

*Society for Protection of the Harbour*  
保護海港協會

**Summary Of Court of Final Appeal Judgment**  
**Interpretation of Protection of the Harbour Ordinance**

**Effect of Judgment** - The CFA pronounced on 9<sup>th</sup> January 2004 that the Town Planning Board had erred in law in the correct interpretation of the Harbour Ordinance; that the Board's decisions must be quashed; that the Wanchai Outline Zoning Plan must be remitted back to the Board for reconsideration; and that the Judgment applies to any reclamation proposal in the Harbour.

**Importance of Harbour** - The CFA pronounced that the Harbour is undoubtedly a central part of Hong Kong's identity. It is the heart of the metropolis and something extraordinary to be transmitted from generation to generation. Reclamation that had already taken place renders what remains of the Harbour even more precious and makes the need to protect and preserve it more important and compelling.

**Legislative Intention** - The Harbour Ordinance accords to the Harbour a unique legal status. There is a great public need to protect and preserve it having regard to its unique character. There must be preservation which means maintenance and conservation in its present state. It must be kept from harm, defended and guarded. Such a principle is strong and vigorous.

**Overriding Public Need Test** - The presumption prescribed by the Harbour Ordinance can only be rebutted by establishing an overriding public need for reclamation. Such need must be of greater public importance than the importance of the Harbour.

**Overriding** – means a compelling and present need which has the requisite force to prevail over the strong public need for protection and preservation

**Present** – means that the need must arise within a definite and reasonable time frame

**Public needs** – include economic, environmental and social needs of the community

**Minimum** – means not to go beyond what is required

**No Reasonable Alternative** – where costs, time and delay would be relevant

**Rebuttal of Presumption** - Each area proposed to be reclaimed must be justified. It is imperative that there shall be no reclamation unless the Overriding Public Need Test is satisfied. The Test is by its nature a demanding one and the burden to rebut the presumption is therefore a heavy one.

**Cogent & Convincing Materials** - Due to the demanding nature of the Test, it is not sufficient to incant the Test or just to pay lip service to it. The materials relied on must be cogent and convincing.