kong with the common law system from their own angle, point of view and concept of value. I will not doubt the motive of the Chinese side if they really do so. We nonetheless have worries if China, which has all along based on only one single Mainland legal system and concept of value for judgement, prepares and organizes a CFA for the present and future Hong Kong Governments. In my view, with the participation of the Hong Kong Government, the people of Hong Kong can at least express their views through the Hong Kong Government or even through the legislature when they have some views on the process of composition of the CFA, so that their views can be reflected in the course of devising the system. Of corse, I also believe the legal experts of the Hong Kong Government will inject the established spirit and principle of common law into the system. I hope the Attorney General will assure the above later.

The Association for Democracy and People's Livelihood (ADPL) and I take an affirmative attitude towards the present Sino-British Agreement and the CFA Bill. But the most important point is to establish every part of CFA under common law principles. I repeat that it is every part. In view of the above, I think that of the whole Bill, the interpretation of "acts of state" is very important. With the inclusion of Article 19 of the Basic Law before CFA is mature, it is a worry to us as to whether the local judicial system will be influenced by mainland China's legal system. As a regional government, once the interpretation of "acts of state" becomes ambiguous, there will be difficulties in the court operation. To make the concept of "acts of state" clearer, both ADPL and I consider the following measures practicable: firstly, amending the Bill by adding paragraph (5), that is "acts of state" shall be construed according to common law principles, in Clause 4; and secondly, seeking and striving for the Chinese Government to promulgate administration regulations to point out through legally binding documents that "acts of state" shall be construed according to common law principles. I think the Bill will be more complete by doing so.

I hope that Members will support a proposal embracing the following three points: firstly, to enable the continuous enforcement of the Sino-British Agreement; secondly, no objection from both the Chinese and British sides; and thirdly, a bill which can explain and relieve the worries of the people of Hong Kong. I think it is a "proposal winning in three aspects" if the above three goals can be achieved. The two-point amendment proposed by our ADPL is proposed to fulfil the criteria in this proposal. In fact, in the course of working out the amendment, we met Mr LEUNG Chun-ying of the Preliminary Working Committee, the British side representative Mr Alan PAUL and some high ranking officers of the Legal Department who had never told us that our amendment was unacceptable and that the two-point amendment contravened the Agreement. However, finally, last Saturday, I was informed by a high ranking officer of the Legal Department that both the Chinese and British sides did not want to have any amendments. I am very disappointed at this. It is inappropriate, not allowable and incorrect if the Chinese and British sides still insist on endorsing the contents of the Bill without any amendments. I believe that they must explain to the people of Hong Kong the reason for doing so if they really want to do so.

I may vote on the Bill in one of the following three ways:

First, I will support the Bill if my proposed amendment that "acts of state" shall be construed according to common law principles is passed. If my amendment is not passed but the Attorney General, in his speech, gives a thorough explanation, pointing out that his understanding of the "acts of state" spelt out in the Bill are in line with the principles and spirit of common law, I will cast an abstention vote. If my amendment is not passed and the Attorney General gives no complete explanation, I will oppose this Bill. I would like to make a pledge here that both ADPL and I will in future continue to ask the Chinese side to spell out in legally binding documents the requirement of having "acts of state" construed according to common law principles if the amendment in respect of "acts of state" which I proposed today is not endorsed. I will also in future propose at the Legislative Council an amendment that "acts of state" shall be construed according to common law principles.

I wish to respond to the remarks of some Members. First of all, regarding the date of operation, ADPL and I have all along hoped to have THE CFA operated as soon as possible. During the debate in December 1991, we in fact hoped to have it operated the sooner the better. If the debate on that day had been passed and the Bill tabled, theoretically speaking, the CFA could have been established in 1993 and that would have left us a period of four and a half years, when approximately 45 to 54 cases could be heard at the CFA on the assumption that the CFA could handle about 10 to 12 cases a year. This would be very meaningful for CFA to gain experience. However, the Bill was not tabled until today and the CFA could only be established at the end of 1996 or early 1997. In other words, we will only have a period of half a year and only five to six cases can be heard during the period. This will be of not much use as far as gaining experience is concerned. If an amendment to the date of establishment may probably have a bearing on the success or failure of the Agreement, I think it is not worthwhile to stake whether the Agreement should be enforced merely because of the requirement of handling five to six cases only.

The second point which I wish to respond is that just now both the Honourable Martin LEE and the Honourable Jimmy McGREGOR raised a point. I hope to express my understanding on that point. They said that should the Agreement fail, we would get nothing. Actually, this view may not necessarily be true. We will not have this Bill before 1997 if the Agreement cannot be reached. However, this does not mean that we will have nothing. In accordance with the provisions of the Basic Law, Hong Kong shall have a CFA on 1 July 1997. If we do not pass the Bill or if the Agreement cannot be reached, what I see is a situation that upon the establishment of the Special Administrative Region (SAR) Preparatory Committee and the formation of the SAR ruling group, or when China needs to organize the 1997 Government, they will continue to organize the CFA in accordance with the provisions of the Basic Law. I have already stated previously the areas which make us worry. In other words, the absence of an agreement or a bill does not mean that we will have nothing. The fact is that in such case, Chinese representatives, the successors of the present Hong Kong Government officials, the Preparatory Committee or the Preliminary

Working Committee will organize the CFA on behalf of Hong Kong. Do you see the consequences? If the consequences are clearly spelt out in the Basic Law, the consequences will come into reality if there is no Bill. In other words, if the supporters of the unamended Bill today will be labelled as "pro-China" or "pro-Britain", on the contrary, those who oppose this Bill leaving us with no Agreement and no CFA currently proposed are actually "pro-China", that is helping China to carry out her measures. It is hoped that you, in casting an affirmative or dissenting vote, should consider the consequences on top of your own value judgment.

These are my remarks.

MR ERIC LI (in Cantonese): Mr President, the anniversary of the dispute over the political reform package has just passed. Today, this Council returns to the "junction of three roads" due to the Court of Final Appeal (CFA) Bill. Subsequent to the secret talks between the Chinese and British Governments, there are always merely "limited choices" in front of the people of Hong Kong.

Having gone through the political reform dispute, the people of Hong Kong should have now understood that some 700 days later, the road sign "No Through Road" would be seen at the superficially broad "public feelings road". We are now having empty talks about smooth transition of rule of law in the hope of having an ideal CFA after 1997. In fact, the future can be visualized, that is the goal "will be within sight but beyond reach". On the contrary, turning to the superficially rather tortuous "path of talks", there will be more chances of going directly to the terminus and therefore a firm CFA in 1997. No matter who is right and who is wrong in the political reform dispute a year ago, with this experience, members of the public should have understood the inevitability of the consequences.

Two months ago, in this Council's debate on the CFA proposed by the Honourable Jimmy McGREGOR, I was of the opinion that before the presence of a specific bill, we could have no alternative but to honestly reflect Hong Kong people's "subjective wishes" under the principle of the issue. However, when we came to the stage of deliberating a bill, it was necessary to hold talks to discuss the issue in detail and to fulfil legislative duties practically by taking the views of the local people from all walks of life into account.

In fact, the question of tabling the Bill is not as simple as merely a subject of motion debate, or a topic of "having the CFA established quicker and with more flexibility" and how to get the best composition. The people of Hong Kong are confronted with "a basket of choices" in relation to the moralization of the Sino-British relationship, whether there will be judicial vacuum, and if members of the public and business investors have confidence in judicial transition. It is necessary to make "prompt" decisions on such issues. If the issues are handled badly, the chance will vanish in a flash. This Council can still show great discontent and try to make improvement in case the composition of CFA does

not conform to the "subjective wishes" of the people of Hong Kong. However, the common aspiration of the people and the relations with the Chinese side cannot be ignored and the plan of establishing the CFA cannot be abandoned in a fit of pique.

The Honourable Members are in fact very courageous in fighting for amendments. However, owing to the actual situation, it is inappropriate to exaggerate the seriousness of the issue. To package political principles with the "crisis theory" for the purpose of broadening influence would severely weaken the confidence of the people of Hong Kong and foreign businessmen as well, though this method could explicitly indicate Members' political stand. Moreover, great efforts have to be made to restore their confidence, so making political commentary with the procedural method is not in line with the overall interests of the people of Hong Kong. In my opinion, this Council should rationally analyse if the legislation, as a result of negotiations, is more or less acceptable when implemented, taking into consideration the "actual distance" and "this Council's objective wished".

(1) *An Early Establishment*

Days are numbered between now and 1 July 1997. The Government has estimated that it would take two years to establish the CFA. Even if this Council makes a decision today, how soon can the CFA be established before 1 July 1997? One year or six months? Is it true that there are as many as five to six cases on the list of hearing as the Honourable Frederick FUNG said?

(2) *Flexibility of Inviting Overseas Judges*

Undoubtedly, it would be better to have flexibility. However, the Chinese side has in fact shown greet flexibility on the question of the nationality of permanent judges by allowing the Special Administrative Region (SAR) Government to recruit experienced expatriates to work in Hong Kong. In the long run, it is of paramount importance for us to strive for appointing the judges who can win "international confidence". The down-to-earth method is to continue the monitoring work after the commencement of the operation of the CFA so as to get a chance of improvement.

(3) *Provisions on "Acts of State"*

The "one country, two systems" concept is unprecedented. Hong Kong should take time to establish a set of legal precedents with its own characteristics. Moreover, the majority of the people in the local legal profession have received British training with a good understanding of common law. As a result, after 1997, the British common law will still be of very authoritative reference use in the SAR. In the light of peaceful feeling instead of the conspiracy theory, even if the amendments are not passed, I believe the CFA's judgements will still be the judicial precedents well-known to the people of Hong Kong. I firmly believe that the Chinese side will not ignore the issue of the confidence of international investors and some illusive "crises" are unlikely to emerge if the people of

Hong Kong and foreign businessmen positively and persistently express to the Chinese side their hope of China's non-interference in Hong Kong's judicial independence.

It is inevitable to support the CFA Bill "at this time, in this place and on this day". However, it will be recorded in history that it is the Chinese and British Governments which secretly "shifted their positions", leaving the Legislative Council with extremely limited choices. After 1991, I have on a number of occasions asked the Government to release some main contents of the Bill before tabling it to this Council and not to pass the Sino-British Agreement until this Council's views have been obtained. However, the British side would apparently prefer surrendering to its Chinese counterpart unilaterally to enabling this Council to have a chance of expressing its views. Finally, this Council was driven to a "dead corner" because of the policy of the British Government of only for the sake of maintaining its own administrative "dignity" in Hong Kong. The people of Hong Kong therefore think that the British Government does not really "return the power of the government to the people" and this is how things are. Under such circumstances, it is the duty of the Honourable Members to look after the overall interests of Hong Kong. We must be bold to shoulder responsibilities and it is impossible to just look after our own image in fear of being regarded as "rubber stamps" or for the purpose of showing firm stand by exchanging accusations with the Hong Kong Government and shirking responsibilities. It will make members of the general public disappointed if ultimately nothing is achieved.

I think that among the major political reforms in the administrative, legislative and judicial aspects, the Legislative Council has no hope of straddling beyond 1997. Should there be an acceptable proposal on the judicial system, I hope that the whole territory will make concerted efforts to ensure that the civil service (that is our administrative structure) can have smooth transition in these two years so as to further restore the already weakened confidence of the people of Hong Kong and foreign businessmen during the Sino-British disputes. This is really our pressing task.

Thank you, Mr President.

1.00 pm

PRESIDENT: As previously indicated to Members, there will be a 45-minute break for lunch. I now suspend the sitting.

1.55 pm

PRESIDENT: Council will now resume. Are there any other speakers? Miss Emily LAU.

MISS EMILY LAU (in Cantonese): Mr President, I rise to speak in opposition of the Hong Kong Court of Final Appeal (CFA) Bill.

Many views have already been expressed in the remarks just now made by a number of Honourable Members. As a gesture of respect for what Mr President has stated a moment ago, I am not going to repeat them. However, I wish to declare my stand and express my views on several points. The first point is on the flexibility of the ratio of judges; the second is on the point that the sooner the CFA is to be established, the better; and the third point is in relation to the issue of acts of state.

Regarding flexibility, I believe that we have already debated this issue in this Council on a number of occasions. Mr President, my understanding of the Sino-British Joint Declaration and the Basic Law is that the CFA shall have the power to recruit one, two or three judges from another common law jurisdiction and CFA shall be allowed to exercise such kind of flexibility. Some lawyers say that it is in violation of the Joint Declaration and the Basic Law if the CFA is not allowed to exercise flexibility, just like the existing the CFA Bill which limits the number to only one or zero. I am rather inclined to take this view. I nevertheless understand that some lawyers, and even our legal advisers in the Legislative Council, mentioned that according to the Administration's present proposal, this may not totally violate the Sino-British Joint Declaration, but this is the lowest limit, that is the worst situation because of the restriction to one only. We do not understand the reason for the Administration to accept such a rigid thing with such a low limit. I believe this is probably in connection with our major political climate, that is the general expectation of the people of Hong Kong is getting lower and lower. I do not know the reason for us to accept such a rigid thing. This has really deprived this Court of its right of choices. In future, when the Court considers that local judges do not have much experience in handling some cases and it is necessary to recruit an additional foreign judge, it is impossible for the Court to do so. In this respect, I firmly believe that during the drafting of the Joint Declaration in 1984, people held such views. Mr President, I repeat that I have no intention to show disrespect for local judges, but I believe at that time, in considering that local judges might not have the qualifications, prestige and status comparable to those of the judges of the Privy Council in London, Britain, included this provision in the Joint Declaration. What is more important, I believe some people may worry that in future, courts will be under the control of communist China. If it is possible to recruit some foreign judges, it will probably boost their confidence so that they think this Court is comparatively independent. I therefore think that flexibility is the keystone of the whole issue. I cannot support this Bill if there is no change in this aspect.

During my conversation with a large number of Hong Kong residents, including some at the grassroot level, some professionals and some billionaires, all of them said in one voice, "Objection to this Bill! It is entirely unworthy of having this and it is cheating the people of Hong Kong to have it." However, the Administration would tell us, "If we do not establish it, there will be judicial vacuum." In that case, should we establish a court of final appeal without careful consideration? Can our expectation be fulfilled in the absence of any judicial vacuum? Moreover, we can now see that our CFA plays no more role than upgrading the judges of the existing Court of Appeal one rank higher and giving them more pay if this Bill is passed. Can we feel at ease and justified with such a CFA?

As for the issue of recruiting foreign judges, it is likely that in future, recruitment of foreign judges will be forbidden completely and perhaps that the CFA will not recruit such judges. I hope this conjecture of mine will be wrong. If it is really necessary to recruit a foreign judge, a judge from Singapore may be recruited! In view of the above, how can such a CFA tell the people of Hong Kong and hoodwink the business community by saying that it is really useful and important to our rule of law? I do not necessarily agree to some people's opinion that it will be extremely useless to upgrade the judges of the existing Court of Appeal to the CFA level in future. Probably it is going too far to say like this. However, shall we return to our original intention of expecting the judges of the CFA to occupy respectful international status, to be very independent, and to win the confidence of the people of Hong Kong? I consider the existing Bill cannot achieve this goal.

Secondly, I wish to briefly touch on the opinion — the sooner the establishment, the better. I fully support what the Honourable Allen LEE has said. Just now I said that I would not repeat this. In fact, (since the CFA) will not be operative until 1997, what is the reason for our haste? Many meetings for deliberation have been rashly held in three weeks and work has not been carried out thoroughly. Moreover, the Administration, as I just now said, rejected what it had stated before. Everybody says that the sooner the establishment, the better. Nonetheless, now the Bill has been proposed, yet the Administration says that the CFA will have to be established in 1997, and you had better pass the Bill and put it there for 700 days to let it be dust-laden. I am very disappointed at this.

Furthermore, Mr President, in regard to acts of state, I only wish to speak on one point and do not want to repeat others. As I recall, the Legislative Council ─ maybe the previous term of the Legislative Council; former Members may recall ─ mentioned their hope for seeking the Chinese Government's consent to amending Article 19 of the Basic Law, for Article 19 of the Basic Law mentions acts of state. The present Administration also says that there is no harm in including it in this Bill, for it has already been embraced in the Basic Law. The problem is, if some people, including some government officers or our colleagues in the Legislative Council, said that they hoped to ask the Chinese Government to amend the part of Article 19 of the Basic Law on acts of state, but now they vote in favour of including this issue in one of the laws of Hong Kong, will they not weaken their own theoretical basis in case there be arguments with the Chinese Government in future? The Chinese Government will in return ask: in June 1995, why did you support the inclusion of "acts of state" in the legislation on Hong Kong's CFA? Since it could be put there at that time, why is it necessary to amend the Basic Law? I hope those Members who, in this Council, called on the Chinese Government to amend the part of Article 19 of the Basic Law concerning "acts of state", would probably say something to remove my doubts, because I do not understand; or perhaps they can say that they have changed their original intention.

Besides, Mr President, some people say this Agreement is unchangeable and we can get nothing if we do not want it. In fact, I believe one of the very important parts leading to the Agreement between the Chinese and British Governments is the lobbying by the business sector. The business community expressed their concern over this issue to the Chinese Government, so I do not accept the view that the Chinese Government adopts an obstinate attitude in doing everything. I hope the business sector as well as other people can talk with the Chinese Government with a firm stand. They should not just say that we want rule of law and CFA and we can accept any CFA. I therefore think that if we take a firm stand, hopefully we will have a chance of convincing the Chinese Government.

I fully support the part of the remarks just now made by Mr Allen LEE on striving for an early establishment and flexible composition. However, he also said that we had to try our utmost to strive for the best arrangements, but in case we failed to do so, we would not oppose CFA. I would like to tell Mr LEE that I believe this is the difference between you and me. He knows that in the Legislative Council, in case we fail to strive for some of the issues, we very often reach a compromise. This Council passes several dozens of bills a year, so we will reach compromise on many issues. However, the question is, when we come across some major principles and matters of life and death, will we take "a firm stand"? This is probably because of the difference between he and me on analyzing the views of the people of Hong Kong. I believe the result of 17 September is that members of the general public will tell us who among us know very well what is in the mind of the people of Hong Kong.

I think that it is the time for a person to tell others the side one is on and to show one's stand at a moment when one's fate hangs on the balance. We have all along strived for the same thing together, and the only difference is that at the moment of life and death, some people would say: it does not work! I had better support the original intention; and some would say: It does not work! I have to take "a firm stand". The question lies in how we can influence the Hong Kong Government, and the Chinese and British Governments. Let us not talk about distant past and only talk about my Bill concerning 60 directly elected seats proposed on 30 June last year. On that occasion, thanks to you, the Liberal Party, I lost. If the Liberal Party had supported me at that time, the whole history could have been rewritten. Today, it is also the Liberal Party which controls the history of this CFA. Members from the Liberal Party, in fact you have said what you want to say. The matter is whether you have such courage to take the last step rather than following others to say I support this and that, but I will support the one proposed by the Administration in case I fail. I am not going to encourage you to act against the Administration, but when we come to important matters, I think we have to be accountable to our conscience as well as to the people of Hong Kong. However, what is of equal importance, I believe in our firm stand. As you the Liberal Party has good connections with the Chinese Government and you have just visited Beijing, you can influence it. The question is, if, after you have told it a lot of things and ultimately it still says that it will not make any change, you will tell it that it is all right to remain unchanged and you will support its original intention, you would not make any change if you were it.

Mr President, I have briefly spoken about a number of issues which I considered to be core ones in relation to CFA. I will oppose this Bill if these issues are not passed at the amendment stage.

MR MAN SAI-CHEONG (in Cantonese): Mr President, I am extremely disappointed at the Sino-British Agreement on the Court of Final Appeal (CFA). Rule of law is the keystone of Hong Kong. Without it, the stability and prosperity of the territory cannot be safeguarded. Now the outcome of the Sino-British Agreement has been rigidly tabled in the Legislative Council for the compulsory acceptance of Honourable Members. This is an act regarding the Legislative Council as a rubber stamp.

Mr President, we can make compromises and have negotiations on other issues. However, it is entirely impossible to make a compromise on an issue which will influence Hong Kong's rule of law and future. Just imagine that if the power of interpreting "acts of state" is on the hands of the National People's Congress, in future, a large number of matters will probably be put on the "golden cudgel" of "acts of state" to prevent CFA from handling them. For instance, in future, should there be commercial disputes between China-funded organizations and Hong Kong companies, will China-funded organizations take "acts of state" as "shields" when a case is heard by the court? Will the power of the CFA be markedly weakened?

This Council discussed the issue concerning the rate of overseas judges at the end of 1991. Overseas judges are not tantamount to judges of foreign nationalities. They may be some experienced, qualified judges who cannot be found in Hong Kong. In view of the above, restrictions to the ratio of overseas judges may lead to heavy losses on the part of CFA in handling some complicated cases.

Mr Chris PATTEN, the Governor of Hong Kong, always talks about maintaining Hong Kong's rule of law. However, just like the case of Dr FAUST, Hong Kong has been betrayed by his compromises. Mr Chris PATTEN has even "lost all his accumulated skills in one short day". I believe the eyes of members of the public are discerning. If today there is a compromise on the rule of law, which the people of Hong Kong treasures, will the freedom, human rights and democracy of the people of Hong Kong be sold at cheap prices tomorrow?

Mr President, it is the last time for me to speak in this term of the Legislative Council. I sincerely hope that Hong Kong's rule of law will never die.

These are my remarks.

MR ANDREW WONG (in Cantonese): Mr President, I speak with a sinking heart about something which I have not written down. These things have been in my mind for a long time. I could not get them down, but I can speak about them.

In my opinion, among the number of speeches I just now heard, the speech delivered by the Honourable Miss Christine LOH is the one which I admire most. All she expressed are actually thoughts already in my mind. Moreover, she also talked about how we opposed the then agreement in 1991 and the reason for our continuous opposition of the then agreement recently. However, what we are facing is a "three-pronged" rather "two-point" predicament. The "three-pronged" predicament does not mean charging ahead, retreat or amendment. Actually, what is the difficulty of the "three-pronged" predicament I stated? No matter whether it is charging ahead, remaining unchanged or amendment, no good results will be obtained. Under the present circumstances, we can see that enacting legislation in relation to the Agreement will not get the result we wish to have. In these circumstances, I am very reluctant to support it. If we veto it, we are not only unable to establish the Court of Final Appeal (CFA) earlier but will "get nothing" even if CFA will be established on 1 July. The establishment of the CFA on 1 July 1997 means that the CFA is established with the participation of the existing legislature and government. In comparison, this is a more desirable method. As for amendments, I support the contents of a number of amendments. It is nevertheless a pity that once the contents of the amendments

run counter to those of the Agreement, we will be back to square one and it means that the amendments will be vetoed, for under such circumstances, let us set aside the possibility of recalling the Bill by the Administration (I believe the Administration will not do so), the Governor will definitely be unable to sign this Bill. Even if he signs it, in accordance with Royal Instructions, this Bill is invalid, so ultimately, we will get "nothing".

Now the fact is, do we want the CFA? In 1991, I strongly opposed and I thought the issue could be discussed again. I raised a proposal which was better than the 4+1 formula on the one hand and could meet the requirements of the formula on the other. However, I proposed not to limit the number of judges sitting on the bench and if necessary, overseas judges could be recruited; or not to fix the number of judges as five, or even with a fixed number of five, additional seats should be arranged for some overseas judges and experts to sit on the bench for certain cases. Obviously, the Hong Kong, British and Chinese Governments failed to reach an agreement for reasons I do not know. Probably it is because of strategical reasons. In view of this, just now the Honourable TAM Yiu-chung said we all knew the reasons. I consider that basically it is because we were not frank enough. Maybe basically power politics have been employed.

Under such circumstances, we can only choose the best from a number of bad options. I choose to forge ahead, that is to establish the CFA. Even if the CFA will not be established until 1 July 1997, this is a more desirable choice in comparison with an option that we are totally not sure whether the CFA can be established on 1 July 1997 and some regulations will only be formulated after 1 July 1997 for establishing the CFA.

Undoubtedly, between the two options, the existing one will be chosen. I do not wish to repeat what Miss Christine LOK just now stated. I only wish to point out that battles will never end. Is it necessary for one to surrender oneself when one is defeated in a battle? It is not necessary, for one can fight again. One can continue the fight provided one has not died. The most important thing is to clearly indicate those areas that we are not happy with. Nonetheless, under the present situation, we must achieve this first. Nothing is perfect in this world. We can only forge ahead step by step within our ability, taking into consideration the prevailing circumstances. I consider the idea of rather dying as a hero than living as a coward naive. This should not be a saying always mentioned by Legislative Councillors and politicians, otherwise, Hong Kong will go towards the abyss of a sea of fire.

Mr President, with these remarks, I oppose all the amendments and support the Bill.

MR JAMES TO (in Cantonese): Mr President, just now the Honourable Andrew WONG said his heart had sunk. In fact, my heart also sinks.

While deliberating this Bill, under the overall major principle, I asked myself the reason for engaging in politics and which one I should vote for today. Some government officials approached us, the Members from the Democratic Party, asking us if we could vote for conscience's sake. I then told them that basically I thought that it was incorrect because this was an important policy on which we could not vote merely for the sake of conscience, that is the so-called individual voting. This is a matter concerning a party. If this can be voted individually, the party will no longer be a party. However, I do have a conscience. Should there be individual voting, I believe that every brother and sister in our Democratic Party will vote for the same thing, that is opposing this Bill and support the amendments proposed by the Honourable Martin LEE.

The matter is, if we are unable to take a firm stand for the people of Hong Kong and express their views on some major issues of right and wrong, why do we engage in politics? This is not as Mr Andrew WONG said of "rather die a hero than live as a coward". It is a matter of telling people all over the world as well as the Chinese, British and Hong Kong Governments, after all whether this is right or wrong and whether rule of law can be maintained. I agree that battles will never end. We therefore have to continue to fight and struggle. On this issue, I find it queer that should Mr Andrew WONG take this attitude, he should at most cast an abstention vote as the Honourable Miss Christine LOK does, and there is no reason for him to vote in favour of an agreement which he disagrees and considers undesirable.

Among a large number of agreements, even the best may go to the abyss or to a sea of fire, probably making Hong Kong unable to have rule of law in future. Just now the Honourable Eric LI warned us not to frighten investors away with such violent views, or else, it could not be compensated with all efforts in future. I cannot act against my conscience by telling other investors that there may be a better future so as to attract them to come here. Even if I am able to deceive foreigners, I am unable to deceive the people of Hong Kong, my constituents and my conscience.

I wish to quote a law dictionary published in 1991 by the Publishing House of the University of Political Science and Law of China. It appears that among the large number of books published in China which I have checked, this is the only one which defines "acts of state". I am now quoting the original text which interprets "acts of state" as "government acts, ruling acts, political acts and state acts which embody state sovereignty, are highly political with direct relations with national interests, so generally speaking, legal actions against them are not allowed." I have read the 4:1 ratio stated in the Agreement on the Court of Final Appeal (CFA). Regarding this issue, as the Honourable Miss Emily LAU said, would there be a court with high prestige or a mere duplicate of the Court of Appeal? However, the issue of "acts of state" is more important than the 4+1 formula. It is because if any judge who bases on "acts of state" to interpret but the ultimate interpretation may not

be in conformity with the provisions of common law, even if he is highly capable, he cannot get out of the "acts of state" concept, that is he is confined to the interpretion defined from the angle of Chinese side.

Many people are in the negative, saying that "acts of state" are not added by us and acts of state such as international and foreign affairs have already been stated in the Basic Law, so you had better condemn the Hong Kong Government. But in fact, it is not us who are bad and it is the Chinese Government which is bad. Of course, the Hong Kong government officials would not say so, and they only do not express this view by word of mouth. Nevertheless, at the meetings of the Bills Committee, our government officials in fact expressed this view indirectly: "We have not inserted any new items. All the items will automatically become effective when the time comes and we have added nothing." In my opinion, the question is, if Hong Kong has already formulated a law in which the wording that we are still striving for amendment is adopted, in future, how can I tell others to amend it?

I think the question is, if we are unable to take a firm stand on this major issue of right and wrong, we will feel ashamed to the people of Hong Kong and we are cheating the investors in the world against our conscience by saying that we will have a CFA. We are just talking about something is better than nothing and ultimately "nothing will be obtained" if the Agreement is violated. These are not positive thoughts.

Of course, every Member has his/her own political inclination. However, finally I would think why should I engage in politics? If I am unable to take a firm stand on this issue, I will outrage my conscience and my God. If someone from the Democratic Party proposes, or even if it is the stand of the Democratic Party to support this Bill, undoubtedly I will withdraw from the Democratic Party instantly.

MR NGAI SHIU-KIT (in Cantonese): Mr President, in accordance with the Sino-British Agreement, no matter from social, economic or political points of views, the establishment of Hong Kong's Court of Final Appeal (CFA) on 1 July 1997 will play a positive role. The Agreement reached this time will lead to the continuity of the local judicial system before and after 1997, and will also boost international investors' confidence in Hong Kong and ease the tension between China and Britain which is instrumental in Hong Kong's smooth transition. This is therefore totally in line with Hong Kong's long term interests. As a Member accountable to the people of Hong Kong, I recommend this Agreement to all the Hong Kong residents and request all the Honourable Members to pass the CFA Bill drafted in accordance with the Sino-British Agreement.

Mr President, after 1997, Hong Kong will be a special administrative region of China. Article 19 of the Basic Law spells out that the Hong Kong Special Administrative Region shall be vested with independent judicial power, including that of final adjudication. This is the most effective pledge made by the Chinese Government for safeguarding Hong Kong's future rule of law system.

Mr President, I do not wish to repeat the advantages of the establishment of CFA to the economy of Hong Kong. However, after the release of the news about the Sino-British Agreement on the CFA, apart from the leading chambers of commerce and majority of members in the business community who welcome it, the consulates and foreign chambers of commerce in Hong Kong from a number of countries have also declared their support in a view that the Agreement can ensure the continuity of Hong Kong's existing sound legal system which is conducive to attracting international a investors and consolidating Hong Kong's outstanding status as an international commercial, monetary and financial centre. The international community's support of the Sino-British Agreement sufficiently proves its great confidence in the future the CFA, believing that CFA will operate efficiently in an impartial and independent way.

I would like to take this opportunity to advise those who repeatedly query if the Sino-British Agreement will affect Hong Kong's rule of law that, instead of burying themselves in sands any longer, they should open their ears and eyes to listen to the positive views of people in the community and see the actual circumstances around them so as to understand public opinions and to realize that they are standing on loose sands without gaining a firm footing.

Mr President, the deterioration of the Sino-British relations because of the political reform package has really made an impact on the Hong Kong community. Over the past few years, most of the people of Hong Kong wished that both the Chinese and British sides could really look after Hong Kong's interests by resuming their normal relationship. Through talks for as long as eight years, at last there is a consensus on the CFA issue. This proves that many problems can be resolved provided both the Chinese and British sides are willing to make concerted efforts with sincerity and to open their door of co-operation. Our voting down of this today is tantamount to voting down and ignoring the sincerity of Sino-British co-operation which is not what the people want to see.

I must also point out that in this Agreement on the CFA, both sides agree to allow the "leading group designate" to be responsible for organizing and establishing the CFA with the participation and assistance of the British side so as to set a good example for embodying the "one country, two systems" and "Hong Kong people administering Hong Kong" spirit enshrined in the Basic Law. If we vote it down today, it is tantamount to voting down the chance of participation and to turning the already certain factors into uncertainties.

Mr President, we learned a lesson four years ago, so we should not commit the same error again. The CFA Bill now tabled is the best arrangement which can be made under the actual circumstances. I believe that Hong Kong residents will welcome a CFA which can operate independently after 1997 and can obtain the approval of the international community. In fact, it is not difficult to make appropriate decisions provided we can start with the interests of the people of Hong Kong in mind.

On this issue, I wish to repeat what the Honourable Simon IP said a moment ago. He described that we had already been out of the tunnel and could see dawn. It is quite right that only the blind people cannot see any light when they are out of a tunnel.

Mr President, with these remarks, I oppose any amendments and support the CFA Bill.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, this Bill raised today is the third and also the last debate on the issue of the Court of Final Appeal (CFA). Though there will be one more meeting tomorrow, to the Honourable Members of this term, this is after all a farewell race, so all will express their views by every possible means. Though many people do not like to listen to my remarks, this does not mean that their views deserve my support. Today Members will try every effort to make their decisions on a certain issue.

We have debated the CFA issue on a number of occasions, but members of the general public are still sceptical about this and many of them do not know what the CFA is and what the CFA will be after 1997. Of course, I am not insulting the wisdom and legal knowledge of members of the general public. As a matter of fact, we must be aware that at present, the so-called Court of Final Appeal is the Privy Council of Britain. If both the prosecutor and defendant are unhappy with the decision on an appeal made by the High Court of Hong Kong, they may appeal to the Privy Council provided two basic requirements are met. I believe that not every Member in this debate knows about the requirements: The first requirement is the amount of money involved in the case must be over $500,000 and that amount is not the current $500,000, but the $500,000 about 50 years ago. Just now the Honourable Martin LEE gave me a hint that it is the $500,000 50 years ago, but I do not know if this is correct. In fact, this is a considerably large sum. The second requirement is in relation to public interests. The Administration knows very well how to make use of this requirement and the Land Resumption Ordinance also makes use of public interests. In view of the above, cases meeting the above requirements may appeal to the Privy Council in Britain, that is the so-called Court of Final Appeal at present. However, we must know that members of the general public or ordinary cases are unable to meet the above requirements. The Chinese Government will recover its sovereignty over Hong Kong after 1997. It is inevitable that she will have her own comprehensive set of laws and the so-called Court of Final Appeal will be established. This is also for respecting the representativeness of the people of Hong Kong by bringing the power of the existing

Privy Council of Britain back to Hong Kong through the establishment of the CFA. On this issue, I hope that members of the public can learn as quickly as they can about a court of final appeal and the future CFA so that they will have talking points at leisure.

Some of our Members query the representativeness of the judges of the court of final appeal or the future CFA. Mr Martin LEE particularly has high expectation over the judges and even requires the judges to be of the highest quality. However, during the debate, I mentioned that Hong Kong is only a city at present and will be a special administrative region in future, so all the matters have to be in line with the local circumstances, demand and reality and we should not base on our own wishful thinking to ask for things and expect to get them all. If that judge is the best in the world, can we have the best lawyers to cope with the needs? Of course, Mr President, some people said that the best doctor knew how to cure patients on the one hand and also knew how to delay treatment because he would have no more business should his patients recover too quickly. The best lawyer knows how to protect his clients' rights and interests by all the laws disregarding whether the clients are right or wrong. The best accountant knows how to advise his clients to avoid taxes lawfully and the so-called avoidance means evading by every possible means. The best surveyor knows how to make the best use of the so-called ratio and to make use of other ordinances. For example, other people are not allowed to construct buildings at the junction of MacDonnell Road, but he can. Nonetheless, as the best judge, one must firmly believe that judgments can be made in accordance with laws.

Some judges, when hearing cases in Hong Kong, get drunken and are unable to make judgements at once. However, in the future CFA, judgments are jointly made by five judges. Even though one of them are half drunken, four and a half of them are sober. In fact, once I lost my appeal at the Privy Council, but I did not even know who those five judges in the Privy Council were. If in future, four local judges can clearly tell us the fact, why is it necessary for us to query their representativeness? Provided that in future the judges and lawyers of Hong Kong can work according to their consciences and continue to study and learn due to insufficiency, I firmly believe that they can represent the people of Hong Kong to strive for the so-called most lofty and accurate judgments in our mind. We have debated this issue from time to time over the past four years. I personally think that there are in fact only imaginary and groundless fears and members of the general public do not know or understand what we are arguing about.

As for the 4:1 issue, we always argue about Article 82 of the Basic Law. Undeniably, according to the interpretation in English, it is plural. But the Basic Law does not spell out whether it is plural in a case and therefore there may be different numbers of expatriate judges in two, three and four cases and this is plural, so what should we argue about? Of course, if lawyers do not argue, that means they will have no business, so barristers, Queen's Counsels or even solicitors, all want to argue. It is not necessary to spend money on arguing his own issues, but he charges you fees if you instruct him. However, the most important thing is to take public feeling into consideration.

I have to take this opportunity to criticize the Government. In 1991, when both China and Britain reached an agreement on this issue, the Government should carry out the plan as quickly as it could in a bid to gain such kind of experience during the transition period and give members of the general public confidence. Instead of stressing too much on investment funds, we should pay attention to local residents. Though in future, CFA may provide services to "the rich", the foreign institutions or foreigners concerned, after all, we still aim at serving Hong Kong residents. I do not mean to reject foreign capital, but we should not regard them as so important because it is the local residents who are the targets of the services of the Government and Legislative Councillors. As for the queries, in fact it is necessary to establish CFA in Hong Kong before 1997 as early as possible mainly for the purpose of enabling it to be operative and to do actual work to boost public confidence. As a matter of fact, analyses reveal that the public may not enjoy and do not wish to enjoy this fact because taking legal proceedings is after all not a good deed. This is particularly the case of civil proceedings which waste money and manpower. I may tell you that once I made the other party lose $2.8 million in one case and I myself ultimately "got nothing". In that case, who has benefited from lawsuits? The answer is lawyers. In view of the above, the public actually do not want to enjoy such a lofty issue triggers so much argument.

Mr President, I predict that today both sides will get almost the same number of votes, probably in a ratio of 29:29. However, one Member may be engaged in other matters, so the ratio will at least be 29:28, or may be 32:26 according to my ultimate forecast. No matter what the outcome will be, we have to firmly believe that the CFA will not be utilized for achieving some political aims and objectives. We are fully aware that the majority of the Legislative Councillors have already made up their mind in voting. With all due respect, they have already been apathetic. No matter how pleasant to listen to and how attractive the speeches are, or if they have theoretical support, the voting result has already been fixed.

We must understand that Hong Kong is a city under British rule at present but will be a special administrative region of China in future. So, we must not think that the people of Hong Kong can take a lead to be in confrontation with the two governments or the future government, that is the so-called sovereign state. It is risky to have such mentality and thinking. The people of Hong Kong can be arrogant, but we must bear in mind that we cannot be megalomaniac. Of course, we must be confident, but when confidence exceeds a limit, ideologically speaking, it can be viewed as revolution. Would it be beneficial to ourselves and the sovereign state? I firmly believe that a law-abiding, legitimate citizen or resident of the future Hong Kong Special Administrative Region who respects sovereignty integrity of the state would not have such mentality. It is natural that a leading government has to listen to opinions on many matters and should make amendments in due course in case of insufficiency. This is what a responsible government should do.

Different views and understandings will change with the impact of times or things. Therefore, today, during the last debate on the CFA by Honourable Members, I personally consider that it is very important for us to understand that basically, we should respect the two sovereign states and the future sovereign state. We should, through proper channels, to try to get from them the goals we want to achieve and all the things that we want in future. Of course, conformity with the central policy to benefit the local policy as well as joint development and balanced development are our vital and ultimate aims.

Mr President, undeniably, some of the laws of the Chinese Government make the people of Hong Kong worry. Notwithstanding this, we cannot make the Chinese Government amend all of them in one day. It is our earnest hope that under the circumstances of "a special administrative region with the one country, two systems pattern" and with the support of the Basic Law, Hong Kong will have legal autonomy. It is firmly believed that most of the leaders of the Chinese Government will show concern about and look after as well as understand the feeling and mentality of Hong Kong residents. In my opinion, there is no harm for us to express appropriate views in case there are shortcomings. However, I myself doubt if it is necessary to make such amendments hastily before implementation.

Earlier, I strived for something from both sides due to some reasons. However, the aim and objective for my doing so is to make the public understand that CFA is not necessarily a lofty goal and we should after all conform to the entire actual situation of Hong Kong so as to have balanced development. Hong Kong, apart from having judicial independence, is after all an economic and financial centre where residents live and work in peace and contentment. In the meantime, the issues concerning society and people's livelihood have to be taken into consideration. In my view, a politician or a participant in politics should not drive wedges aimlessly or with ulterior motives to make members of the public misunderstand a policy or law.

Mr President, I speak to strive for my rights. I will finally oppose any amendments and support the endeavour made by the Government. It is hoped that in future, the Government will enforce laws properly. Of course, mistakes, if any, should be corrected with every effort.

DR SAMUEL WONG (in Cantonese): Mr President, the Sino-British Joint Liaison Group (JLG), through five years' marathon talks, finally reached an agreement on the issue of the Court of Final Appeal (CFA) on 9 June of this year. ZHAO Jihua, Senior Chinese Representative of the JLG, said the significance and impact brought by the agreement should not be underestimated, for this signified the co-operation between the Chinese and British sides on the Hong Kong question which produced positive impetus and effects on the development of the relations of the two countries. Nevertheless, setting the above symbolic significance aside, the Agreement itself is nothing but a better-than-none agreement rashly made by both the Chinese and British sides. No wonder some people call them "ribs of chicken", which, though insipid, would be wasteful to be discarded.

My several points of views on the contents of the Agreement are as follows: First, a delay in the establishment of the CFA beyond 1997 is retrogression. As early as 1991, both China and Britain reached an agreement in principle on CFA. At that time, both sides agreed to establish CFA as soon as possible before 1997. As at the end of last month, when the talks were still in deadlock, the Governor together with the high ranking officials concerned still promoted the idea of establishing CFA as soon as possible before 1997 so as to enable CFA judges to hear cases and gain experience earlier. However, the issue took a sudden turn and then developed rapidly. It is disappointing that unexpectedly now the Hong Kong Government agrees to delaying the establishment of the CFA. On the other hand, the continuity of the final adjudication mechanism is therefore established though the CFA will not be operative until July 1997. As a result, there will not be the so-called "judicial yacuum" before and after the change of Hong Kong's sovereignty. Moreover, the legislative procedures of the CFA Bill will be completed by this term of the Legislative Council to avoid China's "starting another stove" on this issue.

Second, it is about the flexible arrangement of local and overseas judges. The Sino-British agreement reached in 1991 stipulates that there shall only be one overseas judge. At that time, the Administration tried every possible means to lobby in the hope of exchanging for the establishment of the CFA around 1993 with this so as to maintain the continuity of rule of law, smooth transition and accumulated experience. The Legislative Council, fearing that this stipulation would affect the judicial quality of the future CFA, moved motions twice to vote down this agreement. At present, the arrangement of the ratio of overseas judge included in the Agreement remains the same as the rigid stipulation in 1991. It seems that nothing has been gained after a delay of three years or so. Nonetheless, on the list of 30 non-permanent local and overseas judges, there may be many extremely

experienced overseas judges who enjoy high prestige. On the last list of judges, there should be some judges who have been living in Hong Kong for a period of time. Native places and races should not be included as the criteria for being selected. In view of the above, perhaps a loss of flexibility would not be as serious a problem as envisaged.

The third point is on the inclusion of the formulation of "acts of state" in the Agreement. The British side was pleased to accept the inclusion in the Bill the formulation of "acts of state" in the Basic Law, which spells out "acts of state" such as defence and foreign affairs, unlike the interpretation under the common law that "acts of state" are limited to defence and foreign affairs. Relatively speaking, the phrase "such as" may mean other acts in a wider scope. However, we are unable to confirm if this subject and the phrase "such as" were embraced in the 1991 agreement. If the phrase "such as" was not included in the 1991 CFA law, it does not mean that the law can straddle because on 1 July 1997 when the Basic Law becomes effective, the formulation of "acts of state" will definitely become effective and the phrase "such as" will be included in the law. On the other hand, the Chinese side has indicated that the CFA of the Hong Kong Special Administrative Region (SAR) will be a CFA under a local government whose jurisdiction will not be equal to that of the CFA of a sovereign state interpreted in common law. The affairs dealt with by the Central or the relationship between the Central and the SAR are also spelt out. Whether matters involving "acts of state" are within the jurisdiction of the CFA of the SAR may have to be based on the interpretation of the Basic Law by the Standing Committee of the National People's Congress. So, it is extremely difficult for the people of Hong Kong to oppose this. It seems that the only thing that we can do is to ask government officials to accurately define "acts of state" and put it into record at the stage of deliberation of the Bill today.

The fourth point is the spirit of judicial independence. In accordance with the Agreement, in July 1997, the Chief Executive shall be allowed to preside over the first meeting of the Judicial Officers Recommendation Committee to make recommendation on the appointment of the Chief Justice. This may lead to the situation of administration interfering in judiciary. Though the Chief Executive will only preside over the first meeting in a symbolic way, it is hoped that the Chinese and British sides will further discuss whether there will be better arrangements.

On the face of it, it seems that the British side has given up defending the spirit of judicial independence because several years ago, the original intention of establishing the CFA was to let the CFA develop and operate gradually with the experience gained by the British Privy Council, so as to establish a court of final appeal with almost the same prestige, duty and authority, and creditability and high quality as the Privy Council. Judging from the present conditions, this CFA may only be the existing Court of Appeal in another guise.

Positively speaking, an agreement on the CFA issue in fact signifies rather successful co-operation between China and Britain as well as the determination on the part of the Chinese side on implementation of the "one country, two systems, high degree of autonomy and Hong Kong people administering Hong Kong" policy in Hong Kong. Even though this agreement does not bring the people of Hong Kong great disappointment, it has already led the people of Hong Kong into a realm of no alternative. We cannot help asking that over the past years, has the Chinese side attempted to consider the wishes of the people of Hong Kong by allowing some flexibility in line with the Basic Law on the issue of the invitation of overseas judges by CFA? Is it really difficult to do so?

We may sacrifice the high quality and independence of the future CFA if we allow the Bill to be passed unamended. If the Bill is amended substantially, the Hong Kong Government may not accept and enforce it, and judges with prestige may not accept the invitations for sitting of CFA. Moreover, both the Chinese and British sides have resolutely stated that no substantial amendment would be accepted. If the Legislative Council votes down this Bill, Hong Kong will have to face an unpredictable CFA to be unilaterally organized by the Chinese side.

Thank you, Mr President.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, it was not my original intention to speak. But the Honourable Andrew WONG's speech I have heard has touched a raw nerve within me. So I would like to respond to a few points he has made.

Mr President, I am indeed overwhelmed with sadness. I have heard Mr Andrew WONG say that, on the question of the Court of Final Appeal, no matter how hard we fight it, it will be to no avail because what is involved is a Sino-British agreement; it will be to no avail, no matter how hard we try to amend the present Bill, because the Governor will not sign to give his assent to the Bill as amended; as the saying goes, it is pointless to act in a way like "Better die as jade shattered than live as plain tile", for even shattering a piece of jade will not and cannot alter the reality of the resolution in respect of the Court of Final Appeal. For this reason, it is argued, we had better make a compromise whereby a piece of beautiful jade is to be given up in the hope of getting a piece of intact plain tile. But in fact, on this matter, since Mr WONG is, as we all know, an intellectual, he should have been able to learn a lesson and draw some wisdom from Chinese history.

In Chinese history we have a story known as "Pointing to a deer and calling a horse". The moral of the story is that on issues of paramount importance if we do not stand our ground and hold fast to our principle, then what is in fact a deer will be misrepresented, when sufficient numbers of people would call it so, as a horse. I remember a story about a contemporary Chinese intellectual, who wrote an antithetical couplet "Pointing to a deer and calling a horse; drinking pee and taking it as tea", which means that he regretted very much the fact that so many people had pointed to a deer and called it a horse in the past, and in doing so, had paved the way for a dictatorial regime. In the end, that intellectual was arrested and jailed for a long time. During his incarceration there was no tea to drink, and finally he resorted to drinking pee, his own pee, as tea in order to survive and to stay alive. This is the price we have to pay for forsaking our principles again and again on issues of paramount importance. It starts with putting up with "pointing at a deer and calling it a horse" and in the end the hero and the people of his generation will be reduced to "drinking pee as tea". Such is a bitter historical lesson and, on the matter of the Court of Final Appeal, I have found that we are going exactly the same way as that chronicled in history. At first, we had a prefect piece of precious jade that was the Court of Final Appeal as stipulated in the Basic Law. Then, because of the number of overseas judges, it was no longer to be a perfect piece of precious jade. So we told ourselves: "It is all right even if there is no precious jade. We would rather have a perfect piece of plain tile". And now, even a mere piece of plain tile has to be smashed. It is no longer a question of "Better die as jade shattered than live as plain tile". Rather, the saying should be "Better die as a plain tile." What, if anything, can we ask for? Do we want to "live like a human being"? So I have found that on this issue we should not be too ready in negating the value of truths and principles, particularly in the case of an intellectual. On the issue of the Court of Final Appeal, there have been too many concessions and capitulations, one following on another. There have been sustained attempts to comfort and intoxicate oneself by saying to oneself that one has to defer to reality. "How many more cucumbers are there at Huang Tai to pluck?" What little is left for the picking after repeated bashing? On this issue, there have been too many concessions at the expense of principles. It is like falling into a bottomless cesspit. There are numerous lessons for the intelligentsia to learn with regard to this issue. So do not belittle the saying "Better die as jade shattered than live as plain tile".

Moreover, the thinking behind the idea of "Better die as jade shattered than live as plain tile" has reminded me of another person, that is, WANG Jingwei, who advocated a curvilinear approach to save the nation. WANG Jingwei chose to surrender to Japan as a way to save the nation, which he called a curvilinear approach. It is now pretty difficult to verify whether he truly felt that that could save the nation, or he chose this method merely for the sake of his personal interests and career. Anyway, in respect of concessions given at the expense of principles, history has already given its ruling. Eventually, WANG Jingwei ended up being spat on and called names. If WANG Jingwei had not lived so long but had died for the cause of revolution as a young revolutionary, I believe the words he uttered in

his youth would have been well remembered by us all. At that time he wrote a poem: "The speedy axe of the executioner would not cause my young head to be severed in vain". By this he meant that when he was a member of the revolutionary party, he held fast to his belief and his ideal, so that he would not let his youth, his life pass for nothing. As councillors, elected councillors, we should at least live up to the earnest expectation our voters had of us, for which their votes were cast. Never should we have uttered words in such a facetious manner as: "Do not act like 'Better die as jade shattered than live as plain tile', because it is important to arrive at compromises. A *fortiori*, there is no way to change reality." This utilitarianism shocks me deeply. Utilitarianism to the point of cruelty. How I wish that the intelligentsia ─ if there are still intelligentsia in China and if they still want to learn lessons from history ─ would not abandon this way of thinking, that they would not give up the thought of persevering in their pursuit of a piece of precious jade, that they would have the courage of their own convictions, that they would tell black from white and call a deer a deer, a horse a horse.

Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, it was not my original intention to speak. But having heard the arguments advanced by some Members, particularly the query raised by the Honourable Miss Emily LAU as to the Liberal Party's thinking, I feel I must rise to respond.

Members talked about issues of paramount importance, matters of life and death. I believe now is the crucial moment to ask ourselves this: Which, in fact, is a matter of life and death? Keep insisting on the number of judges, or the absence of a Court of Final Appeal? Members may view it differently from different perspectives, but as far as the Liberal Party is concerned, we want to have improvements made to the present Bill. But when such improvements are not possible, then we would reckon that the absence of a Court of Final Appeal will become a matter of life and death. Even if the Bill is not as perfect as we would like it to be, if we do not support this Bill, we will not be supporting the formation of a Court of Final Appeal. That is too heavy a responsibility for us to take. We will be letting the people of Hong Kong down and going against their wish. It is because we remember it very clearly that a survey was conducted not long after the agreement had been reached, and it was found that the people of Hong Kong were mostly in favour of the agreement. But the people of Hong Kong are also in favour of seeking amendment, too. That is because they want to have a Bill which is better than the agreement. Therefore, we are reflecting the mentality of the people of Hong Kong to the fullest extent. The Legislative Council is not a "Council for talk-shows". Ideals should, of course, be a factor for consideration by Members. But the Legislative Council is also an accountable Council. So whenever major decisions are to be made the prevailing

circumstances and the actual consequences will have to be taken into account. If we only talk about ideals and ignore the practical aspects and the consequences, we will lead the people of Hong Kong into dire straits, and that will be irresponsible of us.

Miss Emily LAU asked a moment ago: "Why did the Liberal Party not support my proposal for 60 directly elected seats at that time?" We have never supported Miss Emily LAU's proposal for 60 directly elected seats; we have never supported any Bill which contravenes the Basic Law; and on this matter we have always been consistent. Perhaps Miss Emily LAU should have levelled her criticism at the Democratic Party because the Democratic Party has supported proposals for 60 directly elected seats, 30 seats, as well as the 20 seats advocated by Governor Chris PATTEN. Miss Emily LAU should have asked the Democratic Party what they are up to. The Democratic Party might have thought that if they could not get the best deal, then a less perfect one would do. Miss Emily LAU asked: "Why did the Liberal Party not state their views on the Court of Final Appeal when they met with the Chinese leadership during their trip to Beijing?" I can confirm to Miss Emily LAU that we did. We told the Chinese leadership in no uncertain terms the views of the Liberal Party in respect of the Court of Final Appeal. We told the Chinese side that we wanted to see the Court of Final Appeal set up instead of a judicial vacuum which we reckon would not be in the interests of Hong Kong. We indicated to the Chinese leadership that we sought an amendment because we wanted to have a better Bill. I want to clarify these to Miss Emily LAU, and we also want the public to understand the grounds upon which the Liberal Party considers this issue.

Thank you, Mr President.

MR JAMES TIEN: Mr President, the business community unanimously welcomed the 9 June Sino-British accord on the Court of Final Appeal. The list of organizations which supported the agreement covers just about every significant chamber of commerce and major consulate here. Among those who agreed are the Federation of Hong Kong Industries, the Hong Kong General Chamber of Commerce, the American Chamber of Commerce and the German Business Associations. The United States Consulate General and the Japanese Consulate General also voiced their support.

We have been waiting and sometimes despairing for three years for the two sovereign powers to return to co-operation from fruitless hostility, distrust and spite. We would have preferred the triumph of common sense over antagonism earlier, but it is better late than never. Through that time, there was a lot of hoping and not much to feel good about. For a while, we thought some of the groundwork done since 1984 to effect a smooth transition from British to Chinese sovereignty was for nothing. We in business regret waste, and indeed precious moments and opportunities were wasted as the two sides bickered.

Mr President, the business community's view on the Court of Final Appeal, like ours on just about everything else, is simple, practical, straightforward. I believe that the businessmen's attitude towards issues and also to life also permeates Hong Kong, and that is why our society has been so successful. I hope this will remain while a lot of other things will surely change. We desire a Court of Final Appeal that is genuine Supreme Court rooted like the Privy Council in the common law. Such a Court is important to everyone, not least the investor who needs to be assured of an impartial hearing when he has a grievance and a fair shake. The importance of this Court of Final Appeal will only increase with time as Hong Kong becomes an even more sophisticated financial hub in which everyone can have added confidence. Our city is not where you would put your money if you cannot be sure that it is protected by a law which is neutral, objective and consistent. I believe that the Sino-British agreement fulfils these obligations and all conditions. And the Court of Final Appeal will banish any doubt about a future Special Administrative Region governed by a law, about a society that is committed to justice.

China also appreciates the significance of Hong Kong's judicial independence which it guarantees first in the Joint Declaration and then the Basic Law. The twin pledges to uphold one of the main institutions of the territory are to be lauded, not contemptuously dismissed as some of my colleagues here are inclined to do. I am against those who automatically question other's sincerity and are prejudicial while professing themselves open-minded. China could have planned to base the SAR's Court of Final Appeal in Beijing, and also appoint Chinese judges for that Bench, similar to the Privy Council in London when Hong Kong is under British sovereignty. But the Chinese Government did not do that, agreeing that logically and symbolically the Court of Final Appeal should be in Hong Kong and its judges be selected based on common law by an independent commission.

There are basically two points of contention about the Court of Final Appeal. One is about postponing the Court until China recovers sovereignty of Hong Kong, and the other is supposedly a lack of flexibility in the nationality of the chosen judges. The Federation of Hong Kong Industries and the Hong Kong General Chamber of Commerce would have liked a Court of Final Appeal being constituted as early as possible, like right now, so that the judges on it could acquire more knowledge and experience. That would have been possible if not for the British and Hong Kong Governments' unilateral decision on the electoral reform bill which violated the spirit of the Basic Law and has enticed China's total inco-operation for the last 30 months. We now have to be content with the less satisfactory option of having a Court of Final Appeal functioning from 1 July 1997. We are, nevertheless, pleased that the Privy Council would continue to hear Hong Kong's cases right up to 30 June 1997 to avoid any gap or judicial vacuum.

In business, we have learnt to take the best of what is on offer and to make the best of that, rather than settling for nothing. The Governor told this Council on 9 June that a Court of Final Appeal with China's blessing would endure, and one without would have a short shelf life. He agrees with us that the time to transition is dwindling and there is no purpose in further grandstanding and posturing. That will only be a disservice to Hong Kong and an irritation to international investors. After three years of testing British and Chinese relations which got us on edge, we deserve a rest from the constant tension. If opponents of the Bill now should ask the public, I am sure they will hear the same call for a calm, constructive period to deliver us into the new era. The business sector has strong desires about instituting such a Court without further ado. We do not want to quibble over how many judges from foreign common law jurisdictions can serve in the Court, which is a fixation with some Councillors who, to me, seem to care more about the leaves than for the forest.

I for one shall not pre-judge the merits of the Court of Final Appeal or to denigrate it just because it will not have more jurists from outside Hong Kong to deliberate on cases filed in the SAR.

Since the Bill before us does not prohibit permanent Hong Kong residents of foreign nationalities being on the Bench, it means that the majority of the jurists could hold Australian, British or New Zealand passports. The grim reality is that the Judiciary has not enticed enough prominent or experienced Hong Kong ethnic Chinese barristers to join the Bench, resulting in an overwhelming dependence on judges from abroad. It seems that Chinese barristers, like any Chinese ordinary businessman, seem to feel that making money are more important and therefore are not willing to sacrifice their career and join the Bench. This deficit is not likely to be eased any time soon.

For us in the business world it is immaterial whether a judge comes from Hong Kong or from afar as long as he is learned, sensible, intelligent and understands the common law. This harping on nationality strikes me as a form of ethnic or national discrimination which we as legislators should be against as a matter of principle. Some of my fellow Councillors who are voting against the Bill today never cease to lecture us on other Bills. I would like to turn the table on them by stressing that a good judge or a good person is determined by his character and not by his nationality, race, creed or religion. It is hypocritical for those who promote heavily the Sex Discrimination Bill or the Equal Opportunities Bill to claim they do not understand this. All the words we have uttered on those Bills to promote civil liberties will have been in vain.

On behalf of my constituents, I support the Court of Final Appeal Bill so that we can get this issue behind us and get on with the business of helping Hong Kong through the last phase of the transition without more unnecessary pains and aggravations. If we believe faithfully in the rule of law, the common law, then let us usher in the Court of Final Appeal Bill so that on the stroke of midnight 1 July 1997 it can be ready to take hold. If we do not then we could defeat the Bill and cause Britain into seeking another protracted round of

negotiations with China. Then we will have no Court but a legal vacuum in 1997. We believe in the wisdom of the people as it is reviewed in recent opinion surveys, that we must vote for a Bill to clear away one of our concerns and to go on with earning a living. If not, we can turn on the Bill despite Britain, China and our people. The common law tells us that everyone is innocent unless proven otherwise. I am willing to give the British and Chinese the benefit of my doubt and the Court of Final Appeal a chance to prove its worth. The choice is clear.

Mr President, with these words, I support the Court of Final Appeal Bill as proposed by the Administration.

DR CONRAD LAM (in Cantonese): Mr President, it was not my original intention to rise to speak. But having heard the way many of the Members debated the Court of Final Appeal issue, I am fortified in my conviction with regard to what I have long witnessed in this Council throughout all my years of service. It seems that many Members have different interpretations of the word "pragmatism". "Businesslike" was originally a very good thing, but to some who fail to hold fast to their ideal and have a vacillating stand, the word "pragmatic" is always employed to whitewash the spectacle they make of themselves in their course of backtracking and "U-turning".

The Honourable Andrew WONG claimed earlier on that his decision was a progressive one. I would like to point out that our senses may, from time to time, deceive us in the form of delusions. When people are backtracking *en masse*, those who backtrack at a slower pace seem to stand out in the fore in relation to the others, whereas in fact it is only that they are retreating at a slower pace.

In fact, Mr Andrew WONG's decision is in my opinion really a retrogressive one, only that he is backtracking at a slightly slower pace. On the issue of the Court of Final Appeal, many people are of the view that it is better to have "one" than "none". This reminds me of a story concerning myself. Years ago my mother said to me: "Ah Shing, go steady with your girlfriend and stay with it, do not be so choosy. After all, only one will be your wife." In actuality, if we fail to hold fast to our ideal and if we just make a choice at random and let it stick, is this the stance every one of us should adopt? To me, different people can have different stances and different choices in respect of the issue of the Court of Final Appeal, and I respect the choice each of them make, different though it may be. That said, let me say I have my ideal, my own stance, and I will stand my ground, as ever.

Thank you, Mr President.

DR YEUNG SUM (in Cantonese): Mr President, I shall briefly sum up how the Democratic Party view this matter. We oppose this Bill not for the sake of opposing it. And we are not opposing it irresponsibly. As a matter of fact, we are opposing it for four reasons, to put it simply.

(1) The Time Frame

We all know that many in this Council and in the Government would like to have the Court of Final Appeal set up before 1997. That is because once the Court is set up a body of case law will develop, experience will be gained and credibility established. However, the Government has now gone back on its words and the governments of the two countries have already agreed to set up the Court of Final Appeal only after 1997. To put it in simple terms, this is the first reason why we are against it.

(2) Appointment of Judges

The agreement has it that the Chief Executive may chair a Selection Committee for judicial staff. But the agreement states that the Chief Executive may only chair the Committee with no right to make any appointment. But we all know that if the Chief Executive may preside over a meeting, would it be possible that he or she will have no influence over it at all? Members would do well to think this matter over.

(3) Acts of State

We all know that "Acts of State" is interpreted rather differently under common law and Chinese law. We may think that there is no cause for worry since what will constitute "Acts of State" will be explained in the Basic Law in the future. However, do we have to accept that this must be written, in the form of a legislative enactment, into the laws of Hong Kong by the government of a country or the governments of two countries? It is because in several years' time or some hundreds of days later, China may undergo some changes or China may introduce certain changes or we may successfully amend the Chinese constitution. In that case, what are "Acts of State" will be interpreted differently. Now that the Chinese and British Governments have agreed to write down what constitutes "Acts of State" into the local law, this may cause confusion in the administration of justice in the future.

The Chinese Government holds that relations between the central and the regional governments constitute Acts of State. If something happens between Hong Kong and China, but it will be for the National People's Congress to define as an Act of State, then that will be beyond the jurisdiction of the Court of Final Appeal. We would do well to think this over. Is this the kind of judicial independence we would like to have when such different interpretations may give rise to confusion in so far as human rights and judicial independence are concerned? This is the third reason why we are against it.

(4) Composition

I hope Members present here will be frank with themselves. In the debate held in 1991, all of us opposed the 1991 accord because it was thought that the 4:1 ratio of composition contravened the Sino-British agreement and the Basic Law at that time. This was recorded in Hansard. But we seem to have forgotten that now, probably because amnesia has become so fashionable that we have forgotten why we opposed the 4:1 composition then. And that is why we would accept it now.

In fact, the four simple reasons are all based on one common ground, and that is, whether we take things as they are, or hold on to our principles. When the Honourable Andrew WONG spoke a while ago, he was overcomed with feelings. He said we have to "take things as they are", "there is nothing much we could do", "if amended to jeopardize the agreement reached by the two countries, the Governor would simply refuse to give his assent or the Government may withdraw the Bill", and "if we stick to our ideal, the Court of Final Appeal may not be in place even when 1997 arrives". The way he felt arose from the fact that he takes things as they are. Nevertheless, I would like to tell Members that we all want to have a Court of Final Appeal, but if the foundation for the rule of law should be shaken, it would just like a house built on quick sand instead of on rock. Do Members think a house like this is safe? Form without substance, outward appearance without basic principles, a court with the foundation for the rule of law shaken, these are the dreadful things. We are holding fast to our principles just to prevent all of these from happening. Do not accuse us of being irresponsible. It is you who take things as they are, who accept that "there is nothing much one could do".

During the Burmese democratic movement, Aung San Suu Kyi once said "helplessness" was a habit, but she was not afraid. Now let me rephrase her words in a simpler way: "Helplessness" has become our habit, but the Democratic Party will not accept "helplessness". We will hold fast to the principle of the rule of law.

Thank you, Mr President.

MR RONALD ARCULLI: Thank you, Mr President. Unlike some Members, I have always intended to speak at today's debate because I believe it is a very important issue that we are discussing.

First of all, I would like to make it quite plain that in terms of my constituents, all three associations fully support the agreement that was entered into on 9 June this year, and indeed it was so supportive that by 5.00 pm that afternoon one of them had already issued a press release supporting that agreement. Now, I do not believe that, despite all that we have heard about the government propaganda machinery and how persuasive they are in talking

to us in supporting government measures, even the Government could have moved that fast with property developers, construction companies, electrical and mechanical contractors, to persuade them all within a matter of hours or days to actually support the agreement. I suspect. Mr President, that the support and the desire for an agreement had always long been there, and I think to some extent, Mr President, this is reflected in what my Honourable colleague, Mr James TIEN, said about the business community, and indeed, from my own understanding and perhaps limited contact, by the community at large.

That having been said, I just want to offer a few observations in terms of the arguments, as it were, against supporting the Bill. We have heard arguments and we have heard very strong language from my honourable friend, Mr Martin LEE, about the Court being useless and being worthless, that it is effectively turning the Court of Appeal of Hong Kong overnight into the Court of Final Appeal if, in fact, the flexibility was not given to the Court of Final Appeal to actually select enough overseas judges.

Well, I really only have two points to say. First, if I remember correctly there are some countries that did not have the advantage, perhaps, of the Privy Council being the ultimate Court of Appeal. They survived. Second, in terms of the flexibility issue, if the argument is to be sustained that Hong Kong judges do not have either the intellectual or moral fibre, which I dispute and dispute strongly, to sit in the Court of Final Appeal, then they should be disqualified, not just from the Court of Final Appeal but from the Court of Appeal or indeed from any court in Hong Kong. How dare us sit here in moral judgment above the Judiciary, who we know would be unable to defend themselves? How dare we cast aspersions? Yes, there are sometimes when, as an advocate, as a lawyer in court, one loses a case and one says the judge is absolutely mad, and we have our recourse. We take it on appeal. If we win, we say, "I told you so, I was right" until the other side appeals and wins, and then we are wrong again. But I think one has to be, sort of, fairly cool about this. One has to be fair and, above all, one must not enter into a road or into a path where we are bent on self-destruction.

I do not think it matters that this Council destroys itself. I mean, in a few days we will be dissolved or destroyed, whatever the word is, and in a couple of years' time, chances are that we will be dissolved yet again for and to make way for the Provisional Legislative Council or indeed an elected one for post-1997 in Hong Kong. As politicians I suspect we can take the rough and tumble. I hate to say this, but I suspect that our judicial friends need slightly more tender loving care, and I think one needs to be, above all, fair to them. A lot of them work very hard. A lot of them are very good friends, and a lot of them are people whom we would unhesitatingly recommend or have done in the past before they went onto the Bench. When a friend or a business colleague, a relative got into trouble, they said, who would you go to? I said, go to Martin LEE; as a lawyer, go to Simon IP, or Moses CHENG, or you, Mr President. So, I think, you know, one has to be, sort of, very measured in these criticisms.

Mr President, in terms of the objection, the second principal objection regarding the issue of timing and the formation, I just want Members to think. If the Bill is defeated today or if it is amended in accordance with some of the amendments proposed by the Democratic Party, what are we left with? If it is not passed then we are left with no Bill. We are then left with the Preparatory Committee or the Provisional Legislative Council preparing a Court of Final Appeal Bill because, if we believe that the Chinese Government is as good as they are said to be in terms of upholding agreements and therefore they would uphold the 9 June agreement with the British Government, they will come along and prepare the Bill for the Court of Final Appeal to operate as of 1 July 1997. Do we want that to happen? Some of us may be indifferent as far as that is concerned, in terms of the quality of the product that the Preparatory Committee might come out with, or indeed the Provisional Legislative Council might come out with. Others who have been highly critical of these two institutions-to-be may not wish that, so I ask them to pause and think. Do you really want that to happen? Certainly I would prefer this Council, in today's sitting, to actually decide once and for all whether we go forward or whether we go not into, not backwards as Dr LAM has suggested that one of our colleagues is doing, but to actually got into an abyss.

Mr President, with those words, I will support the Bill.

ATTORNEY GENERAL: Mr President, I am grateful to the Chairman of the Bills Committee, the Honourable Simon IP, and to Members of the Bills Committee for their prompt and thorough study of this Bill. The Bill was introduced into this Council only six weeks ago, and the Bills Committee quickly held nine meetings in order to consider all aspects of the Bill. The Administration is indebted to the Members of the Committee for dealing with the Bill so expeditiously.

In going through the Bill clause by clause, the Bills Committee suggested a number of possible amendments that the Administration has accepted. In addition, the Administration has itself identified a few drafting improvements to the Bill. As a result, I will later today be moving 13 amendments to the Bill. I will explain the purpose of each of these amendments at the Committee stage.

Amendments inconsistent with the JLG agreement

Mr President, I turn now to the amendments proposed by other Members of this Council, and do so in the context of the major concern that has been raised in the course of a long and serious debate. When future generations come to look at the record of this Council in considering the Court of Final Appeal, whatever the assessment they will make, one that they certainly cannot make is that this Council did not fully, thoroughly and seriously consider one of the most important Bills ever put before it. Lest there be any misunderstanding, Mr President, let me state, at the outset that the Administration cannot support any amendment to the Bill that would be inconsistent with the JLG agreement

signed last month. About half of the amendments proposed by Members of the Council fall into that category. In particular, the following amendments are all inconsistent with that agreement:

Firstly, the proposed amendments of the delayed commencement provision in clause 1(2);

Secondly, the proposed amendments of clause 4, which relates to acts of state;

Thirdly, the proposed amendments of clause 16 to remove the 4+1 composition of the Court, and the following related proposals:

- the deletion of the separate category of non-permanent Hong Kong judges, by amendments to clauses 2, 5, 7, 8, 12 and 13;

- the deletion from clause 10 of the maximum number (30) of non-permanent judges; and

- the amendments of clause 14 relating to the tenure of office of judges.

The amendments I have referred to would, if passed, wreck that agreement, an agreement that has taken years to achieve, under which a proper Court of Final Appeal can be established on 1 July 1997, in such a way as to avoid a judicial vacuum. Members have before them a Bill that can ensure a smooth transition of our system of judicial appeals. It provides for the creation of a Court of Final Appeal that, subject only to the Basic Law as it must, has the same jurisdiction and powers as the Judicial Committee of the Privy Council. The passage of the Bill will be a milestone in the smooth trandition of Hong Kong's legal system. It will end years of damaging wrecking uncertainty and give confidence to the local community and foreign investors.

What would the amendments achieve? Two more years of uncertainty? No real chance of a better type of Court of Final Appeal being established after the transfer of sovereignty. The probability, I say, the near certainty of a judicial vacuum after 1 July 1997.

Last week, 11 of Her Majesty's Queen's Counsels signed a statement urging Members of this Council to support this Bill. The eminent lawyers spoke of the need to have a properly constituted Court of Final Appeal ready in the latter half of 1997 to handle important public law and other appeals that are likely to be generated when the Special Administrative Region government takes over. I would like to quote from that statement.

"The rule of law will be in jeopardy if there is then no authoritative court at the top of the judicial pyramid, because of delays and dissension in enacting fresh legislation and in setting up the Court. The present Bill, [that is, the Bill before this Council this afternoon] underwritten by the Chinese Government, meets that need [that is, it meets the need to have a properly constituted court ready in the latter half of 1997] head on. And the two Governments are satisfied that it is in accordance with their Joint Declaration, and in accordance with the Basic Law."

"Why then is there so much factional opposition to the bill? Surely not to save the face of those politicians who went out on a limb in 1991? Surely not to thwart perversely the wishes of both the present and future sovereigns who have reached agreement? Surely no-one argues that the people of Hong Kong would be better off in 1997 if there were still uncertainty over the Court of Final Appeal?"

The Administration therefore urges all Members to oppose these amendments. Each of them threatens to jeopardize the rule of law and to create renewed uncertainty. Let me elaborate.

The commencement provision

First, the commencement provision. The Administration has made no secret of the fact that it originally wanted to establish the Court of Final Appeal well before the transfer of sovereignty. For reasons that are well known, this has not been possible. More recently we had hoped to establish the Court by the summer of 1996. However, the Chinese side of the Joint Liaison Group was only prepard to support the Bill we had prepared on the basis that the Court is established on 1 July 1997. Although this is not ideal, it is an acceptable approach because it meets our important aim of avoding a judicial vacuum in 1997, bearing in mind that the Joint Liaison Group agreement provides a mechanism which will avoid any judicial vacuum. The British Government will ensure that the Judical Committee of the Privy Council will continue to hear appeals up to 30 June 1997, and will fast-track Hong Kong appeals in the months leading to the transfer of sovereignty.

What would the amendment to clause 1(2) achieve, assuming it were passed? First and foremost, this would mean a clear breach of the agreement between Britain and China for the establishment of the Court of Final Appeal. With all the consequences so graphically set out by other Members of this Council in this debate including the Honourable Mrs Elsie TU, this amendment, Mr President, is also unaccepable for legal policy reasons which I shall set out at the Committee stage.

Acts of state

I turn now to "acts of state", and to the propsoed amendments of clause 4, what I will call the "red-herring amendments". As I hope all Members of this Concil are now aware, clause 4 does no more in respect of acts of state than restate what is in Article 19 of the Basic Law. It would be a serious mistake to think that the amendment of clause 4 will in any way affect the application of Article 19 as from 1 July 1997.

Mr President, we must be very clear about what it is that we are debating and what it is we will be enacting. That we are not debating the passage of Basic Law. We are not enacting the Basic Law. We are not debating the merits of the Basic Law. We are debating the Court of Final Appeal Bill and it is that that is before the Council.

There are three proposed amendments: firstly the Honourable Martin LEE proposes to delete "such as defence and foreign affairs" after the reference to "acts of state"; and secondly to give the court a discretion, rather than a duty, to obtain a certificate from the Governor in respect of certain facts; and the Honourable Frederick FUNG proposes the amendment which would provide that acts of state should be construed according to common law principles. I can well understand the Honourable Frederick FUNG's sentiments, but have to point out that the meaning of "acts of state" in cluase 4 must be consistent with the meaning of that expression in Article 19 of the Basic Law and that depends on the correct interpretation of the Basic Law. No definition of the expression in the Bill can tie down the meaning in the Basic Law. That said, I will note that it could be argued as others had done as long ago as 1988 that Article 19 is consistent with the common law and that Articles 8 and 84 of the Basic Law provide for the maintenance of common law principles after 1 July 1997. However well-intentioned the amendments in respect of acts of state may be, it is clear that as a matter of law they cannot override Article 19 of the Basic Law and I will oppose at the Committee stage.

Some Members of this Council have asked why we should bother to include clause 4 in the Bill in the first place. The answer, of course, is that this was required by the recent JLG agreement. That agreement contains a package of measures that are brinding on the British and Chinese Governments. This Administration cannot adopt some parts of it and reject others. The inclusion of clause 4 makes no difference to the Court's jurisdiction in 1997, but it ensures that the JLG agreement can be implemented. The proposed amendments of clause 4 would achieve nothing in terms of the Court's jurisdiction, but they would breach the agreement and destroy the only guarantee we have of a smooth transition in respect of our final appeal court.

Some Members of this Council have sought to attack clause 4 of the Bill by arguing that the Standing Committee of the National People's Congress will, in certain situations, be able to decide what is or is not an act of state. Article 158 of the Basic Law does indeed give the Standing Committee a role in interpreting the Basic Law. But I remind Members that we are not debating the Basic Law. We are debating the Court of Final Appeal Bill, so arguments about Article 158 are another red herring. Neither the JLG agreement nor the Court of Final Appeal Bill touches upon the interpretation of the Basic Law and, in any event, they could not have overriden Article 158. It is therefore quite misleading to criticize the agreement or the Bill for something they did not, and could not, deal with. As the Dean of the Law Faculty at the University of Hong Kong, the distinguished constitution lawyer Professor Wesley-Smith, recently said, when referring to the power of the Standing Committee to interpret the Basic Law, "That of course is in the Basic Law. Whatever is in the Bill does not make any difference to that."

4+1 composition

I turn now to the issue of the composition. Before I deal with the amendments that will be coming up later, I would like to respond to some of the insulting and defamatory remarks made about the Judiciary and I echo here sentiments expressed by the Honourable Ronald ARCULLI. I strongly deprecate the running down of members of our Judiciary and strongly deprecate the use of expressions such as "worthless Court of Final Appeal" to say that we will have a migration of judges fom the Court of Appeal to the Court of Final Appeal so that in effect the Court of Final Appeal will only be the Court of Appeal in another guise. That is an extremely poor point to make. Most judges who sit in Final Court of Appeal in other jurisdictions reach there by a series of judicial promotions. Most of the judges in the Privy Council have got there on promotion from the Court of Appeal, so the point is an extremely bad one to make. Moreover, what interest is served, I ask for Members of this Council, to insult our judges of the Court of Appeal.

The third area where amendments that are inconsistent with the JLG agreement are to be moved is in respect of the 4+1 composition of the Court. This, of course, Mr President, has been the subject of controversy since Setpember 1991, when the first JLG agreement in respect of the Court was made. And we have rehearsed today the arguments, I dare say, some of the old threadbare arguments that we have known but I cannot say have loved over the years. Some Members of this Council may feel obliged to oppose the 4+1 composition in order to maintain the position they adopted on this in the past. They do not wish to be accused of "doing a U-turn."

However, I would like to remind Members of what the representatives of the Law Society said to the Bills Committee. When asked why they now supported the 4+1 composition when they had, in 1991, opposed it, the representatives said "We have had the courage to change our minds". As the President of the Law Society wrote in a letter sent to all Members of this Council earlier this week, "after careful consideration, [the Law Society] has concluded that the formula comes within the broad principle implicit in Article 82 of the Basic Law and is not contrary to the literal construction and liberality of the Article. The Law Society considers therefore the Bill should not be rejected because of the 4+1 formula".

It does take courage to change one's mind, and there are in this case very good reasons for doing so. Since the debate in this Council in December 1991 many things have changed. It is now clear that there is no chance that the Chinese side will renegotiate the 4+1 composition. Independent legal opinions have supported the Administration's view that this composition is not inconsistent with the Joint Declaration or the Basic Law. And we are now in a position to enact legislation, which has the support of the Chinese side, that provides for a proper Court of Final Appeal being established without there being any judicial vacuum.

In all these circumstances, I urge all Members to have the courage to support the 4+1 composition, regardless of what their positions may have been in 1991.

As I mentioned earlier, there are three categories of proposed amendments that are related to the opposition to the 4+1 composition. They are all inconsistent with the JLG agreement, and they are all undesirable for other reasons on which I will expand when we are in Committee.

In urging Members to defeat these amendments, I am asking Members to act in the best interests of the community. How can it benefit the community to wreck the Sino-British agreement for the establishment of the Court of Final Appeal? How can it benefit the community to prolong the uncertainty over the nature of the Court that will be established? How can it benefit the community to jeopardize the rule of law at the time of the transfer of sovereignty? I urge you all, in the interests of Hong Kong, to reject these wrecking amendments.

Other amendments

Mr President, other amendments are to be moved to this Bill by non-official Members this afternoon, those amendments are not inconsistent with the JLG agreement. We have considered them very carefully and I regret to say that we are unable to support any of them.

Some of the proposed amendments add nothing to the Bill in terms of its legal effect and are therefore legally unnecessary. Other would make fundamental changes to the system of appeals that currently applies in respect of the Judicial Committee of the Privy Council. The proposals to abolish appeals as of right in civil cases, and to allow a leap-frogging procedure in respect of civil cases, both fall into this category. The Administration has been at pains to model the jurisdiction and powers of the Court of Final Appeal on those of the Privy Council. This has the huge advantage of continuity ─ the retention of a system with which practitioners and litigants are familiar. We oppose proposals that would introduce significant changes to the system.

Conclusion

Mr President, the Bill now before this Council represents the product, the culmination of long and tortuous discussions with the Chinese side, stretching over seven years. It is one of the most important Bills that this Council has been asked to pass, for it is nothing less than the touchstone for the rule of law in Hong Kong. The agreement that was struck last month has been widely welcomed and supported by, among others, the Chief Justice, the Law Society of Hong Kong, the 11 eminent Queen's Counsels I spoke of earlier, many representatives of the local and business community including the Federation of Hong Kong Industries, the Hong Kong General Chamber of Commence, the British Chamber of Commerce, the American Chamber of Commerce, the foreign business association and chambers in Hong Kong and the China/Hong Kong economic trades associations and received the support of many of our trading partners such as the United States of America, the European Union, Japan, Canada, Australia and South Korea, many sections of the media and, judging by recent opinion polls, the people of Hong Kong. To those who speak in opposition to the Bill, to those who speak in opposition to the agreement, I ask: What do you offer to the people of Hong Kong in their place? What you offer is continuing uncertainty, continuing anxiety, continuing doubt with the consequent loss of confidence.

Members now have a clear choice before them. They can, by supporting the Administration's amendments and by rejecting all others, ensure the establishment of a proper Court of Final Appeal on 1 July 1997, with no judicial vacuum. If they support any amendments that are inconsistent with the JLG agreement, they will recreate damaging uncertainty, as to the form of the Court of Final Appeal to be established after 1 July 1997, with clear understanding that the Court to be set up that date will not be better than the one provided for in the present Bill, and in full recognition of the probability of a judicial vacuum. There should be no doubt as to which approach is in the interests of the people of Hong Kong.

I therefore urge Members to support the Bill and my 13 technical amendments, which are based on the established principles and practices of the Judicial Committee of the Privy Council. They guarantee the establishment of a proper Court of Final Appeal in Hong Kong on 1 July 1997. We have made it clear that we cannot accept amendments which breach the British Government's international obligations. I have to tell Members, in the event that any amendments that are inconsistent with the JLG agreement are passed, I will have no alternative but to withdraw the Bill.

Thank you, Mr President.

Committee Stage of Bill

Council went into Committee.

HONG KONG COURT OF FINAL APPEAL BILL

Clauses 3, 15, 17, 19, 21, 23, 24, 26 to 30, 35, 37, 38, 41, 43, 44, 48 and 50 were agreed to.

Clause 1

MR MARTIN LEE: Mr Chairman. I move that clause 1 be amended as set out under my name in the paper circulated to Members.

As I said earlier, Mr Chairman, I would have liked to have been able to support Mr Allen LEE's amendment. But it was not allowed under Standing Orders, and hence I move what I consider to be a rather poor alternative, and it is by deleting the original clause 1(2) which requires the Ordinance not to come into operation until after 30 June 1997, and replace it by a new clause to read as follows: "This Ordinance shall come into operation on a day to be appointed by resolution of the Legislative Council."

Let me first of all draw the attention of my honourable friend, Mr Allen LEE. The intention is not to have it established after 1997. The intention is to have it established before and hopefully very soon, by a resolution of the Legislative Council, no doubt after the elections in September.

Ever since the Court of Final Appeal was first discussed, it was always thought to be a good idea to have it established as soon as possible. I believe that I was the first one to raise the establishment of the Court of Final Appeal with the Chinese side. I did so in May 1983. After I saw the draft Joint Declaration initialled and published in Hong Kong on 26 September 1984 I was happy. Then from about 1985-1986 onwards, I have been asking the

British Government here to have that Court established in Hong Kong as soon as possible. My idea was simple. It requires a little time for the Court of Final Appeal to gain credibility for itself, to command the respect and confidence of lawyers and the litigants, and indeed the whole community here, and also the overseas investors, and therefore my notion has always been the sooner the better.

There was then nobody who disagreed with me and yet it took the British Administration here so many years before they finally raised the matter with the Chinese Government. And after a lot of dilly-dallying, finally a secret deal was struck, until it was announced to us by some newspapers there was a joint communique at the time the new airport agreement was announced. We have been asking for a copy of their agreement. Of course there is none. There is only a joint communique of some kind. Then this Council debated on a motion raised by the Honourable Simon IP, although it is difficult to tell now how and why he raised it then, condemning the secret deal. I think by 34 to 11, this Council supported him, calling for the establishment of a Court of Final Appeal in accordance with the Joint Declaration and the Basic Law.

More recently, on 3 May this year the Honourable Mr Jimmy McGREGOR moved a motion in this Chamber calling for the early establishment of the Court of Final Appeal. That was amended by Mr Moses CHENG so that: "We call upon the Hong Kong Government to establish this Court in accordance with the Joint Declaration and the Basic Law and the wishes .....", I think, and "..... the views of the two professional bodies and the people of Hong Kong."

So, there have been no less than two motion debates calling for the early establishment of the Court of Final Appeal, and of course our Governor, the erstwhile champion of democracy and the rule of law in Hong Kong, said in public that it will be a test, a litmus test of the sincerity of both the Chinese Government and the British Government to the rule of law, and that test is whether the Court of Final Appeal can be established before 1997. When I stand here to address the Committee, I really feel bad. How on earth could people change their minds so soon?

When we were challenging the Government at the end of 1991 as to why they would make a concession to China on the 4:1 and 5:0 composition, the then Secretary for Constitutional Affairs wrote to us and here I quote him: "Deferring establishment of a Court of Final Appeal to 1997 ....." ─ he was warning us, he said: "Deferring establishment of a Court of Final Appeal to 1997 will result in a Court fashioned entirely to Chinese liking." And that was why he said we have got to make a sacrifice. We must concede on the overseas judges, the flexibility point, in order to win back from the Chinese side the right to establish the Court of Final Appeal earlier on the basis that, if we were to defer it until 1997, it would result in a court fashioned entirely to Chinese liking. Well, what have we got here today? We have got a Bill here. Mine is the enlarged copy. I would say that here you have a Court of Final Appeal proposed to be set up "entirely to Chinese

liking", although we are told by the British side that it is also to their liking, albeit not entirely because they are still a little worried about Article 19 of the Basic Law. I will deal with that later, Mr Chairman.

So, I would respectfully ask Members to stand on principle. If a Court is good and it should be established before 1997, why are we changing our minds? I would have liked to support Mr Allen LEE's amendment to delete subclause 2 of clause 1, but that is no longer possible. So the second best is at least to give to ourselves the right by a resolution in future, soon I hope, to make this Bill when it is passed into law operative at as early a date as possible, certainly before 1997.

Proposed amendment

Clause 1

That clause 1(2) be amended, by deleting the subclause and substituting ─

"(2) This Ordinance shall come into operation on a day to be appointed by resolution of the Legislative Council."

Question on the amendment proposed.

MR ALLEN LEE (in Cantonese): Mr Chairman, originally my view on this issue was the same as the Honourable Martin LEE's, because the major objective of my proposed amendment was to have, as I hope, the Court of Final Appeal set up as soon as possible. But, as I have mentioned during the Second Reading debate, the President blocked my amendment on the ground that it would have a charging effect. I have just heard from Mr Martin LEE that he, too, wants to have the Court of Final Appeal set up soon. I asked the President earlier today this question: If a Member of this Council should, in the future, propose a resolution for the early establishment of the Court of Final Appeal, would the same fate befall it, in other words, would it be blocked on the ground that it would have a charging effect? The reply from the President was "yes, it would". If that should be the case, an element of uncertainty would be introduced, that is to say, when a motion is moved in this Council, it will no longer be only a question of whether it can pass or not, it will moreover be a question of whether Members of this Council can propose a motion for the early establishment of the Court. This will cast an even greater shadow.

Moreover, if Mr Martin LEE's amendment is carried, in case the Court of Final Appeal fails to be set up before 1 July 1997, it will absolutely be possible that the Court will never be set up. Therefore, for these two reasons, the Liberal Party and I cannot agree to this amendment.

MR ANDREW WONG (in Cantonese): Mr Chairman, during the Second Reading debate I talked about a "tri-lemma", which should actually be a "dilemma". If the legislation is not enacted according to the formula as stipulated in the Sino-British agreement, then we will not have a Court of Final Appeal on 1 July. Even if we get the present Bill amended we will end up not having a Court of Final Appeal. I would like to cite a relevant clause from the Royal Instructions, which I failed to cite in my earlier speech, just to make known to all the possible consequences. I regret very much what the Attorney General said just now. He said he would withdraw the Bill if the amendment got carried. I think that would be irresponsible. Members should be given the opportunity to carry on and conclude their debate. Anyway, the end result will be the same ― in other words, no assent will be given by the Governor if the Bill is amended in such a way as to contravene the agreement. Since clause 26 does not have a Chinese rendition, I will read from the English version. I will skip some words, though. "The Government shall not ..... assent in Our name to any Bill of any of the following classes ― ......6. Any Bill the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty". The same clause goes on to state that the Governor can give assent and the part which specifies that assent can be given goes like this: "unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation, in which case he is authorized to assent in Our name to such Bill, unless the same be repugnant to the law of England, or inconsistent with any obligations imposed on Us by Treaty".

What I want to point out is that, in fact, we have only two choices, that is, either "take it" or "leave it". That amounts to what the Honourable Jimmy McGREGOR just described as "black and white". The question Dr the Honourable LEONG Che-hung asked just now was how his doctor colleagues would view this matter. But that is of little significance, because being legislators, what we are going to decide is either "take it" or "leave it". We can say "leave it", and if so, we can say it loud and clear that it is unacceptable. We are not playing the role of an intellectual. We are stating our stance. We are enacting legislation for Hong Kong. If we think that some legislation is no good, that it is not good but bad law then we just leave it. We just vote against it, and that is all.

As regards the saying "pointing at a deer and calling it a horse, drinking pee and taking it as tea", I think that is going a bit too far. But I want to point out that, in the saying "better die as jade shattered than live as plain tile", the "tile" refers not to a piece of tile but an earthenware bowl. When sailing on the ocean and water runs out, then it is better to drink pee than sea water; but without a bowl to drink from, even pee will be out of reach. I hope Members will understand this. I spoke out of my conscience. In my judgment I believe there is no other way out. We can only take things as they are, and I said so. That does not mean I am giving in right up to the point of capitulation. We can still strive for it. Unfortunately, the Honourable Christine LOH is not present right now. During the Second Reading debate I said I was in full agreement with every word she had said, and I only disapproved of the manner in which she abstained. I will not abstain. I have been a

Legislative Councillor for 10 years and never ever have I abstained, not even once. I am not going to abstain today, either. I thought of abstaining, but I do not make such political compromise. So I would rather risk offending my good friends from the Democratic Party, the Honourable CHEUNG Man-kwong, Dr the Honourable Conrad LAM, the Honourable James TO, Dr the Honourable YEUNG Sum and others. As far as I am concerned, this is a proper attitude. But at the same time I have great respect for Members who raise their objection or propose their amendment. At a time when the spirit, albeit not the letter, of the Joint Declaration is being trampled upon, those who have the courage to stand up and bear witness to history deserve, I believe, our respect. But at the same time we have to bear in mind that not only do we have to bear witness to history, but we also have to create for Hong Kong a better future ─ not a perfect one, perhaps, but at least a better one, and at least better than the one which we envisage under a worse-off scenario.

Mr Chairman, with these remarks, I oppose the amendment.

ATTORNEY GENERAL: Mr Chairman, as I said a moment ago, the Administration cannot possibly accept this amendment which is clearly inconsistent with the Joint Liaison Group agreement. Let me remind Members what that says. It says: "The British side agrees to amend the Court of Final Appeal Bill to provide that the Court of Final Appeal shall not come into operation before 30 June 1997".

As I have already stated. Mr Chairman, the Administration has made no secret of the fact that it originally wanted to establish the Court of Final Appeal well before the transfer of sovereignty. I will not go over again what I said a moment ago about the change in circumstance and the clear advantages to this community given by the agreement and now the Bill.

Mr LEE has characterized the agreement as being, or the Bill as being, one entirely to Chinese agreement, Chinese liking. I would just remind Members that one of the heads of the agreement provided that the Chinese side saw no need for further legislative or other provisions in relation to the power to enquire into the constitutionality of laws or to provide for post-verdict remedial mechanisms. Members who have long memories, as most of you have, will recall that those were matters of grave concern to this community in the run-up to the agreement.

So, Mr Chairman, the amendment would breach that agreement with all the consequences that have been set out. We cannot possibly accept it for that reason. I wish to add a further objection to this amendment, one based on legal policy, and it is this: that this amendment would have no effect on the jurisdiction of the Judicial Committee of the Privy Council to hear appeals from Hong Kong before July 1997. I cannot envisage that the British Government would promote legislation to end that jurisdiction before that date in

order to facilitate the establishment of a Court of Final Appeal in Hong Kong in a manner that was inconsistent with the Sino-British agreement.

So, if the Court of Final Appeal were established before l July 1997, as promised by the Honourable Martin Lee, litigants would appear to have two avenues of final appeal before that date: either to the Judicial Committee of the Privy Council or to the Court of Final Appeal. How would the wretched litigants choose, on the basis of their chances of succeeding before either court? That would surely bring Hong Kong's judicial system into disrepute. And what if most litigants chose the Privy Council? How damaging that would be to the newly-created Court of Final Appeal. Would local and overseas judges be willing to serve on a Court of Final Appeal established in such a manner?

Mr Chairman, one has only to think through the consequences of this ill-considered amendment to see that it has no attraction whatsoever. Are Members really prepared to wreck the Sino-British agreement in order to create a parallel system of appeals that might destroy the credibility of the Court of Final Appeal?

In summary, what we are talking about is setting up the Court of Final Appeal no more than 12 months earlier than 1 July 1997 as agreed by Britain and China. The price to pay for this difference is to sacrifice the Sino-British agreement which ends uncertainty about when the Court of Final Appeal will be set up after 1997 and what its eventual form will be. I oppose the amendment.

MR MARTIN LEE: Mr Chairman, I shall be brief, first of all, in reply to the Attorney General's speech. He said that the agreement was not really entirely to Chinese liking and he cited an example saying that there is now no need for any provision to cover the power of the Court of Final Appeal to deal with constitutionality of laws, and any post-verdict remedial mechanism. I have to say that I have not heard the Chinese side saying these things in public. But do they really need it because under the provisions of Article 19 and, of course and also Article 158 of the Basic Law, the power to interpret the Basic Law is vested in the Standing Committee of the National People's Congress?

Now, because of the enlarged meaning given to "acts of state" there is no need, for China to interfere post-verdict because they could stop the action pre-verdict, in fact, even pre-action. They could interpret a particular matter as an act of state and that is final. That is binding on our courts.

Then the Attorney General mentioned the prospect of there being two final Courts of appeal because he says, the Privy Council appeals will continue until 30 June 1997. Well, really! He is behaving like a little boy. He will be difficult. Alright, if you pass it and you will bring it into operation before 1997 then we will give it to you by allowing the Privy Council to continue so that there are two forums of final appeals. Well, if he must

deliberately do that I cannot stop him. That is why I think he really deserves the nickname of "The Wrecking Attorney General".

As for the Honourable Allen Lee, I do share his anxiety because I do not like this amendment of mine 100%. I would have much adopted his, but as I said it cannot be done. And it is true that when we introduce a resolution to this Council before 1997 the Governor could again block it. But we can only hope, Mr Chairman, that one sunny day our Governor may suddenly find the sort of courage that the Law Society has found in changing its mind and give us permission to move such a resolution.

CHAIRMAN: I think it is important that I read into Hansard my ruling on Mr Martin LEE's amendment, which ruling I showed to Mr Allen LEE this morning. I am of the opinion that Mr Martin LEE's amendment does not have a charging effect because if carried, the Ordinance will only come into operation on a date to be appointed by resolution of the Legislative Council. It is only when that resolution is moved that the question of a charging effect will arise and it will be incumbent on the mover of the motion, if not a public officer, to seek the President's ruling and, if necessary, obtain the authorization of the Governor.

Question on the amendment put.

Voice vote taken.

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

Mr Martin LEE claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, 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 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 amendment.

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

THE CHAIRMAN announced that there were 20 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

Question on clause 1, in its original form, standing part of the Bill proposed, put and agreed to.

Clauses 2, 5 and 8

MR MARTIN LEE: Mr Chairman, may I deal with amendments to clauses 2, 5 and 8 together because they really deal with doing away with a distinction of permanent and non-permanent judges?

I understand that the necessity for having this dichotomy of judges, permanent and non-permanent, comes from the 1991 secret deal because then the understanding was and the agreement was that there would be either 4:1 or 5:0, the ratio between local and overseas judges. According to that secret deal, the Chief Justice will be the President of the Court, if he sits. He has to be a Chinese national, and there will be three permanent Hong Kong judges who could be expatriate, who could be non-Chinese. The fifth member would be drawn from one of two lists. One of such lists would be serving or retired Hong Kong judges; the other list being overseas judges from other common law jurisdictions. So, it is for the Court of Final Appeal to decide where the fifth member, or the last member, should come from. If it should come from the list of serving or retired Hong Kong judges then there will be a Court of five Hong Kong judges. But if the fifth member comes from the overseas list then there will only be four Hong Kong judges and one overseas judge.

Now let me here deal with one point raised by my honourable friend, Mr James TIEN, earlier. He seemed to have been attacking us for introducing racial discrimination. Let me immediately disabuse him. Not at all. It is in fact the British and Chinese sides who introduced, perhaps, some discrimination of the races into this formula. When I suggested to Mr LI Jusheng in May 1983 that we should be inviting judges from overseas to sit on the Court of Final Appeal, I actually mentioned three overseas judges so that they would form the majority, so as to ensure investors both local and overseas that their investments in Hong Kong will remain safe. I do not want foreign judges. I want the best brains in the common law jurisdictions. They could be non-Chinese, but hopefully before long they could be even Chinese judges sitting. Actually I have got a learned sister who is a judge in New Zealand now, so we could have a Chinese judge sitting somewhere else. It is nothing to do with nationality in my way of thinking. But, now we are told the permanent judges, the three of them, could be expatriate. This, then, introduces an element as if foreign judges are better. So, I hope Mr TIEN will understand my sentiment. I do not want overseas judges being employed permanently in Hong Kong. They are not necessarily better but I want the best brains in the common law jurisdictions.

Now, but what are we going to have? If we have permanent and non-permanent judges, then you will have three permanent judges plus a Chief Justice, and once they become members of the Court of Final Appeal then they must relinquish their original positions. So, for example, if we should elevate three of our best Justices of Appeal from the Court of Appeal, one notch up into the Court of Final Appeal, then they may not sit in the Court of Appeal any more. They will be permanent judges.

Now, I have asked for figures from the Administration as to how many hearing days the Privy Council would be working on Hong Kong appeal cases per year. For the last three years, they average between seven weeks and nine weeks, remembering that their Lordships in the Privy Council do not sit on Fridays. So, seven or eight weeks, or nine weeks, would be something like two months in the year. That was precisely what I had in mind when I talked to Mr LI Jusheng in May 1983. My concept then was that we do not need a permanent Court of Final Appeal to be established because we do not have that many cases, and because we wanted to invite three overseas judges to come and sit on the Court over these cases, I suggested why do we not invite them two months in the year, January and July? I even named the months because January is right after Christmas; July is near the summer vacation. That makes it easy for the overseas judges to be invited and come here.

Now the advantage, therefore, is that the two local members, for example, should not be permanent. They could actually go back to the Court of Appeal, but of course they must not, we must not allow judges from the Court of Appeal who actually heard the cases under appeal. That would be totally wrong. Now, we have three divisions in the Court of Appeal, so an appeal can only come from one of the three divisions. There is nothing to prevent the judges in the other two divisions, particularly the vice-presidents, to sit on appeal from a case determined by the other division.

Now, I would also like to take this opportunity, Mr Chairman, to answer some of the very strong attacks which were unjustifiably laid at my door. I have not libelled or attacked or cast into aspersion the quality and ability of our Court of Appeal judges. Many of them are my very close friends formerly at the Bar. I have a lot of respect for them. They are certainly good and competent judges for the Court of Appeal, but I doubt if many of them or any of them would claim to be of the same calibre of judges such as Lord DIPLOCK or Lord GOUGH, the Privy Councillors. So, I have nothing against our judges at all. I have every respect for them, but to pull three, four or even five of our best judges from the Court of Appeal and put them in the Court of Final Appeal, only hearing cases two months in the year and not being able to hear other cases in the meantime, I think is certainly a lot of waste of the public purse.

I remember during the Bills Committee a lot of the Members were worried. Could we not ask them to chair certain commissions and so on? Surely the idea is not to have these eminent judges to sit as chairmen of commissions. Hopefully by that time the Vietnamese people would be a matter of history, so there will not be any need for too many commissions of inquiry.

So, the advantage of taking away this dichotomy of permanent and non-permanent judges would have the advantages which I mentioned above. So, we would not be spending too much money. These judges will come and sit two months in the year. The overseas judges will go back to their own courts, the highest courts in their respective lands. The local judges will continue their work in the Court of Appeal. Otherwise we would set up such a Court of Final Appeal as per the Bill and we have so many eminent judges sitting there 10 months in the year doing nothing. They may turn out to be very good golf players!

So, the purpose of these three amendments are first to replace the framework in the present Bill this dichotomy between permanent and non-permanent judges. I simply call them local and foreign judges. I want to bring the best judges from outside Hong Kong and I want to simplify the unnecessary distinctions in eligibility, tenure and appointment as are set out in the Bill, and I also wish to remove the unnecessary and undesirable hierarchy among the judges.

So, for these reasons, I hope Members would support these amendments.

Proposed amendments

Clause 2

That clause 2 be amended —

(a) in the definition of "judge", by deleting "permanent judge and a non-permanent judge" and substituting, "a local judge and a judge from another common law jurisdiction";

(b) by deleting "non-permanent Hong Kong judge" and its definition;

(c) by deleting "non-permanent judge" and its definition;

(d) by deleting "permanent judge" and its definition;

(e) by adding -

""local judge"（本地大法官）means a judge appointed as a local judge under section 7;".

Clause 5

That clause 5 be amended —

(a) by deleting subclause (1) and substituting -

"(1) The following shall be the judges of the Court -

(a) the Chief Justice;

(b) the local judges and

(c) the judges from common law jurisdictions.";

(b) by deleting subclauses (2), (4) and (5);

(c) in subclause (6), by deleting "permanent".

Clause 8

That clause 8 be amended, by deleting the clause.

Question on the amendments proposed.

MR RONALD ARCULLI: Thank you, Mr President. I am grateful to the Honourable Martin LEE for his half-hearted attempt at an apology, but I am afraid he put his foot in it even more by saying that Court of Appeal judges are good and competent as they are and they should stay where they are, and that they will not claim to have the moral intellect or fibre to actually sit in the Court of Final Appeal. I wholly disagree with that. They are also dear friends of mine, and as Members know, I was at the Bar and indeed one of them sitting in the Court of Appeal was a pupil of mine, and he is certainly in my view qualified to sit in the Court of Final Appeal, amongst other.

In terms of what I call the "Martin LEE Court of Final Appeal Formula", we seem to be going down Memory Lane an awful lot these days, and money seems to all of a sudden spring to mind in terms of the economic use of money and economic use of the Court's time. I think seven to nine weeks' hearing time does not mean that their Lordships or whatever they might be called at that time, Mr Chairman, only work that time. They have to obviously prepare for the case and do all sorts of other administrative things. And insofar as it calls for the fixing of January or July for sittings, I mean, talk about justice in, sort of, air-conditioned, sterilized cans. If you want to limit a timeframe for the appeal then by all means do it, but I suspect that it would not do the prisoner sitting behind bars a lot of comfort to say that, "Oops, you've just missed the hearing. Now you've got to wait until January or July as the case may be."

But on the more serious note, in terms of the amendments proposed by the Honourable Martin LEE, the consequence if one supports the amendments, would flow to clause 18 as well, and clause 18 deals with the Appeal Committee. The Appeal Committee of the judges of the Court of Final Appeal is to comprise of the Chief Justice plus two or three judges. Now, if we have a Court of Final Appeal with judges, you know, both in Hong Kong and outside of Hong Kong being qualified to sit, as it were, in the Appeal Committee, I imagine that in practicality terms it would be rather difficult. I mean, what does the Chief Justice do? Does he nominate one permanent overseas judge to sit in the Appeal Committee, or does he leave it floating? Do we do it on an ad hoc basis?

Mr President, I understand that the language of permanent and non-permanent judges in the present Bill might have found its origin in the practice that prevails in the Privy Council today, and I emphasize the word "practice". To sit in the Judicial Committee of the Privy Council you have to be appointed a Privy Councillor, for those non-legal Members, and the Law Lords, as we call them, those who sit in the House of Lords as judges, the Law Lords, all 10 of them, are really, in practical terms, the permanent judges of the Judicial Committee of the Privy Council. Other Privy Councillors, whether within or outside of the United Kingdom, are from time to time invited to sit with their Lordships who form, as it were, the permanent panel, if I could put it that way. So, I suspect that in practicality terms the reason why in the CFA Bill we have the reference to permanent and non-permanent is partly because of that and partly because of clause 18, which deals with the Appeal Committee.

With those comments, Mr Chairman, I will oppose the amendments and so will my fellow Members in the Liberal Party.

MISS EMILY LAU (in Cantonese): Mr Chairman, I rise to support the Honourable Martin LEE's proposal. I believe the Government will recall that, when the matter was discussed in the Bills Committee, even the Legal Advisors advised that this had to be discussed. That is because matters, such as whether it will cost a lot to set up the Court of Final Appeal or how many weeks the Court will be in session, all fall within the ambit of the Bills Committee. Therefore, I asked there and then: Would it not be very expensive to spend so much on setting up a Court of Final Appeal, which would hear cases for a mere 10 or 10-odd weeks? I think there will surely be a row when we ask for appropriation from the Finance Committee. Therefore, I hope this debate will be put on record so that members of the Finance Committee will, in the future, know that we were all worried about this and Members had discussed the matter over in 1995.

I think as far as the public is concerned, they will not understand why a Court of Final Appeal is to be set up just to hear cases for 10 weeks, or to deal with what the Honourable Ronald ARCULLI described as administrative work. I cannot figure out what he meant by administrative work because there is already a D8 officer there to handle such matters. I do not know why judges of the Court of Final Appeal will have to handle administrative work. Even if there is preparation work, that will take no more than two to three weeks, which means there will still be dozens of weeks during which the judges will be left idle. This may well develop into a scandal. Mr Ronald ARCULLI asked why we had become so concerned about this all of a sudden. I think he himself knew that this was not "all of a sudden" at all. In fact, the duration of court sittings has all along been our concern over the past few years. At first it was handled by a subcommittee, then a panel was formed and numerous meetings were held. The matter has been frequently discussed at meetings of the full Council and in the Finance Committee. Members have been asking the Government if the judges work hard. Some judges have indicated, much to Members' astonishment, that they work three hours each day. I wonder in the future, when the Court of Final Appeal is set up, how many hours out of a year it will sit. I believe Mr Martin LEE's proposal can resolve this problem, that is, when need arises, the Court will spend one or two months hearing cases instead of having the judges staying idle for seven, eight or nine consecutive months with no case to hear but being paid tens of millions of dollars of taxpayers' money. As a representative of the taxpayers, I am finding the present arrangement problematic.

Further, Mr Chairman, I asked, in the Bills Committee, if the Court of Final Appeal could be given more work. This is my target. Several weeks of sitting out of a whole year simply will not do. Could the judges be seconded to the Court of Appeal to hear cases? Because I know judges of the Court of Appeal sometimes hear cases in the High Court. Mr Martin LEE has pointed out ─ and I believe he will support it ─ that it is most important that judges will not hear a case in the Court of Final Appeal they heard previously. If we invite judges from somewhere else, then the possibility of having judges hearing the same case in the Court of Final Appeal they once heard in the Court of Appeal will be fairly remote. This is my proposal, and I hope Members will understand that my objective is to ensure that taxpayers' money will not be squandered away. Setting up a Court of Final Appeal can be expensive, and I do not know when the Government will give us a cost breakdown. But we hope that after the Court is set up we will see that there is really work for the judges to do throughout the year instead of having them drinking or playing golf for seven, eight or nine months. This I will not accept.

Finally, in response to the Attorney General's remark that some Members have made insulting comments on the judges, I would say that I myself have never insulted them. However, I have said several times in the Legislative Council that, in comparison with the judges of the Privy Council, our judges are not of a comparable standard nor do they have a comparable status. This is, I believe, something even they themselves would acknowledge. I always believe the reason for the Joint Declaration of 1984 to provide that judges from other common law jurisdictions can be allowed to sit on the Court of Final Appeal is that our judges are not up to the standard. That is why we are allowed to invite overseas judges with quality, status and authority. I hope the Government will not misinterpret what Members say, nor will it instigate unnecessary bickering between the Legislative Council and the Judiciary.

Mr Chairman, with these remarks, I support Mr Martin LEE's proposal.

MR ANDREW WONG (in Cantonese): Mr Chairman, first of all, I have to declare that I can agree to the majority of the amendments proposed at the whole committee stage. I agree to the amendment to Clause 1 just now proposed by the Honourable LEE. I also agree to the amendments to Clauses 2,5 and 8, but my agreement is only limited to the contents. Owing to the fact that provisions are in violation of the Sino-British Agreement, should the amendments be passed, the consequences would be serious, that is no Court of Final Appeal (CFA) would appear on 1 July 1997. I therefore have no alternative but to give up what I like.

Nevertheless, the Hong Kong and British Governments are to blame for all of the above because they, before having talks with their Chinese counterparts, had not inquired of the Honourable Members about their attitudes towards this issue and their views of what would be the best for Hong Kong. For example, just now Mr LEE mentioned whether it was possible to reduce staffing and invite some from abroad. Or, after reducing staffing, provided the number of cases is not very large and it takes not too long to recruit other judges, all of the above deserve our consideration. It is nevertheless a pity and regrettable that the Administration, during the close-door meetings of Legislative Council Panels, refused to "take Members in confidence" by talking with them about what would be good for Hong Kong. Since the matter has come to such conditions, I wish to tell you what I feel.

At this committee stage, I will vote against all the proposals in violation of the Sino-British Agreement, but I may consider voting in favour of others.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, in fact I agree to many points in the amendments proposed by the Honourable Martin LEE today. As a matter of fact, I am in a similar situation as the Honourable Andrew WONG in that as I stated in my first speech, I hoped to have a "a proposal winning in three aspects", that is, without violating the attitude of China in signing the Sino-British Agreement and without against the stand of the British side in signing the Agreement on the one hand and winning the support of the people of Hong Kong on the other. In my opinion, the basic problem of the Agreement and the Bill rests in whether "acts of state" are defined according to the interpretation of common law. I therefore think that this is the most important point for amendment and I will base on this point to make decisions on whether I will cast an affirmative or negative vote or abstain from voting. As for other amendments, I consider that on some technical problems of operation, it would be better not to affect the Agreement wherever possible. Owing to this situation, I believe that I will cast a negative vote.

MR RONALD ARCULLI: Mr Chairman, I just want to say a few words on the question of economy and the Court of Final Appeal. Members seem to be putting their viewpoint forward today on the basis that we want the best, and if I use motor car language, we want Rolls Royce, but it seems we are not prepared to pay for it.

I would like to take the opportunity to remind Members that judges' physical infrastructure costs money. What we should not ask them to do is to demean their position to say that "Ah, because you are only working eight weeks a year, 10 weeks a year, 12 weeks a year, can you please also do other ad hoc jobs in the meantime?" This is the Court of Final Appeal that is very important to Hong Kong and indeed not just from the business point of view but from the community point of view. We should not ask what my honourable friend, Mr Martin LEE, says some of the finest legal brains in the world to go round behaving as if they were here for the part-time job. And I hope that when the paper comes to Finance Committee that somebody will remind me, I am sure that the Administration will, of my words today.

Thank you.

MR LEE WING-TAT (in Cantonese): Mr Chairman, originally I was not interested in making remarks. However, I did not quite understand about what the Honourable Andrew WONG and the Honourable Frederick FUNG had spoken after hearing their speeches.

It appears that the meaning of their remarks made just now is — I do not know if it is their stand or the stand of the Association for Democracy and People's Livelihood (ADPL) — they will "accept all" provided it is the conclusion of the agreement reached by the Chinese and British sides. If my understanding is correct, I would like to invite Mr Andrew WONG and Mr Frederick FUNG to speak only about their stand so that every citizen knows about it. Even if this is their stand, I do not quite understand because last year, in the debate on political reforms, ADPL favoured the demand for full direct election raised by this respected lady by my side. Apparently, this is in violation of the Sino-British Agreement because there was no agreement. Mr Andrew WONG and Mr Frederick FUNG supported the Chris PATTEN proposal, but there was also no agreement. Many policies, including the sewage charges of $6 billion to $7 billion, were passed in the Finance Committee without the consent of the Chinese side. I believe you two also favoured an endorsement. Later we will have to discuss another law, that is the one on mandatory provident fund to which the Chinese side has not given consent. I will be very disappointed and deeply aggrieved if all the matters done by the Legislative Council of Hong Kong will not be accepted until the consent of the Chinese side has been sought.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I have to give a clear explanation because my stand was mentioned a moment ago.

At the previous debate on political reforms, our attitude, that of the Association for Democracy and People's Livelihood (ADPL), was very clear. We had our own ADPL political reform proposal which was released before that of Chris PATTEN. When did we consider the proposal of Chris PATTEN, the Honourable Emily LAU's 60-seat direct election proposal and even the proposal of the Democratic Party? It was when both the Chinese and British sides said there would not be an agreement. When both the Chinese and British sides were negotiating, we only supported ADPL's proposal and nothing other than the proposal. When the Chinese and British sides announced that the talks had broken down and there would not be any agreement (in other words, the Legislative Council cannot straddle 1997), then, why did we not have a better one? This was the then attitude of us, the ADPL.

This time there is an agreement. By saying that there is an agreement, I mean that basically, both the Chinese and British sides hope to establish the Court of Final Appeal (CFA) and I think the basic problem concerning CFA is whether CFA will operate in accordance with common law. In the whole Bill, it is most likely that "acts of state" will ruin the operating mechanism of common law because this point limits the jurisdiction of CFA. Another provision is the operation mode of CFA after its establishment. I consider that this can be amended after the establishment of CFA. I always say that the laws are in our hands and we can make amendments at any time. As for "acts of state", I think this is the lowest bottom line which cannot be changed. I therefore said clearly a moment ago that I would support the Bill if my amendment was passed. If my amendment is not passed, but the Attorney General, in his reply, explains clearly to members of the general public that the definition of "acts of state" shall be interpreted in accordance with common law, I will abstain from voting. If there is not even such an explanation to the people of Hong Kong, I will cast a negative vote.

MR JAMES TO (in Cantonese): Mr Chairman, I have listened distinctly to the stand of the Association for Democracy and People's Livelihood (ADPL), including its strategies and bottom line. I believe the people of Hong Kong have also listened distinctly to these.

MR ANDREW WONG (in Cantonese): Mr Chairman, I have spoken thrice and this is the fourth time I speak. Maybe my speeches are too lengthy. I only wish to say that it was the Second Reading Debate when I first spoke. If the Honourable LEE Wing-tat could not hear clearly, I already spoke distinctly once again just now on the amendment to Clause 1. What is the problem? Under the circumstances that there is an agreement between the Chinese and British sides, we can only take it or leave it and any amendment will mean leave it. However, in the absence of any agreement, we can do anything provided that we consider it correct. I have made this stand clearly and I therefore wish to take this opportunity to say that I do not disagree to the contents of the amendments. It is only that in such premise and under such circumstances, I choose to have the Court of Final Appeal on 1 July 1997.

Thank you, Mr President.

ATTORNEY GENERAL: Mr Chairman, these amendments would delete from the Bill the distinction between permanent and non-permanent judges. They would be clearly inconsistent with the JLG agreement reached in June this year. One of the principles endorsed by that agreement is that there should be permanent and non-permanent Hong Kong judges. In fact, the distinction between these two categories of judges goes back many years and was part of the 1991 JLG agreement.

As Members know, the Bill gives effect to obligations entered into by Britain and China. The Administration is not at liberty to disregard those obligations. Those proceedings are not an academic debate over other possible arrangements. The Bill is designed to implement an international agreement.

Moreover, as the Bill now stands, the division between permanent and non-permanent Hong Kong judges has practical advantages. The permanent judges would serve exclusively in the Court of Final Appeal and would establish a separate and superior identity for that Court. The non-permanent Hong Kong judges would constitute a pool of experience that could be called upon as required.

The permanent judges would play a vital role in shaping the Court, particularly in its early days. The establishment of the Court will, of course, be a historic development for Hong Kong. It is of great importance that there should be a core of permanent judges who will not only hear appeals themselves, but will deal with applications for leave to appeal, the making of rules and other such matters. The proposed amendments aimed at destroying this core of permanent judges would be detrimental to the development of a strong court.

I will have a little bet with Mr LEE. My bet is that this Court will be far busier than he and others think. I look forward to the day when he will be a busy and successful practitioner in the Court, except when he is appearing against the Government!

Mr Chairman, the amendments to clauses 2, 5 and 8 proposed by the Honourable Martin LEE are inconsistent with the JLG agreement and are unacceptable for the reasons that I have just given. I urge Members to reject them.

MR MARTIN LEE: First of all, Mr Chairman, I agree with my honourable friend, Mr ARCULLI, when he says that eminent judges should not be asked to do odd jobs. I entirely agree with that.

But he insists that I have insulted the Justices of Appeal. I do not know why he insists that because certainly Mr ARCULLI would know that, when all former British colonies which were given independence had the decision whether to continue with their appeals to the Privy Council or not, invariably they continued with appeals to the Privy Council for many, many years, not because they thought that full independence is a bad thing. And indeed Members would appreciate that when a former colony gains its independence, it is always very proud of itself, and yet they always have this good sense to know their judges are not quite good enough and maintain the Privy Council route.

But Hong Kong cannot continue with our Privy Council appeals because we are no longer part of the British Empire, and that was why I suggested to Mr LI Jusheng in May 1983 that I wanted to have something similar. I am not saying that none of our local judges are good enough because even in my formula I said two, there would be two local judges who would benefit greatly by sitting with three eminent judges — the best brains from the common law countries. In due course, there could be more, and no doubt there would be more, until a day comes when we have the confidence to say we do not need any more overseas judges.

Now, I am not running down our Court of Appeal judges. Indeed, one of them said to me, why do you need a Court of Final Appeal? Surely you do not need two appeals from decisions of the High Court? And as I said, he is a very able Justice of Appeal. He may well be there in the Court of Final Appeal. I will not divulge his name, obviously. So, let it not be said again and again, by the Attorney General as well, that I am libelling our judges. Why should I do that? I still appear before them!

Question on the amendments put.

Voice vote taken.

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

MR MARTIN LEE: Division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, 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 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 amendments.

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

THE CHAIRMAN announced that there were 20 votes in favour of the amendments and 37 votes against them. He therefore declared that the amendments were negatived.

ATTORNEY GENERAL: Mr Chairman, I move that clause 2 of the Bill be amended as set out under my name in the paper circulated to Members.

The amendment stems from a suggestion made by the Bills Committee. It is proposed that clause 2 be amended by deleting the definition of "Registry". This definition serves no useful purpose since the word "Registry" appears only in clause 41, where the meaning is quite clear.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2 be amended, by deleting the definition of "Registry".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Question on clauses 5 and 8, in their original forms, standing part of the Bill put and agreed to.

Clause 4

MR MARTIN LEE: Mr Chairman, this is one of the more controversial ones. This clause deals with the jurisdiction of the Court. For the benefit of Members, can I just read it:

> Subclause (1) says: "The Court shall have the jurisdiction conferred on it under this Ordinance and by any other law." Subclause (2) says: "The Court shall have no jurisdiction over acts of state such as defence and foreign affairs." And subclause (3) says: "The Court shall obtain a certificate from the Governor on questions of fact concerning acts of state whenever such questions arise in the adjudication of cases and that certificate shall be binding on the Court." Subclause (4) says: "Before issuing such a certificate the Governor shall obtain a certifying document from the Government of the United Kingdom of Great Britain and Northern Ireland."

Mr Chairman, the first question, of course, we asked in the Bills Committee was why we have funny references to the Governor and to the Government of the United Kingdom of Great Britain and Northern Ireland, knowing as we do that under clause 1 of the Bill, that this Court will not come into operation until it is no longer a British dependent territory. But, of course, the real answer as far as I am concerned is that we must give face to the British Administration because this Bill is going to be passed while Hong Kong is still British, and that is why the reference has to be to the Governor when we know that when the Bill, or the Ordinance, does come into operation after 30 June 1997, it will be the Chief Executive, and of course it will be the Central People's Government in Beijing.

But my amendment is not concerned with that. My amendment concerns something much more fundamental. It concerns the definition of "acts of state". But before I deal with it, it is important to remind Members that it is of fundamental importance to the rule of law that everyone, including the Government, is equal before the law. And the danger of extending this doctrine, which is a common law doctrine, of acts of state is that it becomes unclear as to what is or what is not an act of state.

Acts of state do not come before the courts very frequently. The last time any act of state came before a Hong Kong court was in the 1950s, a time when the People's Republic of China Government just took over Southern China, including Guangzhou, and certain aircrafts belonging to the former administration were then flown to Hong Kong and they were sold by an agreement to an American businessman. So there was a challenge as to whether or not such aircrafts actually properly belonged to the new government, and there was an Order in Council which conferred jurisdiction on the Hong Kong courts to try that particular case, and it went up to the Privy Council. So, these are not of frequent occurrence.

Acts of state are not known to too many lawyers because, as I said, we are not concerned with such cases all that frequently. It is, I suppose, like an elephant. It is impossible to define it and yet when you see it you know what it is. The same with our common law judges. They know whether something is an act of state or it is not an act of state. It is not exactly easy, but it is certainly tolerably clear.

But any extension of this term, particularly when the definition is not well-defined, spells danger. Now, under the common law acts of state are not justifiable, namely, our courts have no jurisdiction to try them. An example of an act of state would be the declaration of war or the signing of treaties between governments or the appointment of ministers, that sort of thing. But the appointment of ministers are not justifiable. But is it right to call it an act of state? I certainly do not agree that it should be called an act of state because an act of state really pertains to foreign affairs, and Holmesbury's Laws of England, which is our "bible", defines acts of state as "prerogative acts of policy in the field of

foreign affairs performed by the Crown in the cause of a relationship with another state or its subjects."

And an act of state is normally used as a defence in a court action against a claim against the Government. For example, the last time Britain was at war was the Gulf War. There was, of course the war with Argentina. Now, if during the war with Argentina, that is, there may be an Argentinean businessman trading in the United Kingdom in arms, and he may have a lot of money deposited in a bank account. Now, it is quite open to the British Government, if it thinks necessary, to freeze that bank account so that that trader may not be able to deal in arms during the war with Britain. This businessman may like to challenge the act on the part of the British Government and sue in a court of law, asking for an injunction, for example, or asking for other relief. In those circumstances, it is clearly permissible for the British Government to run the defence of "act of state" because we are at war and this is a foreign alien.

But another important principle in acts of state is that it cannot be used by the Government against its own citizens. So in the example I gave, if you change it a little, supposing it is a British businessman having that money and if the money is seized or the account frozen by the Government, the British businessman will challenge in the courts. Of course the Government can still justify the necessity in freezing his assets but the Government may not run the defence of "act of state", because such a defence cannot be raised against its own citizens. That is a very important principle.

It is not easy. Indeed I had said while I was drafting the Basic Law, that it was impossible to come up with an exhaustive list of what are acts of state. After all, the beauty of the common law is that it is a growing system of law. One decision in the United States may have a bearing on a judgment in the United Kingdom, and so on. This is what we call cross-fertilization, which is important in the development of the common law. When I was a member of the Drafting Committee, for over two years we had been fighting over this. What do we do about acts of state, because the Chinese mainland drafters wanted to define acts of state. They want to state clearly in the Basic Law what matters are outside the jurisdiction of our courts. I gave them copies of Holmesbury's Laws of England. I told them this is the sort of thing which the courts will not try. They are called "acts of state". At first, they refused to listen. So in the first draft of the Basic Law, they got the clause which actually set out the number of things that our courts could not try. I persisted and fought with them and argued with them with a lot of local lawyers' support, and when the second draft of the Basic Law was published in February 1989, they no longer defined the expression "acts of state". It merely referred to acts of state. It was not perfect, that particular clause, and then I was still trying to improve on it, but at least in the definition of acts of state they left it alone. They simply said courts have no jurisdiction over cases in relation to acts of state, but I do not like "over cases in relation to", but I would have been

perfectly happy if it had said, "the Courts of the Hong Kong SAR have no jurisdiction over acts of state", so they got pretty close to it. They agreed they should not define it.

Unfortunately, after 4 June later that year, things changed and they then re-drafted or amended Article 19. (It was Article 18 changed to Article 19) and they added words. "The Courts of the Hong Kong SAR shall have no jurisdiction over acts of state", and then they continue: "..... such as defence and foreign affairs." In the Chinese text, actually, the word "etcetera" was added, "等" : "Courts of the SAR have no jurisdiction over acts of state such as defence and foreign affairs, etcetera." Now, what does that mean? It opens up immediately the common law expression of "acts of state", particularly in the Chinese text, "etcetera", or "等" . What is it supposed to cover? That is the problem.

Before I come to that, though, I would like to remind Members that when the earlier incarnation of this Bill, which is a former Bill on which the Government consulted the Chinese side as well as the two legal professional bodies, again it simply said the courts shall have no Jurisdiction over acts of state. It did not go on to say "..... such as defence and foreign affairs". So there is a great deal of similarity between the second draft of the Basic Law and the earlier version of the Court of Final Appeal Bill, which is in accordance with what I have been arguing all along. For, suddenly they change.

Now, the Attorney General referred to this argument on Article 19 as a red herring. Well, the interesting thing is we now have two versions from the Government: the earlier version and the newer version. The earlier version, I found to be acceptable but not this one. If there is a red herring, the question is, which one is the red herring?

Another principle under the common law is that it is entirely for the judges to decide what is or what is not an act of state. It will not be determined by the Government. The judges themselves will decide, and once they have decided that an issue involves an act of state that is the end of that point. The judge will not go further into this. He must keep off because it is no longer justifiable, and all common law judges know that. Of course, he could be wrong, but there is the Appeal Court, and so on. And that is why it is important to maintain this principle that only judges shall be left to interpret it because after all, this is a common law expression. "Acts of state" is a common law expression.

Unfortunately, the matter is made more complicated because the law in China is also developing, which is no bad thing. I have always advocated for the rule of law in China. And the reason why I entered into politics, if I may echo Mr James TO, is to make sure that we in Hong Kong can preserve our rule of law so that, one day, we could extend our rule of law into China, and that would make our country really great.

The danger, then, is what is the meaning of "acts of state" under Chinese law? The Honourable James TO has already given us a definition from a legal dictionary. I have come across an article published in the form of a letter to the editor by Frankie LEUNG, a former member of the Bar who is now a professor of law in the United States, and he referred the readers to an article by XIAO Weiyun, a former fellow-drafter in the Basic Law Drafting Committee. The article was entitled: "A study of the political system of the Hong Kong SAR under the Basic Law", which was published in a journal of Chinese Law 1988, Volume II. The summary of that view is that acts of state, under Chinese Law, will apply to matters pertaining to diplomatic matters as well as national defence, but it also embraces three other areas: first, administrative behaviour of the Central People's Government; second, acts of a purely political nature; and third, acts committed in the name of the state.

What is particularly worrying is one and three. What is an administrative behaviour of the Central People's Government? What would that include? And three, acts committed in the name of the state. If the People's Liberation Army stationed in Hong Kong were to take over land belonging to a private individual in order to build barracks on it, is it an act of state? Acts committed in the name of the state? Defence affairs? People would say if certain people complain that their right to demonstrate in public has been violated and goes to the court, it is possible then they will say because of the large numbers involved, it threatens the safety of the Hong Kong Government, which is a direct challenge to the sovereignty of the PRC, and therefore it is an act of state. Now, it is quite possible that the leaders in Beijing would so interpret the act complained of, and I will come later on to say who would decide what is an act of state.

So, the danger then of extending the meaning "acts of state" to cover other things which are not known to the common law to constitute an act of state, is dangerous. Of course, I know that there are certain things, as I said, appointment of ministers for example, which is equally non-justifiable, but is not to be confused with an act of state which pertains to foreign matters, according to the definition of Holmesbury: "Prerogative acts of policy in the field of foreign affairs performed by the Crown in the course of a relationship with another state or its subjects."

The danger of using the expression "acts of state" to embrace other non-justifiable matters is that once you give that, once you do that, particularly by doing it by way of a local statute as we are being asked to do in section 4 of this Bill ─ we are repeating something in Article 19 of the Basic Law ─ but once we incorporate it into this Bill and when we pass this Bill into law it becomes part of the local law. Then the danger in the future is, what do you mean by "acts of state"? If your meaning on the face of it is larger than the ordinary common law meaning of an act of state, if you yourself, if we ourselves include under the expression "acts of state" something else which no common law court would recognize as an act of state, although it is equally non-justifiable, then the danger is

that it can be further extended in a way which we may not like, in a way which is detrimental to the people of Hong Kong.

Now, the problem, of course, Honourable Members, is that what is or what is not an act of state, of course, can be decided by the courts. It may be, it may not be because of the complication of subclause (3) which talks about facts concerning acts of state. When I was drafting the Basic Law, in the second draft we used an expression "facts of state". They do not relate entirely to facts relating to or concerning acts of state. It is a very complicated language, I am afraid, and I hope Members will bear with me. But acts of state would include matters like whether on a particular day one country was at war with another country. It did not affect the United Kingdom at all but one, say Japan, was at war with United States in the Pacifics during the Second World War, what was the period? What date did it begin? What date did it end? If a court case, if an issue relevant to that should arise in a court case, now, for "facts of state" as a matter of evidence, if the judge finds it difficult to decide he may, although he is not obliged to, ask the Administration for a certificate, and when the certificate is issued by the Executive, the judge shall be bound by that certificate, but he is not obliged under the common law to ask for a certificate. He would only do so when he was not certain as to what the fact was. So, this is entirely a matter of evidence, unlike acts of state which is a defence to a civil claim.

But what I am worried about is when you read subclauses (2) and (3) together, no doubt taken straight from the Basic Law, it causes a lot of difficulties. "The Court shall have no jurisdiction over acts of state such as defence and foreign affairs. The Court shall obtain a certificate from the Governor on questions of fact concerning acts of state whenever such questions arise in the adjudication of cases." Now, the Court is obliged because it says "shall obtain a certificate on questions of fact concerning acts of state ......" Does it mean that whenever somebody pleads the defence of "act of state", the issue therefore arises? Does it mean that the Court is then obliged to ask for a certificate concerning the fact relating to that alleged act of state? It is quite possible to give it such an interpretation.

I am not saying that this is the only interpretation. Indeed my learned friend, Mr Denis CHANG Q.C., has written an article to say that acts of state such as defence and foreign affairs in fact opens up the inclusion of other matters which are already non-justifiable. But I have already pointed out the danger of putting in other non-justifiable matters which are not foreign affairs matters and included under the same umbrella as acts of state. So, it is arguable. Maybe Mr CHANG is right. Maybe he is wrong. But the difficulty is the courts do not necessarily decide that question because under Article 158 of the Basic Law, the Standing Committee of the National People's Congress can interpret any article of the Basic Law at any time they like. So, even before the action, before the matter goes to court, somebody can go to Beijing and ask the Standing Committee to put an interpretation of a certain article of the Basic Law which may affect the action later on.

Now, the Government's response to that has always been, "Ah, but then blame the Basic Law. Don't blame it on us." It would have been an attractive argument but for the fact that for some reason they saw fit to incorporate the third paragraph of Article 19 into clause 4(2) of this Bill. So, if something is bad, and I do not think the Government has ever argued with me that the Basic Law definition of acts of state is entirely correct, but if you nevertheless choose to incorporate that into our local Bill, I can complain and I am entitled to ask you why do you do that. The answer has been a very miserable one: well, because China wanted it. The question is, why do you give in, if China wanted it and if you do not like it?

I never like to quote Sir Percy CRADDOCK. I do not think the Governor likes it either, but this gentleman, well, Sir, who has been negotiating for the British Government on many matters, including the secret deal in 1991, has gone on record to describe the definition of "acts of state" as "dangerously broad". And knowing Sir Percy as many of us do, when Sir Percy calls something in the Basic Law as dangerously broad, it must be very, very, very dangerous indeed. So why are we incorporating it into our Bill? That is why I urge Members to amend it by striking out these words "such as defence and foreign affairs", to make it accord with the Basic Law definition and leave it entirely to our judges, hopefully, to interpret it under the common law.

Now, further I have also put in an amendment to subclause (3) relating to facts of state. The formula I have adopted is very straightforward: "The Court may obtain a certificate from the Governor on questions concerning facts of state when such questions arise in the adjudication of cases, and that certificate shall be binding on the Court." This is very much similar to what was then in the second draft of the Basic Law, and I do commend to Members, because if we make these two amendments to acts of state and facts of state, then the law is tolerably clear and no doubt we will just leave it to the Court to adjudicate them, to interpret them.

And if I could make a quick response to, I think, Mr Simon IP who mentioned Sir William WADE earlier. Sir William WADE gave two opinions to members of the Law Society. He did not in the second opinion retract his earlier opinion. Perhaps I will deal with that later, Mr Chairman, on reflection. But reference was made to Professor Wesley-Smith, another friend of mine, who did say, well, what is wrong with that, because this clause 4(2) pertaining to acts of state such as defence and foreign affairs, is already in the Basic Law. But my answer is, as I said before, the fact that it is in the Basic Law does not mean that you must incorporate it into your Bill, otherwise why do we not incorporate other provisions in the Basic Law? And indeed, the earlier paragraph of Article 19 makes it plain that what the Courts can try today, the Courts of the SAR can try in 1997. Now, why is that not incorporated into it? And of course, the Administration gave those sort of reasons as to why it is not convenient, it is not desirable. But the question is why do you incorporate certain provisions selectively from the Basic Law into this Bill?

So, for these reasons, and they are very long reasons I am afraid, I would urge Members to support my amendments so as to make the provisions of the Bill in the setting-up of the Court of Final Appeal, and in defining the jurisdiction of the Court to be consistent with the Basic Law.

Proposed amendment

Clause 4

That clause 4 be amended, by deleting subclauses (2) and (3) and substituting ─

"(2) The Court shall have no jurisdiction over acts of state.

(3) The Court may obtain a certificate from the Governor on questions concerning facts of state when such questions arise in the adjudication of cases, and that certificate shall be binding on the Court.".

Question on the amendment proposed.

MRS ELSIE TU: Mr Chairman, I hardly dare to pit my amateur brains against Mr Martin LEE's Queen's Counsel experience. I am glad here to explain the reasons why he is opposing clause 4 of the Bill because what he said has actually reassured me rather than made me afraid.

Apparently, "acts of state" in China would include diplomatic matters, national defence and administrative behaviour, act of purely political nature, much wider. Now I think, unless I was mistaken, Martin said he preferred to have just "acts of state" and not the "such as". Well, I think that it is much better to have "such as defence and foreign affairs" because that limited much more than "acts of state" in China which would include all the other things which are rather frightening.

Having said that, I think we are getting far away from the subject. I am wondering whether we are discussing this Bill as to whether or not we want the Court of Final Appeal in 1997 or whether we are talking about the Basic Law.

MR SIMON IP: Mr Chairman, I do not wish to unnecessarily prolong what are already protracted proceedings, but on this particular subject of "acts of state", I do feel that there has been a lot of misunderstanding, misinformation and misrepresentation, and as a lawyer I would like to try and deal with it briefly. I am very conscious of the fact that when I stand up to speak, I am watched very carefully, especially by Mr Wong Wai-yin who likes to watch what I do with my left hand, Mr President, and also tries to read my mind. What I would like to say to him is "watch my lips and read my words" and he may understand me and what I say better.

Mr Chairman, I think I can really do no better on this subject than to quote a few paragraphs out of an article which was written by Mr Denis CHANG Q.C. in an article which he wrote, I believe, to the Ming Pao newspaper on 23 June, or at least the translation was 23 June, and I think that would throw a good deal of light on this issue. What he says is this:

> "The simple truth is that the Bill nearly reproduces that part of Article 19 of the Basic Law which says that the HKSAR courts shall have no jurisdiction over acts of state such as defence and foreign affairs. Since the Bill will not come into operation until 1 July 1997 it must conform in every respect with the Basic Law, which will have superior force. The Bill cannot add to or subtract from the jurisdiction conferred by the Basic Law. So, what ultimately matters is how "acts of state" will be construed under the Basic Law post 30 June 1997."

I think, Mr Chairman, those three paragraphs really sum up the situation. In my opinion, I would respectfully agree with that. There are, I think, two more paragraphs which I think I should like to draw to Members' attention because they are very relevant, especially in the commercial context, and that is this. He says:

> "There is incidentally no legal basis for thinking that commercial acts by state-owned enterprises, such as the Bank of China, would fall within Basic Law Article 19. It is interesting to note that when Mr LU Peng visited Hong Kong in May 1995 he confirmed this understanding of the legal position. There is likewise no legal basis for thinking that all acts of the executive authorities are outside the pall of law. Indeed, Basic Law Article 35 provides that Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel."

Mr Chairman, some doubt as to the authoritativeness of this view as expressed by Mr CHANG has been mentioned during the discussions in the Bills Committee. Personally, I do not feel that the views expressed by Mr CHANG in this article are devalued in any way because of, first of all, it is an article that appeared in the newspaper rather than a formal, legal opinion which he provided pursuant to instructions by a client; secondly, by the fact that he is an Executive Council Member; thirdly by the fact that the article was written after the Sino-British agreement in the early part of June. I do not believe that somebody of Mr CHANG's reputation and authority would put his name to any view of this kind unless he himself had the strongest belief in its accuracy and correctness.

So, therefore, Mr Chairman, what I would like to say is that it would be wrong to oppose the Bill because of the formulation of "acts of state" as contained in the Bill. It would be wrong to suggest that the rule of law is undermined by virtue of this provision in the Bill and it would be wrong, in my opinion, to suggest that the amendment has merit because somehow by putting in, or by deleting the words "such as defence and foreign affairs" in the original Bill would in any way assist the situation. Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): Having heard the Honourable Mrs Elsie TU's speech, I think she does not quite understand something, so I spare no trouble to explain.

In fact, "acts of state" itself is a defined term. There are many precedents in the common law on the interpretation of "acts of state" as a whole. Now the Basic Law and the Bill refer to "acts of state such as defence and foreign affairs". As "defence and foreign affairs" are stated as the premise, the clearly defined term "acts of state" under the common law becomes incomprehensible. We only know "defence and foreign affairs" are acts of state, but do not know what "等" ("etcetera") refers to. This is not my opinion only. On several occasions at the meetings of the Bills Committee, I asked the Government and the government officials including Mr Richard HOARE and Mr ALLCOCK also confirmed that the Government could not tell me that the concept of "acts of state" under the common law is as same as that of "acts of state such as defence and foreign affairs". They are unwilling to confirm. The only person who experienced opinion on some legal bases was Mr Denis CHANG Q.C., who gave a sense of direction. But he was not sure whether both concepts were the same. Therefore, the concept in the legislation may not follow the common law interpretation.

Later, the Honourable Frederick FUNG will propose an amendment motion, to which the Democratic Party agrees. In order to avoid unnecessary doubt, the Honourable Member asks that an interpretation of "acts of state such as defence and foreign affairs" shall be construed according to the common law principles. We support this. With this interpretation, we can know that the concept of "acts of state" referred under the Bill is exactly the same as that under the common law and "such as defence and foreign affairs" is simply used to elaborate some of its contents.

We often talk about these acts or perhaps I may illustrate with some specific examples. The Honourable Martin LEE has just said, that the "acts of state" as defined clearly under the common law could not apply to the citizens of the state itself. For example, one is arrested by a person in 1998 and called for help, but on the arrival of the police, the arrestor produces credentials to show his identity as a personnel of China's Ministry of State Security and alleges that the arrestee has committed such offences as counter-revolutionary or incitement offences under the Chinese Law. The arrestee certainly objects to an arrest without cause and asks to go to the police station first. Later, the arrestee engages an lawyer to apply for a writ of *habeas corpus.* At the court, the person who claims to be from the Ministry of State Security defends on the ground of acts of state as the state takes action to arrest the person who has committed counterrevolutionary or incitement offence. Then the court has to ask the Chief Executive who in turn has to ask the Beijing Government. The outcome may be to certify the facts: first, the arrester is a personnel of the Ministry of State Security; and second, evidence shoes that the arrestee has committed certain offence. Once the facts area verified, the act is and act of state and the person's act in Hong Kong is, therefore, not under the jurisdiction of the local courts. By that time, the court has no alternative because the person has committed an act of state and this is conclusive with binding force.

However, I have a question. We do not hope to see treason in Hong Kong, but theoretically according to Article 23 of the Basic Law, Hong Kong should enact laws on its own to prohibit any act of treason. As regards the extent and the coverage, we may continue to debate and pursue in future, but such kind of acts should be prohibited. However, the law enforcement agency should be the Hong Kong Police, who enforce the Hong Kong Police, who enforce the Hong Kong's Basic Law and the laws to be derived from the Basic Law. In this way, the acts would not become acts of state. I give the above example to illustrate that under certain circumstances when the courts may not adjudicate the lawfulness of an alleged act of state, the protection given to the Hong Kong people in respect of human rights and freedom, and the spirit of rule of law will be undermined. This example is also applicable to other situations. A company's account may be frozen without cause because somebody claims to be from the Ministry of State Security alleges that the account may be connected with some organization which are defined as problems organizations under the Chinese Law.

I have just given another example. Now I wish to express myself clearly by a realistic example again. When the Liberation Army needs a location other than the military sites under negotiation with the Government, for genuine defence purpose. This is not surprising because we do not know the world's future military development and China may need a particular site to safeguard her security. In cases of land resumption, under the laws of many democratic countries, the army should resume the land according to Hong Kong's laws and add a condition such as for military or defence purpose under the Crown Lands Resumption Ordinance. The land cannot be resumed by administrative means directly. On the contrary, the Liberation Army may resume the land by administrative means and justify its resumption as an act of defence or foreign affairs. But according to the common law concept, "acts of state" is not applicable to the land of the people in the state, therefore, compensation should be offered. Therefore, this example illustrates that the current way of drafting in this Bill offers no protection to the people's private property.

A third example is the recent Dongxinghao incident. Chinese officials at various levels emphasized on several occasions that the arrested suspect in the incident should be put on trial in China. I agree that there is so-called "overlapping jurisdiction" between the laws in China and Hong Kong. According to Hong Kong's law, the suspect arrested locally should be put on trial in Hong Kong. If there is any dispute and the incident occurs in 1998, will China make a determination, through "acts of state", that the jurisdiction of this case lies with China? If China thinks that this is an act of state, can Hong Kong's courts handle this case again? This may mean that many offences committed by Hong Kong people may not be within Hong Kong's jurisdiction due to a determination of "acts of state", that is "the jurisdiction". This will undermine the protection for Hong Kong's autonomy, human rights and freedom.

With my political sense, I guess China may not interpret the "acts of state" in such a way to make the investors worry because she knows that the investors can leave Hong Kong. If there is a case of this sort, investors may pull out at any time and turn to other places for investment. But the problem is that the general public cannot leave Hong Kong and their last hope, protection for both human rights and rule of law, rests on the Court of Final Appeal. Therefore, if "acts of state such as defence and foreign affairs" does not have a clear interpretation as that under the common law, we will face an unpredictable future and let the public down.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, like the Honourable Mrs Elsie TU, I am a layman in law. She said that she was relieved when she saw the words "such as", but I was very worried when I saw the Chinese Character "等" ("etcetera").

I would like to ask the Attorney General or the Honourable Martin LEE a very simple question in my capacity as an ordinary person. If the Central authorities give direction to the Hong Kong Government after 1997 that the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China would not be allowed to organize any June 4th memorial activities, is this an "act of state"? Would this be adjudicated in courts? Would this be adjudicated by the Court of Final Appeal?

Second, would the commercial disputes of state enterprises in Hong Kong be regarded as "acts of state"? Would it be said that these state enterprises' involvement in China's economic interests is so big that their commercial disputes also fall within the scope of "acts of state"?

I hope the Attorney General will answer this question or Mr Martin LEE may also put forward his views on whether the above would be regarded as "acts of state". I believe the Hong Kong people are not familiar with the term "acts of state" at all. We are worried that our society will not be ruled by law. Therefore, I hope the Government will explain on this in giving a reply later. Thank you.

ATTORNEY GENERAL: Mr Chairman, I will not weary the Council with the clash of legal opinions about esoteric meanings of "acts of state". As I have said before, Mr Chairman, we are not debating the Basic Law. We are not debating Committee stage amendments to the Basic Law. We are not debating the interpretation of the Basic Law. We are debating the Court of Final Appeal Bill.

As I explained earlier, the deletion of the words "such as defence and foreign affairs" from clause 4 would not extend the jurisdiction of the Court in the slightest. It would, however, wreck the Joint Liaison Group agreement which provides that the British side agrees to amend the Court of Final Appeal Bill to include the formulation of acts of state in Article 19 of the Basic Law. Neither that agreement nor this Bill in any way alters the jurisdiction of the Court as provided for in the Basic Law which comes into effect on 1 July 1997, the day on which this Bill when enacted will also come into effect. I have not heard a single lawyer deny that proposition. Indeed they cannot because it is self-evident.

Mr Chairman, much has been said about Article 19. I am not going to, as I say, engage in a lengthy legal debate about it. Article 19 of the Basic Law can be construed consistently with the common law. A great deal has been made of the fact that Article 19 refers to acts of state such as defence and foreign affairs, yet it cannot be doubted that under the common law there are acts of government outside the areas of defence and foreign affairs that cannot be challenged in court.

Mr LEE has quoted Holmesbury. He might also have quoted a further passage from Holmesbury's Laws of England: "The term "act of state" is not a term of art but has been used in a variety of senses including any act done by the state in the execution of its sovereign power", and other authoritative writers have said the same.

But I go back to the key point, Mr Chairman, that clause 4 represents the carrying-into effect of the Joint Liaison Group agreement, an agreement reached between the Chinese and British Governments. The amendments proposed would have the effect of wrecking that agreement with the consequences that have been laid out for this Council time and again in the debate this afternoon. I urge Members to oppose these amendments.

MR MARTIN LEE: All I can promise is that I will be shorter than my earlier speech.

First of all, I would like to remind Members that my views on the acts of state and how objectionable it is in the Bill are clearly shared by the Hong Kong Bar Association, and actually other bar associations overseas, but I shall not name them because that would make the Governor very mad, I am told.

Now, the British Government cannot wash its hands and say, look, all we are doing is to follow a definition which is already in the Basic Law. If there is something wrong with it, the British Government has an undoubted duty to raise the matter with the Chinese Government and to get them to amend the Basic Law.

I need hardly remind Members of the Government present today of paragraph 3(12) of the Joint Declaration in which the Chinese Government undertook with the British Government to draft a Basic Law incorporating all the principles contained in the Joint Declaration, including the elaborations of them in Annexe I. If you turn to the second section of Annexe I you will find a statement that: The laws existing in Hong Kong, including common law, rules of equity and so on, shall continue after 1997." If therefore we are right in the interpretation of "acts of state", namely that Article 19 has increased or broadened, in Sir Percys words dangerously, the common law meaning of "acts of state", then there is an undoubted duty of the British Government to get it right. They cannot just wash their hands.

Now, interestingly, Mr Simon IP reminds us of the article of Mr Denis CHANG. Mr Denis CHANG did say that he thinks that it is better, in fact, to add words like "such as defence and foreign affairs". That is why my Honourable friend, Mrs TU, also took that point. Indeed, the Attorney General too says, neither Article 19 nor this Bill alters the jurisdiction of the Courts.

Bearing all that in mind, Mr Chairman, I must ask this question: if it is better to have this definition, why did the Hong Kong Government not think of it earlier when they drafted the earlier Bill? Why did they then simply say "The Court shall have no jurisdiction over acts of state"? Why did they not go on to say "such as defence and foreign affairs"? Why? Why? Why?

You see, Mr Denis CHANG Q.C. was already on the Executive Council then, so why did he not give his learned opinion to the Government: "oh, better get it right. You had better incorporate that into the Bill." On the contrary, Mr Chairman and Members, I would like to remind you that that was one of the eight proposals from the Preliminary Working Committee which the Governor refused to accept in the beginning. So, this gives the lie away. If it is so good, why not incorporate it?

Now, I deal with two questions asked by the Honourable LEE Cheuk-yan which the Attorney General kept away from, so it becomes perhaps my duty to help him on "等", the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China. I cannot, unfortunately, assure Mr LEE that if, for instance, the PLA were to make certain arrests of anybody the Chinese Government may not like in Hong Kong on the ground that this is a subversive or a counter-revolutionary, and if the PLA were to make the arrest, what could the courts do? Of course, the judge would be very happy to give a writ of habeas corpus on application of the family members of the persons involved, but will the judge be allowed to do that? If the Standing Committee of the NPC defines that act as an act of state, that is the answer, and the courts will be bound by that interpretation. Or, a state enterprise trading in Hong Kong. I am sure Mr LU Ping was right and he certainly intends well when he said, look, it should not involve, it should not be applied to any commercial contracts involving, for example, the Bank of China. But wait. Supposing a foreign bank were to sue the Bank of China, not for $2 million but for US$2 billion, which has the possibility of bankrupting the Bank of China. What will the leaders of China say? Well, first of all, can we afford it? The answer is no. Then what? Can we allow the state bank to be bankrupted in Hong Kong? The answer is clearly not. It is not in the state's interest. What is the answer? The answer is Article 19. Let us interpret that as an act of state.

The judges in the court will not like to do that. The High Court judge will not like to do that. The Court of Appeal judge will not like to do that. Indeed, the judges in the Court of Final Appeal will not like to give that interpretation, but they are bound if the Standing Committee of the NPC were to put such an interpretation on it. Much though we disagree with it, what can we do? Read not Mr IP's lips, but read Article 158 for the answer.

And I agree with Mr LEE Cheuk-yan, the word "等" is "etcetera" in Chinese, but it also means "wait" in Chinese. Whether a particular matter will be interpreted as an act of state under the word "等", "etcetera" we have to wait "等" until after 1997. So, for these reasons I ask Members to support the Amendments.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, 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 amendment.

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

THE CHAIRMAN announced that there were 20 votes in favour of the amendment and 38 votes against it. He therefore declared that the amendment was negatived.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, the first amendment I move today to the Court of Final Appeal Bill (the Bill) is on the interpretation of the "acts of state". Clause 4(2) of the Bill says. "The Court shall have no jurisdiction over acts of state such as defence and foreign affairs".

"Acts of state" is a common law concept and is defined in the customary international law. But the concept of "acts of state" is not mentioned in the Chinese Law and is introduced from the common law during the drafting of the Basic law.

Under "acts of state" in the international law, a state's local courts will not validate or invalidate a ruling on the acts of another states. In the case of Britain, "acts of state" refers to Britain's relationship with other states or Britain's acts towards individuals (foreigners) who do not pledge loyalty to Britain, and in principle, the courts will not intervene in these acts. Acts in connection with foreign states include declaration of war, signing of agreements, take-over of places, despatch and recall of diplomatic personnel, recognition of sovereignty and government of foreign states. The precedents concerning personal rights being affected by "acts of state" are already obsolete, and now generally the courts are not willing to restrain intervention simply for the reason of "acts of state" claimed by the Government.

Obviously, "acts of state" under the common law is directed against the Government's acts outside the state and is not applicable to the relationship not pertaining to the state, for example, the relationship between the central authorities and the local authorities. But the arrangements under the Bill do not state clearly whether the term "acts of state" takes the interpretation and principle of the established common law precendents. I believe the Hong Kong people are also anxious and worried about these relatively ambiguous wordings. As the ambiguity of "acts of state" is the biggest shortcoming of the Bill, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I hope the Bill will state that the term "acts of state" shall be construed according to the established principles of the Basic Law.

As we must know, on one hand, "acts of state" is a relatively new concept in the Chinese Law and Chinese books on law gave little explanation. It is pointed out lately in a dictionary on law that "acts of state" is "acts of governing, political acts; acts of state are realization of a state's sovereignty and are highly political". This concept is different from the common law concept in Hong Kong. On the other hand, since the Basic Law has committed that the existing legal system of Hong Kong will remain unchanged and the common law will continue to exist. I think it is appropriate and necessary for adding a new provision in the Bill to stipulate that "acts of state" must follow the established principles and spirit under the common law so as to reduce the people's worries about this provision and clarify the ambiguity of "acts of state".

This amendment does not necessitate a change to the existing Sino-British agreement, but can safeguard the jurisdiction of the Court of Final Appeal. Therefore, I am very surprised at the two reasons, stated in a paper from the Government to the Members for consideration in voting, for the unacceptibility of my amendment. The first reason stated in the paper is that the jurisdiction of the Court of Appeal has already been restricted by the Basic Law and this amendment will not have any legal impact on the jurisdiction of the Court of Final Appeal. Second, Article 8 of the Basic Law provides the maintenance of the common law and Article 84 also stipulates that the courts may refer to precedents of other common law jurisdictions.

But in fact, clause 1(2) of the Bill says similar things. Clause 1(2) stipulates that "(the Ordinance) shall be amended as necessary to ensure that it is in full conformity with the Basic law". If the reason is that such thing has already been written in the Basic Law and there is no need to mention again, why is it repeated in the Bill? Similarly, subclause 4 copies Article 19(3) of the Basic Law and becomes clause 4(1), 4(2), 4(3) and (4). In another words, the Government can copy the Basic Law whereas we cannot. The Government can elaborate what the Basic law contains, but we cannot write into the Bill what is conferred to the Hong Kong people by the Basic Law. Why? I have just cited two examples to illustrate why everything has to be written in the Bill. To explain this way of drafting, I think there is only one reason (of course an explanation from the Government is the best). Does it serve to make China feel at ease? Is it written because China is a bit worried? Conversely, it is not written "acts of state shall be construed according to the common law principles". Is this because there is no need to make Hong Kong people feel at ease? Can the Government ignore the worries of the Hong Kong people?

The ADPL and I think that the largest problem of the whole Bill is the interpretation of the "acts of state" because this outlines the jurisdiction of the Bill as a whole. Therefore, I think my amendment is very important. If my amendment is supported and passed, I will support the Bill as a whole because I think with this amendment, the jurisdiction has already been outlined, no matter we amend or delete the words "such as defence and foreign affairs" or not. The reason is that given a definition according to the common law, the interpretation of those words will be confined. Therefore, I believe I can give support. But if my amendment is voted down, I think there is a need for the Attorney General to give me a very detailed explanation on how the system operates according to the common law. Otherwise, I have no alternative but to abstain from voting. But I will, as I have already said, continue to ask China to publish some valid law documents saying that the term "acts of state" takes the common law principles. I will keep on proposing amendments to the Ordinance at this Council some days later.

In fact, I have to raise two other points. During a discussion on this Bill, members of the ADPL and I met Mr LEUNG Chun-ying, convenor of the Preliminary Working Committee's Political Affairs Group, and Mr Alan PAUL, a British representative. At that time we put forward two views on this important clause 4. First, on jurisdiction I have just mentioned and do not want to repeat here. Second, we hope that when the central authorities interprets the jurisdiction, the central authorities will not give different interpretations on "acts of state" at any time as they wish, but only give an interpretation in adjudicating a case involving fact question on "acts of state". Even the National People's Congress (NPC) cannot have the right to give an interpretation at any time. The two responsible persons replied to me that Articles 19 and 158 of the Basic Law have already stipulated that the NPC will give an interpretation only in adjudicating cases involving fact question on acts of state, and will not give an interpretation in other types of cases. I hope the two representatives including British representative and Mr LEUNG Chun-ying can call on the Chinese Government to follow the law and abide by the law.

I also support the Honourable Martin LEE's amendment to the above clause because the ADPL and I think the Court of Final Appeal is very worrying if its Clause 4 does not state that "acts of state" shall be construed according to the common law principles. If "acts of state" is not interpreted according to common law, there will be 'one place, two systems' in Hong Kong's legal system. The courts below the Court of Final Appeal apply common law whereas the Court of Final Appeal applies "Chinese Law". I think this is unacceptable because it does not make any difference even without the Court of Final Appeal. I think I should support the amendment which has just been moved by Mr Martin Lee.

On the contrary, what will happen if we vote down the whole Bill? The Honourable LEE Wing-tat and the Honourable James TO has asked me similar questions. I think, if we vote down this Bill, vote down the agreement, Hong Kong will still have a Court of Final Appeal, which will be set up by China on her own on 1 July 1997. At that time, only those Chinese experts, Preparatory Committee and Preliminary Working Committee who are only familiar with "Chinese Law" will do the job. I dare not say their motive is bad, but their way of living, customs, value judgment and their system as a whole are different from those of Hong Kong. If there is no participation of legal experts of the Hong Kong Government, I will be much worried. So non-existence of this bill and the agreement does not mean no Court of Final Appeal. There will be a Court of Final Appeal, but we cannot intervene at all in the preparation process of this Court of Final Appeal.

Under this principle, I think I can abstain from voting only when the question of "acts of state" is cleared up; otherwise, I will vote against the Bill.

Proposed amendment

Clause 4

That clause 4 be amended, by adding ─

(5) to avoid unnecessary doubt, in this section, “acts of state” shall be construed according to common law principles.

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, the Honourable Frederick FUNG is correct in pointing out that his amendment is the most important of all the many amendments to be moved today. He should be very proud of himself because I also think that his amendment is the most important, more important than all the amendments moved by the Honourable Martin LEE. Mr Frederick FUNG said that this amendment was important and there would not be no Court of Final Appeal, yet he finally said that he would abstain from voting if the Attorney General did not give a clear explanation. I think this is strange. Anyway, ...

CHAIRMAN: What is your point, Mr Frederick FUNG?

MR FREDERICK FUNG (in Cantonese): What I have just said was that if the Attorney General could not give a clear explanation, I would vote against the motion.

MR JAMES TO (in Cantonese): I am sorry for having got it wrong. The Honourable Frederick FUNG’s amendment today is very important indeed because whether the common law system will be actually adopted depends on whether this amendment is passed. But up to now, it seems that the Government is going to disappoint the Honourable Member because at the six meetings, I did raise the same question on two or three occasions : is the term “acts of state such as defence and foreign affairs” construed according to common law concept? Is its interpretation equivalent to that under the common law concept? The Government does not want to answer and dare not answer “yes”. The Government just told us to look up the Basic Law, which has already made provisions. So we have to look up the Basic Law. Even the Government is afraid of answering “yes”. The only piece which may be said to be legal opinion is that written by Mr Denis CHANG, QC, out of his own good intention, but you have to bear in mind it “may be said to be” and he said, “it may be said so”. “It may be said so” also means “it may not be said so”. Therefore, we will certainly support Mr Frederick FUNG’s amendment. But strangely, as the Government, for example, the Attorney General or the Governor and his officials, always says that they strongly support the rule of law in Hong Kong and are much

concerned about the implementation of common law to safeguard the rule of law in Hong Kong in future, they should have supported the Honourable Member's amendment.

I would like to say to the Members of the Liberal Party that we respect and support your amendment on 4 + 1 composition. But if I have to choose between the amendment on 4 + 1 composition and that on acts of state, I can tell you that "acts of state", a large loophole in the rule of law, is far more important then the 4 + 1 composition. If Members of the Liberal Party have a chance to meet together, I hope you may reconsider whether you will support Mr Frederick FUNG's amendment. If your own good intention is to have the common law adopted and yet you do not give support, I will be very disappointed. Mr Frederick FUNG leaves a leeway by saying that he will continue to pursue even if his amendment is not passed. I hoped that despite their opposition against this amendment, Members of the Liberal Party will tell everybody here openly that they will go to Beijing again not just for other matters but to strive for an interpretation of "acts of state" according to the common law concept. This will be a blessing for the Hong Kong people and your efforts will be much appreciated.

ATTORNEY GENERAL: I well recognize and understand the sentiments and concerns underlying this amendment, but I am bound to say that the amendment would fail in its object, namely, to quote from the text of the amendment, "to avoid unnecessary doubt".

The meaning of "acts of state" in clause 4 of the Bill must be consistent with the meaning of that expression in Article 19 of the Basic Law, and that depends upon the correct interpretation of the Basic Law. No definition of the expression in this Bill can tie down the meaning of the Basic Law, and any attempt to do so is, therefore, doomed to failure.

I said earlier on in the debate that there is an argument for saying that Article 19 of the Basic Law can be construed consistently with the common law, and I would refer again to Articles 8 and 84 of the Basic Law, which clearly provide for the maintenance of common law principles to apply in Hong Kong after 1 July 1997, but I regret, Mr Chairman, that I cannot support this amendment and I urge Members to do the same.

MR JAMES TO (in Cantonese): The Attorney General's view on this amendment is mainly, that we do not need to and cannot write down any wordings such as those in the amendment moved by the Honourable Frederick FUNG because its correct interpretation is contained in the Basic Law itself. Anything we add to the Bill will be confined by this interpretation.

My response is that on this logic, there is nothing wrong to incorporate the amendment into the Bill because finally the Court of Final Appeal Ordinance to see whether there is any contradiction. The second possibility is that finally the Standing Committee of the National People's Congress will interpret whether the Court of Final Appeal Ordinance contravenes the Basic Law by adding a definition involving common law concept. In fact, the Ordinance as a whole will not be affected in this way. Will the Attorney General explain why the amendment cannot be written into the Bill? If it cannot be written now, it cannot be written in future, or vice versa. Why cannot we tell the Hong Kong people of the investors over the world that the Hong Kong Government, Councillors and members of the public to support an interpretation of "acts of state" according to the common law concept, instead of leaving the interpretation with the Chinese Government in future?

MR ANDREW WONG (in Cantonese): Mr Chairman, I believe that I have to say a few words, but I do not want to say too much. I have stated that I would oppose an amendment which violates the Agreement. Though the amendment proposed by the Honourable Frederick FUNG does not violate the Agreement literally, I still find it unacceptable.

Just now Mr Frederick FUNG said that without the inclusion of this amendment, there would be "one place, two systems", that is, the Court of Final Appeal (CFA) would act according to China's interpretation of "acts of state", whereas other courts could act according to the common law concept. As a matter of fact, Article 19 of the Basic Law states clearly about this. Paragraph 3 of the Article spells out: "The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs." and the so-called "courts of the Hong Kong Special Administrative Region" mean all levels of courts. Basically, Article 19 governs all the courts, including CFA. Just now I said that Executive Councillor, the Honourable Denis CHANG, also considered "it may be so" and he also quoted the provision of Article 8 of the Basic Law which stipulates that common law shall be maintained. Under such circumstances, I think that on the contrary, more suspicion will be aroused if only the stipulation of interpreting acts of state with the common law concept is included in CFA to avoid doubts. I think and I have all along thought that there are many loopholes in the Basic Law which are not quite in line with the spirit of the Joint Declaration, so the proper channel is to seek amendments to the relevant provisions in the Basic Law.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I still do not think that the amendment I proposed should not be included in the Bill. If, according to the documents distributed to us by the Administration, there is no need to have an inclusion if inclusion or not makes no big difference, just like the two examples I cited earlier, the Administration itself did write down clearly two items which it made no difference if they were stated or not. As I have just done what the Government did, I cannot see any reason why I cannot do so.

As for the second point, I am not sure whether I stated just now that the British side representative, Mr LEUNG Chun-ying and I, during our meeting, considered that the drafting of the Basic Law was based on common law, so naturally this Bill refers to common law; and in that case, it is very natural to include common law in the Bill. I therefore do not think there are any contradictions. I do not know the reason for either the Hong Kong Government or the British side to avoid the inclusion of the provisions which can set the mind of the people of Hong Kong at ease on the one hand and will not affect the law on the other. They insist on having the original Bill endorsed unchanged and unamended, considering that only those are the good and appropriate provisions.

In the meantime, the Attorney General, while explaining this issue in his earlier reply, only cited two provisions in the Basic Law, that is Articles 8 and 84. Both provisions point out one point. For instance, Article 8 states: "The laws previously in force in Hong Kong, that is, the common law ......", in which the phrase "common law" is also included in the provision. If even the Attorney General pointed out in his reply that Article 8 also states common law, I do not understand the reason why this phrase cannot be included in the Bill. I therefore doubt very much about the reply given by the Attorney General, not knowing if that reply is a clear-cut positive reply or a reply in which even he does not know whether the Court of Final Appeal can definitely apply common law.

Question on Mr Frederick FUNG's amendment put.

Voice vote taken.

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

Mr Frederick FUNG claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, 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 amendment.

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

THE CHAIRMAN announced that there were 21 votes in favour of the amendment and 35 votes against it. He therefore declared that the amendment was negatived.

Question on clause 4, in its original form, standing part of the Bill put and agreed to.

Clause 6

MR MARTIN LEE: Mr Chairman, this is a very short amendment, a very simple amendment. It is just to add the words "subject to the approval, by resolution, of the Legislative Council" at the end of clause 6(1) in relation to the appointment by the Governor of the Chief Justice. That is in accordance with Article 90 of the Basic Law which requires the appointments of all judges to have the endorsement by the Legislative Council.

For this reason, I move this amendment.

Proposed amendment

Clause 6

That clause 6(1) be amended, by adding "subject to the approval, by resolution, of the Legislative Council" after "Commission".

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, this proposed amendment and similar amendments to be moved to clauses 7 and 9 would provide that the appointment of judges to the Court of Final Appeal should be subject to the approval of this Council.

The Bill, let me remind Members again, provides this legislation should come into operation on 1 July 1997 which is the date on which the Basic Law will also come into operation.

Article 90 of the Basic Law will then apply and this provides that in the case of appointment of judges to the Court of Final Appeal, the Chief Executive should obtain endorsement to the Legislative Council. In other words, this proposed amendment achieves nothing since this has already been in the law on 1 July 1997 when this Bill takes effect.

I urge all Members to reject this amendment.

Question on the amendment put and negatived.

Question on clause 6, in its original form, standing part of the Bill put and agreed to.

Clause 7

CHAIRMAN: Mr Martin LEE, as your amendment to clause 2 has not been agreed, you can no longer proceed with your proposed amendment to clause 7 as it is inconsistent with the decision already taken.

ATTORNEY GENERAL: Mr Chairman, I move that clause 7 of the Bill be amended as set out under my name in the paper circulated to Members. Clause 7 relates to permanent judges. In the bold heading to the clause, the opening word of the clause refers simply to judges. The amendment will make it clear that the clause relates only to permanent judges.

Mr Chairman, I beg to move.

Proposed amendment

Clause 7

That clause 7 be amended —

(a) in the heading by adding "permanent" before "judges".

(b) by deleting subclause (1) and substituting -

"(1) The permanent judges of the Court shall be appointed by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission.".

Question on the amendment proposed, put and agreed to.

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

Clause 9

MR MARTIN LEE: Mr Chairman, again, this is a simple amendment. This deals with a list of judges to be invited from other common law jurisdictions and again, I wish to add that "these judges would be appointed with the recommendation of the Judicial Officers Recommendation Commission", but I wish to add the words "subject to the approval, by resolution, of the Legislative Council".

Proposed amendment

Clause 9

That clause 9(2) be amended, by adding "subject to the approval, by resolution, of the Legislative Council" after "Commission".

Question on the amendment proposed.

ATTORNEY GENERAL: This amendment is unnecessary. It would achieve nothing. Article 90 of Basic Law which will come into operation on the same day of this legislation and already provides that appointment of judges to the Court of Final Appeal should be subject to the endorsement of this Council. I urge Members to reject this amendment.

Question on the amendment put and negatived.

Question on clause 9, in is original form, standing part of the Bill put and agreed to.

Clause 10

MR MARTIN LEE: This is another short provision. It limits the number, the total number of judges who would be appointed as non-permanent judges to be limited to a number which would not exceed 30. I see no reason why there should be any limitation at all. This, I understand, was one of the recommendations from the PWC, which of course the Governor now embraces. But I do not see any necessity for this limitation in number, putting a ceiling on it. I shall move to have it repealed.

Proposed amendment

Clause 10

That clause 10 be amended, by deleting the clause.

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, this amendment would be inconsistent with the Joint Liaison Group agreement. That agreement requires this Bill be amended on the basis of the eight suggestions of the political affairs sub-group of the Preliminary Working Committee. One of those suggestions is that the total number of the non-permanent judges should not exceed 30. This limit would have no practical implications since it is not envisaged that there would be any need to exceed that number. I urge Members to oppose this amendment.

Question on the amendment put and negatived.

Question on clause 10, in is original form, standing part of the Bill put and agreed to.

Clause 11

MR MARTIN LEE: Mr Chairman, this clause deals with the precedence of judges. To the non-lawyers I have got to explain. When you have five judges coming in to sit in a Court of Final Appeal, or sometimes as they also sit in the Court of Appeal of five judges, the precedence means the most senior judge, the Chief Justice, will sit in the middle, then the next senior judge would sit immediately to his right, and the third judge coming by seniority would sit to the left of the Chief Justice. Then the fourth senior member will sit, playing the right-wing as it were, and then the most junior one will play the left-wing. So, that is the order of precedence.

Now, according to this clause, the precedence would go as follows: the Chief Justice ─ I have no objection to that; then the permanent judges who, amongst themselves, shall rank according to the priority of their respective appointments; and then the non-permanent Hong Kong judges, that is, the list of non-permanent Hong Kong judges ─ as I explained earlier the list will consist of serving and retired Hong Kong judges ─ and they would rank among themselves according to the priority of their respective appointments to the list of non-permanent judges. So, even though you may have a judge, a non-permanent judge, who is junior to another one, because he has been appointed earlier as a non-permanent judge then he would have precedence over the more senior man. And finally you have the judges from other common law jurisdictions who, among themselves, shall rank according to the priority of their respective appointments to the list of judges from other common law jurisdictions. The net result is that this visitor or somebody to be invited from common law jurisdictions outside Hong Kong, will always play left-wing because he is always recognized to be, of the least standing in this Court of Final Appeal.

Hopefully this will not be a judge from any sort of common law jurisdiction. I, of course, hope that this judge will be really a high-powered judge, for example, somebody invited from the Supreme Court of the United States or Canada, or Australia or the Privy Council. So they would be very eminent judges indeed, but unfortunately because they may be only one, subject to my amendments in relation to clause 16. But, whatever it is, this would be, I hope, a very respectable, high-powered judge, and yet he is considered to be the least important by way of precedence in the Court of Final Appeal. What I do know about other judges, but if I were in the position of that very eminent judge, I would feel a little funny. I mean, why should I come and when I know that I am superior to the other four judges by way of standing because I will be an older man and I would have been appointed to the highest court of the land much earlier than these four Hong Kong judges. Why should I give seniority to them all, and give precedence to them all?

So, what I would suggest in order to give not only face but honour where it is due, to give, to put them in the same method of precedence. So, what I have suggested is this: the judges of the Court shall take precedence in the following order: (a) the Chief Justice; and (b) the other judges who, among themselves, shall rank according to the length of time each of them has served as a judge of a court of unlimited jurisdiction in either civil or criminal matters in Hong Kong or in any other common law jurisdictions. So, they rank according to the seniority of appointment as a judge. I so move.

Proposed amendment

Clause 11

That clause 11 be amended, by deleting the clause and substituting ─

"11. Precedence of Judges

The judges of the Court shall take precedence in the following order -

(a) the Chief Justice; and

(b) the other judges, who amongst themselves shall rank according to the length of time each of them has served as a judge of a court of unlimited jurisdiction in either civil or criminal matters in Hong Kong or in any other common law jurisdiction."

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, this proposed amendment would change the precedence of the judges of the Court so that Hong Kong judges, apart from the Chief Justice, would not automatically rank above judges from other common law jurisdictions.

Local judges will, of course, be most closely associated with Hong Kong and the Court of Final Appeal. I have spoken earlier about the importance of the permanent judges as the core of the Court of Final Appeal in terms of maintaining its separate and superior identity. I can see no real advantage in not giving Hong Kong judges precedence. Moreover the Bill as it stands more closely accords with the practice of the Judicial Committee of the Privy Council than it does the proposed amendment.

Members will recall that I have urged upon them the advantages of the Bill in tracking the present practices and procedures of the Judicial Committee of the Privy Council. I urge Members to oppose this amendment.

CHAIRMAN: Mr LEE?

MR MARTIN LEE: I have not heard a single reason why proper precedence should not be accorded or afforded to somebody as eminent as the one we have in mind.

Question on the amendment put and negatived.

Question on clause 11, in its original form, standing part of the Bill put and agree to.

Clause 12

CHAIRMAN: Mr Martin LEE, as your amendment to clause 2 has not been agreed, you can no longer proceed with your proposed amendments to subclauses (1), (2) and (3) of clause 12 as they are inconsistent with the decision already taken.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, there has been arguments in the legal and political circles since the Sino-British agreement in 1991 up to the introduction of the Court of Final Appeal Bill to this Council, and most of them are on the ratio of local judges and overseas judges. But now Britain and China have had an agreement on the ratio of judges. What we insist on is that ratio of judges. The amendment I move on the interpretation of "acts of state" is quite important, but I think that the ratio of judges is rather important too and the crux of the issue is flexibility.

In the past, on the issue of Court of Final Appeal, I did say that it would be the best if Hong Kong could have enough experienced persons to take up the post of Chief Justice of the Court of Final Appeal without the need for recruitment from overseas. But the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I, having understood Hong Kong's present situation, think that we might not have enough experts in various fields to take up the post of Chief Justice. Owing to this limitation and the lack of provisions in the law, the ADPL and I so far have agreed that there must be adequate flexibility in the ratio of local judges and overseas judges. Up to now, I still think that flexibility must be maintained in inviting judges from other common law jurisdictions.

But now Britain and China have reached an agreement on the issue of Court of Final Appeal and re-emphasized that they would not change their stand on the agreement. I think what we can do now is to consider if flexibility can be achieved within the confined scope; and if not, whether the restrictions are to such an extent that we do not sense any flexibility; and if so, whether the flexibility meets the target we originally demanded for. If so, this is acceptable. The proposal made by the ADPL and I now, while maintaining the flexibility in the ratio of judges, is an amendment on a basis acceptable to both Britain and China. I propose to add "irrespective of the period of his service" after "a judge of the High Court" in Clause 12(1)(a). In fact, I add these words with a view to making the ADPL's proposal clearer. Of course, without a mention of the possibility, the same objective can be reached. Also as explained in the paper from the Government to the Members, the situation may be

the same even without this amendment. But I also wish to explain why the addition of these words will make the Bill clearer.

First, I would like to explain the background of this proposal. Earlier, Britain and China have put forward a ratio of 4:1 in respect of permanent judges and non-permanent judges of the Court of Final Appeal. The HKADPL and I think that within this restricted scope, we can still seek the flexibility in the ratio of different types of judges. Under our proposal, shortly before and after the establishment of the Court of Final Appeal, if the Chief Justice thinks that some overseas judges or judges of other common law jurisdictions are suitable for invitation to adjudicate cases, but as there will be only one non-permanent judge, the Chief Justice should invite this suitable judge, the Chief Justice should invite this suitable judge to be a judge of High Court of a Justice of Appeal first and then after a short period of service - say one day at least - invites this judge to be a permanent judge of the Court of Final Appeal. In fact, this proposal mainly adds one more step than the original process, that is, to invite the suitable judge to be a Justice of Appeal or a judge of the High Court and then from an overseas judge to a local judge. If there is no time restraint, it might take one day only to change the judge's status. Having changed his status, the judge might be appointed by the Chief Justice immediately as a judge to the Court of Final Appeal. Under this circumstances, the ratio of permanent judges and non-permanent judges may be 4:1, 4:2, 4:3 or 4:4 in adjudicating cases, so as to achieve flexibility at this stage. I think in this way, the flexibility in the ratio of overseas judges and local judges can be maintained.

Some Members may be worried that through this way of invitation, there would be too many or an excess of permanent judges. But as everyone knows, first, the Court of Final Appeal would not adjudicate too many cases a year; second, the complexity of individual cases is different. Is it true that all the cases cannot be adjudicated by other judges? In fact, even the number of cases increases, it will not go up greatly. Moreover, it is stated in the provision that there shall not be less than three permanent judges of the Court of Final Appeal, which means that there may be three of more than three permanent judges. In another words, the provision itself gives us adequate flexibility.

In these two weeks, I met with people of both the British and Chinese sides, including Mr LEUNG Chun-ying and Mr Alan PAUL and some senior officials of the legal department and discussed these proposals with. Nobody told me that this proposal was impracticable. Under this proposal, an overseas judge may, by undergoing one more step of process ─ becoming a Justice of Appeal or a judge of the High Court ─ become a local judge and then a permanent judge. But I still hope that our proposal will show this flexibility more clearly. Therefore, I propose to amend Clause 12 in a way to stipulate that a judge of the High Court and a Justice of Appeal, irrespective of the length of his service - just one day may do, as I have just said. This amendment is intended to avoid an administrative situation that, the Judicial Officers Recommendation in future will set some internal policy such as requiring eligible persons to serve as Justices of Appeal or judges of

the High Court for a certain period of time. We hope that this amendment will make such internal policy unworkable and a breach of the law. By saying the above, I hope I can convince all of you to accept my amendment.

I move the amendment. Thank you.

Proposed amendment

Clause 12

That clause 12(1)(a) be amended, by adding after "a judge of the High Court" as such:

", irrespective of the period of his service".

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, under clause 12(1) of the Bill, certain judges are eligible for appointment as the Chief Justice or as permanent judge to the Court of Final Appeal, with no qualifying period of services laid down. The amendment proposes to make such a judge eligible for appointment irrespective of his served period of service. These words do not add anything since this is the effect that the clause has drafted. However, they would raise a doubt as whether judges who are eligible for appointment under clause 12(3) and clause 12(4) as non-permanent judges must have served the tenure of office for a certain period of time. The amendment, therefore, serves no useful purpose and could produce unintended legal consequences. I urge Members to reject this amendment.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, my response is same as the one I made last time in respect of my amendment. It is the same because the Attorney General also admits that Article 8 of the Basic Law makes reference to the common law, and I also admit that my amendment makes no difference. In other words, if the concerned authorities in future think that an overseas judge is suitable to be a permanent judge, they may appoint him as a Justice of Appeal or a High Court judge for a short time — a day or so as I have just mentioned — and then invite him to be a permanent judge of the Court of Final Appeal, thereby giving flexibility in the ratio of judges. If the Attorney General does not express further views, I assume he agrees to this point.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

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

MR FREDERICK FUNG: Division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Frederick FUNG voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, 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, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Ms Anna WU, Mr James TIEN, Mr Alfred TSO and Mr LEE Cheuk-yan voted against the amendment.

THE CHAIRMAN announced that there was one vote in favour of the amendment and 54 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: Both the Attorney General and Mr Martin LEE have given notice to move amendments to subclause (4) of clause 12. I will call upon Mr Martin LEE to move his amendment first in accordance with Standing Order 25(4).

MR MARTIN LEE: Mr Chairman, this deals, of course, with the overseas judge. Under the Bill, there is no particular requirement as to what these judges should be because it merely says: "A person shall be eligible to be appointed as a judge from another common law jurisdiction if he is (a) a judge, a former judge of a court of unlimited jurisdiction in either civil or criminal matters in another common law jurisdiction; (b) a person who is ordinarily resident outside Hong Kong; and (c) a person who has never been a judge of the Supreme Court, a District Judge or permanent magistrate in Hong Kong."

I am concerned with subclause (4)(a) which says that "any judge or former judge of a court of unlimited jurisdiction in either civil or criminal matters in any other common law jurisdiction". I paraphrased a little. And there is no limit as to what that other common law jurisdiction may be. So we could invite a judge, a High Court Judge or a judge of the Court of Appeal in another territory where they still go to the Privy Council. In other words, any appeal from such a territory like Bermuda. Now, any appeal will still go to the Privy Council as a Court of Final Appeal. My question is, why should we invite a High Court Judge or even a Court of Appeal Judge from Bermuda to come to sit on our Court of Final Appeal because that will sit over cases on appeal from our own Court of Appeal?

So, surely the overseas judge must be comparable in stature with the present Lawlords who are hearing our Privy Council appeals, and there is no point in inviting a judge from overseas who is not more learned than our own Court of Appeal judges, because if he is not any more learned, and maybe even less learned, then why do we invite him to sit on appeal from a decision of our Court of Appeal?

And that is why I move to amend this clause so that it will read: "A judge or retired judge of a court of unlimited jurisdiction at the appellate level or above in either civil or criminal matters in another common law jurisdiction that exercises the power of final adjudication over cases arising in that jurisdiction ....." So, if they enjoy the right, the power, if this is a place where they have, for example, the Supreme Court of the United States or the Supreme Court of Canada or the House of Lords, or the Privy Council, then these are the sort of judges clearly we ought to invite and not those who might not have, who might not possess any qualities or learning higher than our own Court of Appeal judges.

I so move, Mr Chairman.

Proposed amendment

Clause 12

That clause 12 be amended ─

(a) in subclause (1) -

(i) by deleting "permanent" and substituting "local";

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

(iii) in paragraph (b), by deleting the full stop at the end;

(iv) by adding after paragraph (b) -

"(c) a retired Chief Justice of the Supreme Court;

(d) a retired Chief Justice of the Court; or

(e) a retired Justice of Appeal.";

(b) in subclause (2), by deleting "permanent" and substituting "local";

(c) by deleting subclause (3);

(d) in subclause (4), by deleting paragraph (a) and substituting -

"(a) a judge or retired judge of a court of unlimited jurisdiction at the appellate level or above in either civil or criminal matters in another common law jurisdiction that exercises the power of final adjudication over cases arising in that jurisdiction;".

Question on Mr Martin LEE's amendment proposed.

CHAIRMAN: I will call upon the Attorney General to speak on the amendment proposed by Mr Martin LEE as well as his own amendment, but will not ask the Attorney General to move his amendment unless Mr Martin LEE's amendment has been negatived. If Mr Martin LEE's amendment is agreed, that will by implication mean that the Attorney General's proposed amendment is not agreed.

ATTORNEY GENERAL: Mr Chairman, this proposed amendment in respect of judges from other common law jurisdictions would limit the jurisdictions from which eminent judges can be selected. Article 82 of the Basic Law and clause 5(3) of the Bill provide that the Court may, as required, invite judges from other common law jurisdictions to sit on the Court.

I must confess, Mr Chairman, that this amendment caught me by surprise as I could not really understand why the Honourable Martin LEE was proposing that this power should now be restricted. Under his proposal, the Court could not invite a judge from another common law jurisdiction if that jurisdiction still allows appeals to be heard by the Privy Council. Of the 53 common law jurisdictions, excluding Hong Kong, I understand that 29 still allow appeals to be heard by the Privy Council. In other words, judges from over half the common law jurisdictions could not be invited to sit on the Court of Final Appeal if this amendment were passed. These would include New Zealand and many jurisdictions in the West Indies which post many fine and eminent common law judges.

The fact that a judge is ruling in a particular jurisdiction may be subject to the appeal of the Privy Council in no way reflects upon his or her stature as a judge. He or she might be a renowned expert in a particular area of law and be prepared to share that as a member of the Hong Kong Court of Final Appeal. This amendment would deprive Hong Kong of the opportunity of gaining that experience.

I would just remind Members of what Mr LEE said earlier on this afternoon, that we are looking for the best minds. His amendment would work against that. It may well be unlikely that the Judicial Officer's Recommendation Commission would recommend the appointment of a judge who did not sit at the appropriate level, but I believe that is a matter for the Commission. If, as sometimes happens, a judge establishes an international reputation with sitting, for example, as at first instance, why exclude him or her from the pool of eligible judges?

Mr Chairman, for all these reasons I urge Members to reject this amendment.

If this amendment is negatived, I will move an amendment to replace the word "former" by "retired" in subclause (4) to avoid an inconsistency of language in this clause.

CHAIRMAN: Members may now debate the amendment moved by Mr Martin LEE as well as the amendment proposed by the Attorney General.

MR MARTIN LEE: I am surprised as the Attorney General is surprised with this amendment from me. Why do we invite a judge of the first instance in Bermuda, for example, to sit in our Court of Final Appeal when that judge's own judgement is liable to be appealed to a Court of Appeal in Bermuda and to be further appealed to the Privy Council? Well, if he is surprised, I am really surprised likewise. Why should we invite a judge in the Court of Appeal in Bermuda to sit in our Court of Final Appeal when that judge's judgement in the Court of Appeal of Bermuda is liable to be appealed to the Privy

Council? Surely, if we have the choice why do we not invite a judge from the Privy Council? It is simply logic, Mr Attorney General. Please support me.

Question on Mr Martin LEE's amendment put.

Voice vote taken.

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

Mr Martin LEE claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are still one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, 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, 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 amendment.

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

THE CHAIRMAN announced that there were 19 votes in favour of the amendment and 39 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As Mr Martin LEE's amendment has not been agreed, I will call upon the Attorney General to move his amendment to subclause (4) of clause 12.

ATTORNEY GENERAL: Mr Chairman, I move that clause 12(4)(a) of the Bill be amended as set out under my name in the paper circulated to Members. This is a technical amendment to avoid an inconsistency of language in the clause.

Mr Chairman, I beg to move.

Proposed amendment

Clause 12

That clause 12(4)(a) be amended, by deleting "former" and substituting "retired".

Question on the Attorney General's amendment proposed, put and agreed to.

Question on clause 12, as amended, proposed, put and agreed to.

Clause 13

CHAIRMAN: Mr Martin LEE, as your amendment to clause 2 has not been agreed, you can no longer proceed with your amendment to clause 13 as it is inconsistent with the decision already taken. I will now call upon the Attorney General to move his amendment to clause 13.

ATTORNEY GENERAL: Mr Chairman, I move that clause 13 of the Bill be amended as set out under my name in the papers circulated to Members.

Clause 13 prohibits most judges of the Court of Final Appeal from practising as a barrister or solicitor in Hong Kong, both when holding office as such a judge and afterwards. However, the prohibition as drafted does not extend to those who are on the list of judges from other common law jurisdictions. The Bills Committee suggested that it should do so and the Administration accepts the suggestion.

Mr Chairman, I beg to move.

Question on the amendment proposed, put and agreed to.

Question on clause 13, as amended, proposed, put and agreed to.

Clause 14

CHAIRMAN: Mr Martin LEE, as your amendment to clause 2 has not been agreed, you can no longer proceed with your amendment to subclauses (7) and (8) of clause 14 as it is inconsistent with the decision already taken. You may however move amendments to subclauses (1), (2), (3) and (4) of clause 14.

MR MARTIN LEE: Mr Chairman, this deals with the tenure of office. In other words, when judges reach the age of 65, they are supposed to retire but they are entitled to have their term of office extended. But unfortunately, under the Bill different provisions apply to different judges, or different types of judges. What I am trying to do is to achieve uniformity. Under the amended clause 14, then the extension of a term of office of the Chief Justice would be from the Judicial Officers Recommendation Commission, whereas the permanent judges would receive recommendation of the Chief Justice only and also the term of years would be different between the Chief Justice and the permanent judges on the one hand and the non-permanent judges on the other. What I seek to do is to bring them in parity to give them uniformity of treatment. So under my sub-paragraph (a) it reads, "subject to paragraphs (b) and (c), the terms of office of a judge may be extended for not more than 2 periods of 3 years by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, and the judge shall accordingly be regarded as having attained the retiring age at the expiration of that extended period". And then (b), "subject to paragraph (c), a person who has attained the age of 65 years may be appointed to be a judge for a terms of 3 years and the term may be extended for one period of 3 years by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission."

So my amendments would have the effect of ensuring that all judges, that is, the Chief Justice as well as other judges, will receive the same treatment when it comes to the term "extensions" and also the retirement age of 65 for all, subject to extensions, and they must all receive a recommendation of the Judicial Officers Recommendation Commission, and these amendments will ensure that the Court of Final Appeal Judges are treated equally and that the independent Judicial Officers Recommendation Commission other than the Chief Justice would make the term extension recommendations.

I beg to move.

Proposed amendment

Clause 14

That clause 14 be amended —

(a) in subclause (1), by deleting "The Chief Justice and permanent judges" and substituting "Judges";

(b) in subclause (2) -

"(i) by deleting paragraphs (a) and (b) and substituting -

"(a) subject to paragraphs (b) and (c), the term of office of a judge may be extended for not more than 2 periods of 3 years by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission, and the judge shall accordingly be regarded as having attained the retiring age at the expiration of that extended period;

(b) subject to paragraph (c) a person who has attained the age of 65 years may be appointed to be a judge for a term of 3 years and that term may be extended for one period of 3 years by the Governor acting in accordance with the recommendation of the Judicial Officers Recommendation Commission;";

(ii) in paragraph (c), by deleting "the Chief Justice or to be a permanent judge" and substituting "a judge";

(c) by deleting subclauses (3) and (4);

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, these proposed amendments are inconsistent with the Joint Liaison Group agreement on which I have spoken already this afternoon extensively, and also undesirable for other reasons. The changes propose that the extension of office of all judges should be effected by the Governor acting in accordance with the recommendations of the Judicial Officers Recommendation Commission.

The Bill provides that it is the Chief Justice who should make such recommendations in respect of judges other than himself. This is acceptable in principle, is in line with the JLG agreement and is consistent with the Joint Declaration and the Basic Law. At present, the Judicial Service Commission advises on extension of judges' terms of office is a measure of practice rather than as a legal requirement. Under the Bill as drafted,

the Chief Justice can make recommendations to the Chief Executive who would of course not be precluded from seeking advice from the Commission.

Another proposal is to change the basis on which non-permanent judges are to be appointed. The Bill provides for appointment for a term of three years which can, as a general rule, be renewed any number of times by the Governor acting in accordance with the recommendation of the Chief Justice. This is considered an inappropriate basis for appointing non-permanent judges given that they are to be placed on lists and selected to hear cases from time to time.

The proposed amendment would require them to be appointed and to vacate their offices on reaching retirement age. I can see no advantage in this amendment at all. It would unnecessarily restrict the pool of eminent judges, particularly retired judges who could serve on the Court from time to time. It would not enhance the position of a non-permanent judge since even with 10 years of office until retirement age, he or she may never be selected to hear any particular case. The amendment is, moreover, as I have said, inconsistent with the Joint Liaison Group agreement.

I therefore urge Members to vote against it.

Question on the amendment put.

Voice vote taken.

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

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, 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 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 amendment.

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

THE CHAIRMAN announced that there were 20 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

Question on clause 14, in its original form, standing part of the Bill put and agreed to.

Clause 16

CHAIRMAN: The Attorney General, Mr Allen LEE and Mr Martin LEE have given notice to move amendments to clause 16. The order of moving amendments will be decided in accordance with Standing Order 25(4). I will call upon Mr Martin LEE to move his amendments first.

MR MARTIN LEE: Mr Chairman, this is a very important amendment I am moving and if my amendment should fail, because it does appear to me that some Honourable Members have a habit of pressing the "no" button consistently, then I would urge Members to support Mr Allen LEE's amendment when it is his turn to move it. That would mean, if mine goes down, then make sure that the Attorney General's amendment is defeated and then that falls upon Mr Allen LEE. Maybe he has more luck than I have.

Now, Mr Chairman, this is a very important point and it is one which attracted a lot of criticism from the entire legal profession, or the two legal professions, at the end of 1991 when the secret deal was struck. Instead of honouring the clear commitments of both Governments in the Joint Declaration and the clear provision of the Basic Law which allowed the Court of Final Appeal a completely unfettered discretion in deciding how many overseas judges to invite to sit on that Court to hear appeals, an arbitrary ratio between local and overseas judges was fixed at 4:1 or even 5:0.

I would emphasize 5:0, because there can be no guarantee at all that when the Court of Final Appeal is established on 1 July 1997 that the Court will invite a single overseas judge to hear a single appeal. There is no guarantee because if we pass this Bill with clause 16 unamended, then do not blame me if you do not find a single overseas judge, even the one from Singapore, sitting in the Court of Final Appeal ever, because you give the option. So, 5:0 is a clear option and, but even if the Court were to say, no, we will invite, at most the Court can invite one, no matter how desirable it is to invite more than one.

The Administration has a lot to explain as to why they have accepted this deal which is a clear departure from the clear language of the Joint Declaration and the Basic Law. Of course, people will cite the supplemental opinion of a very eminent constitutional lawyer. Sir William WADE, but they always cite a single paragraph. Anybody who has read the entire supplemental opinion with any decency would know that he has not changed his mind. He was being fair. Of course lawyers often say, on the one hand you can argue this, on the other hand you can argue that, but in his view he did not detract from his earlier opinion that the provision, which we now find as a result of the secret deal and now this other deal, is not compatible with the Joint Declaration and the Basic Law, and that is still his view. But I know the government officials and people who are opposed to this amendment will cite one single paragraph of that supplemental opinion, as the Honourable Mr IP has done. Mr IP was quite happy with his first opinion, mind you. But the second opinion did not cite the whole thing. He cited it entirely out of context. Now, I say this so that, if they ever cite this opinion again, let them read on and give us the whole text of it so as to have the whole picture.

Mr Chairman, when I first raised this matter ─ and I believe I was the first to raise it because the British side did not raise it for some strange reason, as I said, with Mr LI Jusheng before dinner, in fact Mr Allen LEE was there. We were there, a whole bunch of us, Mrs Selina CHOW was there. But before dinner I pulled him aside and I had a one-to-one conversation with him. I first of all persuaded him to establish the Court of Final Appeal in Hong Kong and not in Beijing, as China was quite entitled to insist if she wanted. But Mr LI was very agreeable to allow us to set it up in Hong Kong. Then I asked him, I said, "Mr LI, there is another question I want to raise with you", as he was rushing across the room to have a glass of wine because he is a great wine drinker. I said, "One more thing, if I may?" He said, "What do you want, Mr LEE?" I said, "Who are the judges who will be sitting on

this Court of Final Appeal now that you agree it may be set up in Hong Kong?" He said, "Of course, Hong Kong judges, Mr LEE, because we cannot use our judges. They do not understand your law. Of course, Hong Kong judges because you have been telling me how good they are and how free from corruption they are." I said, "Mr LI, absolutely right. They are free from corruption, I believe, and they are very good compared with the other judges in the other parts of Southeast Asia."

"But," I said, "compared with the top judges who now hear appeals from Hong Kong, namely, those who sit in the Privy Council, I am afraid there is a somewhat large difference, a big difference between them because in England they have got a much larger pool of Queen's Counsel to choose before they are appointed as High Court judges and they have got a much larger pool, therefore, of High Court judges to choose as Court of Appeal judges, Lord Justices of Appeal, and finally they have got a large pool of very eminent judges to choose from the Court of Appeal who would then sit either in the House of Lords or in the Privy Council. Now, we suffer because we do not have that many eminent lawyers or Queen's Counsels or that many eminent High Court judges or that many Court of Appeal judges." And I said, "Yes, we could do it in Hong Kong but there is this difference, I am afraid, in experience, in learning."

And then I asked him to look at it from the point of view of investors, particularly from overseas. I said, "If today you have an investor from outside Hong Kong who has invested heavily in Hong Kong, if he feels quite secure with his investment because if anything goes wrong he goes to the courts and all the way to the Privy Council, and there he knows that the judges sitting there, the Law Lords, will not be influenced by the Hong Kong Government or by the British Government, even if they dared approach them. But", I said, "when Hong Kong becomes part of China, whether the Court of Final Appeal be established in Beijing or in Hong Kong, what will this overseas investor think, the rule of law in China being what it is?" And he said, "You do not have to talk to me about the rule of law in China." Then he looked decidedly troubled.

Then he asked me, "Have you got any suggestions, Mr LEE?" And I then told him, "I have in fact been thinking about this, and this is my proposal." I said, "First there are about eight or 10 appeals going from Hong Kong to the Privy Council on the average per year, so we do not need that Court of Final Appeal established in Hong Kong to sit throughout the year. Two months in the year will do." And that is why I suggested January and July, as I said earlier this afternoon. And I said, "In the Privy Council there are five judges, so let us keep the figure of five judges, but I would like to see three of the judges in the Court of Final Appeal to be invited from overseas from the Privy Council or from other common law jurisdictions." I named, of course, Canada, Australia, and so on, and I said, "The United States will do because that is also a common law jurisdiction. And then when we have three such eminent judges from these jurisdictions, coupled with two local judges to give the local input, the confidence of that overseas investor and all the people of Hong Kong will be secured."

I mentioned three deliberately because that forms the majority, and as time goes on, of course, we can change the number and he said to me, after half a minute of thinking, deep thinking, "What an excellent idea this is, Mr LEE, but will the Brits agree?" I said, "Let me talk to them.", and I raised it with the then Attorney General of Hong Kong, Mr Michael THOMAS Q.C. on the following morning and he was very happy. But he asked me, "Would the Chinese agree?". I said, "Never mind, just work at it." And work they did.

When I read the Joint Declaration after it was initialled on 26 September 1984 for the first time, I was very happy because I saw that the Joint Declaration provides that the Court of Final Appeal shall be established in Hong Kong and that the Court may, as required, invite overseas judges from other common law jurisdictions to sit on that Court. It is the plural, "judges". Of course, in Chinese we do not make any distinction between "judge" or "judges", "wife" or "wives". So, I was very happy. You can, of course Honourable Members, imagine my shock when I saw this capitulation, this conspiracy between the two Governments in arriving at the secret deal at the end of 1991. And when we attacked the Government their excuse was, well, we sacrificed that but in return we got agreement from the Chinese side to establish the Court of Final Appeal well in advance of 1997, to have it up and running to gain experience and momentum, I suppose, and respect before the changeover of sovereignty. We protested in this Council, twice as I said earlier; the whole legal profession, the legal profession in England and Wales protested. But that is history.

But I would like to ask the Administration, if that secret deal was struck at this huge price in return for one thing: early establishment; and now, when are we going to set it up? Not before 30 June 1997. So, you have given up something important for nothing, nothing at all. What is the excuse now?

Well, Mr Simon IP said, let us leave it to the Court of Final Appeal to decide on its own constitutionality after 1997 as to whether or not a Court of Final Appeal constituted either 4:1 or 5:0 is in keeping with the provisions of the Joint Declaration and the Basic Law. I accept that it is possible in law for the Court of Final Appeal to decide on its own constitutionality, that is, if the Standing Committee of the National People's Congress will allow it to do so.

But what if, before the Court of Final Appeal can actually decide on this important issue, somebody goes to Beijing and has a word with the Standing Committee of the NPC and says, now, look here, something is happening in Hong Kong. Somebody, maybe the respondent, is challenging the constitutionality of the Court of Final Appeal. Let us do something quick. Supposing the Standing Committee then, having consulted with the Basic Law Committee in Hong Kong, then makes a determination: a Court set up in Hong Kong, as per the agreement reached and announced to us on 9 June this year, is in accordance with the Basic Law, as a matter of interpretation. That decision would have been taken away from the hands of the Court of Final Appeal. It is an interpretation under Article 158 of the Basic Law, which binds the Court of Final Appeal. So, I would like to share Mr IP's hope

that the Chinese leaders will allow the Court of Final Appeal to determine on its own constitutionality but I cannot guarantee, unfortunately, that the Court will be left to do it.

The importance in giving the unfettered flexibility to the Court itself to decide how many judges they should invite from overseas is an important one. Let us assume that all the local judges are fully independent. That is not good enough. Why? Because the perception is equally important. There is an oft-quoted sentence in court that not only must justice be done, but it must be manifestly seen to be done. An overseas investor who has invested heavily will doubt whether the Court of Final Appeal, constituted as it is, which could be all five Hong Kong judges, would be as independent as the Privy Council.

It took the British Government a long time to reach an agreement with the Chinese side, beginning at the end of 1991 and now this one. But the business people in Hong Kong did not wait, did they? Jardines led the exodus and many followed suit. I think Jardines started to move out of Hong Kong before the Joint Declaration was even announced and they never came back. I think of the 529 listed companies in Hong Kong ─ my figure could be a little wrong ─ 301 have already moved their domicile away from Hong Kong, and when the Chairman of the Board of Directors of Jardines explained the move in 1984 he said that: "We wanted to stay in a territory which will continue to have appeals to the Privy Council." Many other companies, as I said, have since followed suit.

I was somewhat surprised, as other Honourable Members were, when the Governor announced this recent agreement to us on 9 June this year. The Honourable Allen LEE asked a very pertinent question: "Why did you change your mind? When you were dealing with the political reform, you pushed through in spite of Mr LEE and his party's objections. Why not this one?" I asked him a question, I thought an equally strong one. And then Mr BARROW congratulated the Governor for having struck a beautiful deal which clearly was in the interests of the business people in Hong Kong and has their undoubted support. No doubt, Mr Chairman, my honourable colleague, Mr BARROW, will soon persuade his Board of Directors to lead the triumphant return back to Hong Kong now that they have got such a beautiful agreement on the Court of Final Appeal. I am anxiously waiting.

Mr Chairman, countries that have gained independence from Britain ─ Singapore, Malaysia, Australia, Canada and New Zealand ─ all retained appeals to the Privy Council for years, if not decades following their independence prior to having their own courts of final adjudication set up. Australia won her independence in 1901 ─ well before all of us were born ─ and continued to send appeals to the Privy Council until 1986, not that long ago; nine years ago. Clearly these countries recognized that the cultivation of top-level judges takes a lot of time, and since the appeal to the Privy Council is not a possibility for Hong Kong, we must instead make sure that the Court will continue to have the full flexibility to decide on the number of overseas judges to invite, otherwise it cannot be looked upon as a comparable court to the Privy Council. Of course, the Governor and the

Attorney General have said, oh, this is perfectly comparable to the Privy Council. Who believes them? No lawyer would.

Some Lawyers have changed their minds but for political reasons. I have read very carefully the letter by the 11 silks. As I said, there are 35 Queen's Counsels who did not join in signing that letter. They continue to lament some of the provisions of this deal and of this Bill, but they say well, because both Governments have agreed, the present sovereign and the future sovereign, then they want us, the Legislative Council, also to accept. In other words they want us to be rubber-stamps. Now, that coming from the silks is rather surprising because I always thought that a lawyer would risk everything to defend the rule of law, including his own freedom. That is why we read, from time to time, how lawyers are in prison to defend the liberties of their clients.

Now, we have 11 very pragmatic silks. No doubt, like the Law Society, they will be praised by the Attorney General as having the courage to change their minds. By the same standard, the Governor must be a very courageous man because he too made this massive U-turn and since then he has never stopped in attacking me. He is a very courageous man, attacking Martin LEE. I suppose by the same token we, who insist on standing on principle, must be cowards because we do not have the courage to make a massive U-turn. But, is that the right question to ask, I wonder, Mr Chairman? Is it not more pertinent to ask this question: Do people have the courage to stand firm and defend the rule of law against mighty governments like the Chinese Government and the British Government? Or do we say, if you stand firm on principle you are cowardly, you are stiff-necked and you are naive? Or, as the Governor has been accusing me, of upsetting the stability of this place by talking so much about it to the CNN, I do not know why he is so angry with my appearance on CNN. He did pretty well with Larry KING not so long ago.

I suppose the Government would like us to shut up when we are being betrayed. I can see that. If I was betraying anybody I would like him or her to shut up and take it bravely, courageously. That is something that I cannot do and will not do. Call me a coward if you like, but I will not do it.

My amendment, Mr Chairman, will seek to restore that flexibility which was promised to us in the Joint Declaration and the Basic Law but, what is more, my amendment has the full support of the Bar, less the 11 Queen's Caunsels of course.

I also propose, Mr Chairman, to set out certain criteria which would guide the Court of Final Appeal in deciding what to take into consideration when they deliberate on inviting judges from overseas to sit on that Court. First of all my subclauses say: "(1) An appeal shall be heard and determined by the Court constituted by five judges who shall be nominated by the Chief Justice, or, in the case of judges from another common law jurisdiction, selected by the Chief Justice and invited by the Court. (2) The Chief Justice

may nominate himself to hear an appeal. (3) When deciding which judges to nominate or select under subsection (1)", which includes overseas judges, "the Chief Justice may take into consideration the following factors- (a) the relevant expertise and experience of each judge;" ─ that is important ─ "(b) the legal questions at issue in the appeal; (c) the extent to which the legal questions have been addressed by courts from other common law jurisdictions; and (d) any other matter that the Chief Justice deems relevant to a proper and fair hearing of the appeal. (4) Where the Chief Justice has nominated himself to hear an appeal under subsection (2), he shall be the President of the Court and, where he has not done so, the President of the Court shall be the judge ranking highest in order of precedence under section 11(b)."

It is important for these criteria to be set out because at the back of my mind, I am always worried that, after 1997, the Court under this Bill unamended may simply decide without reason at all not to invite any overseas judge at all.

So, Mr Chairman, this is a very important amendment for the rule of law in Hong Kong. We do not want just any Court of Final Appeal. We want a respectable, credible Court of Final Appeal to replace the Privy Council. How can it be said that a Court of Final Appeal consisting of five local judges will be comparable to the Privy Council?

I am not saying that we could never promote judges high up. Hong Kong is quite used to that. You have magistrates promoted to the District Court. You have District Judges promoted to the High Court, and you have High Court Judges promoted to the Court of Appeal, and now, of course, you could have Court of Appeal Judges promoted to the Court of Final Appeal. But not so many, because what is going to happen is this, if we pass this Bill unamended, we will take at least four, if not five, local judges and the best place to take them, of course, to find them, is the Court of Appeal. I hope we are not going further down, to the District Court, for example, or even the High Court. If we take five of the best and most experienced judges in the Court of Appeal, the strength of the Court of Appeal is immediately depleted. Where do we find replacements? Go to the High Court and pick the best five judges from the High Court. Therefore, the High Court will be depleted. Where do we find, refill, if you like? From the District Court. So we take the best five from the District Court, and then we go down to the magistracies to pick the best five magistrates.

So there will be a lot of promotion going on, alright, but is that the Court ultimately which can be compared to the Privy Council? I am not suggesting that we should never promote them. Some of our Justices of Appeal are very, very junior indeed, even as judges. They are very good as Court of Appeal Judges and I have been told, as I said, by one of them, he does not like this idea. A lot of lawyers are now saying, well, if that is the make-up of the Court of Final Appeal, why have it? Because it certainly increases cost and increases delay before there is final determination. If it is a respectable Court, as I envisage

by these amendments, it is worth having. If not, then we just do not introduce such a Court for the sake of having it.

Mr Chairman, I so move.

Proposed amendment

Clause 16

That clause 16 be amended, by deleting subclauses (1) to (4) and substituting ─

"(1) An appeal shall be heard and determined by the Court constituted by five judges who shall be nominated by the Chief Justice, or, in the case of judges from another common law jurisdiction, selected by the Chief Justice and invited by the Court.

(2) The Chief Justice may nominate himself to hear an appeal.

(3) When deciding which judges to nominate or select under subsection (1), the Chief Justice may take into consideration the following factors -

(a) the relevant expertise and experience of each judge;

(b) the legal questions at issue in the appeal;

(c) the extent to which the legal questions have been addressed by courts from other common law jurisdictions; and

(d) any other matter that the Chief Justice deems relevant to a proper and fair hearing of the appeal.

(4) Where the Chief Justice has nominated himself to hear an appeal under subsection (2), he shall be the President of the Court, and where he has not done so, the President of the Court shall be the judge ranking highest in order of precedence under section 11(b).".

Question on Mr Martin LEE's amendment proposed.

CHAIRMAN: I will call upon the Attorney General to speak on the amendments proposed by Mr Martin LEE as well as his own amendments. I will also ask Mr Allen LEE to speak on the amendments proposed by Mr Martin LEE and the Attorney General as well as his own amendments, but will not ask the Attorney General to move his amendments unless Mr Martin LEE's amendments have been negatived. I will also not ask Mr Allen LEE to move his amendments unless the amendments proposed by both Mr Martin LEE and the Attorney General have been negatived.

ATTORNEY GENERAL: Mr Chairman, the amendment moved by the Honourable Martin LEE would delete the "four plus one" composition of the Court. That is an amendment that goes to the heart of the Joint Liaison Group agreement, goes to the heart of this Bill. It is clearly inconsistent with that agreement and is, therefore, unacceptable to the Administration.

Let me restate briefly, Mr Chairman, what the agreement gives the people of Hong Kong, and what this amendment would in effect take away. The agreement gives the people of Hong Kong the certainty that on 1 July 1997 there will be a proper Court of Final Appeal, one that is fully worked out, fully armed, if I can put it like that, but subject to the Basic Law, as it must be as a matter of law, fully conforms to the practice and jurisdiction of the Privy Council; that we will have a Court of Final Appeal in existence established on 1 July 1997.

It does not need me to remind Members of the uncertainty that has beset this community over the years over a matter of grave importance, namely, the establishment of the Court of Final Appeal. It does not need me to remind Members of the effect on confidence in Hong Kong, the effect of confidence on the people of Hong Kong, if that agreement were to be breached with the consequence of further uncertainty, uncertainty over the next two years, uncertainty as to when and in what form and how a Court of Final Appeal would be set up. It does not need me to remind Members of this Council where the interests of the people of Hong Kong lie. They know, I know, and so do the community.

Why the change of mind? The question has been posed, drawing an analogy with another episode last year. It does not need me to remind Members that the fundamental difference this year is that there was an agreement reached between the British and the Chinese sides, an agreement carrying all the advantages that I have laid out for Members and of which they are fully aware.

This is, as Mr LEE has pointed out, an old issue, one that we have debated long and hard before, one on which passions have been roused. There are no new arguments. no new points. Members must focus very clearly on what are the interests at stake here. Since the debate in this Council in December 1991 many things have changed. I reiterate that there is no chance, no chance, that the Chinese Government will renegotiate the "four plus one" composition.

Independent legal opinions have supported the Administration's view that this composition is not inconsistent with the Joint Declaration and the Basic Law, and Members will recall that, in the debate in this Council on 3 May this year, I set out in some length our reasons for that view. We are now in a position to enact legislation which has the support of the Chinese Government and provides for a proper Court of Final Appeal being established without there being any judicial vacuum.

Mr Chairman, after seven years of long, difficult and tortuous negotiations, we cannot allow the prize to slip through our fingers. Whose interests will that serve? In urging Members to oppose this amendment, I ask Members to think very carefully about what the effects will be, were this amendment to be passed.

I make by way of postscript, Mr Chairman, two other points for Members to mull over. Mr LEE has drawn attention to the advantages of bringing in overseas judges. I will not attempt to recapitulate his arguments set out at such length. I would remind Members, invite them to consider Mr LEE's amendment very carefully because, if enacted, one of the, I suppose, unintended consequences will be that there will be no requirement at all in law that an overseas judge shall sit in any case. You may think that that consequence of Mr LEE's amendment sits rather uneasily with his earlier remarks.

The proposed amendment also sets out the factors which the Chief Justice may take into account when deciding which judges to nominate or select. I believe that the Chief Justice could lawfully take these factors into account in any event. The provisions of this amendment are unnecessary.

Mr Chairman, I urge all Members, whatever their views were in 1991, to accept what is in the best interests of the people of Hong Kong and to reject these amendments.

I turn now, Mr Chairman, to my own amendment. If Mr LEE's amendment is negatived, I will move an amendment to clause 16(1)(a). This is to avoid a possible suggestion that the Chief Justice is required to hear every appeal, which is clearly not the intention as can be seen from clause 16(2).

MR ALLEN LEE: Mr Chairman, I have explained the reason for my amendment during the Second Reading debate. I just want to elaborate the point of flexibility. I think the agreement reached between the Chinese and British Governments is restrictive. Some lawyers say it is in accordance with the Basic Law, yet some lawyers says it is not. Now, to a layman like myself, when you hear legal opinion always on the one hand and on the other hand, I have to make my own judgement. My judgment is the wordings of the Basic Law. No one could claim that it is in breach of the Basic Law or the wordings of the Joint Declaration. That is why I am seeking that flexibility.

During my trip to Beijing recently two days ago, I discussed this issue with the officials of Hong Kong and Macau Affairs Office. My thoughts are maybe they do not like my amendment, and my colleagues in the Chamber could be my witness on this issue, and I gave them the reason why I put up this amendment: because it is good for Hong Kong. That is why I seek that flexibility. The answer I received is, they are not going to interfere with any decisions that I make and they leave it to me to judge what is in the best interests of Hong Kong.

And I am very firm to move my amendment on the flexibility. I look at Mr Martin LEE's amendment. In my view again, in a layman's view, it is too restrictive, such as subclause (3)(a) which is talking about the judges' experience, relevant experiences and expertise of each judge. Now what do those wordings really mean? I cannot understand. I think my colleague, being another eminent lawyer, Mr Ronald ARCULLI, will comment on Mr Martin LEE's amendment.

The Attorney General's amendment is much less controversial. Yet if the Attorney General's amendment is passed then I will not have a chance to move my amendment, so I have no choice but to oppose your amendment to give me a chance to move mine.

CHAIRMAN: Members may now debate the amendments moved by Mr Martin LEE as well as those proposed by the Attorney General and Mr Allen LEE.

MR JIMMY McGREGOR: Mr Chairman, I want to make just a few comments, if I may, about Mr Martin LEE whom I regard as a friend, as an eloquent speaker, as a totally dedicated person with a very high moral standard and, in this case, speaking from the heart and from his very wide experience which goes, as we all heard, a very long way back.

I do not doubt that much of what Mr Martin LEE has said to us is true, is accurate and not only reflects his opinion but reflects the opinion of many of us here. If it were open to us to do some of the things he would like us to do, then I would be the first to fall in line. If it were possible to modify the 4:1 formula in the way he would like, and I would also say in the way that Mr Allen LEE would like; if it were possible to do that and still have an agreement at the end of the day, I again would be the first to fall in line, to take the advice and to do something which, no doubt, would provide for a better and a higher-efficiency Court.

At the end of the day, however, and at the end of today we will have to make up our minds on the basis of what is likely to be acceptable to the two sovereign governments, what kind of arrangement and with what detail will be acceptable, if I may say so, to China, quite apart from Britain. It seems to me that we have been given a very, very clear understanding of what the agreement says in terms of the 4:1 formula. In 1991 we rejected it, and I think we rejected because we knew, we had a feeling, a strong feeling at that time that the British Government had altered somewhat its policy at that time, had gone back, for some reason best known to itself, to China to ask for discussion on the question of the formation of the Court, the composition of the Court; had gone in with a 3:2 formula proposal and had come out of discussion or negotiations with a 4:1 formula which was to be expected. That is what I think and that is what a great many other people think happened.

Having reached that formula we have now, we rejected it basically out of hand. It was not the other parts of the agreement between Britain and China that we seriously objected to. It was this 4:1 formula, which is the key to the whole issue, and it was one of the bases on which Mr Simon IP encouraged us all to reject the formula, and which the entire legal profession was in agreement, that it should be rejected.

Mr Martin LEE has set out eloquently, convincingly and in a most dedicated way his view of what should now be done. But from my point of view, listening as a realist if you like and as somebody who wants to see a Court of Final Appeal in place as soon as possible, in such a way that it will be effective and will help to protect the rule of law in Hong Kong at the earliest possible opportunity, I have to say that China will reject the proposal which Martin is asking us to accept and to approve.

On that basis it comes back to what I said earlier today — it is yes or no, black or white. It is not a question any longer, especially for this particular aspect. You either reject it or you accept it. If you reject it, there is no Court of Final Appeal. If that is what Martin is asking, or if that is what he is proposing and if that is what we are all prepared to accept then good, fine, let us vote on it. But all the argument that I have heard today comes back to that one single point which, after all I did make during the debate we had a few months ago, the same debate, the same issues and the same, possibly the same outcome.

And even Mr Allen LEE's proposal, I am not sure what the Chinese leadership said to him. Maybe he is not too sure himself. It is all a question of interpretation. No? Well, whatever the Chinese leaders said, what they have said publicly and what they have indicated through the Hong Kong Government and the British Government is that any modification of this 4:1 proposal is not acceptable. So, what we come down to and what I have to say again is that despite all the dedication, all the discussion, the hours and hours on issues that we have taken up in discussion and despite what the Government says, what we as Councillors want or say, we come down finally to making a decision and taking a vote on whether or not we have a Court of Final Appeal set up 1 July 1997.

So, I want to say to Mr Martin LEE that on many, many of the points he has made I am sure that most of us are not in disagreement with him. We respect his judgement. We respect his recollection of events. I certainly do and I am sure many of us do, and I have no doubt that the points he is making in law are true and accurate and if we could accept them we would have a better Court of Final Appeal. As it is, however, and it does seem to me we come back to the stark choice, at the end of this discussion, yes or no, black or white, or no Court of Final Appeal.

Therefore, I would ask my colleagues to consider rejecting both amendments no matter what the Chinese leaders said, because I do not think in that ─ this is hearsay in any event ─ and I do not think it is necessarily too accurate. At least, it might not be. And so I think if we want a Court of Final Appeal, we should accept the proposals as they stand now and the draft as it stands now and this 4:1 formula as it stands now. Thank you, Mr Chairman.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, in respect of this amendment, when I moved the second amendment, that is at the debate on the qualification of judges, I raise a question at the end that if the Attorney General does not reply, I assume he also agrees to my understanding that a Justice of Appeal or a judge of the High Court or a judge of Supreme Court may be invited to be a permanent judge. He does not reply, so I assume he agrees that the Court of Final Appeal is to be operated according to the common law. Now I would like to make a comparison. If my understanding, without opposition from the Attorney General, is correct, then what differences will the Honourable Allen LEE's amendment and the Honourable Martin LEE's amendment make? I think there are four differences. I only wish to point out these four differences to you. Of course, after my pointing out the differences, it is up to you to decide whether you will "try you luck" to amend the agreement just for the sake of these differences or not to amend it so as to preserve the status quo. But I am going to state clearly the four differences.

The first difference, between the original Bill and the LEE's amendments is on the powers of judges. If the LEE's amendments are passed, the Chief Justice will select or appoint the judges of the Court of Final Appeal on his own. This is a system of "oligarchy" because there will be only one permanent judge in the Court of Final Appeal. Under the Bill, there will be one Chief Justice plus three permanent judges and I presume that the three permanent judges are frequently in Hong Kong who would handle the work, adjudicating arrangements of the Court of Final Appeal frequently. In other words, as regards the Chief Justice's power, when he decides or handles certain matters, I think and believe that the Chief Justice will have to call a meeting with those permanent judges to handle some matters and consider appointments. Of course, probably it will still be the Chief Justice who makes the final decision, but at least, there will be some permanent judges who can give him advice. This is the first difference.

The second difference lies on the ratio. The Attorney General has not refuted my understanding. In fact, I have already made an analysis to you that the original Bill provides flexibility. What is the difference in term of flexibility? The two Honourable Members' amendments provide flexibility that there may be five overseas judges at most and none at least, which means that the Chief Justice may not appoint any overseas judges or may appoint all five overseas judges. This is the extent of the flexibility the amendments can achieve. How about the flexibility of the original Bill? The original Bill is flexible in a

way that there must be one because the ratio is 1:3. Second, I think four overseas judges will be appointed at most instead of five overseas judges because the Chief Justice must exist. In this way, where comes the four overseas judges? As I have just said, if there are really insufficient judges or qualified persons in Hong Kong for appointment as permanent judges in adjudicating a particular case, the Chief Justice may, through the second amendment I have just moved, invite three well-known and suitable overseas judges and appoint them as Justices of Appeal immediately and then reappoint them as permanent judges to adjudicate that case. In this way, the number of overseas judges actually ranges from one to four and will not be zero or five. In terms of flexibility, the difference is that under the two Honourable Members' amendments, there will be five or no overseas judges at all, and there are merits and demerits in such composition. Under the amendments of the two LEEs, there may be five overseas judges, which means that all are overseas judges; but there may be no overseas judges at all, which means that the Chief Justice does not appoint any overseas judges every time. Under the present Bill, there are one to four overseas judges. Of course, this is the second difference.

The third difference lies on the procedure. Under the two Honourable Members' amendments, the Chief Justice appoints other judges to adjudicate cases and the only procedure involved is the offer of appointment by the Chief Justice. But there will be more steps of procedure if flexibility is to be achieved in accordance with the original Bill, that is, an overseas judge must take one day to be a Justice of Appeal. The third difference lies on this extra step.

The fourth difference is the issue about which the Honourable Miss Emily LAU has been very concerned, that is, money. Of course, under the two Honourable Members' amendments, every appointment of judges is for the adjudication of a single case and the judges will be almost disbanded upon the completion of a case. As no contracts are made with the judges, the expenses may only cover the time taken to adjudicate a case. But of course, the expenses will be higher for more serious and complicated cases. In order to achieve flexibility in accordance with the original Bill, a permanent judge will be appointed until his retirement age of 65. I believe the amount of salaried paid will be different from the money paid for adjudicating a single case. But is there any demerits? I think there is not necessarily any demerits. First, I have just mentioned that the complexity of individual cases warrants the appointment of different overseas judges, but the situation may not be so serious. As you can see, the appeal cases brought to the Privy Council were mostly of commercial nature and fell within a few categories. If we have three or four permanent judges, most of the disputes or complicated cases may be already covered. Therefore, there will not be many cases for appointing overseas judges nor many additional judges. This is the first point. The second point is that if these judges are really outstanding, well-known and specialized in adjudicating a particular type of cases, it may not be a bad thing for appointing them to be permanent judges because this may enhance the status of the Court of Final Appeal. The money may be worth spending.

Therefore, I point out here the above four differences for all of you to consider. There may not be a Court of Final Appeal if amendments are made according to the two Honourable Members' proposals. Without these amendments, is there still flexibility and is this flexibility against what we demanded for at the debate in 1991?

Therefore, I think I do not accept the Attorney General's call for our enough courage. In fact, I think the Bill has already provided flexibility. I do not support the two Honourable Members' amendments.

MR RONALD ARCULLI: Thank you, Mr Chairman. Some years ago, when I was a young lawyer, a very hard-nosed American businessman came to me and said that his lifelong ambition was to find an one-armed lawyer. So I could not understand what he meant and he said to me, well, young man, one day you will recall this story. He said every time I go to a lawyer they give me, on this hand and on the other hand. So, if I have an one-armed lawyer I would not get two sides of the argument. What I really need is advice as to what is right and not what might be or what might not be, and I suspect Mr McGREGOR appreciates that story of black and white.

But that having been said, Mr Chairman, I would like to deal with some of the points that have been touched upon today. In recounting the discussions that the Honourable Martin LEE had with Chinese officials way back in the eighties, we were told that several reasons prevailed upon that particular official to see it from Martin LEE's point of view in terms of the composition and the seat, as it were, of the Court of Final Appeal. As far as composition is concerned, as I recall Mr Martin LEE has told us that his request was for three overseas judges and two local judges. So, to that extent I am glad that certainly in the early eighties he felt that we had sufficient calibre of local judges to actually have two on the Court of Final Appeal. We seem to have gone backwards since then, but be that as it may.

The next point that we are told is that he impressed upon that particular official, Mr LI, that this was all for the good of Hong Kong, for the confidence of investors. Well, we have had two of the representatives of two of the Governments in Hong Kong, the United States Consul General and the Japanese Consul General, supporting the agreement, supporting the Bill. The United States and Japan are the two largest investors in Hong Kong, and I imagine with China being our third or our fourth largest investor, we have some of our largest investors blessing that particular agreement, or indeed the Bill.

We then touched upon the question of the acts of state and whether, if in fact the Bank of China was sued for $20 billion, they will plead an act of state. Well, I think those that understand the balance sheet of the Bank of China will know that $20 billion is a drop in the ocean, and indeed in the international financial markets, the Bank of China, despite its country of origin and its country of incorporation, still finds it relatively easy to actually do business.

On the other hand, we have the example of stories emanating from Vietnam about an American bank that had a branch there that did not honour the accounts that were opened by the local population with that particular branch, the logic being that Head Office would simply say, well, that is carried on the risk of that particular branch. Why should American shareholders bale out that particular branch and pay foreign depositors?

So, all this is actually quite interesting and confusing in many ways, but I think undoubtedly the presence of a Court of Final Appeal in Hong Kong would obviously tend to lend weight to the stability of Hong Kong, to the continuous development of Hong Kong, and indeed to the role that Hong Kong will continue and hopefully continue to play successfully in terms of the development in China, both economic and in other respects.

Mr Chairman, the other point that I would like to speak briefly on is a point that Mr Allen LEE has referred me to, and that is really Mr Martin LEE's amendment in the form of clause 16(3). Mr Allen LEE has very kindly referred to me as an eminent lawyer. Prominent I might be, but eminent I am definitely not because "prominent" simply means that you are well-known. To be eminent you have got to be well-known and you have got to be recognized as eminent by your peers, and whilst Mr Allen Lee might be my peer, he is certainly not my legal peer, so I thank him for that compliment but.

The Attorney General has made one point that, whatever is set out in clause 16(3) could be taken into account by the Chief Justice in nominating who are the judges that will sit on any given Court of Final Appeal. To some extent he is right but I really would disagree with him because we are getting back to this quality game. It would seem to me, Mr Chairman, that whoever is appointed a judge of the Court of Final Appeal in Hong Kong would have gone through the necessary hoops. He would have, as it were, prequalified, and therefore I think to actually set out the criteria in legislation as to how the Chief Justice who, according to Mr Martin LEE's views anyway, is likely to be inferior to the overseas judges that he is about to select, seems to me to be stretching the point a bit.

But what really takes the cake is the amendment in subclause (3)(d) and I would ask Members to pay very particular attention to those words because there is a ring about it that will be wholly unfair and detrimental to Hong Kong, and if anything is going to destroy the rule of law in Hong Kong it would be subclause (3)(d). It reads thus, Mr Chairman, any other matter that the Chief Justice deems relevant to a proper and fair hearing of the appeal." Any eminent judge who is asked to join the panel, whether from Hong Kong or indeed from overseas, looking at that clause would decline. He would say to himself or herself, what Mickey-Mouse court am I going to get myself into where the legislature has to have a paragraph to say that the Court of Final Appeal, that the Chief Justice of that Court will have to select me to sit on that Court so as to have a proper and fair hearing? I could not believe those words when I saw it.

Mr Chairman, I think I have probably outspoken my welcome, so I would end by simply saying that I will vote against the amendment and I would urge Members for the reasons that I have given to join me in that vote. Thank you, Mr Chairman.

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, up to now, today may be called "Martin LEE's Day" because most of his motions only got 20 votes, a vote less than the Hounourable Frederick FUNG's motion. Therefore, as the Honourable Jimmy McGREGOR has just said, we should not doubt the speeches made by the Honourable Martin LEE today, especially his speech on this amendment just now. But I daresay Mr Martin LEE is basically being driven to extremes. Since he has got an award recently, it is not easy to get this award, so he has to pay a price. The speech he has just given, I think, is made for the sake of getting awards. He has mentioned on these few occasions that he had discussed with Mr LI Jusheng. I think he wants to prove that he did many things for Hong Kong people, but in vain. The past is only a recollection, a history. On the day after tomorrow or at the end of this month at most, all Legislative Councillors will have to put down "the car plate" temporarily, which they may put up again if they are re-elected. Therefore, history is only a memory.

Mr Martin LEE has mentioned Jardine's case. I doubt very much why Mr Martin BARROW does not stand up and ask him for clarification. Jardine moved out of Hong Kong actually because it did not agree to the regulations of the Securities and Futures Commission and not because it lost confidence in the future of Hong Kong. If Jardine has no confidence in the future of Hong Kong, it should sell its buildings. On the contrary, Jardine's investment goes further into China now. So it is not true that if has no confidence. In this case, I do hope that Mr Martin LEE will not mislead the investors. I personally have learnt that in fact, Jardine has wanted to negotiate with the Government on how to return to Hong Kong for development, and even for primary listing instead of secondary listing. I do hope this will become true because this shows that Jardine will not move out of Hong Kong and has much confidence in Hong Kong. Of course, I do not wish Mr Martin BARROW to verify or deny this point.

Mr Martin LEE kept on saying, on several occasions, that Hong Kong judges is not comparable to judges of the Privy Council. When he spoke on several amendments, he said that he would not look down on Hong Kong judges. But obviously, he has given them a slap on the face, unnoticed by others. We have to bear in mind that the Chief Secretary sitting in this Chamber may become the Chief Executive two years later and the officials under her leadership may form Hong Kong's highest level of governorship. We may say that this batch of officials were merely heads of department several years ago, but actually is it practicable that the Government will be led by them? Can we have low opinion of them? I believe nobody can make such comments. We firmly believe that the judges of the Privy Council in Britain are of very high quality. At the same time, we have to understand that

though British soccer teams, the United States' NBA basketball teams and tennis players have excellent skills, does this mean, after watching their games, that Hong Kong's soccer teams, basketball teams and others are no good and there will be no sports activities in Hong Kong? Therefore, I hope Mr Martin LEE can have in-depth understanding of the actual circumstances.

Many people outside this Council appreciate the Honourable Member's political inclination, that is as a so-called "man of iron". But is he really unyielding? This will be subject to proof by history. But anyway, I do hope that the Honourable Member will not lead or guide the public to look at a particular issue, and will not force others to agree with him on whatever he thinks is correct. In fact, this is often a matter of points of view.

On the judges ratio of 4:1, I have just said that this is a fact, a figure. Of course, I do hope that the Government of Hong Kong Special Administrative Region (SAR) will immediately make amendments whenever some problems are identified. For example, in some cases involving international law or some involving maritime law, the judges (4:1) may not have thorough understanding and amendments may then be made without any trouble. You have to bear in mind that under the ratio of 4:1 as agreed by British and Chinese governments. the Court of Final Appeal may also adjudicate civil cases, say you versus me one day, why is the Government so worried about the ratio of 4:1? Actually, there will not be bias on either parties and the ratio set is simply a figure. On the question of flexibility, there should be flexibility whenever necessary. Of course, China as a suzerain and sovereign state must safeguard an autonomous Court of Final Appeal in SAR.

Therefore, I do not call on my colleagues to make an evaluation because I have just said everybody is very subjective and numb and already makes up his mind. Mr Chairman, I speak the above because I do not want the public being misled by Mr Martin LEE to think that he is absolutely correct and he fights for us. In fact, all these are his prejudice and he "persists in arguing endlessly" because he is a Queen's Counsel and he cannot lose sometimes. But as for final votes, I do hope he will not have to ask for a vote count, as he himself has just said.

Mr Chairman, these are my remarks.

MISS EMILY LAU (in Cantonese): Mr Chairman, I have just spoken on the question of flexibility and I am not going to say anymore now. I only wish to respond to the Honourable Jimmy McGREGOR's question. The Honourable Member asked us if we were aware that there would not be no ordinance if we rejected this Bill. He said there would be no Court of Final Appeal if there was no ordinance and asked how the Hong Kong people would think about this. I believe I have already said very clearly. I think many Hong Kong people think we are forced by the British and Chinese governments and the Hong Kong

Government to accept this Bill. And what are we talking about is something happened some 700 days later. Even if the Bill is rejected today, I do not believe that this issue cannot be raised at the next term of Legislative Council again. I believe it is very wrong for us to accept the argument.

I have just said that the business sector of Hong Kong is particularly in an advantageous position to influence the Chinese Government. Mr Jimmy McGREGOR was correct to ask what the Liberal Party had said to the Chinese Government during their last trip to Beijing and what had been China's response. I have also raised this point just now. The Honourable Mrs Selina CHOW expressed that I said they did not say anything. Of course, I did not say that they said nothing. I simply asked how they would say to Beijing if they had a chance to communicate with Beijing. I said that the business sector should not only say to China that the rule of law is very important and we must have a Court of Final Appeal, but also say what sort of Court of Final Appeal we must have. I hope the business sector will not say that some sort of Court of Final Appeal with judges ratio 4:1 and "acts of state" is acceptable. I hope the business sector will talk with the Chinese Government about their baseline. I believe the Chinese Government does respect the opinions of the wealthy and the business sector. I hope these wealthy people and businessmen will understand what is good for Hong Kong.

Therefore, I hope Mr Jimmy McGREGOR will know that to reject this Bill today is the most important vote on this occasion and the most important vote today as a whole. So far, the Democratic Party has not yet got enough vote. This time we hope that the votes of Democratic Party plus some of the Liberal Party Members will form a majority. The point is that rejection of the Bill does not mean there is nothing at all. First, why do we hurry because even if this Bill is passed, there are still some 700 days before it can take effect? The next term of councillors may also work in this way. At the same time, I probably have more confidence in the Chinese Government than Mr Jimmy McGREGOR does because I think there will be room for discussion if some businessmen stand firm in talking with the Chinese Government. Therefore, I hope the Honourable Jimmy McGREGOR will not misunderstand us and think that we are not working for the interests of Hong Kong. I believe he and I are working for the interests of Hong Kong and we think there is still room for mediation in this issue. Therefore, as there are a few Liberal Party Members here, I call on them to stand up. I do not understand why they have not told us something in their previous speeches. Those who joined the trip to Beijing or knows what was discussed, please tell us something. As the Liberal Party represents the business sector and they put forward their view, obviously they also believe in this view. Then how did they say to the Chinese Government and what did the Chinese Government say to them? After their return to Hong Kong, they still insist today that this was a nice thing. Can they convey to us some more positive message and let the Hong Kong people know now. When the business sector told the Chinese Government our wish for flexibility in the composition of judges at the Court of Final Appeal, did the Chinese Government think that there is no room for discussion? Or did the Liberal Party still insist when the Chinese Government opined that

there was no room for discussion. I hope Members of the Liberal Party will give us an explanation. Thank you, Mr Chairman.

CHAIRMAN: Mr James TO, we will need to interrupt at eight o'clock.

MR JAMES TO (in Cantonese): Mr Chairman, the Honourable Miss Emily LAU has worked very hard and listened to many speeches often from the beginning to the end. Probably she is now hungry and has gone out to eat something. In fact, the Honourable Allen LEE has already said about this. Having heard the Honourable CHIM Pui-chung's speech, I feel (my feeling again!) whether the Honourable Member wants to get Jardine's vote in the forthcoming election. But such a feeling or such a guess about others is not very good! Anything, if I have such feeling, I have to get rid of it because it is not right.

I have heard the Honourable Frederick FUNG's argument and it is eye-opening to me. He is not here and I hope he will come back when he heard through the loudspeaker. If there is no restraint of the Standing Order, I will have spoken more fiercely and toughly, or even in a way unlike a Councillor. The reason is that having heard his speech, I wonder why he can call a deer a horse, why he can make a good case, why he can deceive himself by saying, "Well, the extent of flexibility in this existing agreement is actually as large as that in the original?" Even the Chinese Government dare not use such argument nor our Hong Kong Government has ever said such thing. If this is practicable, they would have spoken up 10 generations ago. Yet, our Honourable Member, Mr Frederick FUNG, told us four differences. Let me take an analysis point by point.

As Mr FUNG said, there is flexibility but in different ways. He said that under the Honourable Allen "LEE"'s and the Honourable Martin "LEE"'s amendments, only the Chief Justice would have the power to select other judges to adjudicate cases, but under the Bill according to the existing Sino-British agreement, there would be the Chief Justice and three other permanent judges, which means that the three permanent judges would participate in the discussion to select the fifth judge. He said, therefore, the decision would not be made by a single person and would be better and more sound. But probably he was present at a meeting of the Bills Committee, during which I asked the Government about this issue, but the Government said the wordings in the Bill are very clear that the Chief Justice "selects" and "invited by the Court" is not of the same meaning. Nominally he selects and then reselects from the 30 candidates. Do not deceive yourself, Mr FUNG, by saying that it would be conversely better if the other three permanent judges could participate in the selection process.

Second, he said the flexibility in the existing Bill is that the number of overseas judges may range from one to four. Such argument is eye-opening time. If there is such a great flexibility, the Government would have already put forward this argument. Then what is Mr FUNG argument? His argument is that there will be certainly one overseas judge. Why? I wish to start from this point. Under the existing Bill, the quota may be filled by a local non-permanent judge or a judge invited from other common law jurisdictions, but it is not stated that there must be a judge from other common law jurisdictions. However, the Honourable Member said that there would not be the case and there be three other permanent judges. This is merely his wishful thinking and he assumes that no response from the Attorney General means consent from him. He is really deceiving himself to an extreme extent and those who are hearing his words are also deceived. If a judge only takes up the post of a Justice of Appeal for one day or is appointed a Justice of Appeal on his arrival for one day before the Chief Justice selects three judges to adjudicate a case, that process may be called" a cooling-off process". This is the document given to us by him but this amendment has been rejected and the Government does not agree to his idea. Nobody agrees but he indulges himself in wishful thinking by saying so. I think he fools himself and others to a great extent indeed.

Third, he said the Chief Justice would select and, if such flexibility does exist, the overseas judges might be a Justice of Appeal for just one day. I do not see any point mentioned in the motion is workable. Even if this is workable, we seem to treat our legislation, our solemn framework, as a trifling matter or even a "mockery", which is as well without it as with it and may be played with in any way we wish. One day or half a day will do? Why did not Mr FUNG say one hour? Why did not he say that the appointment to be a Justice of Appeal takes effect at the first second when he lands on the airport and the appointment of a judge of the Court of Final Appeal at the following second? Can we treat the rule of law as such a trifling matter? In this way, does the rule of law really exist? Why can there be such lousy rules? Therefore, I do not agree to this "cooling-off in half a second" or "creeping through the loopholes in law". How can we have a sound legal system in this way? Lastly.

8.00 pm

Council then resumed.

PRESIDENT: 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.

Council went into Committee.

MR JAMES TO (in Cantonese): Mr Chairman, lastly I think since the Tiananmen Massacre in 1989, probably China has had no confidence in Hong Kong people at all. Even up to now, we can see that China's control has gone too far by comparison of the two LEE's amendments (the Honourable Allen LEE's and the Honourable Martin LEE's amendments) and the existing Bill under the agreement signed by Britain and China. Why? There may be no overseas judges at all. Why? Because it will be the Chief Justice who selects. Second, China may even have to know from which 30 candidates the Chief Justice is going to select, otherwise, she may not know which one he will select. For example, she may have to know completely the political standpoints of the adjudicating judges in a particular case. The system of Supreme Court of the United States, for example, is quite conservative in its views on human rights, equitable rights and citizens' interest. The Chinese Government has no confidence to such an extent that she has to know beforehand the 30 candidates. There is a saying that "parents cannot read the mind of their children". In fact, the Chief Justice is already a selected person under her control in various aspects. I am not saying that the Chief Justice in future must "applepolish", "straddle the fence" or even be without principles. This may not be the case. He may be a person with firm principles, but his principles, political inclination and ideas, or even understanding and thoughts on the law are entirely within the scope of making China feel at ease. He thinks himself to be a person of principle and guts, but he knows which one is to be picked in the selection process. This ordinance has already stipulated that the Chief Executive nominates the Chief Justice, so China should feel rather at ease. Even if this Chief Justice only selects on the basis of the law, experience required, uniqueness of the case and expertise, the Chinese Government has no confidence in him. "Parents cannot read the mind of their children." She does not even have confidence in the Chief Justice selected by herself. I have to ask why she has no confidence as the Chief Executive himself is already a product of a non-democratic system.

Lastly, I can only say there is difference between the amendment moved by the Democratic Party and that moved by the Liberal Party. Our amendment is moved on the premise that the limit 4:1 contravenes the Sino-British Joint Declaration and the provisions in the Basic Law, and on our opinion that whilst one point contravenes, two points may contravene as well and inevitable high autonomy may also be denied completely. In addition, as many Members have said, at last for every agreement already made, she may say take it or leave it. At present with China on the stronger side, in the remaining one

year or so, actually, what protection can we strive for within the scope of self-government in future? I think this is an important point, the last fortress and the last safeguard provided by the Sino-British Joint Declaration for Hong Kong people. If bit by bit can be repealed, then what can we rely on and what can we get hold of?

MR FREDERICK FUNG (in Cantonese): Mr Chairman, we have a consensus that individual Members may go up to take dinner after 6.30 pm whenever necessary. I have just gone for my meal and have not left the Chamber suddenly as the Honourable James TO said. I left the Chamber when the Honourable CHIM Pui-chung was making his speech, but when I heard Mr James TO arguing about what I said, I came down immediately though I have not yet taken my meal, which is not so important. The most important thing is that we know clearly what we are saying without too many colours and flavours. As I do not know by what standard China will select the judges, I do not say in what way China is going to select. Nor do I say now in what way the Hong Kong Government or the British Government will select judges to be judges of the Court of Final Appeal because this is unknown. As for the unknown, we cannot say we can foresee. Even a " fortune teller" cannot predict, so I will not come to such kind of conclusion. I can only say, one of the differences I have just mentioned is that under "two LEEs" proposed method, the Chief Justice will mainly decide on the appointment of judges; but under the original proposal, as there are permanent judges ─ I have already declared this is my assumption ─ and the permanent judges will work on full-time basis, theoretically, the Chief Justice should consult the permanent judges. I have added that the final decision will still be made by the Chief Justice. This is the first point I would like to clarify.

The second point, I agree that what I have suggested has an extra step of procedure, which may be regarded as "cosmetic process" or "creeping through the loopholes in law", but nobody can say this is unlawful. I assume this point not merely because the Attorney General did not reply to me. In my previous speeches, I have repeated several times that I saw Mr Alan PAUL of the Sino-British Joint Liaison Group (I did already mention his name), Mr LEUNG Chun-ying and some senior officials of Legal Department (I do not want to name them), and nobody told me such way was against the law or illegal, but instead they told me this was workable. At today's debate on the Bill, the highest responsible person of the Government's judicial department, that is the Attorney General, did not reply my question and I had stated clearly that no reply from him meant the possibility of such implications. Yet, he did not reply me before 6 million citizens, in the presence of TV and press media which are reporting the debate. I think he admits and agrees, otherwise, there is something wrong with Attorney General's performance of his own duties.

How about "creeping through the loopholes in law" ─ these are Mr James TO's wordings and not mine. Is this workable with only one extra step? I think the most important thing is that whether there is flexibility at last. At last, responsible persons told me that there might be flexibility. I do not know whether Mr LEUNG Chun-ying is a responsible person. He is currently the convenor of the Preliminary Working Committee's Political Affairs Sub-group. He has participation in the eight points of views in the agreement, the senior officials of the Legal Department is responsible person of the British side; the Attorney General Mr MATHEWS is also a responsible person. Therefore, as so many responsible persons told me this would be workable, I cannot say that legally speaking, it is unworkable. Whether this will be adopted or how this will be adopted leaves to the Chief Justice in future. Therefore, I do not think I am telling a bare-faced lie; I do not think I am making a good case for myself; I do not think what I have said is against the procedures and requirements under the law.

These are my clarifications. Thank you, Mr Chairman.

8.10 pm

CHAIRMAN: Does any other Member wish to speak? I think there are other speakers. We will take the supper break now and resume in 45 minutes. I now suspend the sitting.

9.05 pm

CHAIRMAN: Committee will now resume. Before I call on the next speaker, I have had time to pause and consider what effect the Attorney General's amendment to clause 16 would have on Mr Allen LEE's proposed amendment to clause 16. I have come to the conclusion that the Attorney General's amendment, if carried, would not preclude Mr Allen LEE from moving the substance of his proposed amendments to clause 16. I have conveyed this to Mr Allen LEE and he has indicated that if the Attorney General's amendment to clause 16 is carried, he would not proceed with (a) of his proposed amendment to clause 16, which is, possibly a matter of semantics only, in any event, but will be proceeding with (b) and (c), (b) being the substance of his proposed amendment to clause 16. For the benefit of those Members who are not in this Chamber as this is a matter of some importance, when we do come to vote on Mr Martin LEE's amendment when we ought to have a full house, I will repeat this announcement.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I am going to speak very briefly. I speak to support the Honourable Martin LEE's amendment not because he is the leader of our Democratic Party but because he has done follow-up work on the Court of Final Appeal for many years. He has just elaborated in full length his argument and we completely support it.

Let me quote the Honourable CHIM Pui-chung's words on Mr Martin LEE, "Do you think you are completely correct?" The same words should also apply to the Government, which is not necessarily completely correct. When the Government has done something wrongly or improperly, we as Legislative Councillors have the responsibility to put forward our view and propose consequential amendments in the real interests of the public. On the part of the Government, I wonder if the Government, after last year's battle on the Employment (Amendment) Bill, thinks that there is no difference at all "between doing on evil thing and two evil things". Since then, we seem to hear the Government frequently saying, whenever it holds an opinion different from the Members, then it will withdraw a bill if the Government does not accept the amendments passed by this Council. I wonder if the Government has completely lost its confidence. I heard some Members in this Council say that we will not have a Court of Appeal if the amendments are passed or the agreement is not supported. I believe this is not true.

Today the Government uses the tactic of "vote-locking", which again makes us lost in awe. Many government staff are mobilized to follow from the Chamber to the washroom, they are asked where they are going to. This kind of tactics gives me a "familiar" feeling". At rural elections in the New Territories, the village head goes through a name list and looks around for somebody to vote. The Government seems to have copied some of the tactics used in rural elections.

Mr Chairman, I am going to speak briefly on some of my feelings about this Bill. In the past, at debates on motions or bills in this Council, we often heard the Democratic Party Members and the Liberal Party Members talking about the Democratic Party's stand and the Liberal Party's stand respectively. But today, it seems that so far the Liberal Party colleagues have not yet said "What the Liberal Party's stand is". It seems that the Liberal Party does not have any stand today, therefore, the party members perhaps may feel free to vote at their wish. I feel pity for the Honourable Allen LEE. As a leader of a party, his amendment has failed to get full support from the party. Of course, I respect the Honourable Member very much. Even if he cannot get the party's support, or China might have already given him some opinion during his visit to Beijing, he has still put forward his amendment. I think he is a "man" indeed. But from a party's point of view, without full support of party members for his amendment motion means that this party "comes to an end" or the leader of the party "comes to an end".

Mr Chairman, lastly, Mr Allen LEE has just said that usually there are pros and cos in one's words, then how should we make a choice? The Honourable Member said that his choice depends on what is in the best interests of the public and he did choose according to this criterion. Therefore, if I was able to say these words before supper, I would have asked him to do his best in persuading his party members to support his amendment. In fact, as every one knows, the number of Democratic party members plus Liberal party members forms a majority in this Council and any motions supported by these two Parties can be passed easily. Therefore, if all the Liberal party members support Mr Martin LEE's amendment, his amendment can be passed. On the other hand, if our Democratic party members and all the Liberal party members support Mr Allen LEE's amendment, his amendment can also be passed. Therefore, I do hope Mr Allen LEE will do his best to persuade his party members to support the amendment moved by him as the party leader. Thank you, Mr Chairman.

MR MARTIN LEE: Mr Chairman, I would like to reply first of all to the speech of the Attorney General. He said that my amendment is inconsistent with the deal struck with the Chinese Government recently. He may well be right, but I would like to remind him that my amendment is perfectly consistent with the Joint Declaration and the Basic Law, and I would have thought the Joint Declaration is a superior document compared with the recent deal reached by the JLG, because we were told the Joint Declaration was an international treaty, registered with the United Nations; apparently not the JLG agreement.

So he has this difficulty, has he not? Is he to give precedence to the Joint Declaration or will he give precedence to the JLG agreement? But it seems to me that he is sticking to the JLG agreement and not the Joint Declaration. Then is he saying to us that the Joint Declaration is to be ignored?

I was waiting very patiently for an answer to my question as to why there was a change of mind on the part of the Government. To be fair to the Attorney General, he gave that answer, a very straightforward answer. He said, well, the fundamental difference is that there is now an agreement reached. Well, it should not be difficult to reach an agreement with China because after years of waiting, finally the PWC, a body which was condemned by the Governor as illegitimate or in similar terminology, saw fit to make eight points on the earlier version of this Court of Final Appeal Bill and we were all surprised to find the Governor embracing each and every one of them.

I would like to see the day when he embraces all eight proposals from this Council. Well, after he embraced all the eight points coming from the PWC, which is of course an advisory body chaired by the Foreign Minister himself, is there any doubt that China would not agree? I mean, he was already embracing all the terms of the other side, and then, surprise, surprise, he said to us, there is agreement.

Well, I have seen that before. Sir Percy CRADDOCK is the exponent of that theory: any agreement is better than no agreement. I remember that was his philosophy. I remember him, though, in May 1992, just 10 days before his retirement, he asked me "Why is the Chinese Government so difficult?" I looked at him in the eyes, and I said "Well, you asked for it." He said, "They are so difficult because we just made about six months ago an agreement with them on the new airport. Our Prime Minister flew to China and signed this Memorandum of Understanding on the new airport with Mr LI Peng, and under that deal the Chinese side has one month to consider our proposals, and this is the end of the third month and they are still sitting on it." Third month from then. "Why are they so difficult?"

So, I said "You asked for it because in 1984 you made a perfectly acceptable agreement for us in the form of the Joint Declaration. Why did you see fit to enter into subsequent agreement giving to China, surrendering the autonomy to China, at least vis a vis the airport, which is neither defence nor foreign affairs? And if you see fit to break the first agreement by entering into a second one you must be very have to think that China will honour the second agreement." And I said to him, "Brace yourself for the third, fourth and fifth agreement. But after all, Sir Percy," I said, "what good is an agreement?" Indeed what good is an agreement in the form of the Joint Declaration on this Court of Final Appeal? I thought I had clinched a deal with the Chinese side, but what good is an agreement? They just make another one. And the British made that second agreement with them, so how can you blame China? You agreed to break that agreement, the Joint Declaration.

The Attorney General then said why are there no new points. In fact, there are a lot of new points which I shall come to in due course, and it really surprises me that the Attorney General cannot even agree to those points, and I will deal with them in due course. But, certainly I have not heard of a single good point from the Administration.

Again, as expected, the Attorney General raised the prospect of there being a judicial vacuum if this Bill is amended in any way, as per my amendments. Some of them are so positive and good. Well, this is no big deal because the Chairperson of the Hong Kong Bar Association, Miss Gladys LI said, what do you mean by judicial vacuum if the Court of Final Appeal is not to be established immediately on 1 July 1997?" Anybody with any experience in the judicial system in Hong Kong will know it takes a year, maybe longer, for an appeal to reach the Privy Council. So even if the Chinese side cannot establish a Court of Final Appeal on 1 July 1997 but a few months later, so what? Actually Mr LU Ping said earlier, before the agreement was struck, that there is no problem. The Chinese Government is perfectly confident that there will be a Court of Final Appeal set up on the 1 July 1997. So why are the British pretending that Mr LU Ping cannot honour his word?

But the important issue here, Mr Chairman, is that we are concerned with the rule of law. You can compromise on a lot of things but not the rule of law, because once the rule of law is compromised some people will suffer on account of it. It might not be you today, but how can you guarantee that you will not be affected tomorrow? Those of us who claim to treasure the rule of law all look to our people to defend it.

Well, there is one good thing, though, coming from the Attorney General. He did not criticize that criteria I had proposed, although they were criticized by Members of the Liberal Party. As for the Liberal Party, on behalf of their Chairman, I appeal to them to support Mr Allen LEE's amendment. Poor Allen did not even appeal to his Members. Let me appeal to them. If you do not like my amendment, at least support your honourable leader's amendment and let us get it through. As the Honourable WONG Wai-yin says, 15 plus 15 means 30. Simple arithmetic, and I know there are a lot of other independent legislators who will be supporting this amendment.

As for my friend, Mr Jimmy McGREGOR, he said that: "If it was open to us to do it then I certainly would be the first to fall in line if it was possible to change this 4:1 ratio and still find agreement. I would be the first to fall in line." But my friend, my honourable friend, if there was such agreement, in support of an amendment, my amendment or Mr Allen LEE's amendment, if you want to fall in line, let me assure you, you will not be the first. There will be lots of U-turners who would beat you to the head of the line. Please, friend, join the line now so that others will follow you.

And then Mr McGREGOR also said about his desire to have the Court of Final Appeal to be set up at the earliest opportunity, but he says but then China will object. Again let me remind my dear honourable friend of his position in support of the Governor's electoral reform. There are certain basic values in life that have to be fought for. If you only do things which are without risk you will never achieve much in life.

My honourable friend, Mr ARCULLI, mentioned about the support given to this deal by the Consuls General of the United States and Japan. Well, what do you expect these foreign governments to do? Condemn the deal? Do you expect them to go farther than the British Government would go? I can tell you there was one member of the consular corps, a very senior member, who rang my Chambers when I was in court and told my assistant, "Tell Mr LEE I am sorry my Government will be supporting this Bill, or this treaty or this agreement. Tell him I am sorry, but what choice do we have?" And later the same day, his minister actually rang me up and gave the same message. What do you expect the foreign governments to do?

Well, my honourable friend, Mr ARCULLI, may be right to say that the 12 billion dollars, even in US currency, means nothing to the Bank of China, but supposing it is more? Then what? My Honourable friend, Mr ARCULLI, is a very humble man. He does not acknowledge to be an eminent lawyer. I call him an eminent lawyer who unfortunately happens to be wrong because even eminent lawyers can be wrong. Yes, of course all judges who will be appointed or whose names will be on the list will be prequalified, in his words, but even among prequalified judges surely there are judges who have got more expertise in a particular area of the law. That is what this criteria means. Surely, such an eminent lawyer like Mr Ronald ARCULLI would know that. Indeed, he was formerly a member of the Bar and he was senior to me at the Bar. And I do not see any problem there, in subclause (3), because all it does is to give the Chief Justice a discretion. It does not require him to take into consideration. It gives him a discretion, and I cannot understand his statement that an overseas judge invited will somehow call this a Mickey-Mouse court. This is bewildering.

In response to Mr CHIM, it is not exactly easy because I know that he disagrees with me on a lot of things but I cannot understand where. But I was referring to the statement made publicly by the then Chairman of the Board of Jardines, Mr Simon KESWICK, in 1984, when they pulled their headquarters from here to Bermuda. I was not referring to the subsequent listing, and of course Mr Chim knows that aspect much better than I do.

So, Mr Chairman, this is a very important time now because we are soon to vote on this all-important section of this clause. Are we going to have a respectable, credible Court of Final Appeal or are we going to have just any court of appeal which China will accept? Is it a Court that we will accept or is it a court that others will accept for us?

Question on Mr Martin LEE's amendment put.

Voice vote taken.

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

Mr Martin LEE claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We appear to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, 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 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 amendment.

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

THE CHAIRMAN announced that there were 20 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: I should just like to repeat an announcement I have made on the resumption of the Committee stage and that is that contrary to the script, if the Attorney General's proposed amendment to clause 16 is carried, that will not preclude Mr Allen LEE from moving the substance of his proposed amendment to clause 16.

ATTORNEY GENERAL: Mr Chairman, I move that clause 16 of the Bill be amended as set out under my name in the paper circulated to Members.

Clause 16 relates to the hearing of particular appeals and sets out the composition of the Court. It is clear from clause 16(2) that the Chief Justice is not required to hear every appeal, but clause 16(1)(a) might suggest otherwise. I therefore move an amendment to clause 16(1)(a) to avoid such a suggestion.

Mr Chairman, I beg to move.

Proposed amendment

Clause 16

That clause 16(1) be amended ─

(a) by deleting "subsections (2) and (4)" and substituting "subsection (4)".

(b) in paragraph (a) by adding after "Chief Justice" ─

"or a permanent judge designated to sit in his place under subsection (2)".

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, we appreciate the ruling just made by you. As a result of this ruling, we avoid the embarrassment to choose between the Honourable Allen LEE's amendment and the Attorney General's amendment because in fact, the two amendments are comparable. Under the amendment just moved by the Honourable Martin LEE, our Democratic Party hopes that the Chief Justice may not necessarily adjudicate cases on his own and may also appoint others to adjudicate cases. Therefore, the Democratic Party supports the Attorney General's amendment.

MR ALLEN LEE: Mr Chairman, because of your discussion with me and ruling that I can move my amendment on 16(1)(b) and (c), I will support the Attorney General's amendment because it does not affect the main substance of my amendment.

Question on the Attorney General's amendment put and agreed to.

CHAIRMAN: Mr Allen LEE, you may move your proposed amendment to clause 16 and I believe you wish to proceed with paragraphs (b) and (c) of clause 16.

MR ALLEN LEE: Mr Chairman, I have no further things to add because I have made it known on the flexibility of appointment of judges, overseas judges already. I beg to move.

Question on Mr Allen LEE's amendment proposed.

ATTORNEY GENERAL: Mr Chairman, for the reasons given earlier in this debate, I oppose Mr Allen LEE's amendments. They are inconsistent with the JLG agreement on the composition of this Court. I have spelt out clearly what the consequences would be were that agreement to be breached and must therefore ask Members to oppose Mr Allen LEE's amendment.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr SZETO Wah, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Albert CHAN, 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 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 amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Dr David LI, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Timothy HA, Mr Simon IP, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 25 votes in favour of the amendment and 32 votes against it. He therefore declared that the amendment was negatived.

Question on clause 16, as amended by the Attorney General, proposed, put and agreed to.

Clause 18

MR MARTIN LEE: This is a very simple amendment. The effect is to allow even an overseas judge to participate in the work of an Appeal Committee. Of course it is quite likely that there would be, I hope, an overseas judge from time to time in Hong Kong, and there is no reason why he cannot be allowed to participate in dealing with interlocutory matters, for example, as a member of the Appeal Committee. And this amendment originates really from the Hong Kong Bar Association. I see the merit in it and I move this amendment.

Proposed amendment

Clause 18

That clause 18(1) be amended ─

(a) in paragraph (a), by deleting "permanent";

(b) in paragraph (b), by deleting "permanent";

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, this amendment and the amendments to be moved to clauses 40 and 45 propose that non-permanent judges should be able to serve on the Appeals Committee and the Rules Committee and to exercise certain powers of a single judge. At present the Bill provides that only permanent judges may perform these functions. On a practical level, it is unlikely that there will be a need for permanent judges to perform the functions, and it might well be impracticable to ask them to do so. More importantly, it would help to ensure that the powers of the two committees and of a single judge exercised in the consistent manner if they were always exercised by the permanent judges.

And Mr Chairman, as I have said earlier, the nucleus of permanent judges should play a vital role in shaping the development of the Court by their work in the Appeals Committee and the Rules Committee.

I urge Members to oppose this amendment.

MR MARTIN LEE: Mr Chairman, this is a very clear signal that the intention of the Government is not to treat these overseas judges as proper members of the Court. Why should they be excluded if they happen to be in Hong Kong? It does not make sense at all, and as you say, "thou" and "me" are to be differentiated. So, I see no reason why this amendment should not be supported, and I ask Members to support it. I so move.

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are one short of the head count. Are there any queries? If not, the result will now be displayed.

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 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 amendment.

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

THE CHAIRMAN announced that there were 21 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

Question on clause 18, in its original form, standing part of the Bill put and agreed to.

Clause 20

MR MARTIN LEE: Mr Chairman, this is the sort of amendment that I find totally bewildering as to why the Government could not even consider it, and from now on there will be a number of amendments of this nature unless, of course, the Hong Kong Government has been directed by the Chinese Government to say "no" to all Martin LEE's amendments.

This clause says: "This Part applies to appeals in any civil cause or matter", and "civil cause or matter" as defined in clause 2 means "a cause or matter other than a criminal cause or matter." So if it is not criminal it is civil. Now, Part II of this Bill deals with appeals of a civil nature, and Part III appeals of a criminal nature. And the intention, of course, is to catch all appeals, whether civil or criminal, but there are certain types of actions which lawyers will know as not exactly easy to treat either as civil or criminal. There are judicial review applications and applications for writs of habeas corpus. These are extremely important matters and very often it is through these procedures that the liberty of a subject is protected. And very often you could have a criminal trial and in the course of a trial there is a ruling, which is then challenged by appeal, by judicial review, and then you could go further on to appeal. So, what is the nature of this appeal?

Now, the Bar takes the view, with which I agree, that it is much easier and clearer to spell it out under this clause by the addition of some words, so that the whole amended clause would read: "This part applies to appeals in any civil cause or matter ......" Here you add: "...... including applications for judicial review and applications for writ of habeas corpus."

Now, once the amendment is made then it will become extremely clear now that all such appeals from judicial review, applications or habeas corpus will be treated as civil appeals, even though they may arise in the context of some criminal cases. And as a matter of procedure, I can tell Honourable Members that procedures for judicial review and habeas corpus are contained in the Rules of the Supreme Court and they are normally treated as civil in nature. So, by adding these words cannot possibly cause any harm to the Government, and I am waiting for some powerful reason as to why they cannot even accept that.

I so move.

Proposed amendment

Clause 20

That clause 20 be amended, by adding "including applications for judicial review and applications for a writ of habeas corpus" at the end.

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, clause 20 of the Bill states that Part II applies to appeals in any civil cause or matter. It is proposed to add the words "including applications for judicial review and applications for a writ of habeas corpus." I believe that these words are not only unnecessary but could result in bringing all such applications within the civil jurisdiction of the Court.

Under the current law, it is well established that in an appeal in respect of a judicial review or habeas corpus decision may relate either to a civil or to a criminal cause or matter, depending on the nature of the proceedings in which the decision arose. The Bill therefore proposes that such appeals should be dealt with by the Court in either its civil or criminal jurisdiction as appropriate.

A Committee stage amendment I will move to clause 31 of the Bill, which was inspired by the Bar Association to whom I am grateful, will put it beyond doubt that the Court's criminal jurisdiction extends to such appeals. I see no merit in providing that these appeals should always be treated as civil appeals, and that might be the effect of the proposed amendment to clause 20.

So, on legal policy grounds, not because China has told me to do it, I oppose this amendment.

Question on the amendment put and negatived.

Question on clause 20, in its original form, standing part of the Bill put and agreed to.

Clause 22

MR MARTIN LEE: Mr Chairman, under the present rules in cases of appeals to the Privy Council for civil action, it depends on whether the amount of money involved or the value of the matter in dispute exceeds half a million dollars or not. If it exceeds the half-a-million-dollar mark then any person aggrieved of a Court of Appeal decision may appeal to the Privy Council as of right.

It may be a very simple civil action involving running down action ─ negligence, in the negligent driving of a car. If the damages awarded are $500,000 or more then the insurance company for the defendant is entitled to appeal as a matter of right. If it is anything less then the appellant must show to the satisfaction of the Privy Council that the question involved in the appeal is one which by reason of its great general or public importance or otherwise ought to be submitted to the Privy Council. So really, it depends on the value of the matter in dispute.

Now, because of inflation we are told, this threshold is re-set at $1 million so that in future if the Bill is passed in this form any party aggrieved of a decision in the Court of Appeal, provided the subject matter in dispute has a value of more than or $1 million or more, can automatically go to the Court of Final Appeal as of right. But anything less, he must show that it is a matter of great general or public importance.

Mr Justice LITTON before he was appointed straight to the Court of Appeal of course was a very eminent QC and he wrote an article on this point. Here I quote: "Such right of excess to the Privy Council does not hinge in any way upon the justice of the matter. It depends solely on the depth of the losing party's pocket, his willingness to pay and his stamina. The rich are in effect given a tool to hold the poor to ransom in the cause of litigation".

Take the case of a consumer who bought a tiny flat and he found that he was cheated because the area is much smaller for whatever other reason so he takes proceedings in the High Court, not because it is a flat, and we know how expensive these flats are these days, any flat I suppose would be worth more than a million dollars. And he wins before a High Court Judge. The developer appeals to the Court of Appeal which is chucked out because it was wholly unmeritorious. Now the developer under this rule can go to the Court of Final Appeal as of right, forcing the successful consumer either to instruct counsel and lawyers to go all the way or be forced into a settlement. This is the point that Mr Justice LITTON had in mind when he wrote this article.

So why are there two standards of justice then in civil litigation? I have thought hard as to the possible ways to amend this. One way is to remove this threshold so that any party dissatisfied with the Court of Appeal's decision in any civil matter can automatically go to the Court of Final Appeal so that every litigant has to be treated equally.

Alternatively, we require the standard of great general or public importance to be applied to all parties and ultimately I decided on the latter because I do not want to see too many cases, some of which could be frivolous, to go to the Court of Final Appeal. I commend this to Members because those of us who really care for justice, I am sure, will find my proposal attractive because in the example I gave to Honourable Members this developer can no longer take the successful consumer all the way to the Court of Final Appeal because it has got to show merit, and it has got to show that the case involves some matter which is of great general or public importance otherwise that developer may not go any further.

Again I am waiting to hear from the Attorney General on what policy ground this time that he is going to oppose this, what I consider to be a wholly reasonable amendment.

Proposed amendment

That clause 22(1) be amended ─

(a) by deleting paragraph (a);

(b) in paragraph (b), by deleting "other";

(c) by adding -

"(c) with leave of the Court, from any judgment of the High Court, whether final or interlocutory, upon the consent of all parties thereto if the Court, considering the nature of the question involved in the appeal, is of the opinion that such question is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision.".

Question on the amendment proposed.

MR RONALD ARCULLI: Thank you, Mr Chairman, I will try to relieve the Honourable Martin LEE from his suspense just in case the Attorney General does not take the same point that I am about to take on clause 22(1)(a). I only rise to my feet because of the example used about property developers and the flats. The examples I am about to give is probably more real than the one that the Honourable Martin LEE gave. The example I give is a man caught or a woman caught in a traffic accident and the claim awarded is over $1 million, but his lawyer advised him or her that it is worth much more than that and it is worth $10 million. We all know how wealthy insurance companies are. I hope this does not bring about the reply from ─ you know who. But in that instance, if we were to take away access to the Court of Final Appeal of that particular litigant, I suspect we will be doing far more damage to the system than otherwise and I would not wish to take up too much of Members' time but I promise Martin LEE that for every example that he can think of why

clause 22(1)(a) should not be there, I can give him one, if not more than one, example of why it should be.

Thank you, Mr Chairman.

ATTORNEY GENERAL: Mr Chairman, clause 22 sets out the situation in which an appeal lies to the Court in civil cases. It reflects the current system of appeal to the Judicial Committee of the Privy Council by providing for appeals as of right and appeals at the discretion of the Court of Final Appeal or the Court of Appeal. The only change that has been made to the current system is to raise a threshold for appeals as of right from the figure of $500,000 which was set in 1985 to $1 million in order to reflect inflation.

Mr Chairman, the Bills Committee discussed the appeal as of right and queried whether the threshold should be raised. Some Members suggest that this might favour rich litigants. We have heard the re-run this evening. The Administration disagreed with this. The figure of one million relates of course not to the resources of the litigant, but the amount in the dispute. The proposal now before us is that there should be no appeals as of right. This is a surprising move neither the Bar Association nor the Law Society or as far as I am aware anyone else recently has called for the abolition of such appeals and certainly no suggestion was made when the consultation exercise was conducted. Such abolition would mark radical departure from the existing system of appeals to the Privy Council and would restrict existing rights of appeal.

Additionally, Mr LEE would by his amendment abolish appeals as of right thereby effectively restricting the public right of access to the Court of Final Appeal. This is the development which is neither healthy nor conducive to maintaining Hong Kong's stability and prosperity after 1997 and it is not something which this Government would readily countenance. The Administration has been at pains to ensure that as far as possible the existing system of appeal should continue unchanged. This approach has the advantage of continuity and familiarity. The Administration, therefores opposes the abolition of the appeals as of right.

MR MARTIN LEE: Mr Chairman, I thank Mr ARCULLI for his example because in his example he says the Court of Appeal apparently assessed damages at $1 million, of course from appeal from a High Court Judge, but his lawyers say that it should be $10 million. Now if his lawyer is right surely there is something terribly wrong with the Court of Appeal's decision and I see no reason why the Court of Final Appeal should not give leave because the formula there is by reason of its great general or public importance or otherwise. So there is clearly a discretion there ─ the Court will decide the case on its

merits. If the lawyer is wrong, in fact, the Court of Appeal called it right, I would not then expect the Court of Final Appeal to give leave. So justice is done in either situation.

The Attorney General says well, this is the current system. Of course, and I am not suggesting that it is not, but what is the justification of the current system? It may be many years ago because the Privy Council entertained appeals from a lot of British territories, dependent or otherwise. Therefore they like to limit the number of appeals which could go all the way to the Privy Council. Presumably we set a limit but the Court of Final Appeal will not deal with appeals anywhere but from Hong Kong, of course including Kowloon and the New Territories. The Court of Final Appeal is not going to entertain appeals from Macau, for example, or Taiwan so we must look at it anew surely. Why can we not do it, Mr Attorney? Why must you say "because they did it that way. But this is not the Privy Council. A lot of rules have been changed because this is not the Privy Council and you had no difficulty about it but when I try to improve your Bill ─ no, no, no. Why should there be two standards? One effectively for the richer people and one for the poorer people. What conceivable justification is there? I see people shaking their heads in sorrow. But give me a good reason. I beg to move.

Question on the amendment put.

Voice vote taken.

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

MR MARTIN LEE: Division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Dr David LI, 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 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 amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, 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, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

MR MARTIN LEE: Mr Chairman, I have got another amendment also dealing with clause 22. Shall I deal with that first, which is the leapfrogging provision.

CHAIRMAN: You have only got one amendment listed under clause 22, Mr LEE.

MR MARTIN LEE: I have got a leapfrogging one.

CHAIRMAN: I do not know if we are at cross purposes, Mr LEE, but your amendment to clause 22 subclause (1) was in three parts: (a), (b) and (c) and we have just taken a vote on this.

MR MARTIN LEE: Perhaps I was at fault in that I did not move the leapfrogging provision at the same time. This is by the addition of "(c) with leave of the Court, from any judgment of the High Court, whether final or interlocutory, upon the consent of all parties thereto if the Court, considering the nature of the question involved in the appeal, is of the opinion that such question is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to the Court for decision......" Perhaps I should have moved both and then asked you to divide it up for a vote. They are clearly different matters but involving the same clause 22 subclause (1).

CHAIRMAN: I think it is a matter of good order, Mr LEE. You have effectively put forward the whole of your amendments under clause 22. You would be asking me to re-open the voting, which I do not think I would be entitled to do.

MR MARTIN LEE: Mr Chairman, I did give the notice for the addition of subparagraph (c) and these are totally different matters. I could bring on one without the other.

MR ANDREW WONG: Mr Chairman, since you have put the question on the entire clause, I do not think the Chairman should re-open the case.

MR JAMES TO (in Cantonese): Mr Chairman, if you have already mentioned clause 22(1)(a), (b) and (c) and my colleagues have already received, I myself may also accept the result of voting. Though the Honourable Martin LEE did not talk about the "leapfrogging" process in his speech, but at least as far as procedure is concerned, I believe you should not reopen if you have mentioned subclauses (a), (b) and (c) when referring to clause 22. I am not sure whether you have mentioned Subclauses (a), (b) and (c) or just (a) and (b), but we may check this by listening to the recording tape.

MR MARTIN LEE: If the problem lies with Standing Orders, then could I ask Members to suspend the particular Standing Order because it seems to be a great pity that what is otherwise at least a relevant amendment is then excluded by default. If I have dealt with it together, I would have invited you to ask Members to vote on them separately. But both unfortunately fall within clause 22 subclause (1).

CHAIRMAN: The problem is that your motion was that clause 22 be amended as set out in the paper circulated to Members and the paper circulated to Members enumerates (a), (b) and (c) without any split and I certainly was of the view that you were moving the whole of your amendments under clause 22. As we have already taken a vote on clause 22 as set out in the paper that I have just referred to, it is not a question of now suspending Standing Orders but living with the result. I am afraid that we would have to live with that result. I am sorry, Mr LEE.

Question on clause 22, in its original form, standing part of the Bill put and agreed to.

Clause 25, 31, 34, 36, 39 and 49

ATTORNEY GENERAL: Mr Chairman, I move that clauses 25(3)(a), 31, 34, 36, 39 and 49 of the Bill be amended as set out under my name in the paper circulated to Members.

Clause 25 provides for the manner in which leave to appeal may be granted in civil cases. Leave may be granted on condition that the appellant enters into security for the due prosecution of the appeal and the payment of any costs awarded against him. The clause then provides that where such a condition is imposed the Court shall fix the period within which that security shall be entered into and that the period shall not exceed three months from the date and I quote: "of the hearing of the application for leave to appeal".

The Bills Committee pointed out that the hearing of such an application may last for more than one day in which case it would not be clear when the three-month period ends. It is therefore proposed that the clause should be amended so that the three-month period will run from the date on which the application for leave to appeal is granted.

I turn now to an amendment which is put forward in response to comments by the Bar Association. Clause 31 of the Bill sets out the situations in which criminal appeals lie to the Court of Final Appeal. It has always been the Administration's intention that appeals in respect of any criminal cause or matter should, with the leave of the Court of Final Appeal, lie to that Court from the decisions described in clause 31. However, as drafted, the clause may not achieve this intention.

The Bar Association has pointed out that the clause does not refer expressly to any criminal cause or matter and that the statement that appeals lie at the instance of the defendant or prosecutor would appear to exclude appeals at the instance of a party who is neither a defendant nor a prosecutor. An application for judicial review or habeas corpus arising out of a criminal cause or matter could, for example, be made by a person who is neither a defendant nor a prosecutor. It is intended that an appeal to the Court of Final Appeal by such a person should be possible. The Administration is grateful to the Bar Association for pointing out this problem and I now move an amendment that is designed to overcome it.

Clause 34 provides that the Court of Final Appeal, the Court of Appeal or the High Court may grant bail to a person pending the determination of an appeal to the Court of Final Appeal.

The Bills Committee has suggested that clause 34(3) could be improved in two respects. Firstly, by deleting the words "or denied" from the phrase "if a person is refused or denied bail" since they are redundant and secondly by providing that the Court of Appeal as well as the Court of Final Appeal and the High Court may hear a fresh application for bail after it has previously rejected an application. The Administration accepts these suggestions.

Clause 36 provides that the defendant should be entitled to be present at the hearing of an application to appeal and an appeal unless the Court otherwise orders.

The Bills Committee suggested that the circumstances in which the Court can exclude the defendant should be set out. The Administration accepts this suggestion and the amendment provides that the defendant can only be excluded if the Court considers it necessary in the interests of justice or public order or security to do so. This wording is similar to that in clause 47 of the Bill and section 122 of the Criminal Procedure Ordinance.

Clause 39 provides that the Court of Final Appeal Rules Committee can make rules of Court regulating and prescribing the procedure and practice to be followed in the Court. The clause as drafted gives express power to make rules in respect of taxation and as to whether matters may be heard ex parte. The corresponding rule making power in the Supreme Court Ordinance does not contain such an express power and there are advances in deleting from clause 39 the express reference to that particular power.

In particular by not specifying particular powers we avoid any suggestion that there are limitations on the wide general power to make rules. I therefore move an amendment to delete the express reference to taxation and ex parte hearings.

Clause 49 relates to the transition arrangements for any case where leave to appeal to the Judicial Committee of the Privy Council has been granted but where the appeal has not been finally disposed of before 1 July 1997. The clause provides that any such case shall proceed in the Court of Final Appeal.

The Bills Committee suggested that the Court of Final Appeal should have the power to award costs in respect of the unfinished appeal to the Privy Council. The Administration accepts this suggestion and I now move an amendment accordingly.

Mr Chairman, I beg to move.

Proposed amendments

Clause 25

That 25(3)(a) be amended, by deleting "of the hearing of the application for leave to appeal" and substituting -

"on which the application for leave to appeal is granted".

Clause 31

That clause 31 be amended, by deleting "at the instance of the defendant or prosecutor" and substituting ─

"in any criminal cause or matter, at the instance of any party to the proceedings,".

Clause 34

That clause 34 be amended ─

(a) in subclause (3) by deleting "or denied".

(b) in subclause (3)(a) -

(i) by adding ", the Court of Appeal" after "the Court" in both places where it occurs;

(ii) by deleting "or denial".

Clause 36

That clause 36 be amended, by adding ", where it considers it necessary in the interests of justice or public order or security to do so." before "orders otherwise".

Clause 39

That clause 39 be amended, by deleting ", including taxation and whether matters may be heard ex parte".

Clause 49

That clause 49 be amended, by adding after "thinks fit" ─

"and shall have full power to determine by whom and the extent to which costs in relation thereto are to be paid".

Question on the amendments proposed, put and agreed to.

Question on clauses 25, 31, 34, 36, 39 and 49, as amended, proposed, put and agreed to.

Clause 32

MR MARTIN LEE: Mr Chairman, this is Part III now involving criminal appeals to the Court of Final Appeal.

Under this original clause 32, in order to get leave to go to the Court of Final Appeal on a criminal appeal there will be two stages. The first is the appellant, proposed appellant must first of all obtain leave from the Court of Appeal or the High Court which apparently must have dismissed its appeal. The High Court being effectively the Court of Appeal from decisions or verdicts of the Magistrate Courts. Whereas the Court of Appeal would be the appeal court for convictions from the High Court and the District Court. So such an appellant must first of all obtain a certificate from the Court from which it is appealing to the Court of Final Appeal. But even that certificate will not automatically entitle him to appeal to the Court of Final Appeal because he needs, and this is the second stage, also leave from the Court of Final Appeal.

What the Bar has recommended with which I agree is to simplify such procedure so that leave could be given either by the Court of Appeal or the High Court or the Court of Final Appeal and if any, if the appellant has obtained leave either from the Court of Final Appeal or from the Court from which the appeal is prosecuted, then the appeal will be entertained by the Court of Final Appeal and this streamlines the procedure and I so move.

Proposed amendment

Clause 32

That clause 32 be amended ─

(a) in subclause (1), by adding ", the Court of Appeal or the High Court" at the end;

(b) in subclause (2), by deleting "Leave to appeal shall not be granted unless it is certified by the Court of Appeal or the High Court, as the case may be, that" and substituting "The Court, the Court of Appeal or the High Court shall not grant leave to appeal unless, in the opinion of the Court, the Court of Appeal or the High Court,";

(c) by deleting subclause (3);

(d) in subclause (4), by deleting "The Court may when granting leave under subsection (1)" and substituting "The Court may, when granting leave under subsection (1) or after the Court of Appeal or the High Court grants leave thereunder.".

Question on the amendment proposed.

ATTORNEY GENERAL: Mr Chairman, this proposed amendment would introduce another significant departure from the current system of appeals to the Judicial Committee of the Privy Council. Under that system, leave to appealing criminal cases can only be granted by the Privy Council. The Bill reflects that system by providing that only the Court of Final Appeal may grant leave to appealing criminal cases. This has two advantages. First, it will enable the Court of Final Appeal to decide which cases are of sufficient importance to be considered by it in the same way as the Privy Council does. Secondly, it would mean that the current system of appeals is perpetuated to the benefits of lawyers and litigants who are familiar with the system that is tried and tested. Mr LEE's amendment will deprive the Court of Final Appeal of its legitimate means of controlling the type as well as the volume of business which comes before it. There is a real danger that the Court of Final Appeal may be swamped with cases which could and should have been screened up by vigorous application of principle on the part of the Appeal Committee. I urge all Member to reject this amendment.

MR MARTIN LEE: Yes, Mr Chairman, we are dealing with the Court of Final Appeal that would be spending between seven to nine weeks of its time per year. So, even if, by this amendment, we increase the number of cases going to the Court of Final Appeal on criminal matters. I do not suppose it is such a workload that the Court cannot undertake.

I beg to move.

Question on the amendment put.

Voice vote taken.

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

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Dr David LI, Mr SZETO Wah, 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 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 amendment.

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

THE CHAIRMAN announced that there were 21 votes in favour of the amendment and 37 votes against it. He therefore declared that the amendment was negatived.

Question on clause 32, in its original form, standing part of the Bill put and agreed to.

Clause 33

MR MARTIN LEE: Mr Chairman, I am not moving that amendment.

Question on clause 33, in its original form, standing part of the Bill put and agreed to.

Clause 40

MR MARTIN LEE: Mr Chairman, this relates to the setting up of the Rules Committee. Under this clause 40, there shall be a Court of Final Appeal Rules Committee which shall consist of (a) the Chief Justice, (b) two permanent judges, (c) the Registrar, then barristers and solicitors.

I am seeking to amend (b), instead of two permanent judges I want simply two judges so that it could include an overseas judge.

Now, Mr Chairman, I do not expect this Rules Committee to be working throughout the year or indeed working too much except in the beginning. And in the beginning, if we could call on the services of an experienced judge, for example, from the Privy Council, is that not a very good thing that the Chief Justice and the other members of the Rules Committee could benefit from the experience and advice of such an overseas judge who regularly sits in the Privy Council, for example? So I think it is a good idea not to confine these two judges to the permanent judges who might not actually have the experience of an overseas judge. I beg to move.

Proposed amendment

Clause 40

That clause 40(1) be amended, in paragraph (b), by deleting "permanent".

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, I speak in support of this amendment.

I would like to give some additional views on this "Rules Committee". As the Honourable Martin LEE said, actually it is not necessary to formulate procedures frequently. Especially, at the initial stage, I believe we should let international investors know we are formulating these procedures. In fact, these procedures usually involve one's rights and interests including the appeal procedure. For example, there is a very authoritative thick book on civil proceedings called the "White Book". The whole book is white, comprising two volumes and containing many procedures concerning appeal. In fact, in many major cases, especially appeal in civil cases, the chance of winning or losing usually depends on the procedures. Therefore, I hope that overseas judges and more experienced judges will be allowed to participate in the discussion and formulation, and the investors and others in the whole world will see that we have the participation of some well-experienced overseas judges who have authority in these procedures. I think in this way, we can boost the confidence of others.

ATTORNEY GENERAL: Mr Chairman, I have already explained the Administration's opposition to this amendment when I spoke on the position on the amendments to clause 18(1). In the view of the Administration, it is appropriate for the permanent judges alone to sit on the Rules Committee. We must look to the nucleus of permanent judges working together regularly to shape the development of this Court, particularly in the early days. I urge Members to reject this amendment.

Question on the amendment put.

Voice vote taken.

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

MR JAMES TO: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Dr David LI, 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 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 amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, 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, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

Question on clause 40, in its original form, standing part of the Bill put and agreed to.

Clause 42

MR MARTIN LEE: Clause 42 deals with the Registrar of the Court of Final Appeal. Subclause (2) says that the Registrar shall be appointed by the Governor and shall possess the same qualifications as are required for appointment as a Registrar of the Supreme Court. So we are dealing with the person whose rank is similar to that of the Registrar of the Supreme Court. The holder of that office is not unfamiliar to many of my colleagues in this Council.

Under the present law, the Registrar of the Supreme Court is one of the Judicial Officers whose appointment must be recommended by the Judicial Service Commission. So, I would have thought that it dents to logic that the Registrar of the Court of Final Appeal who is comparable in every way to the Registrar of the Supreme Court should only be appointed after recommendation from the Judicial Officers Recommendation Commission because such a person, once appointed to this post, as we know from bitter experience, could be very difficult to remove and I cannot, for the life of me, understand why the Government will not even accept this amendment which would be adding a few words after the Registrar shall be appointed by the Governor then add "acting in accordance with the recommendation of the Judicial Officers Recommendation Commission". Is it suggesting that the Judicial Officers Recommendation Commission would act unreasonably or is it because it is thought that the Governor would not have the support or would not have the confidence, or the other way round that the Judicial Officers Recommendation Commission will not have the confidence of the Governor? So, I would move this amendment to make sure that the Registrar of the Court of Final Appeal would be a proper person recommended by this body of people who are very familiar with judicial appointment.

Proposed amendment

Clause 42

That clause 42(2) be amended, by adding "acting in accordance with the recommendation of the Judicial Officers Recommendation Commission" after "Governor".

Question on the amendment proposed.

MR RONALD ARCULLI: Thank you, Mr Chairman. I shall be very brief. I suspect the difference between the Registrar of the Court of Final Appeal and the Registrar of the Supreme Court is simply that the Registrar of the Court of Final Appeal will have entirely, and I emphasize, entirely administrative functions. He does not sit as a master and he does not preside over cases that are argued in front of him, so there is no reason why we need to go to the Commission for that particular recommendation. Thank you.

ATTORNEY GENERAL: Mr Chairman, the Administration does not support this amendment which is considered to be premature. The Judiciary is considering the precise nature of the duties of the Registrar of the Court of Final Appeal and whether the Registrar should be appointed in the same way as judges. If at a later date, it is decided that this should be the case, an appropriate amendment to the Judicial Services Commission Ordinance will be proposed. I urge Members to reject this amendment.

MR MARTIN LEE: Yes, my honourable friend, the eminent lawyer, ARCULLI has jumped his gun, clearly because the Attorney General is still considering the duties of his Registrar. It is not exactly easy to second guess the Government, is it? Now, but be that as it may, since he is going to occupy a position which likens him to the Registrar of the Supreme Court because he must possess the same qualifications as are required for the appointment of the registrar of the Supreme Court. Why is it that the Governor can simply appoint such a person whoever he or she is to be the Registrar of the Court of Final Appeal whereas the Governor cannot appoint the Registrar for the Supreme Court? It really is funny. I beg to move.

Question on the amendment put.

Voice vote taken.

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

MR MARTIN LEE: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Dr David LI, 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 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 amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, 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, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

Question on clause 42, in its original form, standing part of the Bill put and agreed to.

Clause 45

MR MARTIN LEE: I am not moving.

Question on clause 45, in its original form, standing part of the Bill put and agreed to.

Clause 46

ATTORNEY GENERAL: Mr Chairman, I move that clause 46 of the Bill be amended as set out under my name in the paper circulated to Members. Clause 46 gives a single judge to the Court of Final Appeal the power to do certain things. It is intended that only permanent judges of the Court should have these powers and the amendment will make this clear.

Mr Chairman, I beg to move.

Proposed amendment

Clause 46

That clause 46 be amended ─

(a) in the heading by adding **"permanent"** before **"judge".**

(b) in subclause (1) by adding "permanent" before "judge" where it first occurs.

(c) in subclauses (2) and (4) by adding "permanent" before "judge".

Question on the amendment proposed, put and agreed to.

Question on clause 46, as amended, proposed, put and agreed to.

Clause 47

MR MARTIN LEE: Mr Chairman, this is my last amendment for today, this evening. This deals with sittings and business.

Subclause (3) as the Bill now stands provides that the Court or the Appeal Committee may, if it considers it necessary in the interests of justice or public order or security, direct that save as provided in subsection (4) no person other than a person nominated by the Court or the Committee shall be in Court or in the building in which the Court or the Committee sits.

Now, so that allows various people in effect not to be allowed to be in Court. Capital letter "Court" which is defined to mean the Court of Final Appeal or the Appeal Committee.

I find this unduly strict and I would suggest to Honourable Members that persons should not be excluded unless they are found to be impeding or disrupting proceedings. If they are not, I see no reason why they be excluded.

I suppose one very important difference between trials in Hong Kong and trials up north is that our trials are always open to the public whereas in the mainland it is very difficult in fact to attend a criminal trial, even if a family member, particularly when the accused is a dissident.

Of course I hope that such practice would not be spread into Hong Kong. But I do not see any reason why people who are not found to be impeding or disrupting court proceedings should be excluded. So I propose the substitution of these words "any person found by the Court or the Appeal Committee to be impeding or disrupting proceedings may be removed from the courtroom or such other room in which the Court or Committee is sitting".

I have also introduced the phrase "the courtroom or such other room" to denote a place and not the "Court of Final Appeal".

Subclause (4) in the original Bill reads: "Subsection (3) shall not apply to a person who is required to be in the Court or building". "Court" in that context means the "Court of Final Appeal". So bearing that interpretation in mind whenever the word "Court" in the capital letter appears it means the "Court of Final Appeal". So if I could paraphrase this clause it means: Subsection (3) shall not apply to a person who is required to be in the Court of Final Appeal or building by virtue of his office or profession or in order of a court (small letter "court") or who is otherwise required for the purposes of any proceedings to be in the Court of Final Appeal or building or to any one person representing a newspaper or news agency".

It is not exactly clear at all that when we say "Court" in the capital we mean the "Court of Final Appeal". So are we referring to parts of the building or the actual Court which comprises of judges? Because once you mean the Court of Final Appeal you are talking about five judges. So the amendment will make it clear instead of court or building, we have courtroom or such other room to make it clear that we are talking about a place. Now I would have thought that when I reach this final amendment, I could persuade the Administration to agree to it, if only to give credit to the two amendments which I did not move.

Proposed amendment

Clause 47

That clause 47 be amended —

(a) in subclause (3), by deleting everything after "subsection (4)," and substituting "any person found by the Court or the Appeal Committee to be impeding or disrupting proceedings may be removed from the courtroom or such other room in which the Court or the Committee is sitting".

(b) in subclause (4), by deleting "Court or building" wherever it occurs and substituting "courtroom or such other room".

Question on the amendment proposed.

MR RONALD ARCULLI: Thank you, Mr Chairman, if my recollection serves me right, the way the Bill is drafted in its present form is reflected in terms of the powers of our other Judicial Officers or Judges in terms of making an order excluding either the public or certain members of the public for the reasons that are stated clearly in the Bill. Indeed, and I might be shot down the second time tonight which I hope at least some of my colleagues will forgive me, we consider this provision when we considered the Public Order Ordinance not so long ago and there was a great debate during our deliberation in Bills Committee as to whether or not the clauses were too wide. As it transpired, I think the wording that we adopted was fairly close if not identical to the wording in the Bill. So, for those two reasons, Mr Chairman, I will oppose the amendment.

ATTORNEY GENERAL: Mr Chairman, I am fated yet again to rise to oppose this amendment. Clause 47 gives the Court and the Appeal Committee to the Court the power to exclude some but not all persons from the Court of Final Appeal in which it sits if it considers it necessary in the interest of justice or public order or security. This power is similar to that currently given to Judges and Magistrates in Hong Kong. The amendment that is proposed to clause 47 however would limit that power so that only a person found to be impeding or disputing proceedings could be removed. This would mean that the Court could not exclude people who are clearly planning to disrupt proceedings or whose presence might otherwise be contrary to the interest of justice or public order or security. This would put the Court of Final Appeal, with regard to its ability to protect itself and the integrity of is proceedings, in an anomalous position or being weaker than that of any other court in Hong Kong. I believe it will be self-evident that the Court of Final Appeal should have the necessary power to protect the proper administration of justice and therefore I oppose this amendment and urge Members to do the same.

MR MARTIN LEE: Mr Chairman, it has been a long day and night and I thank you and Honourable Members for the patience although not enough support. I only miss one amendment which is not bad, I suppose. But these amendments just will not go away, particularly the major amendments. They will come back to haunt Honourable Members. That is, if I get myself re-elected on 17 September.

Question on the amendment put.

Voice vote taken.

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

Mr James TO claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We appear to be one short of head count. Are there any queries? If not, the results will now be displayed.

Mr Martin LEE, Dr David LI, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, 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 amendment.

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

Rev FUNG Chi-wood abstained.

THE CHAIRMAN announced that there were 20 votes in favour of the amendment and 36 votes against it. He therefore declared that the amendment was negatived.

Question on clause 47, in its original form, standing part of the Bill put and agreed to.

Schedule

ATTORNEY GENERAL: Mr Chairman, I move that item 13 of the Schedule to the Bill be amended as set out under my name in the paper circulated to Members. The Schedule to the Bill contains consequential amendments to other legislation. Item 13 relates to the Criminal Procedure Ordinance and contains an amendment to provide that the defendent should be entitled to be present in the Court of Appeal of the hearing of an application for leave to appeal and of an appeal unless the Court for appeal otherwise orders. It is proposed that this provision be amended in the same way as the provision in relation to appeals to the Court of Final Appeal by specifying the grounds on which the court makes move the defendant. It is also proposed to retain the existing provision in the Criminal Procedures Ordinance stating the Court of Appeal may pass sentence on a person even if he is not present.

Mr Chairman, I beg to move.

Proposed amendment

Schedule, item 13

That Schedule, item 13 be amended, by deleting paragraph (c) and substituting —

"(c) by repealing section 83U(1) and (2) and substituting -

"(1) A defendant shall be entitled to be present at the hearing of an application for leave to appeal and an appeal unless the Court of Appeal, where it considers it necessary in the interests of justice or public order or security to do so, orders otherwise.".".

Question on the amendment proposed, put and agreed to.

Question on schedule, as amended, proposed, put and agreed to.

Council then resumes.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

HONG KONG COURT OF FINAL APPEAL BILL

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

Question on the Third Reading of the Bill proposed and put.

Voice vote taken.

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

MR MARTIN LEE: Division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

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

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

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

Mr Frederick FUNG, Miss Christine LOH and Ms Anna WU abstained.

THE PRESIDENT announced that there were 38 votes in favour of the motion and 17 votes against it. He therefore declared that the motion was carried.

Bill read the Third Time and passed.

Second Reading of Bill

MANDATORY PROVIDENT FUND SCHEME BILL

Resumption of debate on Second Reading which was moved on 14 June 1995

Question on Second Reading proposed.

MR HENRY TANG: Mr President, a Bills Committee, chaired by myself was formed to study this Bill on 16 June 1995. The Bills Committee and a subcommittee has held 12 meetings including 11 with the Administration and considered views from 16 deputations and five written submissions.

Members of the Bills Committee have divided views on the Bill.

Those Members who support the Bill are of the view that, to cater for the wider interests of the community and the need of the general public for some form of compulsory retirement scheme, the Mandatory Provident Fund (MPF) is acceptable.

The views of Members who do not support the Bill are generally summarized below:

(1) the primary objection is that the Bill is hollow with many of its key provisions of the MPF Schemes being left out or to be worked out. The two-stage approach (that is, the enactment of the principal Ordinance in the current Legislative Session followed by subsidiary legislation in the next Session) is not acceptable. It would be irresponsible to pass this Bill without implemented legislations fully considered and fully debated. It would be tantamount to signing a blank cheque in passing the Bill.

(2) With the expected change in Members in the Legislative Council in the new term, there might be the possibility that new Members who, in the course of scrutinizing the subsidiary legislations, may find the provisions in the principal Ordinance passed by current Members unacceptable. This will be a waste of time and effort of both the old and the new Members.

(3) The MPF Schemes cannot provide adequate retirement protection for the elderly and for the low-income workers who are most in need of such protection.

(4) The MPF is untried and untested. Many practical difficulties (for example, interface arrangements between the existing occupational retirement schemes and the MPF Schemes, portability, arrangement for self-employed persons, casual workers and so on) are envisaged. These may make the MPF Schemes unfeasible and need more detailed study.

(5) Some Members are of the view that unless there is more government participation and the MPF Authority to govern the schemes is strengthened, they would not support the Bill as such.

(6) At last, the Government's financial support to the MPF Schemes is sadly insufficient.

Moreover, some Members find the Administration's attitude of "MPF or nothing" objectionable.

The Bills Committee has raised many concerns on the Bill and some of the major concerns are highlighted below:

First, the Approval for Subsidiary Legislation, the Effective Date of Operation, Subsidiary Legislation and Schemes.

As many key provisions and important features of the MPF are not specified in detail in the Bill, but in due course must be dealt with by subsidiary legislation. A number of the Schedules to the Bill are completely empty or incomplete. A majority of Members of the Bills Committee therefore consider it necessary to propose Committee stage amendments to subject all commencement notices, schedules, regulations and rules to be made under this Bill to the positive approval procedure on a perpetual basis, that is, approval by resolution of the Legislative Council under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1). As an additional safeguard, this Council will be specifically empowered to withhold approval of commencement of any provision of the Bill unless its supporting regulations or rules (if any) are in place.

The Administration only agrees to submit all subsidiary legislation made under clauses 44 and 45 up to the commencement of clause 6 of the Bill in its entirety be approved by resolution of to the Legislative Council.

I shall elaborate on the rationale and the argument for these Committee stage amendments when I move them as Chairman and on behalf of the Committee during the Committee stage.

Secondly, on the Compensation Fund

To meet the concern of the Bills Committee that the Mandatory Provident Fund Authority (MPFA) should not be allowed to determine whether there is fraud or misfeasance involved, it does involve public funds, the Administration is willing to accept the suggestion that the MPFA should seek a determination by the court before the fund can be used for compensation. Committee stage amendments will be proposed by the Administration accordingly.

Third, regarding the regulation of trustees

Trustees will play a crucial role in the MPF scheme. The Bill specifies a framework for approving and regulating trustees.

The Administration has taken note of Members' concern that the MPFA should have sufficient regulatory powers over trustees and will be moving the necessary Committee stage amendments to this effect.

On the residual provident fund schemes

Members are concerned that the drafting of clause 22 does not guarantee the existence of a residential provident fund scheme. The Administration will move Committee stage amendment to make a firm commitment that nobody will have to face the difficulty of not being able to find a scheme operator.

Fifth, on the tax status of benefits and contributions

Since employers contributions are tax deductible, some Members and deputations consider that employees' contribution should also be non-taxable. The Administration explains that it is not its intention to allow employees' contributions to be tax deductible, as it would constitute untaxed income. Due to the charging effect, the Bills Committee is not able to propose any Committee stage amendment in this area.

Regarding the low-income earners

As many Members express concern that MPF will do nothing for today's elderly, and for low income earners the Administration points out that:

> The MPF is employment related and will provide enhanced financial security for employees and the self-employed after they retire. The Comprehensive Social Security Assistance Scheme exists to provide assistance for those persons, including the elderly, who are in genuine financial need.

Regarding Interface with Occupational Retirement Schemes Ordinance (ORSO)

The interface arrangement with the existing occupational retirement schemes is an area of considerable concern to Members and deputations. In response to their concern, the Administration is prepared to move Committee stage amendment to the effect that relevant scheme members and their employers operating registered ORSO schemes will be exempted from the provisions of the MPF Ordinance, provided that these schemes can satisfy minimum requirements to be specified in the MPF Ordinance. This will enable the Administration to have further consultations with parties concerned before subsidiary legislation on exemption arrangement is developed in detail. Existing schemes will be able to operate without any disruptions.

Industry MPF schemes

As many Members have expressed concern that employees in certain trade groups or industries (such as construction sites, restaurants) and their employers may find it difficult to contribute to MPF schemes, it is suggested to set up industry MPF schemes to cater for the special circumstances of workers in these industries.

The Administration sees the merits of industry schemes but will need to develop specific regulations and rules to facilitate their establishment.

The portability of benefits is one of the major areas of concern for the Bills Committee Members, particularly on the administrative cost involved and implementation problems.

The Administration states that when an employee leaves the employment of his employer, the employee can make an option regarding his accrued benefits. Any one of the options should not incur any significant cost of transfer because the transfer procedure is relatively straight-forward.

In conclusion, it is agreed that Committee stage amendment will be proposed by the Administration to provide that details on portability and transferability of accrued benefits would be set out more clearly in the subsidiary legislation.

Relationship between the MPF and the severance payment/long service payment schemes

Some Members express doubt on the rationale behind the off-setting provisions between amounts paid out under the severance payment (SP) and the long service payment (LSP) schemes.

The Administration states that its policy intention is to enable a long established statutory requirement under the Employment Ordinance to continue. In the longer term, the Administration may believe that definitions of LSP and SP need to be re-examined by the Labour Advisory Board in the context of the MPF.

The Honourable LEE Cheuk-yan will be moving a Committee stage amendment on this issue.

Exemption for "domestic helpers/servants" and hawkers

In response to Members and deputations' concern on enforcement, the Administration has agreed to propose an amendment to exempt "domestic employees and their employers on grounds of enforcement difficulty.

Before closing, I would like to thank Members of the Bills Committee, representatives of the Administration and the Legislative Council Secretariat staff for their strenuous effort in the scrutiny of this complicated Bill within a short span of time.

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

MR TAM YIU-CHUNG (in Cantonese): Mr President, pursuant to Standing Order 30(1), I move to adjourn the debate on the Mandatory Provident Fund (MPF) Scheme Bill. The reason being that only the principal legislation of the Bill is now in place. My intention to adjourn the Second Reading of the Bill is to give the Administration adequate time to complete its work on all subsidiary legislations for submission to this Council at one go.

The Secretary for Education and Manpower wrote me a letter a few days ago, with a view to dissuading me from proposing an adjournment to the debate of the Bill. Nevertheless, the five points put forth by him could not convince me to drop the motion. Now I would like to respond to his arguments.

First, regarding the Administration's assertion that Members should have the opportunity to vote on the MPF Scheme now, I must point out that the Scheme only has a framework thus far. If we are asked to vote in support of it, what specifically are we supposed to support? If it is about setting up provident fund schemes, we have already passed a motion a long time ago to indicate our stand clearly. Nevertheless, the provident fund scheme that the Administration now introduces to this Council is obviously an incomplete set.

Second, the Administration argues that if the legal framework of the Scheme is not passed now, further delays will cause public aspirations to fall through. However, what I am now proposing is only to adjourn debating the scheme, rather than to vote against it. When the Administration has finished working on the whole Scheme and introduces it in entirety to this Council, it can be implemented smoothly after enactment. Therefore, the problem of causing public aspirations to fall through actually does not exist.

Third, the Administration claims that it will amend the principal legislation, that there is no need for adjournment because associate subsidiary legislations will have to be endorsed by the Council before the Scheme may come into effect. My response is that the Scheme as it is has many technical problems. If we do identify some insurmountable problems while looking at the specific details of the subsidiary legislations, the enacted principal legislation will leave us little room to change our mind.

Fourth, the Administration says that adjournment will result in delay, hence reducing the benefits which the Scheme will offer to the public. This is a misleading argument. Even though the principal legislation is passed today, the Government will still find it impossible to implement it tomorrow. Moreover, formal commencement of the Scheme cannot take place until the subsidiary legislations have been passed.

Lastly, the Administration points out that early passage of the principal legislation could enable the establishment of the Mandatory Provident Fund Authority (MPFA) to commence formulating the subsidiary legislations. This argument is, nevertheless, contradictory to the above four. In fact, even if the Administration starts the MPFA recruitment process as soon as the principal legislation is enacted, the MPFA still needs time to co-ordinate drafting of the legislation. Similarly, if the legislation is not passed, the Administration may continue with its current practice of assigning officials of the Education and Manpower Branch to handle related tasks.

Moreover, the Administration remarks that it cannot keep putting up retirement protection schemes endlessly and that it will make no further proposals if the MPF Scheme is rejected again. I would like to point out that my proposal to defer passage of the principal legislation is not an attempt to reject the Bill. Postponement of the Bill will give the Administration more time to prepare the subsidiary legislations. It can still submit the Bill to this Council in the next legislative session. After all, this is a piece of legislation that affects workers of the whole territory. I consider it irresponsible on the part of the Government to wash its hands of it if the Bill is rejected.

In today's newspaper, Professor CHOW Wing-sun of the Hong Kong University who has always been strongly supportive of establishing MPF schemes calls on Members to defer taking a resolution on the MPF Bill. I would like to refer Members to some of his arguments. Professor CHOW queries what it may reflect even if the principal legislation of MPF is passed. He believes that Members opposing the Bill will keep on rejecting it and that views in society will remain divergent. So when details of the legislation are presented to this Council at a later stage, there will be another heated debate and even a revocation of the spirit of the original principal legislation. What purpose can it serve under such circumstances? While the MPF Scheme will not commence until 1997, the Chinese side, on the other hand, has expressly indicated that it will not recognize the Scheme and be responsible for its implementation before an agreement on the Scheme can be reached at the Sino-British Joint Liaison Group. Given these circumstances, are we supposed to review the Scheme in 1997 while it has yet to be implemented. Professor CHOW further points out that he cannot see any merit in forcing through the legislation except maintaining the credibility of the Government. Therefore, whilst he supports the MPF Scheme system in principle, he hopes that the Administration will postpone this Bill. In the first place, this would give Members an opportunity to closely look at the Bill.; and in the second place, it would avoid the situation under which a rejected MPF Scheme Bill makes it even more difficult for the people of Hong Kong to establish a retirement protection system.

Mr President, though I move to adjourn debating the MPF Scheme Bill, it does not mean that I am totally opposed to solving part of the retirement protection problems by way of provident fund schemes. On the contrary, I believe that the public are all aware of the Administration's work on old age retirement schemes over the past year, which has been more active and intensive than its total efforts made in the past 19 years. I also hope that government officials will keep up with their efforts in the coming year, so as to have the legislation drafted properly and to bring about an early materialization of the provident scheme.

Mr President, with this remarks, I beg to move.

Question on adjournment proposed.

MR FREDERICK FUNG (in Cantonese): Mr President, I support this motion and am opposed to the Mandatory Provident Fund Scheme. I object to the Scheme because the Administration had always planned to introduce an old age pension plan. Yet all of a sudden it was scrapped and replaced by this scheme which has never lived up to the expectations of Hong Kong people. To the elderly people in particular, this change is like substituting a lemon with an orange. In view of the Administration's nonacceptance and change of course, I would, under the circumstances, support any motion which may veto, impede or prevent passage of the Bill besides indicating my objection to it.

MRS ELSIE TU: Mr President, the subject of Mandatory Provident Fund, Central Provident Fund, Old Age Pension and so on has been discussed for many years and I think if we would defer this Bill again, it would be very disappointing for the elderly people who think we are just playing games with them. I think that the Bill as it stands could be passed and we could insist on having improvements in the future. But we had a shell of the Bill and I think it can be worked upon in the next Session. But I do think that it should be passed this time. I do not agree with people being led up the garden path time after time and therefore I would vote against deferring the Bill.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party supports halting the discussion on this motion, because we feel that as of today study of the Bill has been conducted in a very loose manner. During the whole process of examination, we have noted a lot of loopholes in the Bill. As such, we support adjourning the debate.

These are my remarks.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the Honourable Elsie TU said earlier that it would be very disappointing for our elderly people if we postpone this Bill regarding the retirement protection system. However, our senior citizens have kept telling me that they are opposed to the Mandatory Provident Fund Scheme because such a scheme will not benefit any old people now in the whole territory. My personal views, nevertheless, are that the provident fund system should only be seen as secondary protection whereas the primary protection should come from the Old Age Pension System. It is sequentially erroneous for the Administration to work on the secondary protection before handling the primary. Therefore, I support adjourning the debate. In the meantime, I hope that the Administration will reintroduce an Old Age Pension Scheme (OPS) to this Council, so that the primary protection is in place before it proceeds with secondary protection. Without fundamental protection from the OPS, elderly people of Hong Kong will not be benefited. Therefore, I am in support of adjourning the debate on this Bill and hope that, before its resumption, the Administration will introduce an OPS Bill to this Council.

MR PANG CHUN-HOI (in Cantonese): Mr President, I have said that I would not offer my comments in this Council, regardless of whether the matter at issue is mandatory pension scheme or central provident fund. I cannot, however, stand anymore today. What actually do we want? Of course it would be most desirable to have a handsome windfall from the sky for distribution to the people of Hong Kong. But is it possible? Certainly the Administration has made many circumambient, not entirely honest and displeasing, moves. On the issue of workers' retirement protection, it has done nothing and kept making false representations. Honestly speaking, it appears that we still respect the senior citizens and

generously wish to give them some money. I am very old too, but has anybody given me any money? Now we keep on squabbling over the ways to address problems facing the old people but want no part in any retirement plans, why? Because such plans will require our workers today to pay their own share of contribution. They do not want the plan so long as they have to contribute to it. Yet on the other hand, they want to have money when they are old. Let us make this clear. You too will be getting old someday, young friends. If you are reluctant to contribute now, then what can be done in future? Be it central provident fund scheme or retirement protection plan, you contribute your share and the employers pay theirs. Nevertheless, you want protection, to get the money but do not want to pay. How regressive this attitude is! There has not been any results over the past few decades, and I do not expect to see any in future.

Now we have trade unions which show deep concern about the interests of the labour sector. These unions always fight for this and that, in the belief that only they could accomplish their demands. Indeed, I am an old man now, too old to compete with you. I do hope that those of the labour sector will really do something good. Shall we introduce the central provident fund scheme? Should we contribute to it? Are there any risks? As a matter of fact, which kind of protection will not involve risks? Our views have remained unchanged.

Mr President, I object to adjourning the debate.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, according to what I know, at 11 o'clock the sitting will ...... I want to ask whether you can make a ruling; if so, I hope you ...... *(laughter)*

PRESIDENT: There is no compulsory time for the sitting tonight. It seems to me that if we could take a vote on the motion to adjourn, we would at least know where we stand tomorrow.

MR MARVIN CHEUNG: Mr President, my views on the MPF proposals are well-known and this is not the time for me to rehearse them. I would hope that I would have the opportunity to speak on the substantive motion and to vote against the proposal, but I do support the motion to adjourn for the very reasons articulated by the Honourable TAM Yiu-chung.

I do not think I am exaggerating the fact that I have probably read the draft Bill more carefully than most other Members in that I have come up with a number of questions to the Government. An inescapable conclusion in reading the Bill is that it has been hastily put together. Every single difficult issue has been galloped over and deferred to subsidiary

legislation. I do not think that this Council has ever been asked to pass such a major piece of legislation with so many bits left open. I accept the argument that this could eventually be dealt with by subsidiary legislation and indeed the Government has promised for the first time to allow most of all the subsidiary legislation to be vetted by this Council through a positive process, but there is no substitute for asking this Council to consider this proposal in the light of all the facts. You are simply being asked to approve this proposal without knowing where it is going to lead you.

Therefore, I would urge you to defer consideration of this Bill until all the details are known and as stated by the Honourable TAM Yiu-chung, this will in no way slow down the implementation of the scheme because the Government has admitted to us that it would take them at least two years to work out all the details by which time there will have been ample opportunity for our successor Council to fully consider the implication of this proposal and in their wisdom, pass it or reject it as they see fit.

Thank you.

MR JAMES TIEN (in Cantonese): Mr President, I have just come to realize today that the Honourable PANG Chun-hoi is the only one left in this Council who truly speaks on behalf of the labour sector. He really touches the point that the issue of retirement protection has been under our discussion for so many years: from central provident fund to old age pension, and then back to some sort of mandatory retirement protection. Other Members who maintain why the Bill should be deferred to September have put forth their views under different reasons. I believe that the sole reason behind the Honourable TAM Yiu-chung's suggestion relates to the Preparatory Committee, which has not indicated its position on the issue on account of China's allegation that they have not been notified by the British side at the Sino-British Joint Liaison Group. As a matter of fact, they do not have strong objection to the Bill as a whole in principle. On the other hand, the Honourable LEE Cheuk-yan and the democrats want to revert to the Old Age Pension Scheme (OPS). They anticipate that they may secure more than half of Legislative Council seats in September 1995. By that time they can move a corresponding amendment and then reintroduce an OPS Bill in September. But the fact is that the Administration will not do any other things if the Bill before us is rejected. What then will happen to the working class? Employers may be overjoyed to realize that, after so much ado, much circling and a few "U-turns", they do not need to make any contributions at the end. Many employers may consider this a better development. The Liberal Party, however, does not agree. Since we have convinced the General Chamber of Commerce, the Federation of Hong Kong Industries and so many employers to contribute 5% for the benefit of future retirement life of the working class, we do want to do this job as best as we can.

Mr President, the Liberal Party does not support this motion.

MR SZETO WAH (in Cantonese): Mr President, I wish to add a note to what the Honourable James TIEN said just now.

Mr TIEN is the representative of employers whereas the Honourable PANG Chun-hoi represents the labour side. According to Mr TIEN, Mr PANG is the only one who really represents the interests of the labour side. This is what appears to be the case in the eyes of the representative of employers.

MR ALLEN LEE (in Cantonese): Mr President, on the issue of retirement protection scheme, I recall that the Honourable LAU Chin-shek and I had had some discussions back in the '70s. Over these years, I have always looked forward to a concrete provident fund scheme coming into being. We have talked about this for almost 20 years. Now, the Administration has accepted this principle and introduces a Mandatory Provident Fund Scheme to which both employers and workers are required to contribute. I do not know what the Honourable Marvin CHEUNG is talking about and I cannot see why he objects. Perhaps it is because the time he spent in studying is very short, and in the Council also very short ─ short in terms of having a comprehensive study of the provident fund scheme.

Today the Council is discussing the provident fund scheme, a retirement protection system. Members of the Democratic Party rampantly accused us in public of not supporting retirement protection. Since when have we not supported old age retirement protection? On this contribution scheme alone, I have had a lot of discussions with your respected senior the Honourable PANG Chun-hoi, a veteran of the working class. Where were you when he was a worker? Now we have such a scheme in place, but you object to it for political reasons and wish to reintroduce the old age pension plan. Do you know what an Old Age Pension Scheme would become after the Hong Kong Special Administrative Region (SAR) Government is established? What we are doing is for the benefit of the needy old people. To those who are in need of relief, we have to shoulder our social responsibility and give them assistance. That is why we have asked the Governor Mr PATTEN time and again, as we are asking him here again, to increase financial assistance to the needy old people from about $1,800 to $2,500. Do you not ever distort the truth and tell the public that we do not support this proposal. We are in support of it. We consider it necessary to give impetus to this move and hope that the Governor will say yes to its implementation when he delivers his policy address in November.

Today, friends of the business sector are willing to shoulder the cost of a provident fund scheme. As the Honourable James TIEN has rightly pointed out, some employers may be pleased to see further delays and more discussions, and the retirement protection plan being stalled for a couple of years more. Why should the business sector support such a scheme? They have to pay the cost out of their own pockets. If a factory has 200 workers, then the employer has to pay 5% of the total monthly salary of the 200 workers. We are often criticized as unscrupulous employers, paying no heed to workers well being. But the

fact is, workers are our wealth, we want to offer them protection when they retire at old age. Members of Democratic Party, I plead with you to stop doing this again. If you do not support this matter, I, Allen LEE, will also shout: "You do not support retirement protection". If someone still wants to defer the scheme and play all kinds of tricks, we will have nothing even in 1997. Is this what you want to see? We do not! We want to make it clear now that we do not.

In rebutting Mr James TIEN's argument, the Honourable SZETO Wah said that Mr TIEN is an employer whereas Mr PANG Chun-hoi is an employee. By contrasting the employers' side with the labour side, it appears that he is trying to split or sever the employers and employees. Does he think that I cannot sense that? Does he think that Members of this Council cannot sense that? You want to divide us! The success of Hong Kong in this 20-odd years is obtained through concerted force of workers and employers. I beg of him not to destroy this relationship. Please do not take it for granted that employers and workers are always antagonistic. We are not such kind of people. We do hope that workers may have their retirement protection. If the related bill has room for improvement, then it should be improved regularly. We are willing to improve. We are also willing to hear the views of the labour side, so as to achieve prosperity together. This is what a responsible Member should do. If we defer the scheme again today, do you think we can have old age retirement protection next year? Do you think the old age retirement protection you are going to sell can pass through 1997? What then if it cannot? Things will be left hanging in midair. I really do not like to hear these words, particularly those that have divisive effect on employers and workers.

MR LEE WING-TAT (in Cantonese): Mr President, many colleagues will probably say that splitting the employers and workers or otherwise cannot be achieved by words alone. It is also not true that affected emotion may help present oneself as one who concerns about the interests of the working class. Whether a Member and his political party care about and work for the working class is judged by their platform and deeds. The Liberal Party say they work for workers. Then they should listen to what the workers want. Workers want old age pension. Are you going to support it? No, you are not. We have strategic divergence. This is not divisiveness. This is the difference between your party and the labour organizations as well as many political parties, inclusive of Democratic Alliance for the Betterment of Hong Kong, Democratic Party and Association for Democracy and People's Livelihood. We do have such difference. This is the fact. Why should you be so emotional and angry, the Honourable Allen LEE? Why do you not just respect this difference? If you think that your platform and stand are supported by workers, then by all means promote them. In any case, you are going to run for direct elections. If elected, you can prove that your platform and stand have the support of the general public. You will know that on 17 September. Stay cool.

Friends of Democratic Party and Confederation of Trade Unions have never thought of commenting on whether our liberal friends only work for businessmen. This is not what we can comment upon. Mr Allen LEE should know that the public will not be led to believe in this only by a few words of a political party or of ours, unless he thinks that Hong Kong employees and workers are naive, only listening to the Honourable LEE Cheuk-yan of Confederation of Trade Unions and the Democratic Party. Are citizens really so naive? Of course not. Everyone of them are right-minded. If a Member's stand and work are not welcome by the public, nobody will support him regardless of how good he is at boasting. If the words of Democratic Party and Confederation of Trade Unions are incorrect, nobody will believe in them even though they repeat those words ten thousand times.

I would also like to say a few words about the Honourable Marvin CHEUNG. His views and mine seldom concur. Yet today he has my support. I am particularly in disagreement with Mr Allen LEE's remarks on him. It appears that Mr LEE has cast doubt on Mr CHEUNG's knowledge about retirement protection. Frankly speaking, I do not know much about this subject. But Mr CHEUNG, his company and many insurance plans under his management are in many ways associated with this area. As far as I know, Mr CHEUNG raised some 70 questions regarding the bill when the scheme was introduced. Many of these questions did not have a reply from or were unsatisfactorily answered by the Administration. What does this prove? It proves that Mr CHEUNG has spent the time and effort to do something for the Bill. He agrees to adjourn the Bill only after considering that no amendments to the Bill is feasible. That is why I support the motion.

MR ROGER LUK (in Cantonese): Mr President, in the course of studying this Bill, there was a puzzling press report that three independent Members were conspiring with the Administration to defeat this Bill, and I was on the list. I think I am one of the Members who have hurled criticisms at the Administration for the way it has chosen to enact this piece of legislation and for its contents. Of course, I lag far behind my colleague the Honourable Marvin CHEUNG when compared with him. However, on learning so many colleagues support adjourning the debate a while ago, I was wondering why we have to do so and what the possible consequences will be. It makes not much difference for us to defer the Bill now or to debate and vote it down on a later date. Yet a big difference is: irrespective of whether we are for or against it, we have to let Members of the next session or the community know about the views of various parties and Members on this Bill. I do not have the least doubt about the sincerity of the Honourable Marvin CHEUNG. This Bill has many technical and drafting problems. As responsible Members, we should not rush it through. Yet in this last sitting of the session, if we deprive ourselves of the opportunity to study the options under the Bill, are we doing our job in a responsible manner?

Certainly every party has its own views on retirement plans, but retirement plans are not necessarily confined to one truth. Retirement protection of any form comes from three levels, that is, self, family and society. I believe that every worker understands that blessings come with self-dependence, and that Heaven and people will help those who help themselves. One will not beg for pension, but will earn it by way of saving. In Hong Kong, care and assistance from the family are an important pillar which we cannot disregard. Retired workers can only secure their protection with the three protective levels working together. When I returned from lunch this afternoon, a group of senior citizens of a certain party petitioned me to vote against the Bill. They think that only old age pension can offer them real help. To them, this is the fact. However, if we do not introduce any retirement protection now or later on, then in future many people will tell me outside the Legislative Council Building that their income is insufficient to support themselves and ask for old age protection. But where does old age pension fund come from? It comes from the pockets of taxpayers. And where does taxpayers' money come from? It is through our own efforts that money could be earned. We cannot merely look at one facet of the whole system. Perhaps it is true that many elderly people are having nobody to fall back on, or having insufficient income to support themselves. Maybe that is why we have to perform this task in order to be responsible. Nonetheless, it is incumbent on us to consider the whole system, and nothing in the system should be left out.

Currently, we are not in short of family protection. I believe that the family factor has played a significant role in the post-war development of the Hong Kong community. We are not in short of social protection either. Although we cannot compare ourselves favourably with the best, we are comfortably better than those that fall behind. What we are lacking is a planned retirement protection system. This protection may take many forms to deliver. We can express our views and different stands in future or after passage of the Bill, but the system is indispensable. We should not simply look at one sector and consider the issue from the party's or one's own perspective, and think that only this is the truth. This is wrong. Only through the provision of a three-level protection can we effectively safeguard the living of our aging population. At the moment, any plan may achieve this goal. However, our option represents the option of the Council and society. We cannot impose our own thinking on others. Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, I would like to respond to the Honourable LEE Wing-tat's earlier remarks. Mr LEE talked about the basic difference between the Liberal Party and Democratic Party. It is simple. The Democratic Party supports socialism. The Liberal Party supports capitalism. Why do I say so? Because one can clearly see this difference when he looks at their views towards old age pension and our views on old age retirement protection. The Democratic party supports giving out old age pension right away, on a non-means-test basis, or under a means test system which will be too loose to produce any screening effect. They say they feel comfortable even if this has to be done through raising tax from the general public. The Democratic Party has maintained their support to this idea since it was suggested by the Governor Mr Chris PATTEN. The Liberal Party, however, has never supported this proposal, for we believe that this is sort of welfarism. What we uphold is to encourage every member of the working class in Hong Kong to save money against their need during old age. But the democrats do not support this. Certainly Mr LEE was right, his words were pleasant to the ears and might be quickly accepted. Nevertheless, he did not mention about the consequences. In my opinion, this can be sugar-coated poison, because I do not support socialism. This sugar-coated poison will result in increasingly heavy old age tax being levied after the Administration has begun paying out old age pension in this way. This is not the road that Hong Kong should take. I wish Hong Kong would never take this road.

As regards the motion to adjourn the debate, I cannot see why the democrats give their support. Actually they do not support the Mandatory Provident Fund Scheme. They have made it very clear that they want old age pension, central provident fund. Their support to defer debating the motion is only a delaying tactic. This matter has remained unsettled for so many years in this Council. As the Honourable PANG Chun-hoi said, it has been dragged on up till present. The Honourable Allen LEE also said that he had discussed this matter with the Honourable LAU Chin-shek since the 70s. Mr LAU is also a member of the Democratic Party. Are we going to keep stalling it? I hope Honourable Members may ask yourself. It is now the time to make a decision. Whether you support or not, you can argue, you can vote against it. These are choices that we can make of our own accord. Why not do it briskly; why keep stalling?

Mr President, I oppose the motion to adjourn the debate on the Bill.

SUSPENSION OF SITTING

PRESIDENT: I am going to suspend the sitting until 9.00 am tomorrow morning.

Suspended accordingly at half past Eleven o'clock.

Note: The short titles of the Bills/Motions listed in the Hansard, with the exception of the Interpretation and General Clauses Ordinance, the Trading Funds Ordinance, the Security and Guarding Services Ordinance, the Inland Revenue Ordinance, the Hong Kong Court of Final Appeal Bill, the Mandatory Provident Fund Schemes Bill, the Personal Data (Privacy) Bill, the Companies (Amendment) Bill 1995, the Disability Discrimination Bill, the Interpretation and General Clauses (Amendment) Bill 1995, the Drug Trafficking (Recovery of Proceeds) (Amendment) Bill 1995, the Organized and Serious Crimes (Amendment) Bill 1995, the Wong Wai Tsak Tong (Renewal and Extension of Sub-leases) Bill, the Hong Kong Sheng Kung Hui Bill, the Church Body of the Hong Kong Sheng Kung Hui Bill, the Hong Kong Sheng Kung Hui Foundation Bill, the Block Crown Lease (Cheung Chau) Bill, the Equal Opportunities (Family Responsibility, Sexuality and Age) Bill, the Equal Opportunities (Race) Bill and the Equal Opportunities (Religious or Political Conviction. Trade Union Activities and Spent Conviction) Bill have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

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