

OFFICIAL RECORD OF PROCEEDINGS

Thursday, 7 June 2007

The Council continued to meet at
half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S.,
S.B.ST.J., J.P.

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE MARTIN LEE CHU-MING, S.C., J.P.

THE HONOURABLE FRED LI WAH-MING, J.P.

THE HONOURABLE MARGARET NG

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, G.B.S., J.P.

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., J.P.

THE HONOURABLE MRS SOPHIE LEUNG LAU YAU-FUN, S.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN, J.P.

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE LAU KONG-WAH, J.P.

THE HONOURABLE LAU WONG-FAT, G.B.M., G.B.S., J.P.

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

THE HONOURABLE EMILY LAU WAI-HING, J.P.

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE TAM YIU-CHUNG, G.B.S., J.P.

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBERS ABSENT:

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.S., J.P.

DR THE HONOURABLE LUI MING-WAH, S.B.S., J.P.

THE HONOURABLE SIN CHUNG-KAI, J.P.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE TIMOTHY FOK TSUN-TING, G.B.S., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE MA LIK, G.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, J.P., SECRETARY GENERAL

MS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

BILLS**Committee Stage**

CHAIRMAN (in Cantonese): A quorum is not present now. Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members entered the Chamber)

CHAIRMAN (in Cantonese): A quorum is now present. The meeting now starts.

Members, I believe you have all received the circular issued by the Secretariat on my instruction this morning, stating that if the items on the Agenda cannot be finished today, the meeting will continue at 9 am sharp tomorrow.

I would like to point out here that this is an arrangement on meeting time which is a procedural arrangement the President must make. However, this will not affect the length or the number of times Members would like to speak, which is at Members' discretion. Yesterday, some Members mistook that this arrangement on meeting time was made to require Members to shorten the debate. I believe Members were only joking. But I think putting this on record today will be more appropriate.

When the meeting was suspended yesterday, I saw Mr Albert HO raise his hand, so I will now call upon Mr Albert HO to speak.

MR ALBERT HO (in Cantonese): Chairman, in fact, I know we have spent a lot of time on the discussion of this amendment. I did not intend to speak originally, but after I heard Mrs Selina CHOW's criticisms against us yesterday, I think I must make a response.

If I have not taken her point wrongly, Mrs Selina CHOW said yesterday that if we insisted on including this condition in the legal framework, we were showing a lack of respect to the current contract signed by the Kowloon-Canton Railway Corporation (KCRC) and the MTR Corporation Limited (MTRCL),

breaking the consensus reached in the contract. In other words, we would have failed to respect the spirit of contract. I am really astonished. For there is no reason that Mrs Selina CHOW, who has a wealth of working experience, should say something like this. She may put forth numerous reasons to disagree with this, and I think some of the reasons are worthy of respect and debate, but for this one, I really find it hard to understand. Why? We all know that in respect of the contract concerned, it will not come into effect unless the legislation seeking to set up the framework is passed by the Legislative Council. That is to say, this legal framework is a prerequisite for the contract to come into effect. So, when the contract is submitted to the Legislative Council, we should fulfil our obligation to examine how the interest of the public, including that of passengers, all relevant parties and stakeholders, can be safeguarded, if the contract is to be brought into effect under a legal framework. This is our responsibility. Does it mean that once the contract they signed is submitted to the Legislative Council, we have to put a stamp on it? Does stamping the contract mean respecting the spirit of contract? In what way is this reasonable?

Actually, regarding this contract, there are both merits and demerits in various aspects, and one of our requests is the setting up of a fund, which will be conducive to the overall railway development of Hong Kong in the future. This is our consideration. We think that if the two railway corporations consider the conditions under the framework acceptable, they may engage in further negotiation upon the enactment of the legislation. In respect of the contract, there should be room for further discussion and the inclusion of additional conditions. It should not override the power of the Legislative Council to examine legislation. Still less should we accept it wholesale.

Therefore, I hope Members will understand that, today, in this Chamber, our obligation is to examine thoroughly what kind of legal framework should be provided for this contract, what conditions should be included to protect the interest of the public, particularly that of passengers and stakeholders to whom we have to pay attention. Thus, I strongly oppose the remarks made by Mrs Selina CHOW last night.

MRS SELINA CHOW (in Cantonese): Chairman, of course, I am not saying that any contract can override the Legislative Council. However, I have to point out one thing. If it is presumed that the Government has not made any undertaking or agreement throughout the entire negotiation, and that substantial

changes to issues discussed and agreed by the Government and the railway corporations can be made, I think, the difference of opinion between the Democratic Party and we in the Liberal Party probably lies here. They think that setting aside 3% of the profit is a simple matter and that 3% is only a meagre amount, so there is no reason that such a change cannot be made. They consider they definitely have the right to make such a change.

However, we think that as the Government has already discussed the overall financial arrangement with the railway corporations, whereas the Fund now in question will alter the major component of that arrangement, the enactment of such a provision will have significant impact on the overall financial arrangement, making it completely different from the original agreement the Government reached with the railway corporations. In that event, it will be tantamount to telling the Government that the issues it have agreed with the railway corporations originally are no longer valid, and that it should discuss them all over again. In other words, negotiations have to be started afresh and agreements already reached with the railway corporations have to be changed completely.

Certainly, Members may say that we are empowered to do so. No one ever say that the Legislative Council has no power to do that. But the question is whether or not we respect an agreement reached after repeated discussions. Since a fundamental structure has been laid down, should amendments by way of legislation be made arbitrarily? Should we not examine the agreement as a whole? As certain content has been laid down, should we not consider the validity of the agreement upon the inclusion of such amendments? In our opinion, if an amendment is made to such an important component of the financial arrangement, the original agreement will lose its integrity and be considered null and void.

Thank you, Chairman.

MS MARGARET NG (in Cantonese): Chairman, I have no intention to engage in this battle. However, Mr Andrew CHENG, Mr Albert HO and I, as members of the legal sector, as well as the Democratic Party and the Civic Party, are particularly sensitive to any not respect the spirit of contract. So, we must make clarification.

With regard to any agreement reached by the Government with another party, which implementation is subject to the enactment of legislation, both parties concerned will understand that the terms and conditions in the agreement are subject to amendment in the legislative process. This is not unique to business contracts of Hong Kong, for in the international community, the same situation applies. During the scrutiny of Bills, Members surely understand that if a tacit agreement has been reached to a large measure between both parties, any amendment to the significant part of it may involve certain complicated change. Certainly, we have to face this situation. If the request proposed is very reasonable and the Government accepts that it should do so, say setting aside 3% of the profit for the establishment of the Fund (I do not wish to go into the details of it), the Government may then make an administrative decision on whether a new round of discussion should be started or not. This is totally unrelated to the spirit of contract.

For this reason, Chairman, I hope colleagues will refrain from criticizing other Members, who have put forth different opinions or hold opinions different with the content of the agreement reached by the Government, for violating the spirit of contract. Will Members please come back to the subject? Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, regarding the earlier remarks of Mrs Selina CHOW, I think, in a way, they suggest that she is unwilling to discharge the obligation of a Member of the Legislative Council, which is to monitor the Government. She said that we had to uphold the spirit of contract, but a contract has not yet been signed. Where can we see such a contract? That contract is subject to the enactment of legislation and the approval of minority shareholders. It is only by then that the so-called Operating Agreement will be formally concluded. But, for the time being, this process is still going on. There is no question of the contract for a contract does not exist at all. All we have is just a letter of intent or a framework, making known to us the issues the Government has discussed with the railway corporations. According to Mrs Selina CHOW's logic, the matter would be very simple. That is to say, as a Member of the Legislative Council, one has to do nothing and discharge no obligation, and can even sever one's own functions and powers. To conclude, since discussions are now being conducted by the Government, we should trust the Government and leave it all to the Government. More so, we should accept readily any agreement reached between the

Government and the two railway corporations. In that case, the scrutiny of legislation by the Legislative Council would be unnecessary.

I recall an incident which Mrs Selina CHOW was also angry about, that is, the unsolved problem of toilets. At that time, she made a loud request for the provision of toilets. If the Government and the railway corporations fail to agree on the provision of toilets after all, will the incessant demand for the provision of toilets be regarded as breaking the spirit of contract? She certainly will say that

CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, we will discuss these facilities later, so you should not talk about them now.

MR LEE CHEUK-YAN (in Cantonese): I know, but I am not talking about facilities. I am just citing it as an example to illustrate that if that were the case, we had to say no more. I mean that if Mrs Selina CHOW's logic holds, there is no more we can say. For we will just need to accept readily any agreement reached by Government and call it a day, providing a quick solution to the problem. But I think we absolutely cannot act this way. The Legislative Council, as the legislature, has the obligation to supervise this agreement reached by the Government.

Today, even if we revise the agreement and require the establishment of a Railway Development Fund (the Fund), surely, the Government will have to discuss the issue again, but after all, an agreement must have the consent of both parties. Despite the passage of the proposal by the Legislative Council, the two railway corporations may still turn it down. If the proposal is not accepted, there will be no agreement, whereas shareholders may also veto the agreement. Besides, the Government, being the major shareholder, may also vote down the proposal and the proposal will eventually fall through. However, the crux of the problem is that we, being Members of the Legislative Council who represent the people, have to consider the issue from this perspective and examine whether or not it is a good thing. On behalf of the Hong Kong Confederation of Trade Unions, I support the setting up of the Fund. My stance is clear: Any increase in fares should be submitted to the Legislative Council for approval.

Chairman, since you do not allow me to propose my amendment, I cannot propose any amendment in this respect. Chairman, I will express my dissatisfaction with the "scope" when we come to the discussion on the long title later. However, our stance is that "automatic" adjustment in fares should not be allowed. Mr Andrew CHENG proposes the establishment of the Fund to circumvent mention of "fares", but Members know that it is *de facto* a fare stabilization fund, though he stops short of saying so. I have to give him the credit for he knows how to get round your so-called consideration of the scope so that he can propose his amendment.

Why do we consider this an important point? In fact, we always think that if "automatic" fare increase is allowed, we may not be able to stop the increase when we consider a fare increase is undesirable in a certain year, for it is left to the Government to decide. Indeed, the final decision rests not with the Government. I should say that the decision will fully rest with the MTRCL in future, and neither the Government nor the Legislative Council will have the power to intervene. If a fare stabilization fund is set up, we, in a large measure, will have one more tool to control fares, for at times when an increase in fare is considered undesirable, we can control the increase of fares by transferring money from the reserve. Therefore, from the point of view of the public, the stability of fares definitely needs to be maintained. Chairman, I thus support the setting up of a fare stabilization fund, for this will also help balance the interest of the public and that of shareholders.

However, Chairman, today, when I watch a report on television, I think that what the Government is doing now will fail to please anybody. Yesterday, we, including myself, kept saying that the Government had failed to balance the interest of the public and that of shareholders, and that the Government had favoured shareholders by approving "automatic" fare increases, thereby enabling the corporation to reap huge profits. The setting up of the Fund, as proposed today, is in fact an attempt to prevent the Government from favouring shareholders, hoping that it will pay more attention to the interest of the public. However, on the other hand, minority shareholders say that the Rail Merger Bill focuses too much on the interest of the public, but I do not see this point. Now, the Government can please neither side. Minority shareholders criticize it for buying the losing KCRC and favouring the interest of the public, and they say they may oppose the merger. But, on the contrary, we think that the Government favours the shareholders and ignore the interest of the public. Therefore, this product will after all please nobody, proving that it is totally

undesirable. Both sides consider it undesirable, no one thinks it is good. Therefore, I cannot understand why yesterday there were still Members expressing support for the legislation on the merger of the two railway corporations.

However, Chairman, back to the Fund, we hope that Members will consider one point, that is, if fare increase is to become "automatic" in future, we really need to set up a fund as a counter balance. In any special or urgent event in future, say the outbreak of avian flu or SARS again, excuse me for saying so, if the "automatic" fare increase approach is still adopted, what can we do? If fare increases are still subject to no control, what will the situation be? If a fare stabilization fund has been set up, it will take effect at such times. Therefore, in the long term, I think this is an important mechanism.

Thank you, Chairman.

MS MIRIAM LAU (in Cantonese): Madam Chairman, Members have so intensely.....

(Mrs Selina CHOW rose to request elucidation)

MS MIRIAM LAU (in Cantonese): Do you wish to elucidate?

CHAIRMAN (in Cantonese): Since Mrs Selina CHOW has not spoken before, so I will let her speak first.

MS MIRIAM LAU (in Cantonese): Does she wish to elucidate? Mrs Selina CHOW, do you wish to elucidate?

MRS SELINA CHOW (in Cantonese): Yes, I do wish to elucidate.

CHAIRMAN (in Cantonese): You need to elucidate? Fine, Ms LAU, please be seated first. I shall call upon Mrs Selina CHOW to elucidate her speech made earlier.

MRS SELINA CHOW (in Cantonese): Because just now Mr LEE Cheuk-yan said..... I wonder if the Chairman thinks that I should elucidate at this point. It was about the toilets which he lumped with our discussions. Since he has mentioned my name, a clear elaboration should therefore be made.....

CHAIRMAN (in Cantonese): Sorry, Mrs Selina CHOW, because while he was speaking, you should have.....

MRS SELINA CHOW (in Cantonese): He should not be saying that, and I should not be elucidating either.

CHAIRMAN (in Cantonese): You should have risen to ask why he said so.

MRS SELINA CHOW (in Cantonese): I should have made an elucidation at that moment, right?

CHAIRMAN (in Cantonese): Yes, you cannot elucidate now.

MS MIRIAM LAU (in Cantonese): Chairman, since Members are so intensely discussing this point of law, I also wish to clarify the point mentioned by me yesterday. With regard to the Fund (the Fund) proposed by Mr Andrew CHENG, if we look at the proposed section 32F carefully, subsection (1) provides that, "In each financial year, the Corporation shall pay into the Fund 3% of the net profit derived from the Corporation's property development, property investment and property management". This proposal may actually affect the property development and financial arrangement which the MTRCL has put in place right at the start, that is, how income from property development has been used to subsidize railway operations. It is because, be it in the past or present, the MTRCL has been managing a large number of properties, and receiving rental income and management fees from them. Such income has been included in the proposed provision of Mr Andrew CHENG, but with a deduction of 3%. On this ground, I think that the existing contract will be affected.

Certainly, we have now come to another contract, which was signed for the purpose of the proposed merger. As far as I understand it, there is a Memorandum of Understanding (MOU) in respect of the existing contract, which sets out all the agreed terms. In fact, the financial arrangement is also incorporated into it. Of course, the subject of our discussion is the enactment of legislation. We have spent 80 hours to refine this project, but it does not mean that the basis of the whole project should be changed outright. The 3% deduction proposed by Mr Andrew CHENG has already made the new agreement..... Even though the Bill has yet to be passed, all the elements are there. His proposal will only topple the whole basis. I am not saying that this is not allowed, but the discussion must start anew. The question is although we may start the discussion anew and reach an agreement again, it is not what is contained in the original merger agreement. Therefore, I am actually talking about two different contracts. One is the existing contract, which is the financial arrangement of the MTRCL over the past two decades. This agreement and the relevant financial arrangement have been operating since the initial construction of the railway, and will be valid for five decades. Mr Andrew CHENG's proposal will therefore affect this contract and the relevant arrangement.

Furthermore, Mr Andrew CHENG's proposal will also affect the merger agreement under discussion, which contains a MOU in which all the required elements are covered. I think Mrs Selina CHOW just now said that we had reached that stage, where everything is on the table. Should we start bargaining at this stage if an outright change has to be made? Or should we address Members' concern by other means only after the Bill is passed. For instance, what should be done in case of an economic downturn in future? How should the public be taken care of? I am not saying that the remarks made by Members were wrong because I also praised the fare stabilization fund in my speech yesterday. Yet, the question is: Where do the resources come from? For precedents such as the Western Harbour Crossing and the Tai Lam Tunnel, the sources of resources have been very clearly set out in the provisions and their places of origin were also agreed by all. However, this is not the case now. It is only wishful thinking on the part of Members to specify the retention of a certain percentage of profits in the signed or nearly completed contract — the last step outstanding is the enactment of legislation. We consider this not an appropriate approach.

Thank you, Chairman.

MR JAMES TO (in Cantonese): Chairman, I thought that after nine o'clock last night..... I remember that Ms Miriam LAU was present and I thought that I had given her a full explanation. The point is it was an attempt by Ms Miriam LAU to create confusion. She said that there was originally one contract, and now there was another. However, in reality, this is not the case. I am aware that some of the projects of the MTRCL are underway, and the justification put forward by her is why 3% of the profit should be set aside when those projects are already underway.

Mind you, however, the current problem is that, insofar as the new development right is concerned, there is a term that the MTRCL may take it or leave it. And, in respect of this term, it seems to be an attempt by the Government to reach a Memorandum of Understanding (MOU) with the MTRCL on behalf of the community or public at large, and then say that it would only be valid with the final approval of the legislature. In fact, it is absolutely possible for the Secretary to make a clarification. The Department of Justice would never allow her to sign any agreement that guarantees the endorsement of proposals even if she is so bold to do so. Because if it turns out that any proposal is voted down, the Government will have to make monetary compensation. This is utterly impossible.

The implementation of any proposal is subject to this piece of legislation as the future development right and overall framework will be put in place in one exercise. As a result, just as we said, everything will be subject to contract. We should not be saying "subject to contract", but instead "subject to the approval of the Legislative Council". Approval of the Legislative Council must be obtained, and nothing is possible without its approval. Of course, if the proposal is, just as Mrs Selina CHOW said, approved by the Legislative Council with an extra piece of bone; in other words, you get a piece of bone or something which you find hard to accept free when you buy a piece of pork, then who should be held responsible? The responsibility lies with the Government as it had failed to heed the voices of the Legislative Council, which represented the public, when it signed the MOU with the MTRCL in the first place. Certainly, the Government has some degree of mandate and credibility, and it can bargain on behalf of the general public with a view to making the best judgment and drawing up the best implementation plan.

The question is, what if the Legislative Council really..... Yesterday, in Beijing, Chief Executive Donald TSANG said that the Legislative Council was

an elected body returned by two different elections, where he did not have any vote. He therefore cannot guarantee that the Legislative Council will definitely approve of the plan of the Government and the result of bargaining obtained by exercising his power on behalf of the people. No one has ever said that and this is where the challenge of our future political reform lies. The Chief Executive has said that too.

Therefore, this Council has the right to pass this Bill or not, or to make some amendments before passing it. If the passage of this Bill really affects the existing MOU, we may have to start the discussion anew. The point is, however, the legislation must be enacted in a holistic manner and the deal must be done. It is the final outcome of the bargaining, and must be looked at in a holistic manner..... Mind you, why should we look at it in a holistic manner? I think that this is reasonable for two reasons. First, the full implementation of the project would mean the takeover of a railway corporation by another railway corporation, and there will be a gigantic railway system by then. Competition will no longer exist in railway services, OK? You may say that originally something has to be put in place, and yet, we now have a brand new framework and system. So, if the MTRCL..... If the senior management of the MTRCL stated that new terms have been added by the Administration, it can simply turn down the proposal. The Secretary may clarify that it is possible for the MTRCL to turn down the proposal. There is no mandating it that the MTRCL must swallow any unacceptable proposals after the Bill is passed.

Second, as I have said before, if some shareholders really consider that there is serious problem with the proposal, which they find unacceptable, they may initiate legal actions to protect their interests in shares — both indirect and direct interests. Is negotiation not possible at this stage? Mr Andrew CHENG had highlighted this point in the Bills Committee at a very early stage, and even elaborated on it, right? At that time, the Secretary also said that it was a good suggestion, so did a number of our colleagues, right? If the Secretary thinks that there is a chance of..... Certainly, it is because the Secretary does not think this amendment has the slightest chance of passing that she dares table it. If she does think that there is a chance of passing this amendment, please take a look at this case. Yesterday, Ms Emily LAU also challenged those Members who voted in favour of the motion at Second Reading yesterday. If the Secretary had been more persuasive and taken a tougher stance on the establishment of the Fund, would there not be the establishment of the Fund? This is possible. Of

course, you may say that there will not be any merger with the establishment of the Fund, which is possible, OK? It is a matter of give and take. We cannot say that the passage of this amendment is a violation of the spirit of contract and disrespect to the rule of law. I consider this argument most strange.

Furthermore, up till now, the Secretary has never said that the passage of this amendment is the end of everything. Certainly, the Secretary may be very cautious because she is afraid of being accused of threatening Members if she said that. However, at least, the Secretary did not consider it necessary to say it out as she was convinced that the amendment would be passed. If the amendment is actually passed but she failed to do her job, she can further negotiate with the MTRCL. And, if she fails again, the matter will then be returned to this Council for discussion. There is no alternative. It is only a matter of give and take, but not a violation of the spirit of the rule of law.

Earlier, Ms Margaret NG also mentioned one point. Yet, she had only touched on it briefly, which Members may not catch it. Any agreement that is signed between two countries, or one which Hong Kong signed with the authorization of the Central Authorities, is subject to the approval of the Legislative Council. If it is not approved, negotiation must be conducted again. Not to mention an agreement negotiated between the Government on our behalf and a private organization. You said that the Legislative Council did not have any veto power, but was merely a rubber-stamp. Some Members may think so, right? This is nonetheless a necessary step, where all proposals must be approved by the Legislative Council. This is clear enough.

If the Secretary agreed that what I just said was a violation of the law, and if she agreed with the views expressed by Mrs Selina CHOW and Ms Miriam LAU, then please elaborate on that. While we Members said that we are responsible to ourselves, the Secretary said that the Government should be held responsible and even the Chief Executive may be held responsible. If the Secretary dares state this legal concept, which is considered laughable, and acknowledges it with the backing of so many lawyers from the Department of Justice and also one whole night to prepare for the elucidation, then please state it out.

MS MIRIAM LAU (In Cantonese): I am speaking again.

CHAIRMAN (in Cantonese): Yes, you are speaking again, but my usual practice is to let Members who have not spoken speak first. You do not mind, do you?

MR RONNY TONG (in Cantonese): Chairman, it does not matter. Let Ms LAU speak first.

CHAIRMAN (in Cantonese): It does not matter, Mr Ronny TONG. You can now speak.

MR RONNY TONG (in Cantonese): Chairman, I think Ms LAU and Mrs Selina CHOW have distorted the real meaning and principle of the spirit of the law and the so-called spirit of contract. We have to be clear about two points. First, the so-called spirit of contract is not above the rule of law, but rather, under it. There are common situations, which occur frequently, where an agreement reached by two parties will sometimes be nullified because the relevant law is changed. The law would not say that the legislature should not enact a certain piece of legislation, but rather, it would say that if a person, whose vested interests are sacrificed due to the enactment of that piece of legislation, shall be indemnified according to the law. Hence, there is absolutely no question of legislation being restrained by the existence of a contract. This is the first point.

Chairman, the second point is more important. That is, if one of the parties to the contract is the Government which, being fully aware that part of the contract may have to be ratified by law through the Legislative Council or be subject to change in accordance with the law, and out of respect for the legislature, should clearly specify in the contract to the other party or even add specific clauses when making the contract that the contract may be subject to change in future by the law. If the Government, in making the contract, ignores the existence of the Legislative Council and conversely apologize to the Council after the contract is made and asks it not to enact laws which go against the spirit of contract, then the Government is not respecting the legislature. This is a more worrying situation. I hope this situation will not arise in this Bill. The contention this time is not because of disrespect of the Government to the

Legislative Council, but because of confusion by some Members of the spirit of contract and the spirit of the rule of Law.

MS MIRIAM LAU (in Cantonese): Chairman, Mr Ronny TONG said I have distorted the law. Let me distort Mr Ronny TONG's remark again in the hope to put my view points straight.

Chairman, first of all, I wish to make it clear that as far as the discussion on the fare stabilization fund is concerned, it was suggested at the very last stage of deliberation in the Bills Committee. I remember Mr Andrew CHENG asking the Secretary about this proposal and the Secretary said it could be considered, but we did not pursue it any further after that. It was not until Mr Andrew CHENG had introduced his Committee stage amendment that we discussed his proposal in detail. If I remember it wrong, would Mr Andrew CHENG please kindly tell me? The amendment sets out in detail from where the 3% will be drawn, how it will be handled, and so on. It was at that stage that the Bills Committee fully learnt about his idea and thus we did not have the opportunity to discuss with the Government or the two railway corporations whether such a fund should be put in place and how it should be handled.

Now it is, in fact, the very last stage. Members may well recall that this Fund proposed on the Fund only came about all of a sudden on 29 May, that is, a few days ago. That is why I said if this element was introduced at the very early stage, say rewinding to 2004 when the Government suggested the rail merger for the very first time, we would definitely ask the Government to consider this proposal. The development of the entire discussion might well have been different. It is hard to say. I could not remember whether it was in the debate on 3 March 2004. I seemed not to recall this view point being expressed. Even if it was, the proposal did not specify in detail how it should be carried out.

Nevertheless, as I also mentioned in my speech yesterday, the idea of the fare stabilization fund is good, but the problem is that if it is introduced at this stage, we would have to take the financial arrangement — which is an important element — of the entire project out. We certainly can do anything during the legislative process. Some totalitarian countries can even confiscate the property of a person through legislation, but we would not do that. The legislative

process in Hong Kong seeks to introduce legislation by the most comprehensive and acceptable means through mutual discussion.

As for the contract, I would like to respond to a point raised by Mr James TO. He was referring to some investments now or development projects in the future, not these proposals. I have also read out Mr Andrew CHENG's proposal. He was referring to profits generated from property management. In the past 20-odd years, the MTRCL has managed a lot of property. From it revenue was generated in the past as it is at present. It is from this revenue that the proposed 3% contribution will be drawn. The drawing of profits affects the agreement reached between the MTRCL and the Government in the very beginning, which also states that property development and the revenue generated thereof will be used to subsidize railway development. It is that agreement that I was referring to, which will be affected by Mr Andrew CHENG's proposal now.

Certainly, future contracts will also be affected. With the merger of the two railway corporations, in the process, property brought over by the KCRC will be affected and its development will also be affected. Contracts in the past, present and future will also be affected. Moreover, this proposal will also affect contracts and financial arrangements already existed in the past. All these will be repudiated by this proposal.

We are not saying that we cannot legislate on this, but the question remains: Should we do it this way? This is also why we are discussing on this right now.

Thank you, Chairman.

MR JAMES TO (in Cantonese): Chairman, I was misunderstood.

CHAIRMAN (in Cantonese): Your remark was misunderstood? Please clarify your point.

MR JAMES TO (in Cantonese): Chairman, I do not know if my remark was deliberately misinterpreted or what; anyway, I am worried that someone may

have misinterpreted my remark. I clearly learnt just now..... I know Ms Miriam LAU opined that the even existing MTRCL projects had to be subject to the 3% contribution. I already learnt about her view at 9 pm or so yesterday, so I already responded to her last night. The problem is, when we come to this new proposal, by saying "adding an extra bone", I meant that the old projects would have to be covered too. If we want so, we should go for the new projects; if we do not want so, the old projects will not have to be subject to the 3% contribution. This is what I meant. Therefore, this is a new..... really, you have a new proposal, that is something you should not be entitled to originally, and it is not about taking advantages of others. Now, it is quite the opposite, that is, the MTRCL wishes to, in the now public portion, which does not belong to it.....

CHAIRMAN (in Cantonese): It seems that you are making another speech rather than clarifying your point.

MR JAMES TO (in Cantonese): I am clarifying my point because.....

CHAIRMAN (in Cantonese): What you said just now is more or less the same.

MR JAMES TO (in Cantonese): It is. That is why I am clarifying.

CHAIRMAN (in Cantonese): Then, that would be enough. Members already got your point.

MR JAMES TO (in Cantonese): That will do as long as the Chairman understands my point. I am just afraid that some Member deliberately does not want to understand it.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I originally did not intend to speak in this section because I know little about the operation and functions of the Railway Development Fund (the Fund). All I know is that the operation of the Fund can achieve an effect, that is, it can provide an opportunity

to stabilize the fares. I thus support in principle the amendment under this section.

Why? Members know that the public are most concerned about the fares. The public will be very anxious and worried if no restriction or control is imposed on the fares. I will thus support Mr Andrew CHENG's amendment. However, I also noted Ms Miriam LAU's view on this. I am puzzled and thus would like to take this opportunity to ask Ms Miriam LAU for a clear answer. I heard her repeatedly say yesterday and today that the Fund is good, but I could not hear her say in what respect it is good and what the advantages are. All I have heard is that although she finds the Fund good, if it is introduced now, it will be problematic, including the problem of contract. The two lawyers have already mentioned the spirit of the law, I am a layman, so I dare not make an issue here.

However, on the other hand, the point is that Ms Miriam LAU asked why it has to be implemented now — although she finds it good; and she opined that we can pass the overall framework first and explore this problem slowly in future. In relation to this point, I wish to ask Ms Miriam LAU this question clearly: If Mr Andrew CHENG's amendment cannot be passed, can she undertake that after the passage of the overall framework, the Government or MergeCo will discuss and settle this problem with us? I wish to sort out this point. If she says she can, I wish she can cite some examples to illustrate that there were successful examples in the past.

Chairman, why did I ask this question? The most impressive and relatively familiar example to me is the half-fare concession for people with disabilities. Why do I raise this issue? I wish the Chairman will not stop me.....

CHAIRMAN (in Cantonese): If you know that your speech has deviated from the question or that you have been repeating yourself, you will stop yourself and I will not have to stop you.

MR LEUNG YIU-CHUNG (in Cantonese): I just want to confirm a point. As the Chairperson of the Equal Opportunities Commission also emphasized to us that Australia also made use of the process of privatization to add this to the operating agreement and got this issue settled, this is the most opportune moment.

Coming to this topic, Chairman, if the time after the passage of the Bill rather than now is the opportune moment to discuss this issue, may I ask what favourable condition we have to discuss with the other party then? What makes us so confident that we can succeed? I thus really want Ms Miriam LAU to answer this question of mine. Her remark will only mislead us or make the public think that all our efforts are useless because the matter can be discussed and solved later. Yet, the question is: Is there any example in history that a successful outcome can be achieved in such discussion? If there is no such example, would she please stop making such remark, or she will be misleading the public and Members.

Chairman, I so submit.

CHAIRMAN (in Cantonese): Ms Miriam LAU, do you want to clarify?

MS MIRIAM LAU (in Cantonese): As Mr LEUNG Yiu-chung wanted me to reply, I am obliged.

CHAIRMAN (in Cantonese): Please reply later as I want to let two Members speak first.

MR LEE CHEUK-YAN (in Cantonese): Chairman, perhaps after I have spoken, Ms Miriam LAU will have to clarify again. Ms Miriam LAU has raised a point just now which I find it hard to accept, and her remark instantly changed the impartial image of her in my mind because I found her remark most unfair to Mr Andrew CHENG.

She said Mr Andrew CHENG had been very late in introducing this amendment. Yes, as a matter of fact, he did not introduce the amendment promptly enough because he had to draft the amendment and Members had to discuss it. She, as Chairman of the Bills Committee, under the normal course of the scrutiny, simply would not let the scenario in the debate now, that is, the debate on this Bill on 6 June happen. The normal scenario is that Mr Andrew CHENG will propose his amendment, and the Government will take it back to

examine, probably together with the two railway corporations. The Government will then come back to Mr Andrew CHENG and inform him whether the proposal is feasible, or of other possibilities. Mr Andrew CHENG proposed the Railway Development Fund (the Fund) and the drawing of 3% profit. Ms Miriam LAU, as a member of the Liberal Party, might hold that the 3% could be handled differently as she said that the Fund is a good idea. If so, she could introduce her proposal, while we proposed ours and Mr Andrew CHENG proposed his, and then we discussed them under the normal practice. As such, the amendment concerned simply would not be have been tabled so quickly today for examination, but rather, it should be referred to the Government for consideration.

As the Chairman of the Bills Committee, she knows only too well how the entire process has been excessively pressurized to meet the deadline on 6 June. She knows it. She takes charge of the whole situation and also helps compress the time to today. How could she conversely blame Mr Andrew CHENG for introducing the proposal late? This is very unfair. To be fair, the whole scrutiny process is distorted, such that various proposals could only be introduced at the very last minute, rendering us impossible to carry on with the deliberation. If this Bill was tabled in October, we would then have three months to deliberate on Mr Andrew CHENG's amendment. It would then be a different picture, and she is aware of that. I thus hold that her remark just now..... especially taking account of she being an insider and also the one responsible to compress the scrutiny period, she has no reason to make such a remark, accusing Mr Andrew CHENG of introducing the amendment late. Thank you, Chairman.

CHAIRMAN (in Cantonese): Ms Miriam LAU, do you wish to clarify?

MS MIRIAM LAU (in Cantonese): No. I want to make a response.

CHAIRMAN (in Cantonese): You want to make a response? Can you do it together with the reply later?

MS MIRIAM LAU (in Cantonese): Fine.

MRS SOPHIE LEUNG (in Cantonese): Chairman, I am also not a member of the Bills Committee. However, after listening to the discussion on the spirit of the law today (especially in this section), I do not wish that our remarks today — in particular after the two lawyers have spoken — will give the impression that despite A and B sharing common characteristics, such characteristics can be freely changed after the merger to arrive at product C, or even a product X.

I hold that we should not look at the matter this way. In particular when we come to the merger — the Government just now has also mentioned a Memorandum of Understanding, that is, the MOU, we, as responsible politicians, should specify when tabling our mandate to the Government very early back then that we might consider certain proposals, but we could not change it beyond recognition.

I hold that the barristers and solicitors just now seemed to be saying time and again that this process of changing into product C could be used to get rid of the original role and characteristics of the whole thing. I do not wish to arrive at such a mechanism. Thank you, Chairman.

MS MIRIAM LAU (in Cantonese): Chairman, I wish Honourable colleagues would not be so sensitive. My remark just now is about facts and I did not intent to criticize Mr Andrew CHENG at all.

I hold that the biggest challenge of handling this Rail Merger Bill is that it became very sensitive whenever we came to the facts. Colleagues also became sensitive and took those facts as criticisms. In fact, I did not have such intention at all. I just stated a fact, that is, the idea of a fare stabilization fund appeared at the later stage. Had it been put forward on Day One, that is, 2004, the way of handling it might have been different. I was not criticizing, and I know that Members have been working very hard. I wish, however, colleagues will understand that being Chairman of the Bills Committee, it is a load not easy to carry and it is not an easy task either. This is the point I wish to clarify first.

With respect to Mr LEUNG Yiu-chung's remark about why I said the fare stabilization fund is a good idea, I wish Mr LEUNG Yiu-chung can sit down and listen to me. Maybe he was not here when I spoke yesterday. If so, I will say it again for him. I said that the fare stabilization fund is good in a different context, for I was referring to the Bills on the Western Harbour Crossing and the

Tai Lam Tunnel, where both of them had in place such a fare stabilization fund. It is something good under those two Bills, or we would not have supported them then.

Why do we say that it is something good under those two Bills? Because it can, in effect, stabilize the tunnel tolls. At that time, the operation and financial arrangement of the two tunnels were based on a three-legged foundation, namely, the lowest net return estimate, the higher net return estimate and the highest net return estimate. The Government at that time also reached an agreement with the two tunnel companies individually that their internal rates of return (IRR) were 16.5% and 15% respectively. The IRR is derived by the difference between the lowest and the higher net return estimates. Then, how do we calculate the contribution to the fund? If the return exceeds the higher net return estimate but smaller than the highest net return estimate, 50% of the return will be contributed to the fund; if the return reaches the highest net return estimate, which means that the return is out of expectation, then all of the return will be contributed to the fund. In other words, this can obviate the need to increase the tolls if the throughput drops in future. The capital was channelled into the fund when the returns of the tunnel companies exceeded the negotiated rates of return. I said that it is something good because without this fund, the money would have channelled to the tunnel companies' pockets. We did not wish that the money be gone into the tunnel companies' pockets, but rather back to the drivers. Thus, this arrangement is absolutely good under those two ordinances.

The capital collected is appropriately drawn from additional resources and additional returns. This is indeed a very good arrangement. However, such a good arrangement is not applicable to tunnels which do not have the minimum IRR and the three-legged financial arrangement. Thus, the Tate's Cairn Tunnel does not have this arrangement, nor does the Eastern Harbour Crossing or other transport infrastructure. If they do not have this arrangement, the situation is similar to the rail merger under discussion now, for we have never guaranteed that the MTRCL, the KCRC or MergeCo will make any rate of return. We have not done that, nor have we undertaken that they can make any money. It thus does not exist the issue of earning more or earning less at all. If a fund is to be set up on this foundation and a 3% contribution drawn, it is not feasible, though it can be done through further discussion after new arrangements are formulated. The point is, having reached this stage now, we find it

inappropriate to suddenly change this basic and fundamental financial arrangement. Thank you, Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I have listened to Ms Miriam LAU's remarks, but I may not be able to fully digest what she said because it is quite complicated and informational. However, I still have something which I would like to ask Ms Miriam LAU. Having heard what she said just now, I find that she agrees that the Fund serves to stabilize fares, just that she finds the rail merger different from the case of the tunnel companies because the internal financial arrangements are different.

As she finds that the Fund serves a fare-stabilizing function..... actually, I am not sure if she finds this important, that is, the major premise I mentioned just now: the public is most concerned about whether the fares will be subject to control and remain stable after the merger. If she agrees that this is the major premise, I am puzzled. If she finds this so important, why did she not fight for extending the scrutiny period of the Bill?

Chairman, to date, I do not know how other Members here feel, personally, I am baffled. Why must the Rail Merger Bill be passed today? What is the problem with passing it at a later date? Why is it so inappropriate to do so? The only reason is that the MTRCL has been telling us and the public that delaying the merger means delaying the fare reduction. I already spoke on this issue yesterday.

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung, about the issue you said just now, you seem to have mentioned it in the Bills Committee many many times already, and also.....

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I have not finished yet.

CHAIRMAN (in Cantonese): I know, but I wish to tell you that you have already gone astray a little. The question under discussion is to decide whether or not these amendments are passed.....

MR LEUNG YIU-CHUNG (in Cantonese): I was saying.....

CHAIRMAN (in Cantonese): Hence, if you wish to speak, you should come back to the content of the amendment. How come you have talked about whether this should be discussed today? That is already history. You had better come back to the question under discussion.

MR LEUNG YIU-CHUNG (in Cantonese): No, Chairman. I beg to differ with your remark because there are cause and effect behind my words. I cannot just mention the effect without stating the cause.

CHAIRMAN (in Cantonese): However, your cause is too long. Can you shorten your cause and speak more on the effect?

MR LEUNG YIU-CHUNG (in Cantonese): You can ask me to make it briefer, but you cannot tell me what I should not say.

I hold that, with that being the case, why do we not extend the scrutiny period to allow time to examine this proposal? Especially considering that Ms Miriam LAU holds that the general direction of the Fund is good, just that the details need to be studied. Chairman, where does the contradiction lie? Ms Miriam LAU made a remark just now — unless I heard it wrong. In her speech earlier on, she ask why we did not pass the Bill first and discuss it later. This has turned into something discussable. As the details can be discussed, the problem lies in the time. Why did I mention the premise just now? It is about the time. Why does the discussion have to be held after the passage of the Bill and not before it? Chairman, this is the question I want to ask.

What we are debating today is that, other than the problem of the contract in relation to the Fund and some other similar problems..... as such, I hold that the problem is not a matter of principle, but the detail which is technical in nature. I think Mr Andrew CHENG is prepared to openly discuss the details again. I think he does not mind doing that. As to how to perfect the operation of the Fund, I believe Mr Andrew CHENG will agree that further discussions

can be held on that, provided we have the opportunity to do so. We do not have time to further discuss it as Chairman, you said just now that this Bill has to be passed today.

CHAIRMAN (in Cantonese): I did not say that the Bill has to be passed today. I only said that we were discussing this question now. Do not put words into my mouth. You must withdraw your statement because the Chairman would never ask Members to pass or negative any Bill. You have to withdraw that remark.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I mean.....

CHAIRMAN (in Cantonese): You have to withdraw that remark. You said "the Chairman said the Bill has to be passed today". I cannot accept it. You have to withdraw the remark.

MR LEUNG YIU-CHUNG (in Cantonese): I wish to clarify.

CHAIRMAN (in Cantonese): You have to withdraw it. You have to withdraw the remark that "the Chairman said the Bill has to be passed today" because it is, in effect, challenging my neutrality. How could I allow it? I would never have asked Members to pass any bill. You have to withdraw it before you continue to speak.

MR LEUNG YIU-CHUNG (in Cantonese): Okay, Chairman, I withdraw it and then I clarify what I have just said.

What I meant is that this Bill has to be tabled to this Council for passage at this time, and not that it has to be passed today and not that you want us to pass it. What I meant is to table it to this Council for passage.

CHAIRMAN (in Cantonese): The tabling of Bills to this Council is meant for debate, and then to be put to the vote.....

MR LEUNG YIU-CHUNG (in Cantonese): Yes. What I meant.....

CHAIRMAN (in Cantonese): Whether or not it is passed is not a fact. It has to be voted by Members and it is not yet passed. You thus have to withdraw the remark that "the Chairman said the Bill has to be passed today". However, as you have already withdrawn your remark, I accept it, but you have to be more careful with what you say in future.

MR LEUNG YIU-CHUNG (in Cantonese): Okay, let me clarify again. By saying having the Bill passed, I mean it has to go through a process to see if it is passed or not.

CHAIRMAN (in Cantonese): Yes.

MR LEUNG YIU-CHUNG (in Cantonese): It has to be debated and it may be passed or negated.

CHAIRMAN (in Cantonese): Yes. Correct.

MR LEUNG YIU-CHUNG (in Cantonese): I hold that the problem lies in why we could not have more time before that to discuss the details or even the technical problem. Why must it be tabled now in such haste? Why? This is the contradiction I question. Ms Miriam LAU said just now that discussion could be held later, which is exactly what I question. Why do we have to discuss it later, rather than having the problems properly discussed before that?

Chairman, I so submit.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS MIRIAM LAU (in Cantonese): Madam Chairman, I do not intend to respond to Mr LEUNG Yiu-chung anymore because I think I have repeated my words many times and made my stance on these matters clear.

Why do we have to hold a debate today which in fact began yesterday? In fact, Mr LEUNG Yiu-chung and other Members are very clear. We hope that the Bill can be passed on 11 July so that the MTRCL can discuss the matter with its shareholders and the merger can take place as early as November, thus enabling the public to enjoy fare reduction immediately.

Mr LEUNG Yiu-chung is very clear about this. The matter has been repeatedly discussed in the Bills Committee and the House Committee. I do not believe that repeated discussions on the matter here will serve any useful purpose for the deliberation of the matter as a whole, except a waste of time.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ANDREW CHENG (in Cantonese): Chairman, just now I listened very carefully to the views of colleagues from different parties and groupings. I would like to respond to their views point by point.

Regarding the Rail Merger Bill, many colleagues in the Legislative Council at this stage today are very unhappy with many things. I agree with this.

Chairman, as I said in my first speech in the resumed Second Reading debate yesterday, I think the Legal Service Division, the Secretariat, and even the President, have spent a lot of time in response to so many amendments, including the issue of the Fund. Has our work been improved after spending so much time? I am sure that before the Third Reading, Chairman, I understand that I can speak on the long title and the Bill as a whole.

However, regarding this amendment, the work could have been completed by around 10 o'clock last night. In other words, I conceived that the Secretary, after the questions had been asked, would rise and speak in an accommodating attitude that the proposal would be implemented or considered. To my surprise, Mrs CHOW from the Liberal Party mentioned one point, and that is, the spirit of contract should be upheld, thus resulting in the beginning of another debate. Then Ms Miriam LAU also mentioned the problem of timing, saying

that Andrew CHENG should have raised the issue early as it could not be passed in such a hurry. Of course, Mr LEE Cheuk-yan has made it very clear just now and I am very grateful to him for having voiced most of my thoughts.

However, I hope the Chairman can understand one point. Having listened to the views of colleagues for so long, as I said on previous occasions, I think it has nothing to do with the spirit of contract no matter whether or not there is a Railway Development Fund or a fare stabilization fund. Rather, it is a matter about the views of various parties and groupings on how to strike a balance between public interests and the commercial interests of MergeCo after the merger.

I respect colleagues from the Liberal Party as representatives of the business sector. They may consider the proposal not proper from the perspective of their functional constituencies and their economic theories. They may insist on further consideration on the ground that to set aside 3% of the net profit for setting up the Fund will affect previous management contracts. However, I hope that we, responsible for monitoring public interests, and Mr LEUNG Kwok-hung's remarks in his last speech yesterday..... Chairman, I think this is the best of his speeches ever made since his joining this Council. He has in particular mentioned social contract. No matter Members agree with him or not, we are now talking about two different ideologies. So we should not talk about the specious argument of the spirit of contract.

When talking about the spirit of contract, I think the Secretary and Ms Miriam LAU know it very well. During the 33 months from February 2004 when the Government decided to instruct the two railway corporations to discuss the objectives of the merger to 11 April 2006 when the Government decided to sign the Memorandum of Understanding, the construction of the Shatin to Central Link (SCL) had been confirmed..... when we talk about contract, even such a major contract which involved the fundamental concept was shelved by the Kowloon-Canton Railway Corporation (KCRC) on the ground of the merger exercise. If the spirit of contract is really respected, I believe that, from the business point of view, the KCRC will certainly consider suing the Government for breach of contract if it is not wholly owned by the Government,

So, this is not a question of the spirit of contract. The rail merger will apparently affect some previous contracts signed for the construction of the SCL,

apart from some contracts between individual staff and the two railway corporations and many other contracts entered into in the past. Concerning the Railway Development Fund proposed by us, I certainly understand that the future profit situation of the two railway corporations will be affected. I hope that the Government, as the major shareholder and the sole owner of the railway corporations, after striking a balance between the commercial interests and enormous price pressure to be faced by the public in future, will understand that the property above the railway stations, which are such valuable land resources, should also be shared by the public. As to the Government, it is just responsible for indirect injection of capital into the two railway corporations for property development on behalf of the public. We hope that part of the profit can be set aside for railway development in order to improve the service. This is purely a question of making decision and positioning. So, I hope that Ms Miriam LAU will not talk about the upholding of the spirit of contract. Her colleagues in the legal profession have also mentioned this point. So, Chairman, I do not wish to repeat these points anymore.

Secondly, concerning the issue of totalitarian countries, after hearing some colleagues' views, I really felt that..... I hope Ms Miriam LAU will understand that the enactment of legislation does not aim at imposing something on the conduct of the people by way of an amendment just like what the totalitarian countries will do. In fact, I do not want to discuss this point in such a short time. Chairman, if I were the Chairman of the Bills Committee, I would even have requested a detailed consultation in case there was an issue as controversial as the anti-smoking legislation and there were colleagues who wished to move amendments to it.

So, Ms Miriam LAU mentioned just now the point that due to the time constraint, it is difficult to implement the proposal because it is totally impossible to know the thinking of the railway corporations. Neither do we know the views of the public. Is 3% of the net profit enough? The public may say that it is not enough. I have checked some records, Chairman, enabling us to see the profit of the MTRCL and the KCRC from 2002 to 2006. In 2002, their profit is around \$4.9 billion; in 2003, their profit is around \$7 billion; and in 2004, more than \$6 billion. About these profits, the public may ask, "According to the figures in the past decade, what percentage will be more sensible so that the railway corporations will not feel uncomfortable and the public will feel that sufficient fund will be accumulated for the next 50 years?" In that case, I agree that a more detailed discussion is in order.

However, nothing in the world is so absolute or so perfect, Chairman. Why are we in such a situation? Why did the Chairman get so angry just now? I absolutely understand why. It is the Government which has made us angry and those with a low EQ will find it hard to bear. As a result, I would like to tell the Secretary that all the contradictions among different parties and groupings have been exposed, thus adversely affecting the dignity of the Legislative Council. However, I will not speak at length on this because this is irrelevant. I would rather speak on this issue again before the Third Reading.

So, Chairman, regarding the Railway Development Fund, as I just said, I hope there can be no more mention of the spirit of contract because the rail merger has repudiated all contracts signed by the two railway corporations internally or with the Government. If the Government is willing to make more efforts, there is no question of the spirit of contract because it is bilateral. If the Government is willing and the railway corporations can convince the former, the contract can be signed when both parties have come to a consensus.

Now the problem is that the Government is reluctant to set up a Railway Development Fund or a fare stabilization fund. As the Government is reluctant to do so, the railway corporation will certainly be unwilling to set up such a fund. Who will come out and say that 3% of the net profit should be used for setting up a fund? No one will. As the Government and the railway corporation will not do so, parties and groupings in the Council in support of the Government such as the Liberal Party or the DAB will consider it unnecessary to support this proposal. That is so simple.

Chairman, I think the issue has gone through thorough discussion. I believe we all have explored the matter from the perspective of different ideologies. For instance, Mr LEUNG Kwok-hung has mentioned the social contract. Regarding whether, as the railway development model in future, a certain percentage of profit from the development of property above the railway stations should be set aside to offset the capital needed for railway development and price pressure, we in the Democratic Party and most of the colleagues from the pan-democratic camp think that it is necessary to do so. I also hope that colleagues from the Liberal Party and the DAB will express their views because no views have been heard from the colleagues of the DAB. I really want to hear their intelligent advice. No matter they support it or oppose it, I hope they

will not just press the button but also explain why they have come to such a decision.

At any rate, a debate which has lasted for two days and a couple of hours is positive and I will look at it from a positive perspective. Discussion on the matter has begun no matter we agree or disagree with other colleagues' views. As Mr LEUNG Yiu-chung has just asked — he has asked a very good question, I hope that Ms Miriam LAU, as the spokesman of the Liberal Party..... today, I would like to reiterate that the amendment will come to naught as it has a very slim chance of being passed. However, if it is not carried and colleagues think that my concept can be further explored, studied and is desirable to a certain extent, I hope they will feel free to express their own views and ideas so that my concept can be dealt with in a better way and perfected, thus striking a balance between the commercial interests and public interests. Only in doing so will there be a healthy model for us to take forward the railway development in the next 50 years.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, it seems the focuses of the speeches delivered by many Members last night and this morning have centred on the fare stabilization fund. It so happens that I also want to speak now and in doing so, I actually want to reset the focus of Members' discussion.

Mr Andrew CHENG's main idea is about a development fund. In this regard, I hope that when Members consider whether or not to support this amendment, they know clearly that the matter under discussion is a development fund.

I wish to add three points. Mr Andrew CHENG's aim in moving this amendment is to establish a fund to provide or improve railway service and facilities and to enhance railway safety. However, I very much wish to stress

that after the merger, MergeCo will have to maintain a satisfactory and efficient service and uphold safety standards in compliance with the law and the Operating Agreement, just as the existing railway corporation has to. Irrespective of the existence of such a fund, it will still be necessary to do so. After the establishment of MergeCo, it has to invest in repairs and maintenance, and in replacing and improving the facilities of the railway system, so as to meet these stated requirements. There is no need to establish a special fund for these purpose. Therefore, the Government does not agree with this amendment.

Secondly, concerning the idea of establishing a fare stabilization fund, I have already said several times that we hold an open attitude towards it. However, this is a complicated issue and we cannot act rashly. If the proposals are really constructive and reasonable, the Government will adopt an open attitude towards them and this can be considered in the future. However, I must point out that it is stipulated that after the rail merger, fare adjustments have to be made under an objective and highly transparent mechanism. In comparison with the autonomy that the railway corporations now have over fares, the mechanism will have the effect of stabilizing the fare level. I hope that after the merger, the new mechanism will be allowed to operate for a period of time so that the results can be ascertained before deciding what should be reviewed in the next step. In fact, we also have a regime for reviewing this fare adjustment mechanism (FAM).

Finally, concerning the proposal to establish a fare stabilization fund using the profits derived from property development, this point was discussed clearly and thoroughly in past meetings of the Bills Committee. The aim of giving the MTRCL the right of property development is to make up for the shortfall in capital for the construction of new railway lines that are financially not viable, so that it will be possible for the railway corporation to construct the relevant railway lines and provide service to the public. At the same time, the fares can be set at reasonable levels without the need for any subsidy from the Government. Therefore, the mode that integrates railway operation and property development is adopted when implementing railway projects. The income from property is reflected in the determination of new fares by the railway corporation, therefore, it should not be factored again into fare adjustments. In other words, in the process of determining the fares for new lines, the estimated profit from properties has been taken into account in determining the original fare level. Thus, it is not reasonable to include this kind of income in the FAM or use the

income to establish a stabilization fund because this factor will be included repeatedly. Therefore, the Government does not support the amendment on this count. Thank you, Chairman.

MR ANDREW CHENG (in Cantonese): Chairman, I would like to give a very brief response. It seems that the three points raised by the Secretary, compared with her argument yesterday — perhaps it is because a debate is an interactive process — the Secretary has suddenly come up with three points which I think are rather strong and seem to be a response indicating her disagreement. I therefore feel most sorry for that.

In particular, when proposals regarding payments from the Fund under section 32G for purposes in subsections (1)(a) and (1)(b) are mentioned, we all understand that it is the responsibility of the railway corporation to enhance the safety of the railways. As to whether it is necessary to set up an additional fund so that the railway corporation is required to fulfil such a duty, I elaborated my views very clearly yesterday. I pointed out that other Members and I had talked at length about the fitting of screen doors or the provision of other services such as toilets. Concerning the enhancement of railway services, a lot of administrative work or even time required to put forward such a request to the railway corporation can be saved if there is such a fund. So, I hope the Secretary can understand that the provision or improvement of railways and the toilet facilities or services, or just services, at railway stations has very important implication. The implication is that if I, as a passenger, have to pay an expensive price for service which I consider unreasonable, I will think that the price charged by the railway corporation is on the high side. Why is the price so exorbitant? Even after the FAM has been implemented, the Fund is still desirable if the public consider it out of line with society.

Yesterday and on a few occasions when the Secretary was present, the Administration gave me an impression that the matter was worth studying because it would really have such an effect. However, when the Secretary spoke just now, I felt that the matter had been repudiated. In her opinion, this is basically the responsibility of the railway corporation and no additional fund is needed; secondly, the current fare stabilization or FAM of the railway corporation has performed the function of a fare stabilization fund, the Fund is therefore not necessary.

So, Secretary, I do not intend to repeat our arguments. I mean it. But I remember that Mr James TO was quite emotional when he asked the Secretary some questions last night because he was worried that when the Government said that a study was needed, it was a perfunctory remark trying to pacify us. The Government told us not to be disheartened even if the proposal was not carried despite our support as the study would be continued. I am very worried. If the Government has mentioned these three points in its response, what kind of study will be conducted? Because the major premise of the Administration is that the Fund is not necessary and it has urged colleagues in a high profile to oppose me. Of course, the Government has also urged them to vote against the motion. But why did I say last night that I hoped the Administration would give a more proactive and positive response to serve as the basis of the study? Is it still necessary to do a study if those three points just mentioned are adopted as the basis? The Government has basically considered the setting up of such a Fund superfluous and that is our difference in terms of ideology. So, if the Secretary is shaking her head, perhaps I have distorted her remarks. I will certainly be happy to listen to her argument again if she is prepared to repeat it. Thank you, Chairman.

CHAIRMAN (in Cantonese): Before I put to you the question on Mr Andrew CHENG's motion, I wish to remind Members that if his motion is agreed, he may move his amendment to add the definitions of "Committee" and "Fund" to clause 5. If his motion is negatived, he may not move the relevant amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new heading before new clause 15A and new clause 15A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Member raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr KWOK Ka-ki and Dr Fernando CHEUNG voted for the motion.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the motion.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr Alan LEONG and Mr LEUNG kwok-hung voted for the motion.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the motion.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, five were in favour of the motion and 16 against

it; while among the Members returned by geographical constituencies through direct elections, 17 were present, nine were in favour of the motion and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As Mr Andrew CHENG's motion on Second Reading of new heading before new clause 15A and new clause 15A has been negatived, he may not move his amendment to add the definitions of "Committee" and "Fund" to clause 5, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): As the amendment to clause 5 moved by the Secretary for the Environment, Transport and Work has been passed earlier, I now put the question to you and that is: That clause 5 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 8.

MR ANDREW CHENG (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of

Procedure be suspended in order that this Committee may consider my proposed new clause 21E together with clause 8.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr Andrew CHENG, you have my consent.

MR ANDREW CHENG (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider my proposed new clause 21E together with clause 8.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Mr Andrew CHENG's proposed new clause 21E together with clause 8.

PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

PRESIDENT (in Cantonese): Those against please raise their hands.

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

CHAIRMAN (in Cantonese): Council is now in Committee.

CLERK (in Cantonese): New clause 21E Schedule 7 added.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has given notice to move an amendment to clause 8 and the addition of new clause 21E, which seek to amend section 9 of the Mass Transit Railway Ordinance and add Schedule 7 thereto. Dr Fernando CHEUNG and the Secretary for the Environment, Transport and Works have also separately given notice to move amendments to clause 8 to amend section 9 thereof.

CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I shall first call upon Mr Andrew CHENG to speak and move his amendment to clause 8.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I move the amendment to clause 8.

Madam Chairman, clause 8 specifies a number of service requirements. In other words, the MTRCL after merger is required to provide platform screen doors and automatic platform gates under new section 9(1A)(a). Secondly, it is required to provide facilities to enable the reception of sound broadcasting services by persons on the railway premises under new sections 9(1A)(b) and 9(1B). And thirdly, in the form of a schedule, the performance pledges of the MTRCL and KCRC are included to become part of the law, which is also

concerned about the performance level such as punctuality of 99% mentioned yesterday.

Madam Chairman, I think this issue has been discussed in the Council for many years. Concerning platform screen doors and automatic platform gates, relatively positive responses have in fact been received recently in the relevant panels and the Subcommittee on Matters Relating to Railways. Both the KCRC and MTRCL expressed at the meeting on 4 May that the installation of screen doors and gates were technically feasible. At present, the KCRC and MTRCL have around 15 elevated platforms where screen doors are not installed. Regarding these screen doors, I think everyone will know without my elaboration that they can prevent the falling of passengers onto the tracks or any attempt of suicide — in fact, this is a tragic convenience. So, we hope that colleagues who supported the installation of screen doors in the past can continue to give their support.

Another issue which has attracted more discussions in the Bills Committee is about whether or not facilities should be installed or cables be laid to enable the reception of sound broadcasting services in the MTR tunnels or along the MTR lines. Madam Chairman, this may require a discussion on the concepts of specific services. I have put forward this perspective and request in order to seek responses from Members or the Secretary on two major points. In a society with sound information systems, particularly in Hong Kong, which is an international information centre with sound information systems and an advanced society, if the reception of sound broadcasting services in the tunnels is possible so that information outside the MTR tunnels can be received when travelling on the MTR, it is really a common wish and everybody will consider this an enhancement and value-added service. In various road tunnels, travellers have been able to receive FM and AM broadcasts for many years. Why are MTR commuters isolated from the outside world once the train has entered the tunnels or gone underground? When an accident occurs, in particular when an accident or failure occurs, I believe it will help evacuate the passengers if these 1 million-odd or even 5 million-odd passengers can be informed of the accident at the very moment on that day. So, broadcasting service is in fact a value-added and win-win service, through which the flow of information can be facilitated.

In particular, Madam Chairman, we in the Bills Committee have asked the cost involved. I mean how much money will be spent by the MTRCL.

Madam Chairman, it will cost \$100 million to lay these cables, according to their rough estimation. However, I told the MTRCL not to quote \$100 million so rashly because it is a huge sum with many zeros following the numeral one. Among so many zeros, how much is spent on laying cables, installation of receptors and antennae? And how will these devices be dealt with? Can it be cheaper? The MTRCL is reluctant to provide figures on these. As everybody knows, when the relevant party is reluctant to provide the figures, I will be very worried for fear that it has provided a very huge figure regardless of all consequences, making people think that it will cost as much as \$100 million for implementing such a proposal. This is very unfortunate because the fleece comes off the sheep's back. In future, passengers may be deducted 50 cents instead of 10 cents from their Octopus cards.

However, I think we should understand that if such value-added service is desirable, I very much hope that the MTRCL can show some sincerity and provide us a breakdown of the figure, telling us how the \$100 million is arrived at with details on how many tens of millions are spent on cabling, how many tens of millions are spent on installing antennae, and how many tens of millions are spent on the installation of software. Besides, the MTRCL also said that the annual maintenance cost would reach as much as \$4 million. The MTRCL then provided another figure, saying that the telecommunications companies — these are the service providers to cell phone users like you, Madam Chairman, and me — will also charge us monthly fees. To my surprise, the MTRCL will charge these telecommunications companies \$267 million annually. This is a net profit, Madam Chairman, which will reach \$267 million annually, meaning that it will be more than \$11 billion in 50 years. This is a huge figure. On the basis of a 50-year franchise, the MTRCL will receive more than \$10 billion of the so-called tunnel levy from these telecommunications companies. Now the MTRCL is asked to spend \$100 million on laying cables so that passengers can listen to the radio in the tunnels but has refused on the ground that it is not feasible. I wonder whether it is too stingy.

Of course, some colleagues with reservations indicated in the scrutiny stage of the Bills Committee that the MTRCL was considering more advanced methods, such as Wi-Fi, Internet service, telecommunications by 3G mobile phones, and so on. However, Madam Chairman, you may also be aware that there are always a group of people who have lagged behind technology by three

or four years, in particular the aged, including myself. I admit that in terms of technology, I sometimes..... I think those who are 40 years old or above will lag behind for several years those who are aged 30 or 20 and using i-Pod or 3G mobile phones. These people may listen to sound broadcasting by mobile phones or other types of radios or individual radio sets. They would like to listen to the radio when taking the KCR, minibus or ferry. But when travelling on the MTR, these aged people will find that the sound broadcasting service has ceased abruptly when they enter the precincts of the MTR. If \$100 million is spent on the installation of hardware and \$4 million is spent on maintenance annually in comparison with almost \$10 billion of income in the next 50 years, and the MTRCL still refuses to provide value-added service despite the receipt of levies, I will put a question mark on the value-added effect and synergy, which means that one plus one is bigger than two, to be brought about by the rail merger. I have therefore, Madam Chairman, simply specified that "provide facilities to enable or facilitate the reception of sound broadcasting services by persons on the railway or on railway premises."

Next, one of my amendments is to set out the performance criteria for the performance level in the third column of Schedule 7. Why do I propose that the performance level listed in Schedule 7 be added to the Schedule so that it will become part of the principal Ordinance? It is because, in our opinion, the calculation method, which we debated yesterday on the measurement of punctuality, train reliability and train frequency can meet the expectations of the people, and the existing performance level has often failed to meet the public requirement. For instance, the performance level in respect of train service delivery is 99.5%; passenger journeys on time for the MTR and KCRC railways is 99.5% and 99% respectively; and train punctuality for both railway corporations is 99%.

Besides, there are some other issues which have been discussed earlier and that is, the reliability of ticket machines and add-value machines. Madam Chairman, you may also notice that in the past, problems were found in the Octopus add-value machines during the value adding process, apart from defects and over-deduction of fares. Moreover, the passengers were not informed of the problems on the corporation's initiative. Rather, it is the passengers who discovered the discrepancies between the added value and the previous remaining stored value of their Octopus cards by checking, due to a brainwave, on the

Internet why a sum of money had been deducted and the balance of their Octopus cards did not tally. This is something like trial and error. So, regarding the formula for calculating the add-value machine reliability — because we have also discussed this issue — their calculation is not based on the amount of over-deduction and the amount deducted in each erroneous deduction case as supposed to be. Rather, they will regard the erroneous deduction of \$100 as one case and the erroneous deduction of 20 cents also one case. Hence, the public will have the impression that this problem is very similar to punctuality. They will think that the railway corporations are always treated with leniency no matter on the calculation method of the add-value machine reliability or punctuality. This cannot reflect the public opinion on the error of a six-digit sum being over-deducted from 400 to 500 passengers in a short period of time. Under the current criteria, such a mistake can hardly be reflected.

So, I hope, through the amendment, there will be more reasonable standards and criteria to show the reliability of the add-value machines and the punctuality of our trains so that more objective requirements can be met. So, I propose the addition of section 9(1C) to stipulate that the Chief Executive in Council may by order amend Schedule 7. Through such an order in future, the Legislative Council can also hold debates on whether or not the performance criteria should be amended on a regular basis so that the public will know on a regular basis whether the performance level can meet their needs and the service criteria or not. Another example is the reliability of entry and exit gates. Numerous discussions have been held on the issue and there are few entry gates which will display the remaining stored value of Octopus cards when passengers pass the gates. The railway corporations said that they would do their best to make changes to this although they also insisted that it was not necessary to have such a display when passengers pass the gates because the balance would be shown upon exit. However, the balance will be displayed when passengers pass the gates in some stations, such as the Central Station.

Initially, the MTRCL seemed to make a bet with me. I told the Corporation that some entry gates did show the balance when passengers pass them but the Corporation itself might possibly not be aware of this. Later I had the confirmation from the Corporation. I therefore think that the reliability of these entry and exit gates should be enhanced continuously so that we can monitor these electronic currency and Octopus cards together and know when

mistakes have been made in order to protect passengers against loss. So, I hope these amendments can ensure that synergy, meaning one plus one is bigger than two, can be brought about by the rail merger.

Thank you, Madam Chairman.

Proposed amendment

Clause 8 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon Dr Fernando CHEUNG and the Secretary for the Environment, Transport and Works to speak on Mr Andrew CHENG's amendment as well as their own amendments, but will not ask them to move their amendments now.

If Mr Andrew CHENG's amendment is agreed, he may move the Second Reading of new clause 21E. In addition, Dr Fernando CHEUNG will have my permission to revise the terms of his amendment to clause 8 and move the revised amendment.

If Andrew CHENG's amendment is negatived, he may not move the Second Reading of his new clause 21E. Dr Fernando CHEUNG may move his amendment to clause 8. Whether the Secretary for the Environment, Transport and Works may later move her amendment to clause 8 will depend on the Committee's decision on Dr Fernando CHEUNG's amendment.

DR FERNANDO CHEUNG (in Cantonese): Chairman, my amendment and that of Mr Andrew CHENG overlap in our proposals on platform screen doors. According to the information on hand, during the five years between 2001 and 2006, there were six cases of visually-impaired passengers accidentally falling onto the railway track. I think there are even more cases of people with disabilities accidentally falling onto the railway track when using the two railways. However, the information that I have with me is not complete, and even if we wish to obtain more information, it may not be easy for us to get it.

In fact, some of those cases involving passengers falling onto the track were suicide cases, but some were accidents. The Centre for Suicide Research and Prevention of the University of Hong Kong (HKU) had tried to conduct a study on cases of passengers falling onto the track of the MTR and whether these cases are related to screen doors. They also hoped to collate the relevant information, so as to study ways to prevent similar accidents from happening in the MTR or other railways in the future. But regrettably, when they requested the relevant information from the MTRCL, the latter refused to provide it to them. The Centre for Suicide Research and Prevention of the HKU also approached Secretary Dr Sarah LIAO of the Environment, Transport and Lands Bureau for such information, but the Secretary also refused to provide the relevant information.

This is indeed most regrettable, because this bears a close relationship with public safety in the operation of the two railway corporations. When an academic institution wishes to conduct studies relating to screen door facilities, I do not quite understand why the railway corporation or the Policy Bureau would refuse the HKU's request for such information. While they explained that this might involve privacy, I do not see what privacy is involved.

But anyway, I will not dwell on this point, as I will ask an oral question in this connection later. Public safety and the safety of people with disabilities travelling on railway as well as the retrofitting of screen doors to enhance protection of their safety are issues that warrant continuous consideration by us and also more attention from members of the public on the latest developments.

I mentioned just now that there were six cases of blind passengers falling onto the track in five years, whereas the others..... For example, the first three months in 2006 saw at least 10 accidents of people falling onto the track. In fact, these cases do not only happen to people with disabilities, but also to the able-bodied. Chairman, let us imagine: When people with disabilities travel on railway — they sometimes travel to and from work on railway, as people with disabilities also have to work — although there may be the so-called tactile guide paths, the platform is usually crowded with passengers during the peak hours and the protection provided by the guide paths to the blind is thus greatly undermined. Therefore, without screen doors or automatic platform gates, the safety of people with disabilities is actually not sufficiently protected under the circumstance.

The reasons given by the MTRCL in explaining its reluctance to retrofit screen doors or automated platform gates (especially at aboveground platforms) is that firstly, technical difficulties are involved and secondly, screen doors will further reduce the platform space. We strongly disagree with this. In fact, from past experience, the retrofitting of screen doors may instead increase platform space at some stations (such as the Disneyland Resort Station where automatic platform gates are fitted). Space may increase because without screen doors, passengers are restricted from stepping out of the yellow line, for it is dangerous to stand too near to the railway track. But after screen doors are retrofitted, space will, in fact, be expanded. Even if the platform is crowded, the screen doors can indeed further protect the safety of passengers. This will also provide more protection to people with mobility difficulties, who may not necessarily be people with disabilities because sometimes, they can be the elderly or children.

In a study or survey conducted by a newspaper, over 500 people were interviewed and asked whether they agreed that screen doors should be retrofitted, and as screen doors are not retrofitted in the East Rail, the interviewees were especially asked whether or not they thought that screen doors should be retrofitted in the East Rail. In fact, 80% of the respondents considered the retrofitting of screen doors necessary, while some people considered that automatic platform gates would suffice. I personally think that this should depend on the technical feasibility, as well as the studies conducted by the two railway corporations. But the most important point is that the absence of screen doors will pose threats to the safety of people with disabilities or people with mobility difficulties.

Apart from screen doors, Mr Andrew CHENG also mentioned that the two railway corporations should allow members of the public to listen to radio broadcasts, especially in MTR stations. Other than enabling members of the public to listen to some general information and entertainment programmes with their radio, I have a new point to make. In fact, radio may sometimes be used as a means of communication in emergency. Assuming that a serious accident occurred in a MTR station or outside the station, if the communication system of MTR trains is damaged or broken down, and when there may not be a public broadcasting system inside the underground tunnel of the MTR to report on what is happening outside, radio can actually serve as a means of communication between the authorities and passengers. It is certainly not our wish to see this

happen all the time, which is quite unlikely generally speaking, but when such a case does take place, this facility will actually enable passengers with a radio to receive useful information. Certainly, this is not a main reason why the MTR should consider retrofitting antenna for passengers travelling on the MTR to listen to radio broadcasts, but I think that this is still worthy of our consideration. I, therefore, very much support the other amendments proposed by Mr Andrew CHENG. Thank you, Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, I would like to.....

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung, do you have a point of order?

MR LEUNG YIU-CHUNG (in Cantonese): I would like to speak.

CHAIRMAN (in Cantonese): Just press the button in order to do so.

Secretary, you may now speak.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam Chairman, I will propose an amendment to specify clearly that where the MTRCL operates the TSA bus service during the Concession Period, the MTRCL shall ensure that the TSA bus service is operated properly and efficiently under this Ordinance and all other applicable laws and the Operating Agreement. Later on, I will consider giving a response after listening to the speeches of Members. Thank you, Madam Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Madam Chairman, insofar as this part of the business is concerned, Mr Andrew CHENG spoke of screen doors or automatic platform gates in his speech.

I would like to tell you, Madam Chairman, that over the years, we have launched joint operations with the Hong Kong Blind Union almost every year to

call on the MTR to address squarely the issue of platform screen doors. Why? Because the Hong Kong Blind Union always receives complaints from their members that when they use the service of the MTR, they are actually very worried about, say, falling onto the railway track, and so on. Unfortunately, there have been cases of their members falling onto the track, resulting in some unfortunate incidents. This is why they invite us to join their campaign to strive for this facility every year.

When we approached the MTRCL in the past, the MTRCL would tell us that they did not have the technology to retrofit screen doors at aboveground platforms. We have heard this for many years but after hearing this for so many years, suddenly we were taken by great surprise seeing at the opening of the Disneyland Resort Station that automatic gates are fitted on an open platform. The MTRCL has never mentioned this to us, but we can see at this station that they have done a very good job of it. We finally come to realize that it is not the case that they do not have the technology. They do have this technology, and the question lies only in whether or not they are willing to apply it. In view of the fitting of automatic gates at the Disneyland Resort Station, we questioned the MTRCL in this Council why they could install automatic gates at the Disneyland Resort Station but not in other stations. They said that they would still need to study if that was feasible.

Madam Chairman, such stalling tactics do give some people the impression that when all they need is more confidence in entering the platform to take public transport, they have nevertheless been put off repeatedly. How can this inspire confidence in them to travel by this means of transport? But regrettably, to people with disabilities, they must always travel by railway frequently. Why? It is because comparatively speaking, railway is far more convenient to them, and it would also be safer to them if they do not fall onto the railway track. But on the contrary, the problem is that there are still inadequacies which have created barriers to them and made it difficult for them in using railway.

So, Madam Chairman, my view is: Can the MTRCL genuinely and more fairly tell us where exactly the difficulty lies, so that we can put our heads together to solve the problem? This is in any way better than repeated procrastination and using abstract terminology to tell us that studies are required and yet, they do not know how long the studies will take and resort to continued procrastination. Certainly, we understand that retrofitting automatic gates on

aboveground platforms will certainly be costly. This is obvious and we do appreciate this. But nowadays, when we are progressing towards a civilized and advanced society, do we have to restrain or restrict ourselves as such on this issue?

Everybody knows that we encourage people with disabilities to integrate into society and we encourage the building of a society for all. These slogans have been chanted for many years, but if we cannot truly put them into practice, it would be a great insult to society and worse still, this would be dragging the hind leg of society. Therefore, I think it would be most desirable to make this a statutory requirement. Why should we set it out clearly that this must be done? It is because in retrospect, if the Disability Discrimination Ordinance was not enacted in 1994, I believe — Madam Chairman, even though you would think that I have a selfish motive — I do not believe these public transport operators will take the initiative to provide ancillary facilities to facilitate the use of public transport by people with disabilities. After the enactment of the Disability Discrimination Ordinance, they must comply with the law in any case. That said, Madam Chairman, I must add that even though this requirement is provided in law, they may not necessarily be willing to provide convenience to people with disabilities in all aspects.

As pointed out in Dr Fernando CHEUNG's amendment, the lifts at some stations are not fully accessible by people with disabilities. If no statutory provision is in place, the situation would worsen, and worse still, they would not be provided with such facility at all. So, for the sake of the safety of people with disabilities, especially the blind, I fully support the amendment proposed by Mr Andrew CHENG, and I hope that the Government and the new MTRCL can truly attach importance to the safety perspective and provide sound facilities.

Madam Chairman, I so submit.

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung, this is a joint debate now, and you may as well include your discussion on the amendments proposed by Dr Fernando CHEUNG or the Secretary.

MS MIRIAM LAU (in Cantonese): Madam Chairman, the Legislative Council is, in fact, very supportive of and very concerned about the retrofitting of

platform screen doors and automatic gates. We have discussed this issue many times before and as a matter of fact, platform screen doors are already retrofitted on a great majority of underground platforms of the MTR. We understand that the MTRCL or the two railway corporations are currently conducting a study, with a view to resolving the difficulties in retrofitting platform screen doors at the at-grade or aboveground stations. The technical difficulties involved include platform edge loading, ventilation and earthing protection. This was actually a topical issue discussed at a meeting of the Subcommittee on Matters Relating to Railways when the problems faced by the MTRCL or the two railway corporations in this respect were explained in detail. Mr LEUNG Yiu-chung might not have attended this meeting, as he may not be a member of the Subcommittee. But the difficulties involved were explained in some depth at the meeting.

I am not in the construction business, but I think the difficulties involved are basically like building a bay window in a new flat. If the flat is newly completed, certainly that would absolutely not be a problem. But retrofitting a bay window in an old flat will involve technical problems, and it is not the case that a bay window can be retrofitted casually and the problem can then be straightened out, for that may be dangerous. So, it is absolutely understandable that retrofitting works is not feasible for the time being due to the need to overcome technical difficulties. This is why automatic gates can be fitted at the Disneyland Resort Station. Why is it not feasible at the old stations? Because that is not easy, and it is not the case that they can simply take a pair of doors there and the doors can be retrofitted right away. It is because they are added to the existing facilities, and such being the case, it is necessary to solve the problems arising from the retrofitting of such doors.

We do not wish to see that retrofitting these gates or screen doors would pose any danger. The main problem is that the platform may not be straight and so, there will be a lot of gaps and if the gaps are not properly filled, passengers might fall off the edge easily. We very much support plans to provide these facilities, but we must at the same time appreciate these problems and allow the two railway corporations time to solve them. The MTRCL has also undertaken to solve this problem and complete the retrofitting of screen doors or automatic gates at all its stations in 2012, whereas the KCRC will complete such works in 2013. This is an undertaking given by the two railway corporations to this Council in the Subcommittee on Matters Relating to Railways. This is all for the information of Mr LEUNG Yiu-chung.

With regard to other issues, we have also discussed them repeatedly. I wish to mention the facilities provided to people with disabilities inside the stations or railway. I would like Dr Fernando CHEUNG to know that I also have a relative who is wheelchair-bound. I fully appreciate that wheelchair-bound people do require the assistance of certain facilities when they take public transport. As I have also mentioned to Dr Fernando CHEUNG and other Members, I have once taken the underground railway on the east coast of the United States. I had to make several interchanges, and after the first or second interchanges and when I was going to interchange for a third time, I, who was pushing my relative in a wheelchair, found that there was no lift (their lift did not work), and we finally had to return to where we set off and we were unable to reach our destination. After that experience, and when I review the MTR service in Hong Kong afterwards, I think perhaps the MTRCL or the KCRC in Hong Kong is already doing better than some cities in the United States in this respect.

I can assert that Hong Kong definitely compares more favourably than the United States in terms of facilities helping people with disabilities. We have tactile guide paths as well as other facilities provided for people with disabilities, but these are not found in the United States. Perhaps it is because I have only been to the United States, or I have paid particular attention only to the United States in this respect, coupled with the experience that I have just relayed to Members. But in all fairness, I think the two railway corporations in Hong Kong have done quite a good job in providing facilities to assist people with disabilities travelling on railway. The MTRCL has, in fact, carried out work in this regard over the past decade. Over the past decade, the MTRCL has retrofitted facilities at a cost of \$400 million to facilitate access to railway by people with disabilities, and it also plans to further inject \$100 million for improving these facilities in the next five years. Certainly, we will absolutely throw weight behind the improvement of these facilities, but it is most important to know that the railway corporations are not doing nothing. They have, in fact, been carrying out work continuously, and they have been doing quite well and they have provided these facilities, as there is at least a lift for us to take, unlike what I had experienced there and then when I made several interchanges and found out only when I interchanged for a third time that there was no lift and finally, I, pushing my relative in a wheelchair, had to return in the same train. I think while we genuinely wish to assist people with disabilities and to provide as much assistance to them, it is most important that the two railway corporations

also have the wish to do it and that practical actions will be taken to help them, to provide barrier-free access to them to facilitate their use of the railway.

We absolutely support the two railway corporations making continuous efforts to improve the facilities for people with disabilities. Meanwhile, I think this should not be bundled up with the Rail Merger Bill before us today, because we have seen that they have already carried out work in this respect and they have been doing a good job, and we have seen that they will continue to do so in the future. We trust that their work in this respect will continue. We will also urge them to carry out such work, whether in respect of platform screen doors, platform gates, and facilities for people with disabilities. We will certainly continue to urge the two railway corporations to improve such facilities.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any Member who has not spoken wish to speak?

MR LEE WING-TAT (in Cantonese): Chairman, this issue is one of the subjects that was discussed very much apart from toilets in the meetings of the Bills Committee. Now clause 8A is added to clause 8 to specify that on account of rail safety, platform screen doors and automatic platform gates are to be retrofitted at existing railway stations. Let me first talk about this point. This is not a new argument and some of the platforms of the railway corporations have this kind of screen doors already. We know that most of the costs of fitting these screen doors come from the fares paid by the public.

Sometimes I would think that this kind of screen doors is actually an essential facility for the railway corporations. This is because, firstly, passenger safety in those places not fitted with screen doors will certainly be affected. Another point is, as it has been discussed in the district to which I belong, a few aboveground MTR stations in Kwai Fong, Kwai Hing and such like places, and in Tsuen Wan station which is underground, are not fitted with any screen doors. Members have always debated whether or not screen doors should be fitted at these stations. Of course, the MTRCL would say that these

stations are aboveground and so an air-conditioning system cannot be installed and it would be difficult to retrofit screen doors there.

However, is it really that difficult to retrofit screen doors there? For many years, MTR passengers have been bearing great inconvenience. Just imagine, now that the weather is so hot and people who go to the Kwai Fong, Kwai Hing and Tsuen Wan stations would really be sweating all over. It does not only apply to those who wear a suit but also those ladies who wear a dress or gentlemen wearing a shirt, they would find it very hot. Actually, I also share this unpleasant feeling. I hope, of course, that apart from installing screen doors, consideration should also be made for these stations to undertake some improvement works in ventilation and air-conditioning. During the debates held in the Bills Committee, some Honourable colleagues said that in Mong Kok there were some air-conditioners for sale with vertical outlets for cooled air and these were quite effective in lowering the temperature of a place. I think what the MTRCL is doing now is not enough, for this is not a new problem at all. It has been almost 30 years ever since the MTR began operation in 1978 or 1979. And it was only when the Bills Committee talked about screen doors that they said that installing screen doors would affect ventilation. When ventilation is poor and since other kinds of air-conditioning facilities cannot be installed in these aboveground stations, passengers would only feel hotter all the more. I hope that the MTRCL will undertake studies in this aspect and retrofit the facilities concerned. Because passengers in these stations have been suffering the heat for so long and they should be treated fairly.

Secondly, I recall in the meeting of the Subcommittee on Matters Relating to Railways last month, Mr Andrew CHENG proposed a motion. I do not remember too well whether it was 2010 or 2011, or if it was later amended to 2012? The year is about the same as the one about universal suffrage that we are fighting for. The amendment says that the MTRCL is prepared to undertake such work and the proposal to retrofit screen doors would be implemented. We are very glad to see that they have made such a pledge. We hope that after this amendment is passed, we can urge them to do the job well. Besides, after the discussion held on that day, we have not yet received any comments from the MTRCL on how the related works is to be carried out in each of the stations. I think when this amendment is passed, it would certainly be possible to devise a concrete timetable which specifies when the works should be

carried out by the MTRCL in which district. This would help solve the problem of screen doors quickly.

When discussions were held in the Bills Committee, many Honourable colleagues did not understand too well why it was so difficult to install these screen doors whereas it could be done in the Disneyland line without any problems. I do not want to see the public get an impression that special favour is given to all matters related to the Disneyland while the people of Hong Kong are treated like second-class citizens. It is only after so many demands and petitions and much debate in the representative assemblies that the MTRCL is persuaded into devising a plan to carry out works on this. I do not think that strikes me as a good practice after all.

Thirdly, Chairman, I wish to talk about radio reception in railways and on railway premises. We stand to be convinced on this issue. Why is the MTRCL not willing to accept the view put forward by the Democratic Party even to this date? We are in an age of information explosion but it is still so hard to receive radio service on board MTR trains. There are even some places where no radio reception is possible at all. I think this state of affairs runs totally counter to the idea mooted by the Government to develop services like Wi-Fi, 3G, and so on. Admittedly, installing such facilities may incur some costs. But I think these can be addressed after discussion with the relevant railway corporations to see if some revenue can be obtained by way of advertisements or charging a fee to finance the installation of the relevant facilities. It is hard for me to believe in the explanation offered by the MTRCL, that information is disseminated to passengers by the display screens in MTR trains. Because the reception of information should not be controlled by the railway corporations in the first place. The passengers should have the right to listen to a particular radio and not others and there is no reason why they must obtain information only by looking at the display screens.

In addition, we can notice that what are shown on the display screens are more often than not advertisements instead of information. On the other hand, whenever there are failures of the railways, the reporting system is often very slow. This is all too common. It is only when the people learn of the incident from the radio that they know about the cause of the accident, disruption or delay in the MTR. Actually, this is the kind of information which passengers should

have the right to know and there is no reason why the railway corporation should not provide the relevant facilities and services as soon as possible on account of this.

In my opinion, I believe the amendment can achieve the following points. First, it can improve the situation in many aboveground MTR stations. I hope that the MTRCL can install screen doors expeditiously and it would be most desirable if the ventilation or air-conditioning system can also be improved at the same time. Although there may be some technical problems in that, I must still make this demand again on behalf of the citizens, because they have been suffering from it for more than 20 years. Second, more information and radio broadcasting services should be provided on board the trains. All these are essential to a cosmopolitan city like ours with advanced information systems. As for money matters, I hope that the MTRCL can see the point that at times money has to be spent. I hope the MTRCL can make use of the proceeds and charges from advertising collected from business organizations to provide the relevant facilities and services.

With these remarks, Chairman, I support this amendment. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any Member who has not spoken wish to speak?

(No hands raised)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, I will invite Dr Fernando CHEUNG to speak again.

DR FERNANDO CHEUNG (in Cantonese): Madam Chairman, a while ago Ms Miriam LAU said that we should not handle the issue by adopting a bundling approach and she also talked about her own personal experience. I am moved by it. Compared with other places, the facilities of the two railways in Hong Kong cannot be considered poor and some of these facilities are not bad at all. However, can we be happy with the facilities that we have got?

Madam Chairman, I think there is still great room for improvement there. In many cases, the facilities are already there, but can they be of any practical use? First, let us see if the relevant facilities are sufficient. In many of the MTR stations now, there are still lobbies that do not provide any direct access to the ground level. This means wheelchair users cannot use the lifts to go to the lobby or into the station direct. There are 16 such stations and they are: Shek Kip Mei, Wong Tai Sin, Diamond Hill, Tai Wo Hau, Lai Chi Kok, Cheung Sha Wan, Sham Shui Po, Prince Edward, Yau Ma Tei, Jordan, Sheung Wan, Admiralty, Tin Hau, Fortress Hill, Sai Wan Ho and Shau Kei Wan. If you ask us whether or not there is any room for improvement, we will say that there is really a lot of room for improvement.

In these 16 stations mentioned by me, Admiralty is an important interchange point. But even to this date, we do not have any lift that goes directly up to the ground level. Wheelchair users have to use some of these so-called stair lifts or wheelchair aids. These aids or lifts may carry some kind of risk in operation. My daughter and I have tried using these and the result is not successful because my daughter is afraid of these facilities. These wheelchair aids are commonly called "monster vehicles" and they do not have any external cover and they must edge down the stairs step by step. Maybe my daughter is still very young and she gets very frightened when she is inside the aid. After some struggle, she is inside that aid and carried by it which moves slowly downwards. She gets so scared that she wants to jump out of it. Of course, I used my hands to hold her. I said to the MTR staff that my daughter would not ride on that aid anymore. The MTR staff was very nice and managed to make very quick responses. I was very satisfied, but the facility cannot be considered good enough. This is a real story.

About the Admiralty Station, I have some friends who are wheelchair users and they have used these "monster vehicles" before. Once a friend of mine was in one of these "monster vehicles" and as it was moving halfway through the stairs, there was a disruption in power supply and the MTR staff had to get another of these aids to carry him. He was stuck there for more than an hour. I can imagine the difficult time he had to go through. He is not physically very strong. The fact that there is a disruption in power supply in these aids comes as no surprise because they have been placed there for a long time, not utilized. Besides, not many people with disabilities would like to use them. When they use these facilities, it is like putting up a show for the people to watch. This is because many people have never seen such funny scenes

before. However, this makes users feel very embarrassed. That is why most of them would rather not use these aids and just give up.

There is a building called the Duke of Windsor Social Service Building near the Admiralty Station and it houses the Hong Kong Council of Social Service, a host of welfare service organizations and the federation of rehabilitation organizations. The headquarters of these NGOs are all situated there. In other words, the headquarters of the federations of many organizations for people with disabilities are there as well. It is most ironic that these people cannot go there from the Admiralty Station barrier-free.

There are also some other facilities. For example, in the Yau Tong and Lam Tin Stations, there are ramps that can be considered relevant facilities. In Lam Tin Station, there are quite a number of other facilities in the neighbourhood that are essential to people with disabilities. As many Honourable colleagues are aware, there is a school for the physically disabled built by the Red Cross, a neighbourhood centre for the elderly and the headquarters of The Hong Kong Society for Rehabilitation. The Society provides many rehabilitation services and it runs the Rehabuses. There are also a community centre, a general out-patient clinic and other facilities in the vicinity. However, we cannot use the ramps at the Lam Tin Station to go to these places. The parents of people with disabilities pushing the wheelchairs, say to the staff of the MTR that once they are up to the ground level, they are in a no man's land. The road aboveground is called the Lei Yue Mun Road and it is an expressway. If Members would like to go to the facilities mentioned by me just now, they must make a big detour. Even if they go on foot, I think it would take them more than 45 minutes to get there. If people are on wheelchairs, they will need more than one hour. These parents ask the staff how wheelchair users can get there, the reply is ridiculous — he suggested us to take a taxi.

If these people can use the stairs, they should be able to go from the station to these facilities direct. These facilities are already there and they are accessible by vehicles. But the reality is that we cannot get to the school for the physically disabled, The Hong Kong Society for Rehabilitation headquarters, and so on. It is odd that though these facilities are already there and they are installed and they comply perfectly with the design manual and everything, they cannot be used. They have become useless. The same case goes for Yau

Tong Station. Some time ago I stated that case in some other meetings and I even went there and took photographs. As seen from the photographs, the exit of the Yau Tong Station is a factory area and it is another piece of no man's land — the Cha Kwo Ling Road. However, once we arrive at some other places, like Lei Yue Mun Estate, Ko Chiu Road, Sam Ka Tsuen, and so on, there are no such facilities there.

As for other MTR stations which have lifts, the locations of these lifts are very interesting. Tsuen Wan Station is a very important station, but as described by people with disabilities, that station is one which has no turning back. Why? Passengers who take the train from Tsuen Wan in the direction of Kowloon can find a lift so that they can take a lift and go to the platform from the ground or the entrance for ordinary members of the public. But if they ride on a train from Kowloon in the direction of Tsuen Wan, there is no lift and there is only an elevator. For those who return to Tsuen Wan on a wheelchair, there are two aboveground exits, one at exit E and the other at exit D. Exit E has got bi-directional wide gates but exit D does not. Exit E which has got bi-directional wide gates has two steps of stairs after passengers have passed through the gates. There are no wide gates at exit D. However, it can reach the ground level direct. So these facilities are really ridiculous. The facilities are installed there, but it is doubtful if they can be used. We do not know what we should do about them.

Madam Chairman, the amendment which I propose is in fact very mild. I can see nothing bundled up with it at all. My first point is similar to what Mr Andrew CHENG has said about platform screen doors, automatic platform gates and half-height automatic platform gates. The second point is a provision that there must be a sufficient number of lifts so that passengers can go from the ground level to the platform direct. In fact, during the discussions on the Bill, both railway corporations have undertaken that lifts will be installed in every station and it is only a matter of time for this to be done. My point has nothing in conflict with their undertaking. The third point is to provide enough staff in the railways to assist the passengers in need. This has something to do with basic service and safety considerations. The examples cited by me all require assistance from the station staff. If there is no assistance from the staff, even if the facilities are there, those in need cannot use these facilities as they are not designed from a user-friendly perspective. If there is no help from the staff, it can be said that there is no way these facilities can ever be used.

Apart from these examples, Madam Chairman, when people with disabilities ride on the MTR, even if all the places are accessible, they would need assistance still. At present, some of the train doors still have a gap with the platform and so when people on wheelchairs want to board or alight from a train, they may need a plank before their wheelchairs can run over the gap safely. Now in each train, there are three carriages for use by people with disabilities.

Now there is an interesting arrangement on the International Day of Disabled Persons. Last year on that day, the MTRCL was very nice and people with disabilities could ride on the MTR for free. The initiative was made to encourage them to go out more often. The MTRCL posted notices saying that it was hoped that no more than one person with disabilities would ride on the same train at the same time. This is absurd. Since that day was the International Day of Disabled Persons, many people with disabilities would go out on that day, accompanied by their friends or relatives. At times it is quite common for a few persons going out together on wheelchairs. We would do this on other days as well. The notice required that not more than one person with disabilities should ride on the same train and they should inform the MTR station concerned one hour in advance so that arrangements could be made. Madam Chairman, we do not know when we will use a public means of transport when we go out with our friends or families and that we have to inform the transport operator concerned one hour beforehand or call the MTR one hour in advance, telling the staff there that we would ride a train at a certain MTR station. The explanation offered by the MTRCL sounded quite reasonable. It said that it was meant to make its staff better prepared. They said that it was not possible to arrange for more than one wheelchair to board or alight from a train. This is because if more than one wheelchair is found in a carriage, this would cause hindrance and there may even be safety problems for both the people with disabilities and other passengers during peak hours.

Madam Chairman, I am not saying that people with disabilities should enjoy any privileges, but I think a balance has to be struck in this issue. If we really want to achieve a barrier-free society and that our public transport system can accommodate the needs of all people, there is no cause for us to accept such an absurd arrangement. We cannot say, when two persons with disabilities want to go out together, "Sorry, we cannot let you two ride on the same carriage of the train. You cannot talk and one of you must ride in the carriage in front while the other one on the one at the back. Or you must go on separate trains. That is to say, one of you should take this train and the other take the next."

This is hardly acceptable. How can it be said that this is meant to enable people with disabilities lead a normal social life?

To this date, people with disabilities are still negotiating with the MTRCL. As a matter of fact, some kind of moderation has to be done by the Equal Opportunities Commission in these few days to see how a sound arrangement can be made when more than one person with disabilities in wheelchair want to ride on the MTR. Therefore, with respect to assistance, the third point of my amendment is very important in that assistance should be provided by the staff. In this connection, I do not see any element of bundling here. This is exactly what the two railway corporations should do and what we are doing is to make use of this opportunity of a rail merger to write out some of the things that should be done so that they can be provided for in the Ordinance. The amendment wording is in fact very mild. I have not requested any specific amount of matching facilities or number of staff and likewise, I have not listed the kind of facilities that should be provided in which stations specifically. Everything rests with the two railway corporations and they can take whatever administrative measure or make whatever decision they like as long as they can provide safe and barrier-free services, thus enabling all members of the public to use the two railways to meet their various needs.

These are but my humble views. Thank you, Madam Chairman.

MR LEUNG YIU-CHUNG (in Cantonese): Chairman, with respect to Dr Fernando CHEUNG's amendment, actually, I wished initially to talk about the examples cited by Dr Fernando CHEUNG. Why? It is because over the past few years, many groups of people with disabilities have been asking us to take part in their actions to fight for barrier-free transport. So many such groups of people with disabilities have talked on various meetings about the examples cited by Dr CHEUNG. Only that there is a difference between Dr CHEUNG's experience and mine as this is his own personal experience. His daughter is facing such conditions and so he feels the pinch of the problem acutely as he has more personal encounters with it than I do.

However, Chairman, I would like to tell you that the various problems raised by him have been mentioned verbally by many people with disabilities and related groups time and again. These live examples make them feel that it is really hard to find a chance whereby they can use public means of transport and

integrate into society. And they would hope very much that there can be improvements in this aspect. About the barrier-free access issue, in fact it has been discussed by various parties for many years. Things have become much better after the enactment of the law on disabilities and there is no gainsaying it. However, the crux of the problem is that genuine results should be achieved and there should be no window-dressing or piecemeal actions.

With respect to the examples cited by Dr Fernando CHEUNG, I have personally witnessed such things before. Chairman, you may know that when we fight with the people with disabilities for half-fare concession, we had a rally at the Central Station. Many people on wheelchairs attended the meeting. We tried to help these wheelchair users go to the rally venue. The station has some lifts but people would still need to walk down a very long corridor and the location is quite remote and hard to find. Besides, the lift can only carry two wheelchairs at one time. It cannot take more than two wheelchairs and so if there are a few wheelchair users, they may have to wait for quite a long time.

People with disabilities know well enough that they cannot expect to enjoy the convenience of the facilities just as ordinary people like us do. They can never enjoy complete convenience and so they have not made demands to this effect. But they would be very happy if something can be done to reduce the difficulties they may face. But in many cases, even the request of reducing the difficulties they face cannot be met. So they ask Dr Fernando CHEUNG to move this amendment on their behalf in the hope that the new railway corporation can address the problems.

Chairman, if the executives of the railway corporation have had the experience of venturing with these people with disabilities like Dr CHEUNG has done and if they have been to those places pointed out by Dr CHEUNG, they will find where the difficulties are. Since we seldom use these facilities, we would not see how serious the problem is. By all appearances, it looks as if everything is in place and so how can there be any problems? Our instinctive judgement tells us that everything is in order. Only those people who actually use these facilities will tell what the problems are.

If there is really an intention to make improvements, the railway corporation executives may try to go with the people with disabilities to every station in every district, take a look there and make a trip. Then they will gain a

profound experience of where the problem lies. This may in turn change the way they deal with the problem afterwards. But would it work if we just verbally ask them to do this? Many years ago before the Disability Discrimination Ordinance was passed, we had urged them to provide such facilities. But they did not do so. Now it is only when there are requirements in law that they do these things. It is for this reason that I support Dr Fernando CHEUNG's amendment.

Another thing is that Ms Miriam LAU has just given me some information on half-height platform screen doors. It is learned that it is not that the MTRCL will not do this, only that they will do it later. It will only undertake such work after all the screen doors have been installed. As Mr LEE Wing-tat has said earlier, it seems that such kind of work can be undertaken in 2012. For me, I do not know which among the two pieces of information is more accurate.

Chairman, it does not really matter whether which piece of information is more accurate than the other one. The most important thing I wish to point out is that since such work can be carried out now, why can it not commence early? This is especially true about the study on the relevant works, must it be done only after all the screen doors have been fitted? Why was this study not undertaken a few years ago? Why does the preparation for it only start after our pressing?

Chairman, I understand of course that it is not that easy to add new facilities to existing structures. We appreciate this perfectly well. We are not demanding that action be taken at once like the case of screen doors, that is, screen doors should be built inside the other stations. However, the point is that the lives of people with disabilities are at stake and so can something not be done to shorten and compress the time a bit so that protection can be given to their lives sooner? This is the point I wish to stress.

Unfortunately, to date we have not yet received any clear answer from the railway corporations. I do not know if they will install screen doors at aboveground stations. This is the most important thing. Also, if these are to be installed, when would it take place? If the conclusion is that these are to be installed, why then can arrangements not be made at the same time? Why will such work have to wait until all the screen doors are installed? We have to raise such kind of questions all the time in the discussions. Does it mean that

objectively speaking, these people with disabilities and their groups are being disregarded?

I do not want to make these groups come under this impression, but the question is that the Government and the MTRCL are really giving people such an impression. It seems that they think the issue should be delayed as much as possible and it is not that important. It should not be given a priority and it can just be put aside. This is the kind of impression they give. If this is not the case, they had better show us the proof that this is not what they think and they attach great importance to this matter. Moreover, if this is technically feasible, why do they not speed up the process?

The most important aim of the amendment is the hope that more pressure can be exerted on the relevant organizations so that they can really face up to the problem and address it. For this reason, I support the amendments proposed by the two Honourable colleagues.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, since the first day I became a Member of this Council in 2004, I have been aware of the efforts made by people with disabilities to lobby the MTRCL to improve its facilities to enable them to, like everyone else, make convenient use of MTR services.

Frankly speaking, it is because the Government and the MTRCL have been adopting a stalling attitude towards the aspirations of the people with disabilities that we have to spend time today discussing including requirements of improving facilities for people with disabilities in the legislation. Why did we have to spend so much time here if the Government and the MTRCL could have readily accepted good advice by undertaking to install platform screen doors and lifts in every MTR station?

I do not understand why the MTRCL has all along refused to cater to the needs of people with disabilities for such facilities as platform screen doors and lifts. While the MTRCL has always cared about its public image, the Government has also time and again repeated its commitment to building a caring and just society. To build a barrier-free social environment is an important step

in enabling people with disabilities to integrate into society. Hence, both the Government and the MTRCL should adopt a more positive attitude.

I really cannot understand whether it is technically infeasible to install platform screen doors and additional lifts between station entrances and concourses or the financial burden is so enormous that it is hardly affordable. In either of these cases, the Government and the MTRCL still should give a detailed explanation to the public. Otherwise, they should begin examining ways to satisfy the needs of people with disabilities.

For instance, although the Sunny Bay Station of the MTR Disneyland Resort Line is an at-grade station, it can still be fitted with platform gates to ensure the safety of commuters (particularly visually impaired commuters). Given that platform gates can be fitted at the Sunny Bay Station, why can screen doors not be retrofitted at existing at-grade and aboveground stations along the railway? Obviously, this is a matter of sincerity.

While I am aware that the chances of this amendment being passed today are very slim, I still wish to implore the Government and the MTRCL to give priority to the needs of people with disabilities by actively considering and following up the proposals raised in the amendment. We must not say that we need not take care of the needs of people with disabilities because it is not provided for in the legislation, right?

Dr Fernando CHEUNG has been making great efforts for the well-being of people with disabilities. In addition to this amendment, there are two more amendments, though Dr CHEUNG has been unable to propose them smoothly. Nevertheless, I believe the Government and the MTRCL have already had a good understanding of the views Dr CHEUNG wishes to express. Here I would like to call on the MTRCL to make an effort to meet the needs of people with disabilities even if this is not provided for in the legislation.

I would like to share with Members my personal experience. Though I have said this at a meeting for the scrutiny of the Bill, I still wish to repeat it here. Last year, my mother became half-paralysed and wheelchair-bound after suffering from a stroke. She has now gradually recovered and managed to walk for a very short period of time. At around 5 pm on a Saturday, my mother and I had to go to Central to deal with some contract issues. After completing the contract formalities in Central, I accompanied my wheelchair-bound mother to

go back home. Although I had originally wanted to take a taxi, no taxi could take us, as we were told by three taxi drivers that they were changing shifts. In the end, I decided to take a bus instead so that my mother could return home as early as possible for rest.

However, we encountered another problem with the bus. After waiting for more than an hour, a bus with facilities for wheelchair-bound passengers finally arrived. I guess Members might ask me why I did not take the MTR. Even if we went to the MTR Central Station, we would not be able to find any lift which could take my mother direct to the underground station to board a train. The situation at that time was we could take neither a taxi nor a bus, and we had to wait for more than an hour. I would like to ask: In such a sophisticated place as Hong Kong, why is it so difficult to take a taxi, while it takes more than an hour to wait for a bus and there is a lack of relevant facilities in MTR stations, given that the MTR Central Station is already a big station?

The MTR station entrance I had intended to take was the one outside the Prince's Building in Central. However, we had to walk down the stairs as the station was not equipped with an lift. If my mother could have stood up and walked, we would have travelled home by the MTR without the need for an elderly person (that is, my mother) to trudge on the street for more than an hour. In the end, we waited for several buses running the same route to pass before we managed to board a bus with facilities for wheelchair-bound people.

This was how I felt at that time: Why has the Hong Kong Government or the MTR failed to provide services to people with disabilities? As a Member of this Council, I have failed entirely in persuading the Government or the two railway corporations to do so. We are not technologically inadequate. Furthermore, Hong Kong has been such a sophisticated place. However, we are really lagging far behind if we cannot even provide simple facilities as such.

I was enraged because it took more than an hour before my mother could return home and take some rest. Just imagine a half-paralysed person who has to labour in such a manner just because our MTR stations are not equipped with lifts. Furthermore, not every bus is equipped with facilities for wheelchair-bound people. How should we address these problems?

Though I know it is impossible for this amendment to pass, I would still like to fulfil my responsibility as a Member of this Council to express my feeling

and make suggestions on behalf of people with disabilities. Even if the relevant rules will not be provided for in law, I still hope the relevant authorities and MergeCo can make more effort for people with disabilities.

Madam Chairman, I still wish to raise one more point, that people with disabilities, being members of society, are capable of contributing to society. They should be given the chances to lead an independent life. To provide a barrier-free society is the first step towards this goal. I hope Dr Fernando CHEUNG's amendment can be passed, though this should be an insurmountable task. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ABRAHAM SHEK: Madam Chairman, I support the spirit and the hard work of Dr the Honourable Fernando CHEUNG in his constant fight for the rights of the handicapped, but I believe this fight cannot be resolved by legislation in the case of this particular merger Bill. His fight, however, must continue.

I further believe that it will be more beneficial for MergeCo to voluntarily implement changes and improvement for the handicapped and to introduce concessionary fares as a good corporate citizen. Let it do it voluntarily than through legislation. I also have faith that the new MergeCo, under its Chairman and the future Board, would take note of the interests and wishes of the handicapped. Through your voices expressed so vividly today, it will be able to give the handicapped and the elderly the concessionary fares and improve facilities for them. I really believe in that.

So, I will not support your amendment.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Dr Fernando CHEUNG raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, you have already spoken for another time.

DR FERNANDO CHEUNG (in Cantonese): Thank you, Chairman. I am also thankful to a few Members for their support. Actually, their support is not for me personally. It is for people with different needs in the territory. This is meant to be a principle as well as a philosophy of life. Whether Members give me spiritual support or support by actual votes..... the latter is definitely more important.

I am thankful to Miss TAM Heung-man for sharing her personal experience with us. That was indeed an embarrassing experience — it was time-consuming to wait for a bus, and yet there was no lift in the MTR station. There is indeed a lift at the Central Station. However, someone who is unfamiliar with the station will not be able to locate the lift. Furthermore, the number of lifts in the station is very small. Actually, there are one at Worldwide House and another one at the Hong Kong Station. But generally speaking, not everyone is aware of the existence of the lifts. This leads to another problem concerning signage. People with disabilities find it inconvenient because there are simply no clear directions in many places. Such inconvenience is indeed avoidable.

Chairman, apart from giving my response, I would also like to raise another point. Concerning the use of the two railways by people with disabilities, many people might have the concept deep in their mind that the MTR and the KCR are mass and high-speed transit systems. They are specially designed to transport a large number of commuters to different places at a high speed and so, the two railways are basically unsuitable for use by people with disabilities and the MTR is not entirely suitable for use by the elderly, the vulnerable and people with disabilities. It is owing to this concept that many think that it does not really matter whether this and that kind of facilities and concessions are available. Frankly speaking, many elderly people simply do not like taking the MTR because they find the MTR extremely dangerous.

In a survey conducted by the University of Hong Kong several years ago, it was found that a very high proportion of people with disabilities consider the MTR not user-friendly and safe. Hence, they are most reluctant to take the MTR. Actually, buses are still most popular among people with disabilities.

Chairman, while this concept sounds appealing, it is actually wrong. Many people, especially Hong Kong people, consider that since we are living in a high-speed city, we should advocate efficiency and target achievement. We

are practical and yet sometimes we can be very snobbish. We would hope that people with mobility difficulties or people likely to cause inconvenience to others will not, frankly speaking, stand in our way as a wheelchair or people with mobility difficulties will easily lead to accidents or danger. If not, the congestion will not do them any good. What is more, they will hinder other commuters and thus render the high-speed mass transit systems meaningless. In the event that these people have accidents in using the escalators or lifts or even fall onto the tracks, delay will be caused, and inestimable financial losses will be incurred with further delay.

I would really like to point out that if people still harbour this concept, thinking that the MTR is unsuitable for the elderly, the vulnerable and people with disabilities, they really need to think twice. The Hong Kong SAR Government has an unequivocal slogan that Hong Kong is determined to become an accessible city. We are all advocating inclusion and equality. Therefore, it will be a great pity if we still hold onto the attitude of "not allowing anyone to stand in our way", as I mentioned earlier.

Frankly speaking, every one of us will have to go through different stages in our life. Our physical fitness will also vary at different stages. There will definitely be a need for all of us to slow down and seek assistance from others. Human beings can be grouped under different categories. Our family members might not fall into the same category because of the differences in their abilities. Today, Hong Kong claims itself to be "Asia's world city". We should cherish such values as plurality, inclusion and equality. If we as politicians, policy-makers and people leading society to move forward can treat the people as our family members, we will start contemplating what can be done if our family members are in such situations. I believe either the two railway corporations or policy-makers should, as stated by Mr Abraham SHEK, have accomplished their tasks voluntarily a long time ago. This was what ought to be done. As remarked by Mr Abraham SHEK, no legislation or regulation is warranted, for this is simply what ought to be done. But the problem is that they have not done so. It is not because they do not understand or they are not aware of the crux of the problem. In fact, many elderly, vulnerable and disabled people are facing great difficulties. If the two railway corporations are not unaware of this, the only possibilities are that they disagree or are conceptually wrong.

For these reasons, Chairman, I very much want to point out that this concept is outdated, for Hong Kong people having different needs are not treated

as family members. When we have had experience having a direct bearing on ourselves, we will realize clearly this is not the way to formulate policies. However, I do not mean that we will not be able to understand this unless we have people with disabilities in our families. Every one of us would have some elderly or vulnerable relatives and friends. Do we not understand this? Should commercial values be put before everything? Do we only strive for speed, efficiency and profits in doing everything? I believe the two railway corporations, even if they are renowned for their great success, efficiency and safety, are not concerned about profits only.

Hence, insofar as my amendment is concerned, Chairman, I hope Members can give me direct support with their votes, in addition to spiritual support. If Members do not vote in support of me such that the two railway corporations and policy-makers are allowed to act voluntarily, I really wonder how long we have to wait. So long as we still have to wait, we will still be facing a transport system which is not truly efficient and barrier-free. Therefore, I hope colleagues can consider this seriously.

Chairman, I really cannot see how the three points raised in my amendment can be considered offensive or impracticable at all. If Members cannot even support an amendment as such and make any concession, how can we explain to the people with disabilities outside the Chamber?

While explanation is only a matter of secondary importance, Chairman, the point is that every piece of legislation represents a spirit and values. I hope the values represented by the Rail Merger Bill are inclusion, equality and justice. Thank you, Chairman.

DR JOSEPH LEE (in Cantonese): Madam Chairman, I would like to speak in response to the concept mentioned by Dr Fernando CHEUNG earlier, that is, the MTR is designed in such a way that it is unsuitable for use by the elderly, the vulnerable and people with disabilities. I remember this observation by me was raised during the discussion between Dr Fernando CHEUNG and me. I must clarify a very important point, that some concepts raised by me have been omitted by Dr Fernando CHEUNG.

What I mean is that it is not enough for us to simply call on the MTRCL to offer, following its merger, fare concessions to people with disabilities because I am concerned that some people with disabilities will be lured to use the MTR

owing to the concessions. However, the MTR, KCR, West Rail, and so on, are basically designed as mass transit systems. The argument would be unsubstantiated if we merely ask for fare reduction without simultaneously calling on the two railway corporations to provide infrastructural support following their merger. Hence, I feel sorry for the speech delivered by Dr Fernando CHEUNG just now. He has actually omitted the point considered to be the most important by me. Although my speech might be not entirely consistent with the motion, I still wish to set the record straight: While I agree with the amendments proposed by Dr Fernando CHEUNG or Mr Andrew CHENG to urge the MTRCL or MergeCo to do better by installing additional platform screen doors and lifts, it seems Dr CHEUNG has quoted in his speech my observation out of context.

I would like to reiterate that it is inadequate to merely request the two railway corporations to offer, following their merger, fare concessions or adjustment to the elderly, the vulnerable and people with disabilities. We should simultaneously call on the two railway corporations to provide support facilities and make improvements because the railways are not designed for use by the elderly, the vulnerable and people with disabilities. I would like to clarify this point.

I support this motion. Thank you, Madam Chairman.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I know someone who is in the antiques business. As a favourite of her family members since the tender age, she takes pride in herself. Not only is she an efficient worker, she is also a beautiful lady. I happened to bump into her one day after we had not seen each other for a long time, and I found that she had changed. Not only had she slowed down a bit, she was prepared to listen to others attentively. She told me it was because she had fallen and gone lame when she was organizing her goods. Of course, she was not actually lame. She had only hurt her ankle. However, she told me that she realized for the first time in her life that every one of us was, to a certain extent, weak. Because she had difficulty getting about after she had hurt her ankle, and she had to seek assistance from others to do anything.

Do we have to have the experience of hurting our ankles before we will realize some people need others to help them because they are unfortunate?

Actually, we might encounter misfortune many a time. I have often said that even LI Ka-shing, who supposedly does not need to seek help from others in his entire life, might fall on the street one day and need someone to help him apply medicinal wine to his wound. Therefore, it is better to do good deeds. If someone does bad deeds, others might not help him apply medicinal wine.

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, I have to interrupt you. Does the slogan displayed on your body have anything to do with the subject of your speech?

MR LEUNG KWOK-HUNG (in Cantonese): I have no idea. I display the slogan because it was pushed onto my body.

CHAIRMAN (in Cantonese): No unauthorized display of slogans is therefore allowed.

MR LEUNG KWOK-HUNG (in Cantonese): Never mind.

(Mr LEUNG Kwok-hung peeled away the slogan)

CHAIRMAN (in Cantonese): I know that this slogan is related to a Members' motion to be moved by Dr Fernando CHEUNG later. You might keep it and display it again until then.

MR LEUNG KWOK-HUNG (in Cantonese): All right. I thought that you.....interrupt my speech.

CHAIRMAN (in Cantonese): You may continue.

MR LEUNG KWOK-HUNG (in Cantonese): Should someone fail to do good deeds, there is bound to be retribution once he is reduced to..... For instance,

even though Mr LI is not supposed to require assistance from others, will someone call for an ambulance or apply medicinal wine for him should he fall down? Actually, this is an example of sowing a good seed to reap good harvest. I am not seeking to advocate superstition. Instead, I am just trying to say that, in order to achieve true social harmony, everyone should consider the predicament of others — then society will get a good result from sowing good seeds.

All right. Let us come back and take a look at what Dr CHEUNG has proposed today. It is about fares and barrier-free access. Nothing more. My dear friends, this is all.

Another friend of mine will often act in this manner: he will smile and reply it does not matter whatever request is made of him. However, when you repeat what he said earlier after an hour or so, for instance, that he had promised to donate \$500 to help children, he would question whether he had said anything like that. He is the kind of person who will act in that manner. I initially found the kind of persons like him very strange. He was merely paying lip service. He would say "yes" whatever request he was posed. However, he would completely forgotten his promise when he was really asked to pay.

Will our Council merely hold empty talks and fail to put policies into action? Will our Members deliver their speeches in a hubbub but press the wrong buttons at voting? This is actually the mental state of contemporary people, or many contemporary people — loss of speech control and schizophrenia.

We are merely discussing a very humble power. I believe Members will scramble to speak if what is held today is an election forum. I would often attend some election forums and see some elderly people or so-called disadvantaged people. They are often pushed by someone with their elbows to prevent them from entering the venues. By quoting classics and talking about topics ranging from emperors to Dr SUN Yat-sen, they are actually seeking to reflect the unfairness of society. We really have to do something for the disadvantaged, children, the elderly and people with disabilities.

When the election is over and after the delivery of the election statement, what has happened will mostly fade away, like the fading of colour from the shirt on me now. Honourable Members, I understand that today's voting is a race

between the Government, the MTRCL and the KCRC to pass a piece of legislation here to facilitate a merger between the two railway corporations. I will not discuss the absurdity of the merger because I have dwelt on this too much. However, the crux of the problem lies in the resistance attitude adopted by some Members towards the amendments.

We can see that if an amendment not endorsed by the Government is tabled to this Council, the Government will definitely not allow it to be passed. The present situation is just a repeat of the scrutiny of the legislation relating to covert surveillance last year. Chief Executive Donald TSANG once said that people not sharing his vision would not be invited to his cabinet, or in other words, appointed to be Secretaries of Department and Directors of Bureaux. His agenda is to improve the people's livelihood and foster harmony. The Central Authorities are responsible for the substantial appointment of Secretaries of Department and Directors and Members of the Executive Council because the Central Authorities have been told by Mr TSANG that they share the same vision as his and they are part of his team. When he says "this", they will not say "that". Even though the Secretary is present here, I think there is nothing she can do. Does she share Mr TSANG's notion of improving the people's livelihood and fostering harmony or strong governance and sparing no one? Like many contemporary people suffering from anxiety, this Government is suffering from schizophrenia and loss of speech control by engaging in empty talks while failing to put policies into action.

I also appreciate the sense of helplessness felt by those colleagues who have promised to support the Government. It was most fortunate for women in ancient times to meet someone who did not treat them well. Their fates were not held in their own hands, but were determined by some sorts of prearranged marriage. After all, they were fortunate in the sense that, even if they had involuntarily married someone whom they did not love, they would tell people that they were very happy.

Political coalitions today are in an even worse situation. Many people will say, "This is against my wish. However, there is nothing I can do, for I am called upon by the Government to support it." My dear friends — no, I should be addressing the Chairman, sorry — (*laughter*) Chairman, I feel very sorry for this. Even women who married someone in prearranged marriages more than a century ago knew that this did not work. I remember a line in ancient poetry describing the shock felt by a concubine in the imperial palace "when the

140 000 soldiers took off their armour". She questioned why she was the only one left to put up resistance when all those male soldiers surrendered their weapons in the face of invasion.

Many of the Honourable colleagues actually feel deep in their hearts that the Government is not doing the right thing. However, there is nothing, nothing, nothing they can do, for the Government will not sympathize with them. The Government merely knows how to pursue strong governance and act forcibly. Of course, under the policy of "affinity differentiation", the proposals put forth by pro-government groups will be adopted, and publicity campaigns will then be launched in housing estates saying that Team A has got you one rotten apple and another less rotten apple, while Team B has got an orange.

I really wish to ask Honourable colleagues who are going to vote in support of the Government today this question. Is a business not required to assume social responsibility? Does such social responsibility exist in name only? When someone queried whether a certain responsibility was a social responsibility, the business being queried must give a reply. When it was questioned why it had failed to discharge the responsibility, it replied that it could hardly do so. This is what has happened.

Today, are the MTRCL, the KCRC and the big brother behind them, that is, the Government, responsible? It is said that a government should have morals. Where are our Government's morals? The Government has mobilized a lot of people in Geneva to explain on public occasions to the United Nations Commission on Human Rights its ambitious plans and great endeavours to be implemented under the International Covenant on Economic, Social and Cultural Rights. Will the Government say that it is not responsible when it has failed to do something?

Honourable Members, I wish to remind this Council once again that the merger today is endorsed and promoted mainly by the Government. The Secretary is personally in command of her subordinates, and veteran officers can be seen everywhere downstairs — the situation has been slightly improved, for they have been given a seat after my complaint — Honourable Members, what do they want? They want to tell Honourable Members that they would not make the smallest concession, that they share the Government's notion of improving the people's livelihood and fostering harmony. However, very sorry.....

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, I have to interrupt your speech again because you seem to keep dwelling on the political system, not the facilities in MTR stations. You had better come back to the question relating to facilities.

MR LEUNG KWOK-HUNG (in Cantonese): No, Chairman. I am actually referring to something.

CHAIRMAN (in Cantonese): You should come back to the subject.

MR LEUNG KWOK-HUNG (in Cantonese): Actually, I am a most attentive and meticulous person. I am not talking about a vague concept. Instead, I am lobbying other colleagues who might vote for the Government. I am reminding them that even if they support the Government, they just need to support Mr TSANG's notion of "improving the people's livelihood and foster harmony" and they will get an identical, or a greatly different, conclusion.

I believe Mr TSANG was sincere when he made those remarks. If his subordinates come here to sell a proposal different from his notion, and if they look back at his good side, they will definitely support me, right? Therefore, I was referring to something. *(Laughter)* Fine, since the Chairman has told me, I will remember that screen doors, barrier-free access and fares constitute a social cost. The Government has indicated throughout the debate that this cost may be borne by businesses rather than the Government. However, I have been told by businesses that though they like such values, the cost should be borne by the Government instead. For both the MTRCL and the KCRC, the Government is the major shareholder, therefore, the Government can hardly shirk its responsibility. It may, for instance, conduct consultation through the Home Affairs Bureau, allocate funding through the Health, Welfare and Food Bureau and implement the proposal through Secretary Dr Sarah LIAO — if it is sincere. Alternatively, the Government should take advantage of the merger to tell the two railway corporations that the good old days are gone. Nevertheless, we can have even better days by achieving empowerment of the disadvantaged in terms of affirmative actions and equitable power. The Government has already

decided to act in this way. If they do not like the idea, sorry, the merger might fall through thanks to our promotion. Has the Government acted in this way?

The Government has not acted in this way. Like a candle in the wind, Mr Andrew CHENG and Dr Fernando CHEUNG are flickering here. If they are blown harder by the opponents on the other side, the light will go out. In the end, once the votes are cast and the buttons pressed, the candle will stop burning. What is the light smoke mourning for? It is mourning for the decline of this Council, the decline of the Government, the decline of businesses, and the decline of the rights of the disadvantaged.

Hence, Chairman, I have been speaking to the question. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, Secretary for the Environment, Transport and Works, do you wish to speak again?

(The Secretary for the Environment, Transport and Works shook her head to indicate that she did not wish to speak again)

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

MR ANDREW CHENG (in Cantonese): Chairman, the Secretary said in her first speech that she would like to listen to the speeches of colleagues, but after that, she gave no response. So, she..... I would like to raise a point of order. Actually, I intend to speak after the Secretary has given her response, so I implore the Secretary to..... As the Secretary said in her first speech on this amendment that she would listen to speeches of our colleagues, I have all along been waiting for her to speak. I do not want to waste time. I hope the Secretary can speak first and then I will speak again, could she?

CHAIRMAN (in Cantonese): Mr Andrew CHENG, you have already spoken once. Secretary, do you wish to speak?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, actually, I have been listening all along. The amendments of Mr Andrew CHENG and Dr Fernando CHEUNG are about the provision of adequate facilities, including platform screen doors and automatic platform gates, for the purposes of protecting the safety of persons on the railway or on railway premises. However, since the greater part of the discussion is focused on persons with disabilities, I do not think I have to give any response under this topic.

DR FERNANDO CHEUNG (in Cantonese): Chairman, we are now in.....

CHAIRMAN (in Cantonese): A joint debate.

DR FERNANDO CHEUNG (in Cantonese): This is a joint debate and my amendment also includes other parts. Chairman, will you please point out those parts?

CHAIRMAN (in Cantonese): Do you not know the other parts of your amendment? You had better tell it yourself, for the Chairman should not say too much.

DR FERNANDO CHEUNG (in Cantonese): Chairman, the other parts of my amendment include the provision of an adequate number of lifts to provide direct access from the ground level to the station platform. Moreover, adequate staff should be deployed on the railway to ensure the safety of passengers using the services of the two railway corporations. Regarding the remaining part of my amendment, it is indeed the original amendment.

CHAIRMAN (in Cantonese): However, you have to explain that persons with disabilities are indeed very much in need of these facilities, am I right?

DR FERNANDO CHEUNG (in Cantonese): Yes, that is it.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): However, according to the literal meaning of the amendment, this is an amendment related to all passengers. In this respect, I may perhaps give my response on services provided to persons with disabilities, stating clearly the policy adopted by the Government.

Actually, during the Second Reading debate, I already mentioned it once that the transport policy adopted by the Government seeks to provide barrier-free transport for persons with disabilities. In the course of discussion on the Bill, the MTRCL accepted the views of Members and agreed to provide at least one bi-directional wide gate at all KCR stations upon the merger for the convenience of persons with disabilities. It also agreed to amend the relevant clauses of the integrated Operating Agreement, in other words, those undertakings will be implemented via the Operating Agreement. It has been stipulated that upon the merger, escalators and lifts should be installed at appropriate locations for the efficient and effective transit of passengers within stations. With regard to the installation of platform screen doors, we have made it clear during the discussions at the Bills Committee that the feasibility study on platforms should cover safety and installation issues and the study will be completed by the end of 2007. If these proposals are put forth in the amendment, conflicts will arise in some measure and it is inappropriate too. For once these provisions are stipulated in the Bill, the MTRCL is required to provide the relevant facilities on the very day the legislation comes into effect, otherwise, the MTRCL will be breaking the law. Therefore, I urge Members to vote against this amendment.

MR ANDREW CHENG (in Cantonese): Madam Chairman, the Secretary said in her reply that our proposal on the installation of platform screen doors would create conflicts, for the technical studies of the two railway corporations would be completed by 2007 and they had undertaken to complete the works in 2012 or 2013. The Secretary went on to say that if we did so, and if the MTRCL could not complete the work required immediately, the railway corporations concerned would contravene the legislation and be liable to penalty upon the passage of the Bill.

Madam Chairman, whether or not the railway corporations concerned will violate the legislation or be penalized should not be a cause of concern, for the Government has never invoked the law for this purpose and has on the contrary put up reasonable defence for not doing so. With regard to the technical problems of installation, I believe the public will also agree that if the authorities concerned have already started conducting the studies, we will not be creating obstacles or conflicts by including this requirement in the legislation.

Earlier on, the Government, or Ms Miriam LAU on behalf of the Liberal Party, has expressed that in view of the undertakings already given by the two railway corporations, we should not pressure them to do so, nor should we include the requirement in the legislation. I feel deep regret about this. I think these concepts and logic are most strange. We are talking about two issues here. First, the motion passed by the Committee is not legally binding. The two railway corporations have undertaken to complete the installation of platform screen doors on 15 platforms by 2012 and 2013 respectively. This is the year 2007, and from now until 2012 and 2013, there are five to six years to go. If any major technical difficulties are identified during this period, as it did in the past decade or so, how can the Government give an account of the 34 deaths in the past decade — if my memory is right — as a result of the failure of the two railway corporations to install platform screen doors.

The Government will of course say that some of the cases were caused by suicide or various individual problems. However, the absence of platform screen doors did make it easier for those people to commit such foolish acts. Indeed, some of the victims who had no intention of so doing just fell onto the track by accident because the platform was overcrowded. I think this is a bloody lesson. Had I not requested the Secretary to respond to these questions, she did not seem to consider it necessary to do so, for she has already secured an adequate number of votes.

I hope the Secretary can be more serious about this. This Bill submitted by the Secretary has pushed us to this pass. All along, I have been waiting for the Secretary to give her response after colleagues have finished speaking, indeed, the Secretary has not yet responded to the part on broadcasting services. She may not have noticed it if I do not remind her. I hope she can read the content of my amendment thoroughly, for apart from broadcasting services, I have also mentioned Schedule 7. Just now, I have spent more than 10 minutes talking about the performance requirement, and then about the arrangement that

the Chief Executive in Council may by order amend Schedule 7. The Government should at least state its own position rather than dealing with it in such a haphazard manner.

The Secretary urges us to pass the Bill expeditiously, but the amendments we propose are seriously drafted, reflecting the concepts we uphold. I hope the Secretary will not treat those platform issues lightly. I also hope that colleagues from the Liberal Party and the DAB will express their views or respond to my earlier remarks about Ms Miriam LAU. I think it is very strange that when the requirement is not legally binding, all Members say that they fully support the installation of platform screen doors, and they even hang banners everywhere in their districts stating they have successfully secured the installation of platform screen doors or requested such installation. However, when amendments seeking to make such requirements legally binding are proposed, they put forth all sorts of reasons to oppose the inclusion of such amendments in the legislation.

What kind of principle is this? What kind of legislature is this? Do they respect the legislative function a Member should fulfil? One reason for their opposition is that they are pro-government. Another reason is that they are protecting the interest of the business sector. It is as simple as that. In the Committee, Members have made strenuous efforts and numerous suggestions, and eventually forced the two railway corporations to complete the technical works by 2012 or 2013. If so, Secretary, how will the inclusion of such a requirement in the legislation create any conflict?

"To provide adequate facilities, including platform screen doors and automatic platform gates, for the purpose of protecting the safety of persons on the railway or on railway premises" — the authorities concerned often bring up all sorts of technical problems as an excuse, but when we are not forcing them, we can see that those technical problems are in no way technical in nature, for the root of the problem is money.

Over the years, the authorities were unwilling to conduct studies out of monetary concern, but had instead attributed this to the bends, the curvature of glass screen doors, as well as the air flow caused by elevated tracks, bends and non-underground tracks. However, as the Sunny Bay Station of the Disneyland Resort Line comes into operation, their lies are laid bare? What is the problem?

Is not the Sunny Bay Station line an open line? Have not the platform gates been installed? Are those bends posing real difficulties? I can read the Secretary's mind — since the two railway corporations have already undertaken to do so, we should not put too much pressure on the them.

The Secretary is the representative of the SAR Government on the Board of the KCRC and the representative of the largest shareholder of the MTRCL. If she can press on more, the two railway corporations will show more enthusiasm. I hope Members will understand that these issues involve lives. Why can one be so cold-blooded on issues like these? Besides, I really cannot understand why Members will support the arrangement when it is not legally binding, but oppose an amendment that makes the arrangement legally binding. What kind of political parties are these? In the face of these issues, how can they act in this way only protect the Government? Can they not put forth reasons that are more tenable?

I have to wait until Mr LEUNG Kwok-hung returns to this Chamber before I respond to his notion of "a candle in the wind". Frankly, we are really burning away our "youth", though I am not sure whether it can be regarded as "youth"; I am sure we are burning away our time. Ms Miriam LAU has just returned to the Chamber, I hope she will give a response, for I believe she would have heard my criticism against her outside the Chamber.

Madam Chairman, I now turn to you to speak. I hope those Members who have indicated support for the non-binding motion urging the railway corporations to install platform screen doors or automatic platform gates will, at this most crucial moment, support the inclusion of the arrangement in the legislation to make it legally binding. No one knows what will happen in the next six to seven years. If the requirement is included in the legislation, the two railway corporations will have to execute it. It is just that simple. According to the Secretary, if the requirement is included in the legislation, the two railway corporations will have to commence the project immediately. But, excuse me, Secretary, if this is included in the legislation, it is certain that the two railway corporations have to complete the task. However, since the two railway corporations have already submitted the specifications and timetable for all the projects, I believe no one will request the Secretary to prosecute or penalize the two railway corporations only because they are unable to do this now or they

cannot finish it so soon. Besides, the Government has never imposed any punishment on the two railway corporations.

Madam Chairman, I am angered by these reasons. Once again, I have to point out that 34 lives were involved. Of course, the absence of screen doors may not be the major cause of death of some of the victims. However, indirectly, this has created an objective environment which allows persons who lose their mind on the verge of the moment to jump onto the railway tracks. Or that passengers, persons with disabilities or the visually-impaired, as mentioned by Dr Fernando CHEUNG, may fall onto the railway tracks by accident because the platform is overcrowded. Why do they not face these problems squarely? What is wrong to stipulate it clearly in the legislation? How will this create conflicts?

In addition, I hope the Secretary may give her response on broadcasting services. I hope she can take another look at her cue, and let her colleague next to her tell her about it. Earlier on, I mentioned the spending of \$100 million on cabling. As telecommunications companies are paying up to \$267 million each year in tunnel levy to the MTRCL, the MTRCL will get more than \$10 billion during the 50-year franchise. The Government should have its own position. Colleagues have listed the many advantages and concepts relating to the reception of radio broadcasts earlier, I urge the Secretary to give a response.

I have already included in my amendment the specific content and the reliability of ticket issuing machine and add-value machine in Schedule 7, and I have also explained the relevant concepts and principles. Now, it is the Government's wish that, before proceeding to the Third Reading of the Bill today, these amendments can be..... I hope the Government will at least put up opposition, rather than just requesting the ruling coalition to oppose the amendments proposed by Mr Andrew CHENG. There is no reason to do so. If they give no reason, why should they oppose my amendment? Had I not requested the Secretary to speak, she would have given no response. I am most disappointed indeed.

Madam Chairman, apart from the Government, I also hope that those Honourable colleagues who have once supported the installation of platform screen doors by the two railway corporations can put forth some convincing reasons at this crucial moment today to convince me, though they may not be

able to talk me into it. As in the case of the Railway Development Fund, Members may not necessarily convince me. However, the debate today will be recorded in the Official Record of Proceedings, forming a good foundation for continual pursuance or debate on the issue in future.

However, if only one or two Members voice opposition today — actually, I have only heard one Member opposing it; Mr Abraham SHEK has also expressed his views, but I have seen no other Members..... In the past, some Members had demanded strongly the installation of platform screen doors. In their constituencies, they even said that they would request, or have successfully requested, the installation of platform screen doors. But, here, in this Chamber, they oppose the installation of screen doors. They may even cite the reason used by the Liberal Party, that is, since the two railway corporations have already agreed to install the screen doors, the inclusion of the requirement in the legislation is thus uncalled for. Is it not an insult to our role as Members of the Legislative Council?

Moreover, it is impossible that the two railway corporations will immediately agree to complete the installation works shortly. If anything happens in the next six to seven years, should the issue be submitted to the Legislative Council for discussion again? Are we not letting slip a golden opportunity? Why can the request for the installation of platform screen doors or automatic platform gates not be stated clearly at this stage? We understand that these projects are technically feasible, if so, why can we not make such a request now? To those Members who really cannot support this amendment, apart from being pro-government and allowing railway corporations to save money, I do not see they have other reasons that can convince me.

Thank you, Madam Chairman.

MR FREDERICK FUNG (in Cantonese): Madam Chairman, regarding the amendment proposed today, I support the issues raised by Mr Andrew CHENG earlier in relation to platform screen doors. However, I am not going to speak on screen doors, but on the remarks made by the Secretary in her earlier reply, that Hong Kong is a barrier-free city, and that she considered, upon the merger of the two railways, barrier-free access would be provided and all MTR stations should be able to achieve it.

The Hong Kong Association for Democracy and People's Livelihood (ADPL) staged a campaign yesterday, but unfortunately, it is not reported in today's newspaper, for no reporter was at the scene yesterday and there was no report on this. Yesterday, we, a group of members of the Sham Shui Po District Council and a group of elderly, travelled to and from the five stations in the Sham Shui Po District and staged a demonstration in each of these stations. Why do we have to stage demonstrations? For in the MTR stations of the Sham Shui Po District — apart from Mei Foo Station, which I will come back to it later — barriers are found in four of these stations, including Lai Chi Kok, Cheung Sha Wan, Sham Shui Po and Shek Kip Mei, where the barrier-free requirement is not met. Why do I say so?

Regarding these four stations, first, passengers have no problem in accessing the platform from the concourse, but for access from the concourse to the ground level, passengers face problems in all four MTR stations. In these four MTR stations, there is no escalator providing direct access from the ground level to the concourse, and all escalators provide only half-way access. All the staircases from the ground level to the concourses are divided into two sections. Escalators are provided for the first section but not the second. It is indeed strange. Actually, the District Council has discussed the issue a number of times, and the MTRCL has also told us the same story — first, the MTRCL has never been willing to meet the District Council and discuss the issue with us; second, according to the written reply it provided, insufficient space was not the cause, and the provision of escalators was impracticable because of other obstacles. It is strange that the provision of an escalator is only feasible for a certain section of staircase only but not for the remaining section which is exactly of the same width of the section provided with an escalator. We cannot understand why this is impracticable. Third, are lifts not installed?

Yesterday, in the course of our demonstration, we met an old man in a wheelchair — no, the old man was not in a wheelchair, but supported by his companion and a cane — who lived in Kwun Tong and went to Sham Shui Po. He wanted to go to the ground level from the Sham Shui Po Station, but this would certainly be difficult, for he needed the support of a companion and the assistance of others. After waiting for a long time, an MTR staff member came to us and asked whether we needed assistance. He asked what he could help. I do not know the name of that machine, but we call that "the monster" in the community. The staff said that he might use the monster to help the old man, and if the old man used a wheelchair, the monster could carry his wheelchair and

him upstairs. First, the old man was already halfway up the stairs. Second, when the monster was ready to serve him, or say from the time the staff offered to carry him upstairs with the monster until the old man could get to the ground level, a total of half an hour was spent.

Moreover, the staff asked us at the time why we did not request a wheelchair, which was actually available for borrowing, members of the Sham Shui Po District Council were also at the scene. So, no one, not even members of District Councils, knows that the MTRCL may provide wheelchairs for its passengers. Naturally, I do not know whether a large number of wheelchairs are available in each MTR station. Like toilets in MTR stations, they are available in all stations, but are designated for staff only. All of us know nothing about it. Why does the MTRCL not promote vigorously the availability of wheelchairs for borrowing? Is it afraid that too many people may borrow the wheelchairs? Eventually, no one knows that wheelchairs can be borrowed from MTR stations by paying a deposit of \$100. None of us knows about it.

Certainly, the wheelchair issue is not my focus. I notice that now, by means of the provision of certain facilities: first, wheelchairs; second, the monsters; third, escalators; and fourth, lifts, the MTRCL is trying to create the impression that the so-called "barrier-free access" is available in MTR stations. However, in respect of these four options, in four of the five stations in the Sham Shui Po District, escalators and lifts are not provided. In this connection, as the Secretary assured earlier that this could be achieved, I thus urge her to examine how these facilities can be provided at the five MTR stations in the Sham Shui Po District.

As to the fifth station, Mei Foo Station, what is the problem? At the request of the public, a lift has been retrofitted. However, Mei Foo Station covers a large area. If Members have been to Mei Foo Station, they will understand. Worse still, the lift is located at the end of the street. If a passenger is at the end of the street, the location of the lift will not be a problem. But if he or she happens to be at the other end of the street, he or she will be in big trouble. For the passenger will have to walk from one end of the street to the other end in order to take the lift. For elderly people who have to rely on a wheelchair, a cane or a walking frame, they have to walk for 15 minutes. The suitability of the location of facilities or the necessity for additional provision is another problem.

Surely, if all the people in need are wheelchair-bound, they can easily draw the attention of others and MTR staff may come to their aid. However, the gravest problem in the Sham Shui Po District is that not many elderly use wheelchairs, as a larger number of them use canes and walking frames. I believe Members are aware that the proportion of elderly population in the Sham Shui Po District is the highest in the territory. However, the facilities of the MTR make their service completely inaccessible to the elderly.

Secretary, you have given your response earlier. However, by coincidence, members of the Sham Shui Po District Council were invited to meet with Members of the Legislative Council to discuss the issues of the Sham Shui Po District this morning. The District Council members of that district also raised the above problems. On the other hand, according to the policy brief the Government provided to us, the situation is exactly the opposite of the Secretary's description. It states clearly that unfortunately the MTRCL has indicated the impossibility of providing such facilities, which means the provision of additional escalators or lifts at Sham Shui Po Station, Shek Kip Mei Station, Cheung Sha Wan Station and Lai Chi Kok Station as I mentioned earlier will not be possible. I thus wonder if the undertaking given by the Secretary earlier suggests that after the debate today, the Secretary will request the MTRCL to improve its services in this respect. Will the Secretary at least request the MTRCL to appoint its staff members to visit Sham Shui Po and discuss the issue with the members of the Sham Shui Po District Council? Despite repeated invitations, they have never been willing to visit the district and attend the meetings. Therefore, the two slogans, "barrier-free city" and "barrier-free access", should carry a footnote stating that they are not applicable to the Sham Shui Po District, which will be more appropriate and closer to the truth.

If you really mean to include Sham Shui Po, then you have to address the problem found in the five MTR stations mentioned by me earlier. As I said earlier, the provision of escalators or lifts will not only satisfy the need of persons with disabilities, for the demand of the elderly in this respect is even greater. In terms of head count, the chances of the elderly taking the MTR may be higher than that of persons with disabilities. Therefore, I think, no matter it is for the benefit of persons with disabilities or the elderly, or for the mobility-handicapped, this situation should be improved and the problem must be addressed squarely.

Moreover, the approach now adopted by the MTRCL is absolutely unacceptable to me. I hope, with my remarks today, the Secretary will seek clarification for me about the policy brief we read this morning, in which the Government states that no improvement would be made to the four MTR stations, contradicting the Secretary's earlier remark that Hong Kong would be a barrier-free city. I hope the Secretary will give us a reply shortly, and this is a question which I wish to pose to the Secretary via the Chairman. Thank you.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MS EMILY LAU (in Cantonese): Chairman, I rise to speak in support of the amendments of Mr Andrew CHENG and Dr Fernando CHEUNG.

Like Mr Frederick FUNG, I would like to focus my speech on barrier-free access. For those with mobility disability, be they persons with disabilities, the elderly, the injured or any other persons, I believe when they take the MTR..... Mr Frederick FUNG mentioned the situation in the Sham Shui Po District, and though I have not visited every MTR station, most of the stations are very inconvenient. This is a point the Secretary should have known.

Now, colleagues are just trying to state these requirements unequivocally. If no action is taken after the requirement is stipulated in law, it is surely an offence. The issue has been discussed for so many years but little progress has been made. That is why the stipulation of this in law becomes so important. Otherwise, as Mr Andrew CHENG said earlier, sometimes, I really think that it is useless to say so much during motion debates. Despite the large number of speeches delivered, no one acts with great determination when it comes to genuine action. Why does the requirement have to be stipulated in the legislation? Because what we said in the past was not legally binding, and had thus become ineffective.

Actually, as Asia's world city, how can Hong Kong do so little and act so slowly in this respect? The best approach is to ask the Secretary to visit every MTR station in future when she is not so busy to see how many MTR stations are really barrier-free. I think this really brings Hong Kong into disrepute, for we

definitely have the ability to do so and should have the determination to do more. Otherwise, how can Hong Kong be worthy of the claim as a barrier-free city?

However, not only does the Secretary desist from doing so, she even implores Members to oppose it. May I ask when will this target be achieved? How long will it take to complete the task? The present failure to achieve the target should indeed be attributed to the unwillingness of the MTRCL to take it forward. I think it is really undesirable.

Chairman, I do not know how long will today's debate last, we may have to continue tomorrow or even the day after. Now, Secretary Stephen LAM is here to stand in for Secretary Dr Sarah LIAO to let her have a break. Members are not trying to waste time deliberately. However, regarding certain issues, Members who are usually prepared to speak on some useless debates are unwilling to say a word in the discussion on this useful motion. This is most frustrating. I always disagree with gratuitous debates, for no matter what is said during these debates, it will be useless. But sometimes, we may encounter difficulties even in debates of this kind, and the motion concerned may not be passed, though these motions are useless irrespective of their passage or otherwise. Today, when we can do something serious, all these are laid bare. No matter what the Government has said on normal days, when it comes to making actual commitment — for once the requirement is written down, it should be enforced, and failing to do so will be an offence — the Government says no and does not support it. It shows that all the Government said in the past were lies. Lies after lies, all it said were lies. It is just lying!

I support the amendments.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR RONNY TONG (in Cantonese): Chairman, I agree with the arguments raised by many Honourable colleagues. It is most imperative that the Legislative Council, as its name suggests, legislates. While the major function of Members of this Council is to enact legislation, our terms of reference also include enacting legislation. If Members of this Council do not stand firm in their convictions, they will fail to live up to the expectations of us on the part of Hong Kong people. Neither have we discharged our responsibility as

lawmakers. I absolutely agree with Ms LAU who said earlier that, in certain non-binding motions, Members could certainly engage in talking about inconsequential matters to give others the impression that they supported certain stances but, when it came to really exercising their political rights, some of them would hide in the Ante-Chamber and emerged later to vote in support of the Government. In my opinion, they have failed entirely in discharging their responsibility as Members of this Council, and I feel sorry for them. The entire Council would also be shamed if we work with such colleagues.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Dr Fernando CHEUNG raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, you are speaking for the fourth time.

DR FERNANDO CHEUNG (in Cantonese): I would like to thank the Chairman for allowing me to speak for the fourth time.

I will not repeat what I said. It is only because, after hearing the Secretary's response, I must respond to her brief and disappointing comments.

The Secretary's logic is most interesting indeed. She said if both Mr Andrew CHENG's amendment and mine were passed today, the MTRCL would immediately violate the law upon its merger. Chairman, I would like to remind colleagues and the Secretary once again that the first point raised in my amendment concerns the provision of adequate facilities, including platform screen doors and automatic platform gates, for the purposes of protecting the safety of persons on the railway or on railway premises. In what way is this proposal unreasonable? In what way has it gone too far? What ought not to be done? What facilities are financially not viable or infeasible in terms of principle and value? The second point is about the provision or installation of lifts to provide passengers direct access from the ground level to the station platform. Likewise, Chairman, is this proposal again unreasonable? Is it illogical? Has it gone too far? The third point is about the provision of adequate staff on the railway and on railway premises to assist passengers.

Chairman, if the Secretary considers the three points raised by me reasonable, why can they not be stipulated in law? In the earlier discussion, it was pointed out that basic care must be given to commuters, definitely including people with disabilities and the elderly, with different requirements. Although we have not been able to discuss fare concessions so far, the Government would tell us whenever these subjects were raised that the MTRCL had earmarked hundreds of millions of dollars for the provision of facilities, and the KCRC had also earmarked huge sums for its facilities. Not only did we take pride in our facilities, many issues were also dealt with satisfactorily. However, our request for some reasonable arrangements in facilities is now rejected on the ground that doing so will violate the law. It transpires that even allocating hundreds of millions of dollars will break the law. Should we enact a law in this way, we will be deemed breaching a fundamental law like this one. What logic is this?

Our request for provision of basic facilities was rejected on the ground that the law would be violated once legislation was enacted. Again, our request for provision of other facilities for people with disabilities was immediately rejected by the Secretary who said that huge sums of money had been injected, and they were of a world-class standard and "unrivalled". Chairman, if they are truly "unrivalled", why should they be afraid of meeting the several basic requests?

I really cannot figure out whether the barrier-free transportation and barrier-free city we have been advocating are real or just a slogan. Chairman, I would like to put this question to other colleagues in this Council, particularly those who have made up their minds right from the very beginning to support the Government and oppose the three basic and reasonable requests raised in my amendment. What justifications do they have? Why can they not accept the three points? In addition to political, social and political reasons — the political reason is absolutely clear in the sense that they are royalists, what other reasons do they have that make it impossible to accept this amendment?

This amendment is not asking for universal suffrage or sharing of powers. Neither huge sums of money are involved. While the MTRCL has already made some handsome profits, the KCRC is also making money. Following the merger, the two railway corporations will even rake in enormous profits. Hence, where does the problem lie if it is technically and financially feasible to do so? Given that the notion of a barrier-free city can be truly realized simply

by meeting this basic and reasonable requirement — I hope this is not merely a slogan but something that can truly be realized — where does the problem lie?

Why should all amendments moved by Members definitely be negated? This is absolutely unreasonable. Is such an act rational? Should we as policymakers examine in the course of enacting legislation if there is such a need in society from a rational angle? Does our legislation seek to protect the right of certain people to use public transport on an equal basis? Do we have the notions of justice and care? Do we have all these?

Even these basic requests are now rejected. While everything will go well if the two railway corporations act voluntarily, the requirements somehow cannot be laid down in legislation in a mandatory manner. If the two railway corporations are willing to act voluntarily, they should have already done so a long time ago. Why have they not acted in that way to date? Just now Ms Miriam LAU said that the original design of the platforms simply makes it impossible. Therefore, many technical difficulties will be encountered in retrofitting. Right, this has not been considered at all. Many issues have indeed not been considered. Having said that, the Secretary is indeed having a hard time, for she has kindly agreed to install the gates. What more can we ask for now that the KCRC has finally yielded to our dogged determination and agreed to install wide turnstiles at each station?

I have cited a number of examples to illustrate that facilities are not necessarily usable for they are not conceived from the angle of users. Some facilities, such as a turnstile reachable by two flights of stairs, are simply unusable. Furthermore, can the installation of at least one wide turnstile at each station be considered remarkable? I wonder if Hong Kong society has reached such a stage that the Government will say something like this: "Sorry, such inconvenience will only be temporary. When we consider the conditions are ripe, we will do it. We will definitely do it, only that it will take time. You can rest assured that a decision will be made. We know when the most suitable time is. However, we cannot state explicitly in law that this has to be done."

What does the Government have to protect? What is the Government's concern? Regarding these basic requirements of people with disabilities — the Secretary insisted earlier that these amendments of mine are relevant to ordinary commuters, that is, all commuters, but not necessarily people with disabilities.

Chairman, as pointed out by Frederick earlier, many elderly people with mobility difficulties and some toddlers — baby carriages are used by many people nowadays — and people find that it is very inconvenient to use baby carriages in certain MTR stations (I have cited more than 10 stations earlier). Many overseas tourists thought that facilities in Hong Kong should be excellent — their assumption was originally legitimate. However, they later found out they could only manage to go halfway in MTR stations. I believe many overseas tourists should have had the same experience as described by Ms Miriam LAU earlier. Contrary to their thinking that they could push their baby carriages through the turnstiles for access to the MTR stations, the entire baby carriages had to be lifted and carried over them. Although baby carriages can be manhandled, how can a wheelchair? Furthermore, it is simply impossible for an electric wheelchair to be manhandled.

Chairman, I have absolutely no intention to waste Members' time. We are burning our youth — sorry, I have no more youth — I should say our lives instead. This tiny flame of ours will soon go out. However, before it goes out, I hope the relevant government officials and Members who are entitled to vote today will consider Mr Andrew CHENG's amendment and mine. Is my amendment unreasonable? Is it demanding too much? Is it infeasible? If not, I hope Members can vote according to their conscience.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Frederick FUNG, you may speak for the second time.

MR FREDERICK FUNG (in Cantonese): Chairman, maybe it has got on my nerves.

Although this problem has been discussed in Sham Shui Po for years, no solution has yet been identified. On the whole, we consider that the merger is helpful to fare reduction and other aspects. We also support some of the amendments, that is, the amendments proposed by Mr Andrew CHENG and Dr Fernando CHEUNG. However, one point in particular deserves our support. Furthermore, I must specially point it out to the Secretary. If the Government is all along convinced that Hong Kong is an accessible city with barrier-free

access, I hope it can really consider the example cited by me earlier in relation to the five MTR stations, including the Sham Shui Po Station. I believe the problem mentioned by me earlier is not exclusive to those five stations.

I still wish to cite one or two more examples because these live examples can enable Members to understand and get a feel of the problem. In addition to the example I cited earlier concerning how elderly people climb down a flight of stairs step by step with canes and walking frames — while it might take only 15 seconds for an ordinary person to walk down two flights of stairs, elderly people might possibly take 15 minutes to do the same — the second example is related to baby carriages, an example mentioned by Dr Fernando CHEUNG earlier too. I would like to tell Members that the population distribution of Sham Shui Po is very interesting, with most of its population being elderly. In other words, the district has a relatively high proportion of elderly people. Sham Shui Po has a very strange profile of being wide at the top and bottom levels and narrow in the middle. This means there is a very large number of elderly people and children. At present, the Government still owes Sham Shui Po eight primary schools. This means that many children have to travel to other districts for schooling. Chairman, I have to mention this because I wish to tell the Government that very often, there is difficulty for children or baby carriages in going downstairs. In addition to people with disabilities and elderly people I mentioned earlier, children and people using baby carriages actually experience the same problem in MTR stations.

Furthermore, I would like to remind the Secretary that, in the course of commercialization, we see that more and more shops are now operated inside MTR stations. These shops and lifts are related. I wonder if government officials who are here have ever travelled on the MTR and noticed a phenomenon. I have seen this phenomenon, which is particularly applicable to bakery shops. We can see two people dragging a high stack of 10-odd plastic racks with a banging noise down the stairs to the concourse, and again climb up the stairs with the same banging noise on leaving the concourse. Why are they allowed to do so by the MTRCL? What problems will occur? First, from the angle of the MTRCL, the stairs will definitely be damaged, and the walls will be bumped and scratched, thereby leading to damage. This is not good for the MTRCL insofar as repairs and maintenance are concerned. Second, this practice is very dangerous. In the absence of a lift, this is the only way to transport goods. However, in the event of carelessness, if one of the plastic racks containing bread or cakes falls down, someone might get hurt. How can

we let this happen in such a highly developed international city as Hong Kong? It is ridiculous that not a service lift is available inside a MTR station. However, if a lift can be installed to transport goods, I think it will be even better for it to carry passengers.

I wonder if Members are aware of the phenomenon that more and more shops are operated inside MTR stations just for the sake of doing business and making money. I am not referring to the shops; I am referring to the MTRCL or the KCRC. They only know how to come up with ways to make profits without taking into consideration the operational needs of others. Neither do they address the problems or danger possibly arising in the course of operation. What can be done when someone gets hurt? Even if the MTRCL or the KCRC is prepared to deliver the injured person to hospital and meet the medical bill, it is useless because the person would have suffered because of the injury. This is why I think that we must address, consider and pay attention to these problems.

Hence, I think that the amendment proposed by Dr Fernando CHEUNG today is absolutely reasonable and essential. Why can the proposal still not be implemented today? The Government owes us an answer. I hope the Secretary can respond to these issues instead of maintaining that Hong Kong is an accessible city, and yet we can tell from our real life that the actual situation is different.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr LEUNG Kwok-hung raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, you are speaking for the second time. Please stand up.

MR LEUNG KWOK-HUNG (in Cantonese): I had some feelings on hearing the Secretary say that the two railway corporations might be put in a position of violating the law should this amendment be passed. This is possible, right? Should this legislation be passed and take effect, the KCRC or the MTRCL, that is, the future MTRCL might be prosecuted should it fail to do so.

But the question is who is responsible for this. Had Members presented public opinion through that non-binding motion debate, the first question we have to ask now is whether the Government has heeded the views conveyed during that debate. If corporate compliance has to be ensured through legislation, the relevant legislative work should have already begun. If barrier-free access is to be provided for the sake of contributing to a good cause, and if the provision of the same would take four years, then we should wait four years. The responsible person might then come up with reasonable arguments one after another by saying that he actually wanted to do it, but he could not manage it. He might even say to the Judge in Court, "Your Honour, we would like to do this. However, we could not manage to. Worse still, this amendment has been passed by Members of the Legislative Council. Could you give me a chance?" He could say something like that.

However, the present problem is just the opposite. We have been told that, if we act in this way, the MTRCL will violate the law. Such logic is really strange. If the Government wishes to contribute to a good cause and the MTRCL has not been so arrogant, discussion is actually possible. The MTRCL may explain to Dr Fernando CHEUNG that, even though he is right, they might be prosecuted once the amendment is passed, and request Dr CHEUNG to reconsider the matter. I wonder if Fernando has ever had a chance to see their backs. Despite the present emphasis on a ruling coalition, harmony and inclusion, dissenting views will still be totally disregarded. Anyone who has an opinion can only take the case to Court by bringing a lawsuit, right? Not only is it a problem, it is also sophistry — if you would like me to do so, you have to enact legislation; however, if this amendment is unfortunately passed, you will put me in a difficult position. Such being the case, what do you expect the Government to do? Actually, Members should actually put this question to the Government: What do you want?

In Hong Kong, can it be considered that nothing has happened at all even if the motion is passed? In spite of the fact that we are treated constitutionally as if we are a rubber-stamp or a tea house, I can still not bear to see that these can be used as excuses. If this is so, should the national security legislation be passed, many people will suffer, right? At least, I will be the first one to suffer, right? What logic is it? Does it mean that the community will be immediately caught by the law because of the passage of an amendment? For them, there is no problem at all, but you have to be "smart". However, the Government will blame someone if an amendment it does not wish to pass is passed unfortunately

— Fernando, I am telling you not to be pleased. If the black ball is pocketed this time because of a failed stroke, there will be critics in the community saying that opposition Members have succeeded in their raid, and the Government is now facing for a catastrophic disaster. Someone will definitely say that these Members have stirred up trouble by making the Government induce the two railway corporations to break the law.

Therefore, insofar as this issue is concerned, I would very much like to consult the Secretary whether or not she needs to take a 15-minute break and then seeks instruction from Chief Executive Donald TSANG if it is necessary to make some minor concessions. The Secretary may let us pass the amendment with such a circuitous tactic by requesting someone to go missing again.

Now that we have reached this stage, I wonder if Mr TSANG is watching the television. If he is watching the television, I wonder if he can give the Secretary a call to give her leeway to manoeuvre. Mr TSANG, did you hear me? It is really inconceivable that there is absolutely no divergence in terms of our legislative intent. However, there is a significant divergence in terms of provisions in law. What is more, views are sharply divided in the debate. At the time of voting, everyone will be prepared to meet the challenge in order to get what they want. Who should we blame? Fernando, you are wrong. You might have a chance to win if you join the other team because of the policy of "affinity differentiation". There will be no problem if we could raise the proposal by standing on the other side as a traitor. The Government will say, "He belongs to team B, and if the proposal is raised by team B, it should be passed."

I once talked to the Secretary, "If you find it hard to be a government official, you should step down and go back home to write your memoirs. I can assure you it will definitely become a best seller because bureaucratic sorcery and bureaucratic sagas can be found throughout the book. Should you decide to write your memoirs in future, I will definitely support you by being the first one to buy it."

In other words, a government official has to be — I do not know what I should say. I was supposed to be good at words — self-contradictory. Fernando, your amendment will definitely not be passed. I really hope the Secretary can go back and consult the relevant authorities what concessions can

be made and then make them. Therefore, Members should not often think that I am wasting time. My only hope is for the Government to press the button. If the button is pressed, I will immediately stop talking. There will be no more divergence by then.

The Government is not willing to take one step backward and insist on moving forward into the territory of others. It will even say, "If you wish to get something, you may come and get it, but before that, you have to step over my corpse." I would like to tell the Government that I will not hesitate if I have the chance to get what I want by trampling on its corpse. Unfortunately, under such a unique system today, there is no way for us to win.

I hope my friends who are either watching the television broadcast or the debate here in this Chamber can understand that there was originally a chance for their reasonable demands to be passed into law for compliance by the MTRCL. However, their demands cannot be met now, for they have been thwarted in this Council in a very strange way. I do not wish to say too much anymore. I hope certain colleagues will exercise their "right to go missing", and the problem will then be solved. I hope they can think twice. I also hope the Secretary can accede to my proposal by spending 15 minutes to consult Chief Executive Donald TSANG whether any concessions can be made. Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr Andrew CHENG raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr Andrew CHENG, I have forgotten how many times you have spoken, but you should have known it.

MR ANDREW CHENG (in Cantonese): No, Chairman. As far as I can remember, this is the third time I speak on this question. I have actually tried to restrain myself as far as possible.

I was waiting for the Secretary and other colleagues who did not agree with Dr Fernando CHEUNG and me to respond to the questions raised in my previous speech. However, none of them has spoken yet. I can only conclude

that..... in her impassioned speech delivered just now, Ms Emily LAU raised her hand and uttered the words "telling lies" repeatedly. If they choose not to respond, they should not have talked about non-binding motions in such an exaggerated manner in the districts and District Councils and, when it came to the critical moment, listened to the Government and said that if this is included in the law, conflicts will arise when the law is violated.

Chairman, I am going to use this argument to debate with the Secretary again. I hope the Secretary can refer to section 16 of the existing Mass Transit Railway Ordinance — I believe her colleagues have definitely got the provision, though the marked-up copy previously used by the Bills Committee should most preferably be used — the legal adviser to the Secretary has got it. Chairman, page 14 of the Chinese version is about default under the franchise. As pointed out by the Secretary earlier, once such amendments raised by Dr Fernando CHEUNG and I with respect to platform screen doors, barrier-free access and lifts were passed (the Secretary indicated that the amendments would not be passed), the MTRCL would break the law.

Chairman, let us now look at the meaning of default. The expression "default" covers the following points. First, there has been a substantial failure by the Corporation to discharge an obligation under the Operating Agreement (I repeat "a substantial failure by the Corporation to discharge"). Second, the Corporation has failed or there is a likelihood of its failing substantially to operate the railway in accordance with this Ordinance. Next, "there has been a substantial failure to discharge an obligation under the service concession agreement" is added, though the obligation is to be discharged under the concession agreement this time. Under the existing legislation, the Corporation is in default if its failure results in a substantial breakdown of the service or the safety of persons travelling on the railway or being on the railway premises being endangered in a manner likely to result in serious injury to those persons.

According to our logic, if the Bill becomes law, the MTRCL will definitely submit proposals stating what procedures will be adopted in 2012 or what will be done at certain platforms before 2013. Such being the case, there will be no problem. It is precisely because these are already stated in the Bill that the authorities can tell us that the railway corporations will be required to comply with the existing legislative requirements under the franchise. I simply cannot see what conflicts can possibly arise. On the contrary — there is no such legislation at present — the MTRCL may choose to do it or not to do it.

This explains why it has been able to adopt a stalling tactic year after year, thus resulting in more people falling onto the tracks and more people losing their lives. How many lives can we afford to lose?

If there is no such legislation, what default can there be according to the definition of "default"? Is its safety likely to result in..... serious injury to the people? The MTRCL may deny and accuse that they have jumped onto the tracks of their own accord. However, the existence of legislation would provide a legal basis. The MTRCL will then have to explain to us what initiatives it will take, how platform screen doors and lifts will be installed, and how it will discharge its obligation and tasks under the franchise.

I hope the Secretary can give me a response on this point. I also appeal to political parties and Members who support the Government and disagree with the proposal raised by Andrew CHENG and Fernando CHEUNG to install platform screen doors to make a response.

Chairman, I really have no intention of filibustering. However, I have yet to receive a satisfactory answer, even if it is not convincing at all. If they have fully discussed the matter and put forth their ideas, we can at least sit down and talk. Despite the doubt I raised earlier about the Liberal Party, members of the Liberal Party have already left without giving a response. I would also like to consult colleagues from the DAB because the two political parties did express their support in non-binding motions in response to our previous calls for the installation of platform screen doors in 2012 or 2013. This is really unacceptable if they make a volte-face today by raising objection and yet they are unable to put forward arguments when they are asked to do so.

Therefore, Chairman, I am afraid you have to be a bit more tolerant later because I might rise to speak for a fourth, fifth or sixth time. I will continue to wait for colleagues to speak because this is a very important legal basis and debate. As what we are going to do is to enact legislation, the Government should not provide specious answers while other political parties keep their mouths shut. It is meaningless that Members will merely express either support or opposition. I guess the Secretary is ready. I hope she can respond to my observation and the arguments refuting her contradictory points.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, Secretary for the Environment, Transport and Works, do you wish to speak again?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I know that Members of the Legislative Council, being lawmakers, certainly all have their own views on enacting legislation.

First, Mr Andrew CHENG commented on our views on enacting legislation to require the installation of screen doors just now. I am not in a position to argue with him about the basis for enacting legislation. Such is the legal advice to us. I can only say that the provision in the legislation in question states that the relevant facilities must be provided on the day that the legislation comes into effect, therefore, if this cannot be done, the law will have been broken. This is not a point about a major occurrence that clause 16 refers to, as he claimed, but is another matter. Therefore, I am not in a position to argue with him anymore because I am not a lawyer.

Instead, I wish to point out that on issues involving principles, for example, on the installation of platform screen doors, the MTRCL has retrofitted platform screen doors in all underground stations and this was done without the enactment of legislation. In the second phase, we hope that platform screen doors will also be retrofitted in at-grade stations. This has been approved by the Subcommittee on Matters Relating to Railways and we have also got an undertaking to do so. A feasibility report will be submitted at the end of 2007.

Just now, several Members asked why this can be done immediately at some places? For example, Mr Andrew CHENG also asked why this had been done so quickly in Disneyland. Is it the case that we can do so as long as we want to? This is not a question of whether we have the will or not, rather, this is because at the time when the Sunny Bay Station at the Disneyland was designed, several decades had passed since the MTR was initially designed. Not only have the technologies advanced, people's expectations have also

become higher. Therefore, there was no problem in including automatic platform gates in the design.

If such a facility is included in the overall design at the design stage of the project, there will not be any difficulty at all. However, there are problems in retrofitting screen doors in some existing stations. One cannot say rashly that it is only necessary to add screen doors because in retrofitting platform screen doors, problems involving the gap between the platform and the train may arise and it is necessary to solve them. Members have also mentioned this point just now.

Therefore, we are not saying that as a matter of principle, we do not agree with Members' suggestion that more safety measures have to be introduced. These measures mainly involve facilities for people with disabilities or screen doors. They can be implemented under the Operating Agreement (OA) with which the MTRCL, be it the existing one or the future one, will have to comply. Moreover, this is also an effective regulatory measure. Therefore, on this issue, no disagreement exists among us and the only difference lies in the means by which the end is to be achieved.

As regards the problems in Sham Shui Po as pointed out by Mr Frederick FUNG, my colleague has just shown me a letter issued today and it has to do with the passages and lifts designed for people with disabilities. Mr Frederick FUNG said just now that there were a number of exits in a station and the present standard was to provide the facilities at one of the exits in each station as far as possible. Of course, we all consider this inadequate but this is only the initial step because just as Mr Frederick FUNG said just now, the distance between exits can be very great and if one has to go to a certain exit on purpose, one may have to walk a long way and this is also impractical, so there is room for further improvement. I believe we have also discussed this in the meetings of the Bills Committee and Members have expressed a lot of views on facilities for people with disabilities.

After discussions with us, the MTRCL also agrees that it is necessary to enhance communication with groups representing people with disabilities. I believe that concerning communication, as Mr FUNG pointed out just now a number of times, it seems our communication with the district councils has yielded little result, and there has been no involvement from them. However,

the MTRCL has undertaken that it would try to better understand the needs of people with disabilities in respect of facilities and also agreed to add a new provision in the proposed integrated Operating Agreement (IOA). Therefore, the OA will provide for this matter by specifying that MergeCo has to put in place a procedure to consult groups representing people with disabilities, review the provision of facilities by the Corporation to people with disabilities annually and notify the groups for people with disabilities concerned of the review results, so as to enhance communication between the railway corporation and these groups and provide more opportunities for discussion.

All along, the railway corporation has operated in the mode of OA and this has been very effective. In view of this, I hope Members will know that our discussion has not been totally in vain, only that we have adopted such a mode.

Mr Andrew CHENG also proposed the provision of sound broadcasting services in the Bill. Not many Members have raised this matter for discussion because we all know that this matter has been discussed for a number of times and the MTRCL has said that the investment required will be as much as \$100 million. It has also explained to the Bills Committee why it is not possible to set out the price of each item in detail, because it would affect the recent tendering process for the wireless system. I wish to explain here that the MTRCL has already installed a designated broadcasting system. In the event of an incident, the train driver can communicate with passengers in the most direct way, therefore, it has done its utmost in safety.

As regards using the broadcasting system to provide general sound broadcasting service to passengers, the MTRCL explained that the frequencies of the broadcasting system were different from those of radio stations, so it was not possible to receive radio broadcasts using the existing broadcasting system. In order to enhance passenger service, recently, the MTRCL introduced 3G mobile services into its railway system, so that passengers can browse news and information and listen to radio broadcasts using the Internet services provided by mobile phone service providers. In the latter half of 2007, Wi-Fi service will also be launched and by then, it will be possible to receive radio and television programmes on the platforms and in the concourse of 16 MTR stations using wireless internet service. It is believed that such new technologies will be launched successively and there will also be advantages in various areas, for example, in installation cost. Therefore, on the provision of information

service, we have learned that the MTRCL considers this direction more appropriate in the present situation.

There are also several points relating to service performance. Mr Andrew CHENG added a new provision to the Bill to specify that the MTRCL must attain the specified performance levels. Concerning these proposals, we cannot accept the relevant amendments for several reasons. The existing requirements on the service performance of the MTRCL are specified in the IOA, hence, they will also be found in the OA instead of being included in the legislation. This is just like the requirements on service performance for other public transport services and the Commissioner for Transport is also responsible for supervision in accordance with the relevant franchise agreement or licence. These requirements on service performance are also not included in legislation as statutory requirements. These supervisory regimes are proven, so we do not see any need to enact legislation.

As the supervisor, the Commissioner for Transport must review the service requirements specified by the IOA from time to time and when necessary, appropriate changes have to be made in consideration of various factors. If legislation is enacted on these requirements, all future changes have to be made by way of legislation. It will definitely take more time to complete the process and flexibility will also be reduced. Therefore, we do not support enacting legislation on them, however, it is still possible, in principle, to accomplish this.

Furthermore, we have seized this opportunity of the rail merger to raise a number of service performance levels after making reference to past levels of service performance, thus making them even higher than the international standard. The railway corporation is required to attain the raised levels of service performance long term. The levels proposed by Mr Andrew CHENG are even higher than the raised levels and can be as high as 99.5%. There is really a lack of objective criteria for determining whether such a level is reasonable and practicable.

The last point is that the service performance requirements or levels proposed by him can already be found in the passenger service pledges made by the two corporations and they are made by the railway corporations voluntarily.

They are exerting their best to achieve levels even higher than those specified in the OA without being required to do so by the OA or legislation. They are exerting so of their own accord. If we turn these pledges into statutory requirements, the incentive to make improvements voluntarily will be lost. In management, this factor is very important, so we do not want to turn something desirable that is done voluntarily into legislation with heavy penalties attached to it. For this reason, we do not support this amendment either.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Mr Frederick FUNG raised his hand to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr Frederick FUNG, speaking for the third time.

MR FREDERICK FUNG (in Cantonese): Chairman, I have got even more questions after listening to the Secretary's speech. Therefore, I have to follow up.

First, I am definitely pleased to hear the mention of the OA, as it is already stated explicitly in the OA that some groups of persons with disabilities will be consulted. However, the Secretary has not responded to this question raised by me concerning the District Councils. Insofar as the District Councils are concerned, I am not referring to the Sham Shui Po District Council only. I am referring to 18 District Councils, because the MTR should serve all the people in Hong Kong. Of course, people with disabilities require special treatment because of their special needs. However, ordinary people have ordinary problems that need to be dealt with too. These people include infants, children and elderly people I mentioned earlier. When the District Councils request discussions with the MTRCL, does it occur to the MTRCL that it is obliged to discuss with the District Councils? Will the OA include such wordings as "advisory bodies", "relevant advisory bodies" or "District Councils" to widen the scope of consultation?

Second, I would like to follow up the lifts mentioned by the Secretary earlier in her response. She said that a lift could only be installed at one end of the street and it had to take time for improvements to be made insofar as the other end of the street is concerned. In short, however, a lift is definitely available in every MTR station. I hope I have not caught her wrong. One of the two possibilities is that every MTR station is really equipped with a lift. However, the lift merely goes down from the concourse to the platform. In other words, there will definitely be a descending lift in every MTR station. It is right that all MTR stations in Sham Shui Po have lifts. However, of the five stations mentioned by me earlier, only the one in Mei Foo is equipped with a lift going up from the concourse to the ground level, though it is situated at just one end of the street. Though I find the Secretary's remark that improvements will be made still acceptable, it is unacceptable that no lifts are available in the remaining four stations. Furthermore, the escalators installed are divided into two sections. In other words, the stations are served by descending escalators only, and there is a lack of ascending escalators. Insofar as improvements in this area are concerned, the Secretary said that there was definitely a lift in every MTR station. Was she referring to a lift going down from the concourse to the railway platform or up from the concourse to the ground level? If she was referring to a lift going up from the concourse to the ground level, such a lift is definitely not available at the moment. However, if she was referring to a lift going from the concourse to the railway platform, she was indeed talking nonsense because such facilities had already existed a long time ago. If she was referring to a lift going up from the concourse to the ground level, I can say that no such lifts are available in any of the MTR stations in Sham Shui Po.

Actually, I do not intend to mention Sham Shui Po only. I am merely using it as an example. The same situation actually applies to many other MTR stations. As in the case of lifts, the escalators only go halfway. Such being the case, will there be at least one lift in every MTR station in the future? If yes, the conditions can really be improved. This statement is not entirely meaningful if it merely reflects the present phenomenon. I wish to ask: What did the Secretary mean in saying that a lift would definitely be available in every station?

Thank you, Chairman.

CHAIRMAN (in Cantonese): Members, you should be entitled to freedom of speech, and so it is absolutely your personal choice to decide how much you wish to speak. However, how can the problems mentioned by Members at the moment be discussed in the Committee of the whole Council? Should they not be discussed in the Bills Committee? Perhaps there have been some new developments, and these problems had yet to arise in the Bills Committee stage. Does any other Member still wish to speak? I will see if the Secretary can respond after all Members have spoken.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(Dr Fernando CHEUNG raised his hand to indicate his wish to speak)

DR FERNANDO CHEUNG (in Cantonese): Chairman, my speech will not be long because I will speak very briefly.

There is one point I would very much like to make in response to the Chairman. Actually, I would really like to discuss these matters in the Bills Committee, but it was not easy at all to do so. The Government's skills and Ms Miriam LAU's leadership were so superb that, for some unknown reasons, we found it absolutely not easy to hold discussions. There were many ways for them to do what they liked.

In view of the complexity of the Bill, we have continued to express our views. Chairman, even though I submitted my proposed scope of amendments and specific proposals to the authorities as early as January, I have not yet received any response. At the very beginning, we were only allowed to express our views without any response received. I had waited for a long time before seeing gradual responses from the authorities in April. However, not all the points raised had been responded, and later the content of our intended discussion was divided up. It is indeed difficult for me to describe what we have gone through. I can only say that the authorities have an agenda. For instance, we have really been unable to keep up with the discussion on clauses 2, 8, 10 and 24 today.

Chairman, our lives are very precious too. As there are a lot of matters we have to follow up, sometimes we might not be able to spend all of our time on

the meetings. If we were not present in the meetings all the time, the discussion of certain items might already be over in a blink of an eye. Therefore, Chairman.....

CHAIRMAN (in Cantonese): I have to interrupt your speech. As your requests are already included in your amendments, there is no need for you to further elaborate. The remark I made earlier was actually referring to Mr Frederick FUNG's question as to whether there are lifts reaching the ground level. You might as well speak what you have intended to speak.

DR FERNANDO CHEUNG (in Cantonese): All right. I would also like to let you know that there are really some concrete difficulties.

Had there been sufficient discussion, we would have to discuss many of our views in Council meetings. Now I would like to respond to the Secretary's response. It appears that the Secretary has no intention to respond to the amendment proposed by me earlier with respect to providing adequate assistance, staff assistance, and so on. Actually, the logic of the question raised by me earlier was very simple. My question was: Are there any unreasonable areas in my amendment and, if the answer is in the negative, why can the amendment not be included in the legislation? What the Secretary is implying is that once it is included in the legislation, the two railway corporations might violate the law. Therefore, Members must never support my amendment.

However, the Secretary has all along maintained the logic that the two railway corporations have been providing excellent services and hundreds of millions of dollars have been spent on the construction of world-class facilities. Given that the facilities are of world-class standards, why would the two railway corporations breach the law if such basic and reasonable requests are included in the legislation? This is indeed contradictory. However, the Secretary has not responded to this point.

At the very least, the Secretary should give us a response. While we proclaim Hong Kong to be an accessible city and a society seeking equality and inclusion, how are these slogans and policy directions going to be implemented? The answer must be the actual implementation of policies and legislation. The Rail Merger Bill under discussion today allows us to include some provisions in

the legislation for the implementation of such policy directions as building an accessible city and inclusive society. I believe both my amendment and Mr Andrew CHENG's amendment are relevant to such policy directions, so what is wrong with our amendments?

Furthermore, neither the Secretary nor Members of this Council can act as a Court. Frankly speaking, we do not know whether the two railway corporations will be caught by the law if these are included in the legislation. Hence, I hope the Secretary will not use a technical excuse.

Chairman, if the Government really thinks that it is worthwhile for Members' amendments to be implemented and the Secretary has also agreed that our positions are consistent, the authorities might as well do it voluntarily. Unfortunately, we have been told by history that it has still not been accomplished after so many years. Under such circumstances, should we press for this matter through the legislative process?

Thank you, Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ANDREW CHENG (in Cantonese): Madam Chairman, insofar as the law is concerned, I hope that the Secretary will stop saying that she does not wish to debate this issue with me because she is not a lawyer, as she has the assistance of her legal adviser and what is more, we are in the process of making legislative amendments.

In fact, Madam Chairman, it is not our wish either to repeat what we have said over and over again here but we implore your permission.....

CHAIRMAN (in Cantonese): I cannot refuse permission for you to speak.

MR ANDREW CHENG (in Cantonese): I know.

In fact, it is not my wish either to see this happen, but before the Committee stage, the timeframe was indeed very tight. It is true that many

issues should not be discussed here. But we have to discuss them here because the Secretary did not attend the meetings and her representatives could not convince us to accept certain amendments on behalf of the Secretary, and it is also because of the views that the Secretary has just put forward, as she kept on saying that according to her legal adviser, the relevant parties will breach the law after the enactment of the legislation

But Members can take a look at the Mass Transit Railway Ordinance. The Secretary can also seek immediate counsel from her legal adviser. It actually involves two offences. One is in section 29 and the other in section 30. Section 29 concerns negligent act by employee, say, when an employee driving at too fast a speed has knocked down someone. Perhaps let me briefly explain this provision. Section 29, which is entitled "Offence of negligent act or omission by employee", provides that if an employee of the MTRCL negligently does something in connection with his duty and if the safety of a person is hence endangered by such act, the employee commits an offence. So, as the provision of platform screen doors or lifts has to do with default, this section certainly does not apply.

Then, there is section 30, namely, "Offence of wilfully endangering safety". Simply enough, it provides that a person may commit an offence if he wilfully does or omits to do anything in relation to the railway or railway premises, and by that act or omission, the safety of any person being on the railway or on railway premises is endangered, or is likely to be endangered. Members may say that if this is incorporated into the legislation and when a person wilfully omits to do something, he may be considered as having committed this offence, but I wonder if this will be the case. However, I can see a point and that is, even if it is interpreted in this way, the person concerned certainly can point out that a comprehensive plan is in place to arrange for the retrofitting of those screen doors in 2012 or 2013 and so, there is no question of wilful acts endangering safety on his part.

Madam Chairman, I also hope that the Secretary understands that section 57 provides a lot of protection to the MTRCL. Under this section reading "No civil liability for breach of statutory duty", no breach of any duty of the MTRCL created by or pursuant to this Ordinance gives rise to any civil liability. Members may argue that if we request the MTRCL to retrofit platform screen doors today and if the MTRCL fails to do so, it may think that it will be sued in future and civil liability will be involved if someone falls onto the railway track.

But let us take a look at this section. There is this very provision in law protecting the MTRCL. Even if the MTRCL has failed to discharge the duty as set out in the Ordinance, such a breach of duty does not give rise to any civil liability in law.

Madam Chairman, Ms Miriam LAU is still not seen in this Chamber but honestly speaking, I will persevere and I will not give up. I will continuously urge the Secretary as well as colleagues of the Liberal Party and the DAB to give explanations in response to the concern I have voiced. With regard to a provision which we previously agreed to incorporate into the legislation in order to call on the MTRCL and KCRC to carry out safety measures concerning platform screen doors, a provision which they fully supported when it aroused no controversy and carried no binding effect, why do they oppose it today when we are going to give it legal effect, alleging that this would be in conflict with the existing legislation because the incorporation of this provision may cause the parties concerned to be punished? As I have already said, sections 29 and 30 which may lead to punishment are basically irrelevant, and the parties concerned will not be punished under section 16 for default under franchise either. So, please tell me what conflicts will arise.

Madam Chairman, even though you are not a member of the Bills Committee, you have listened to me for fourth times today, and I believe you understand the question that I have been asking. I hope that the Secretary, and also Miriam LAU of the Liberal Party, a lawyer by profession, can explain to me why she opposes my proposal of setting out clearly the requirement of retrofitting platform screen doors.

Colleagues of the DAB have not yet spoken. But they have put up more banners and distributed more pamphlets in parliamentary assemblies and in various districts than those by all the other political parties. I do not know how they are going to vote today and I heard that they seem to be supporting me. I do not know if I am naive in thinking so. I do not know. If they support me, I would certainly think that their demand in the past is consistent with their vote today, and they are also consistent in what they have done before. However, I do not know if this is the case, because nobody from the DAB has spoken at all. I really look forward to their speeches. They ought to justify their vote, disregarding whether they would vote for or against the amendment.

So, Madam Chairman, I am really sorry, and actually I have never expected that we cannot even finish our discussion on this amendment at 7.00 pm.

This is really unexpected, but since the Secretary has put forward such an argument, I must ask the Secretary to give a response which I consider more acceptable and reasonable to my amendment for future reference and for the record. Otherwise, I think it is a most unreasonable interpretation of any legislative amendment.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak? Miss TAM Heung-man

MISS TAM HEUNG-MAN (in Cantonese): Madam Chairman, I really must talk about my feelings. During our scrutiny in the Bills Committee, we had indeed tried very hard to attend the meeting every day, four hours per session, and we did not complain even if meetings were held on Saturdays. Regrettably, Madam Chairman, we had so many other meetings to attend. I am a member of the Public Accounts Committee, the Panel on Economic Services, the Finance Committee, and so on. But when the time of the meetings clashed, how could I attend them all? It was impossible for us to attend the meetings, but the meetings finished very quickly — they were surprisingly short; nobody spoke, and the meetings ended after a short while. Under such circumstances, Madam Chairman, how could we express our opinions? I do not mind taking all the trouble to say this again: The rail merger was discussed by us every day but after the discussion the authorities would invariably say that they needed to go back and consider our views, and with regard to the problems raised by us, they also said that they needed to go back and consider them. But after consideration, they would eventually reject everything. Why? Because they had secured enough votes.

Mr Andrew CHENG said just now that other Members had not yet spoken and he hoped that they would vote in support of him. Andrew CHENG, you are much too naive! I think the Government already has enough votes and when the vote is taken later, those Members who have not spoken will support the Government. As such, how can the Bill be examined with abundant clarity? The meetings often finished very quickly, and when we were available for a meeting, we would find that the meeting had already ended. Such being the case, we can only bring it up for discussion in this meeting today.

Madam Chairman, I am really very sorry for wasting your time. In fact, we only wish to duly play our part and properly fulfil the duty expected of us as Members, and to ensure clarity in our scrutiny of the Bill and the use of words with care to avoid mistakes. But our meeting today seems to have returned to the stage of deliberations, as Members have kept on saying that we did not have the opportunity to express our views. The Chairman of the Bills Committee always said that we had only three minutes to speak and that our arguments were redundant, and I would respond that I had repeated my points over and over again because the Government had not given me the information and that was why we had to ask for it again and again. It seems to be superfluous for us to make our points and asked questions over and over again, but the fact is that we have not obtained the information that we asked for. The Administration would then dismiss us by saying that they would provide the information at the next meeting but at the next meeting, we would be told that the meeting was over or the meeting would be over very soon, and the deliberations of the Bill eventually came to a close in this way. How possibly could Members do their job properly?

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for the Environment, Transport and Works, do you wish to speak again?

(The Secretary for the Environment, Transport and Works shook her head to indicate that she did not wish to speak again)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, I have to remind Members again that if Mr Andrew CHENG's amendment is agreed, he may move the Second Reading of new clause 21E. In addition, Dr Fernando CHEUNG will have my permission to revise.....

MR LEE CHEUK-YAN (in Cantonese): Chairman, a point of order. It seems that a quorum is lacking now.

CHAIRMAN (in Cantonese): I see. Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): A quorum is present now. Meeting will begin.

CHAIRMAN (in Cantonese): Before I put to you the question on Mr Andrew CHENG's amendment to clause 8, I wish to remind Members that if Mr Andrew CHENG's amendment is agreed, he may move the Second Reading of new clause 21E. In addition, Dr Fernando CHEUNG will have my permission to revise the terms of his amendment to clause 8 and move the revised amendment.

However, Mr Andrew CHENG's amendment is negated, he may not move the Second Reading of new clause 21E. I shall call upon Dr Fernando CHEUNG to move his amendment. Whether the Secretary for the Environment, Transport and Works may later move her amendment to clause 8 will depend on the Committee's decision on Dr Fernando CHEUNG's amendment.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Mr WONG Kwok-hing, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, five were in favour of the amendment and 12 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 12 were in favour of the amendment

and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG, you may move your amendment.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I move the revised amendment to clause 8.

CHAIRMAN (in Cantonese): You do not have to revise your amendment. You shall move your amendment, because Mr Andrew CHENG's amendment has been negatived.

DR FERNANDO CHEUNG (in Cantonese): Chairman, I move the amendment to clause 8.

Proposed amendment

Clause 8 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Dr Fernando CHEUNG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Dr Fernando CHEUNG rose to claim a division.

CHAIRMAN (in Cantonese): Dr Fernando CHEUNG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Mr WONG Kwok-hing, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung and Mr Ronny TONG voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, six were in favour of the amendment and 12 against it; while among the Members returned by geographical constituencies through direct elections, 21 were present, 12 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

CHAIRMAN (in Cantonese): Secretary for the Environment, Transport and Works, you may move your amendment.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Chairman, I move the amendment to clause 8.

Proposed amendment

Clause 8 (see Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for the Environment, Transport and Works be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr James TIEN, Dr Raymond HO, Mrs Selina CHOW, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Ms Miriam LAU, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming and Mr WONG Ting-kwong voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Ms Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms LI Fung-ying, Mr LEE Wing-tat, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG, Mr Ronny TONG and Miss TAM Heung-man voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that there were 40 Members present, 23 were in favour of the amendment and 16 against it. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CLERK (in Cantonese): Clause 8 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clause 16.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, on behalf of Secretary Dr LIAO I move the amendment to clause 16. I move that clause 16 be amended as set out in the paper circularized to Members.

Clause 16 of the Bill is on vesting power in the Secretary to make regulations. Part of the scope of the provision has been discussed in the Bills Committee and it is agreed that the railway corporation has been vested the power to make regulations on similar matters in that part. Furthermore, the Secretary has never invoked such power to make any regulations. It follows that the provision is obsolete. After discussions in the Bills Committee which also gave the consent, the provision concerned will be deleted. The said amendment has been examined by the Bills Committee. I hope Members can vote in favour of the amendment moved by me. Thank you, Madam Chairman.

Proposed amendment

Clause 16 (see Annex I)

CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Constitutional Affairs be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the amendment passed.

MR ANDREW CHENG (in Cantonese): Chairman, I move a further amendment to clause 16 to amend section 33 of the Mass Transit Railway Ordinance.

Chairman, section 33 of the Mass Transit Railway Ordinance is regulations and bylaws. Clause 16 provides that "The Secretary may make regulations for all or any of the following purposes". During our scrutiny of the Bill on 8 May, we noted that clause 16 proposed to include in section 33 "requiring the Corporation to submit to the Commissioner, at such times and in such manner as may be specified in the regulations, a programme of the future operations or plans of the Corporation for the rail and TSA bus service within the North-west Transit Service Area for such period as may be so specified, including, without derogation from the generality of the foregoing, routes to be operated, frequency of service and vehicle allocation to those routes."

Chairman, our amendment to this clause is simple. We propose to add "information on the fare level for the service" after "frequency of service". Why do we consider this important? It is because a fundamental difference is that the fares of the feeder bus service within the North-west Transit Service Area (TSA bus service) in future will be calculated according to the formula which allows for increase and reduction in fares to be applied to railways, rather than the existing mechanism which allows for increase and reduction in bus fares currently adopted by franchised buses.

As you may know, Chairman, a mechanism is in place to allow for increase and reduction in bus fares, whereas the railways also have their own mechanism which allows for increase and reduction in railway fares. During our discussion, we thought that since regulations are made to require the Corporation to submit to the Commissioner a programme of operations including routes to be operated, frequency of service and vehicle allocation to those routes

on the premise that the North-west Railway and TSA bus service are not undermined, I think this Council and the local residents will very much like to know also the fare level and information on fares.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

In this connection, we have only proposed a very simple amendment and we hope that the West Rail and the ancillary bus service and feeder service — I think Secretary Stephen LAM, who is very clever, would know what I am going to amend when I talk about it. Although I have not discussed transport issues with him before and I have no idea what he is going to say in his speech to oppose my amendment, I look forward to listening to his reasons for his objection to my amendment. I think he would argue that the fare level or other matters relating to fares are not the most important principle or the essence of the Bill.

But with regard to the bus service, I hope that apart from paying attention to the routes to be operated, frequency of service and vehicle allocation, this Council and the local residents certainly think that insofar as future bus service is concerned, the more information they can obtain about the fare level, the better,

Deputy Chairman, I do not wish to dwell on this point anymore. Honestly, this should not cause too many contentions, unless the Secretary will give reasons which I find utterly astonishing, or colleagues who oppose my amendment have put forward reasons which I think I must refute. Otherwise — as I still have not eaten yet, and I wonder if I have a chance to eat tonight — this should not be too contentious, and I hope that colleagues will support my amendment.

Proposed amendment

Clause 16 (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Deputy Chairman, Mr Andrew CHENG has proposed to amend clause 16 of the Bill to vest power in the Secretary to make regulations and to require the MTRCL to provide information to the Commissioner of Transport on the future operation plans or programmes, including the fare level for the railway service in the North-west Transit Service Area and bus service for the North-west Railway.

(THE CHAIRMAN resumed the Chair)

Objectively speaking, it is not practical to require the MTRCL to provide information on the future fare level for railway service in the North-west Transit Service Area and bus service for the North-west Railway. It is because after the rail merger, the FAM which allows for increases and reductions will replace the autonomy in determining fare level which the railway corporations currently enjoy. In addition, any future adjustment in fares shall be worked out according to a formula under the mechanism and this formula is linked with the changes in the Consumer Price Index and the Wage Index of the sector concerned as published by the Census and Statistics Department on a regular basis.

Since the MTRCL is no longer in a position to determine fare level by itself, before the Census and Statistics Department publishes any change in the relevant indices, the MTRCL is unable to furnish any information regarding future fare levels in its operational plans with respect to railway service in the North-west Transit Service Area and bus service for the North-west Railway. Hence, the proposal made by Mr Andrew CHENG will not work. We implore Members to vote against Mr CHENG's amendment.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, would you like to speak again?

MR ANDREW CHENG (in Cantonese): Madam Chairman, as I have expected, the reason of the Government is that my demand is impractical.

In fact, Madam Chairman, I think this is not fair to Secretary Stephen LAM, for he is in charge of the Constitutional Affairs Bureau. Frankly speaking, I do not know how I should debate this with him. With regard to universal suffrage, I certainly wish to debate it with him more. But on this issue, even if I asked him to give a response, I wonder how he is going to respond. Secretary Stephen LAM, you have to understand this: In the speech that you have just read out from the script, you said that my demand is impractical because a mechanism which allows for increase and reduction in fares is already in place serving as a basis, but I would like to tell you that what the ancillary TSA bus service will adopt is not the existing mechanism which allows for increase and reduction in bus fares, but the mechanism which allows for increase and reduction in railway fares.

This is only a very humble demand and we think that if it is included in the Bill, even though the Government may consider it impractical, from the angle of the residents or Members, when the Corporation is required to include even the frequency of service, routes to be operated and vehicle allocation in the programme of operations submitted to the Commissioner, I would find it very strange if the fare level or information is excluded.

In fact, any programme of the operation of bus service should at least include this level, so that the public can judge whether the fare level, information or arrangement is reasonable. But you are saying that this demand which we consider as reasonable and essential is impractical. In fact, I can say that the information on vehicle allocation is impractical. Why should I care about vehicle allocation, because it would suffice to provide sufficiently frequent buses and so, why should vehicle allocation be included? In other words, your proposed inclusion of routes to be operated, service frequency and vehicle allocation apparently shows that in your view, the more detailed the information, the more reasonable it is, but in the final analysis, information on fares which is also of public concern must also be provided.

So, Madam Chairman, on this issue, honestly, I will not further debate it with Secretary Stephen LAM. After making this response, I would just shut my eyes and vote, disregarding what he has to say. It is because on this issue, if the Government is really acting like this, I would feel dejected. Moreover, I really

do not understand why it is not Secretary Dr Sarah LIAO who is giving a response here. It was Secretary Dr Sarah LIAO who requested that the Second Reading debate be resumed and the Bill be read the Third time on 6 June, so she should know that she will need to attend the meeting on 6 or 7 June. I do not understand why she has sent a stand-in instead. With regard to such a solemn piece of legislation, she was nevertheless not in the Chamber to give a response and this, I think, is extremely regrettable. If she considered that this Bill is so important, she should be in this Chamber from the beginning till the end of the meeting to show respect to the legislative process. Secretary Stephen LAM, you are nodding. I do not know whether or not your nodding means that you agreed with me. But in any case, considering that you are facing the criticisms which should be directed at your colleague and that all you can do is to read out from the script to give a response, I am sympathetic over your situation.

Having said that, while I am sympathetic over your situation, you are obliged to respond to my questions since you are sitting in this Chamber. As you cannot give me a response and you said that my demand is impractical, I think this is entirely not in line with the principle and is unreasonable, and I would like you to give a further response. There are still many issues to be raised, such as the provision of toilets, development above stations, and so on. I very much hope that we can move onto the Third Reading of the Bill tonight. So, insofar as this issue is concerned, I will not speak any further. Yet, I hope that you can give me a more decent reason.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Secretary for Constitutional Affairs, do you wish to speak?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam Chairman, I would like to make a clarification for Mr Andrew CHENG on one or two points. Secretary Dr Sarah LIAO attaches great importance to this Bill and she thinks highly of the views expressed by Members. The reason that I attend this meeting as a stand-in for a while is to enable her to grab a bite after which she will return to continue her exchange with the Members.

Mr Andrew CHENG has stated his arguments for another time and with great sincerity. But still I would like to explain how our analysis was made. Under the new system, the overall fare adjustment rate for railways has to follow a formula. And this formula is: change in the composite Consumer Price Index multiplied by 0.5 plus the change in the Nominal Wage Index (Transport Sector) multiplied by 0.5, then minus the Productivity Factor. Both indices are published data of the Census and Statistics Department. Therefore, Madam Chairman, information can only be provided after verification by the Census and Statistics Department and other relevant units on changes in the indices. Therefore, it is not possible to comply with Mr Andrew CHENG's request, that is, to require the MTRCL to provide information in its proposals on fare level changes as worked out under the formula and to deduce changes in bus fares. This is because under this new formula, the new overall fare adjustment rate can only be worked out after there are changes in the indices. Therefore, his view that future changes in fare level should be stated in the proposals submitted by the railway corporation at this moment, that is, say, in June 2007, is not consistent with the latest formula and fare adjustment rate that we are discussing now. We understand that he is doing this out of his concern for the operation of the railway corporation and the well-being of the public. This is exactly what we do. However, there should be an exchange of views. I think Members should be clear on this point after this second reply by me.

CHAIRMAN (in Cantonese): Does other Member wish to speak?

MR ALBERT HO (in Cantonese): Chairman, the Secretary said just now that it is very difficult to predict the rate of adjustment in future, and I appreciate the reasons that he stated. But with regard to the new routes, or as some of the routes will be replanned, should they tell us the fares to be charged at the beginning? This is only fair to do so. We may not know by how much the fares will be adjusted in future, but with regard to the new routes, they have to determine the fares, and the fares will then be increased or reduced according to a formula in future and this, I understand. Should the authorities guarantee that information will be provided in respect of new routes?

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR ANDREW CHENG (in Cantonese): Madam Chairman, I hope Secretary Stephen LAM will understand that if the official response that he made earlier can really hold water, when the District Councils (DCs) examine the five-year development plan of buses or the development plan for the next decade in future — they often have to examine such plans, or development plans proposed for the next few years which include the route map, the market value in money-of-the-day prices, fare level, and so on, I am not demanding..... Certainly, in the event of dramatic economic changes in the future, the formula to be used as the basis for calculation will change accordingly and this, the public certainly understands. But at least, in the programme of operation, and at that particular point in time, such information must be submitted for evaluation. So, I do not accept this kind of explanation from the Government. Otherwise, when the DCs study the future developments, they may not be provided with any information on the rough estimate of fare adjustment, and this is inappropriate.

Madam Chairman, I will not talk about this anymore. I certainly hope that the debate is still going on when Secretary Dr Sarah LIAO returned from her meal, so as to put on record that I had blamed her wrongly for excusing herself from this meeting. I would also like to find somebody to stand in for me, so that I can grab a bite, but we Members may not be able to do so, because my attendance is still required for the subsequent proceedings and so, I still have to stay here. But I hope that Secretary Dr Sarah LIAO will come back from dinner earlier and see whether she can answer this question, but I think the amendment would probably be put to vote when she returned.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR JAMES TO (in Cantonese): Chairman, a quorum is lacking now.

CHAIRMAN (in Cantonese): I see. Will the Clerk please ring the bell to summon Members to the Chamber.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

CHAIRMAN (in Cantonese): A quorum is present. Does any other Member wish to speak?

(No other Member wished to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute, after which the division will begin.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Ms Margaret NG, Mr WONG Kwok-hing, Dr Fernando CHEUNG and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Mr Bernard CHAN, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr Howard YOUNG, Ms Miriam LAU, Ms LI Fung-ying, Mr

Tommy CHEUNG, Mr Vincent FANG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG and Mr WONG Ting-kwong voted against the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Dr YEUNG Sum, Mr Andrew CHENG and Mr Frederick FUNG voted for the amendment.

Mr James TIEN, Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung and Mr CHEUNG Hok-ming voted against the amendment.

THE CHAIRMAN, Mrs Rita FAN, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, four were in favour of the amendment and 13 against it; while among the Members returned by geographical constituencies through direct elections, 16 were present, seven were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negated.

CLERK (in Cantonese): Clause 16 as amended.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendment to clause 16 moved by the Secretary for Constitutional Affairs, the question I now put before you is that: Clause 16 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

CHAIRMAN (in Cantonese): Those against please raise their hands.

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority of the Members present. I declare the motion passed.

CLERK (in Cantonese): Clauses 21 and 30.

CHAIRMAN (in Cantonese): It is now time for Mr LEUNG Kwok-hung to move a motion under the Rules of Procedure to seek my consent that Rule 58(5) of the Rules of Procedure be suspended. But since this is not important, I would ask Mr Andrew CHENG to move this motion. *(Laughter)*

MR ANDREW CHENG (in Cantonese): Chairman, I was just about to go upstairs for dinner *(laughter)* when you, Madam Chairman, told me to move a motion. I can see that even the Secretary has returned from dinner. It so happens that there is now some time for me to take dinner but..... never mind.

Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider new clauses 20A and 21D, new heading before new clause 29C and new clause 29C together with clauses 21 and 30.

CHAIRMAN (in Cantonese): As only the President may give consent for a motion to be moved to suspend the Rules of Procedure, I order that Council do now resume.

Council then resumed.

PRESIDENT (in Cantonese): Mr Andrew CHENG, you have my consent.

MR ANDREW CHENG (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole

CHAIRMAN (in Cantonese): I think I cannot wait for Mr LEUNG Kwok-hung any longer. In order not to cause disruption to our examination process, we can only suspend the meeting and then send as many people as possible to locate Mr LEUNG Kwok-hung. *(Laughter)* I now suspend the meeting.

7.43 pm

Meeting suspended.

7.47 pm

Committee then resumed.

(THE CHAIRMAN'S DEPUTY, MS MIRIAM LAU, took the Chair)

DEPUTY CHAIRMAN (in Cantonese): A quorum is lacking. Clerk, please ring the bell.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

DEPUTY CHAIRMAN (in Cantonese): A quorum is present.

DEPUTY CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung has given notice to move the addition of new clauses 20A and 21D to the Bill to repeal section 54 of and Schedule 2 to the Mass Transit Railway Ordinance. Mr Andrew CHENG has also given notice to move such addition to amend section 54 and Schedule 2 thereof.

DEPUTY CHAIRMAN (in Cantonese): Committee now proceeds to a joint debate. I shall first call upon Mr LEUNG Kwok-hung to speak and move the Second Reading of new clauses 20A and 21D.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy Chairman, I move that new clauses 20A and 21D be read the Second time.

(Mr LEUNG Kwok-hung stopped and flipped through the script)

MR LEUNG KWOK-HUNG (in Cantonese): I have nothing more to say. Do I still have to say something?

DEPUTY CHAIRMAN (in Cantonese): Mr LEUNG Kwok-hung, you have finished speaking, have you not?

MR LEUNG KWOK-HUNG (in Cantonese): Yes, I already moved the motion.

DEPUTY CHAIRMAN (in Cantonese): You have finished your speech, right?

MR LEUNG KWOK-HUNG (in Cantonese): No.

DEPUTY CHAIRMAN (in Cantonese): Please go on if you wish to speak.

MR LEUNG KWOK-HUNG (in Cantonese): These two new clauses are actually proposed by Mr Albert CHAN. As we both belong to the League of Social Democrats and he is my fellow party member, I, therefore, moved the motion in this Council on his behalf. Mr CHAN also regretted his absence from this meeting. Due to the anniversary of the death of his father as well as his daughter's graduation from university, he had previously arranged a visit to Canada to attend to his family affairs. He had repeatedly urged me to explain to Members that he had no other alternative and he hoped that Members can understand.

We propose to add "Application of certain laws to Corporation Section 54 is repealed.". This is actually sheer common sense. We cannot find any reason to explain why the MTRCL can enjoy exemptions.

As repeatedly pointed out by Mr Albert CHAN and me, the MTRCL is a public body established with the public coffers of Hong Kong people and a colossal amount of subsidy. The responsibilities required of it should be expressly provided for in law. In the debate earlier, Mr Andrew CHENG also said that only some slight punishment is imposed on the MTRCL. But in spite of this, it is still given many rights that are not given to many other enterprises or relevant transport service providers. This, we consider inappropriate. We hope that this can be reviewed in the discussion on the Rail Merger Bill.

This is why we proposed to include the new clauses, hoping to induce discussion among Members. We also hope to arouse more concern in the community during this debate. In the final analysis, we certainly hope that the new clauses can appropriately monitor the MTRCL and that such monitoring can be codified in law.

With regard to the Public Health and Municipal Services Ordinance, as we all know, the MTR now enjoys exemptions that are unlikely to be given in other circumstances, such as the exemption in respect of public toilets. We consider that it is now time to conduct a review. In the beginning, as the MTR was built underground, it thought that it had a lot of reasonable defence. For instance, it considered that public toilets or other hygiene facilities or measures were unnecessary, or that it should be given exemption if it could not meet the requirements of the Public Health and Municipal Services Ordinance. Therefore, Mr Albert CHAN and I think that it is now time to conduct a review.

This is all I wish to say.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That Mr LEUNG Kwok-hung's new clauses 20A and 21D be read the Second time.

I should now call upon Mr Andrew CHENG to speak but he is not in the Chamber at the moment. The Clerk said that he would be asked to return to the Chamber. If he does not return right now, I would have to suspend the meeting until he returns.

(Mr Andrew CHENG still had not returned)

DEPUTY CHAIRMAN (in Cantonese): Perhaps we shall suspend the meeting, shall we not?

7.58 pm

Meeting suspended.

7.59 pm

Committee then resumed.

DEPUTY CHAIRMAN (in Cantonese): A quorum is again lacking. Clerk, please ring the bell.

(After the summoning bell had been rung, a number of Members returned to the Chamber)

DEPUTY CHAIRMAN (in Cantonese): A quorum is present now.

DEPUTY CHAIRMAN (in Cantonese): I now call upon Mr Andrew CHENG to speak on the motion moved by Mr LEUNG Kwok-hung as well as his new clauses, but will not ask him to move the Second Reading of his new clauses now.

If Mr LEUNG Kwok-hung's motion is agreed, that will by implication mean that Mr Andrew CHENG may not move the Second Reading of his new clauses 20A and 21D. If Mr LEUNG Kwok-hung's motion is negatived, Mr Andrew CHENG may move the Second Reading of his new clauses 20A and 21D.

MR ANDREW CHENG (in Cantonese): Deputy Chairman, first of all, I must say I am very sorry. Mr LEUNG Kwok-hung will usually exhaust the 15

minutes allowed to make a speech. Actually, I was keeping an eye on the time when I was eating upstairs and it was just that I was about to have my last bite before I had to come down. I did not know that he..... Sorry for keeping everyone waiting.

Deputy Chairman, we are talking about toilets after finishing a meal. Deputy Chairman, this is in fact a problem of toilets. This amendment is the last one I propose on behalf of the Democratic Party in the entire Bill. Later on, Mr LEE Wing-tat will propose his amendment.

Deputy Chairman, the new clauses 20A and 21D seek to amend section 54 of and Schedule 2 to the Mass Transit Railway Ordinance. These include: first, the MTRCL is to be exempted from regulation under the Buildings Ordinance. However, the difference of my amendment from that proposed by Mr LEUNG Kwok-hung (that is, also that of Mr Albert CHAN as well) is that the other Members do not think that the MTRCL should be exempted from the Buildings Ordinance. Since I know that he will propose an amendment like this, so I would focus my attention on urging Honourable colleagues to support a motion which is not legally binding, which is on the installation of toilets or some other facilities on station premises.

It follows that the exemption in relation to the Buildings Ordinance does not include the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations. If there is no such exemption, it will mean that these facilities should be installed. In addition, sections 1, 2, 3 and 4 in Schedule 2 have to be repealed, so as to make the MTRCL obliged to manage the toilets under the Public Health and Municipal Services Ordinance.

I shall speak on the difference between my amendment and that of Mr LEUNG Kwok-hung and Mr Albert CHAN later on, and I shall focus on the issue of toilets in order to make Members understand better.

Deputy Chairman, about the problem of toilets, the subject has been discussed at various lengths and depths in the Bills Committee and the Subcommittee on Matters Relating to Railways. Demands have been put forward on this subject. After listening to all these arguments, there is one thing which we do not understand. Why are there toilets in the KCR stations but not in the MTR stations? The explanation offered by the MTRCL is that

this is not feasible in terms of construction, design and technology. The professor is now here. I remember very well that the professor talked about the Buildings Ordinance and the toilets issue in many of the meetings. He also thinks that the reasons put up by the Government and the MTRCL (especially by that Mr LAU who is the head of train operations) are not justified at all.

Now in many MTR stations, like those in Tsim Sha Tsui, Mong Kok and Central, according to what is found in a paper, there has been an increase of some 200 to 300 retail outlets and eateries in these stations since the MTRCL was listed in 2000. This is of course the total number. Of these 200 to 300 shops, most of them are shops like Maxim's and Starbucks — I do not know if there are Café de Coral or Fairwood — there should be some Maxim's outlets and of these some sell barbecued food and boiled vegetables in oil like those that I have just eaten. Anyway, there are all sorts of foods on sale. We know that although the sewage works of these eateries are certainly different from those for toilets, they have to be addressed by some sort of engineering design. Then why can the MTRCL have more shops in the stations just to make more money but not toilets for public convenience, truly meeting the urgent needs of the people? This really beats me.

So I hope all Honourable colleagues from all political parties and groupings..... Deputy Chairman, now that you are sitting up there, a while from now you will come down. I hope the Liberal Party which you represent can support me over this amendment. In the information I have got, I still have the motion moved on that day by me and seconded by Miss TAM Heung-man, which strongly demands that the MTRCL should install public toilets on all station premises for public convenience. At that time, this motion was passed. It was supported by all political parties and groupings, including Mrs Selina CHOW of the Liberal Party who is also a Member of the Executive Council. At that time, we all passed that motion happily.

Having said that, it is in fact sad for that motion to have been passed. Problems related to the rail merger and toilets have been discussed in a number of meetings. Deputy Chairman, as the Chairman of these meetings, I know that you were very impatient at that time and you bundled up the problem of toilets with the two railways and the services and policies of the MTRCL which are so complicated and wide in scope. Do you not think that it is ridiculous actually?

However, we really feel helpless, for if the issue is not raised in the context of the Rail Merger Bill, we would really not know when we will have another chance to talk about it. The corporation has been given a 50-year franchise and if we do not add this provision to the law today, it will continue to enjoy the exemption and it is not obliged to provide any toilets. I think this is not reasonable. Of course, the MTRCL has its own explanations such as should people really need to use the toilet, they can approach the station staff. I had an experience of that some 10 years ago. Deputy Chairman, I have talked about it before. Then I had diarrhoea, and I was not feeling well. But after I had made that request, I found that I had to walk a long way, pass many doors and to top it all, as we all know, it was freezing cold inside the MTR stations — I do not know why the air-conditioning is set at such low temperatures — I was not feeling well and I had loose bowels, and that staff member led me on a walk of several hundred feet and through four or five doors before I came to the staff toilet. I almost fainted when I arrived.

So, Deputy Chairman, despite the MTRCL's claim that toilets are available to passengers when they need one, it is still very inconvenient for the general public. It is not reasonable at all. Of course, what I have just said is something that happened more than 10 years ago. I came to learn from the information I got recently that there seems to be some six or seven staff toilets in each station on average. This is why the MTRCL says that it is very convenient for passengers to ask for permission to use the staff toilets. Then I have another question. Why can the MTRCL staff have six or seven toilets but not even one for use by the public? I do not think this question can ever be answered.

If it is said that there are technical difficulties, and it is very difficult to dig out sewer ducts underground, then there should be just two toilets for the staff. But the reality is not so. The fact is there are as many as six or seven staff toilets in each station, but it is not possible to set aside one or two for use by the public though there is a demand for it. Just think, it does not make any sense at all.

Deputy Chairman, on this issue of toilets, I really do not want to spend too much time on it. But I want to talk about it. Honourable colleagues from the DAB in charge of this matter are not here, I do not know how they are going to vote on this. I hope that they will really lend me their support. I always think and in fact I thought about it when I was in bed last night, "Does this amendment

stand any chance of getting passed?" I think this amendment could well be the only one among all amendments that stands the best chance of being passed. Because a relevant motion has actually been passed.

Please do not tell me that it has been passed before. Things are different on this occasion. Deputy Chairman, the MTRCL has not agreed to this even to date. About the platform screen doors discussed earlier, you may still say that it has made an undertaking to commence work on that in 2012 or 2013, so we do not have to press it to take immediate action. Then it is said that including this in the law would make it liable to a breach and a contravention of the law and it would be obliged to do so. The demand this time around is for toilets. Of course, I think the Secretary may say that if it does not have the exemption, it will certainly not be able to build the toilets so soon and it may need a few months or half a year. I do not know how long it would take to build a toilet. Secretary, I hope you would not raise arguments like that again, saying that there will be no toilets once the law is passed. If it is given the exemption, are you going to lay a charge on it? I hope there will be no arguments like these.

When the Government is to lay a charge on a certain entity, it will have to see whether or not it can put up any reasonable defence. If we ask it to do something and it does not, then it should be prosecuted. This is the spirit of the law. But if we pass a law unanimously to demand that it must provide toilets and no exemption is given, then it has got to do it. It will have to submit plans for it and say when this can be done at which station at the soonest.

We must also tell the Secretary and stress that we are not asking for underground toilets which may mean an engineering headache. It always tells us that it is very difficult to build toilets underground. We are not asking for toilets built next to the underground platforms, we are just asking for toilets at the same level as the toll gates, just like the case of the KCR and the East Rail. These toilets are actually situated at ground level and they are inside the concourse, right? I cannot see any reason that it is technically not possible to spare some space in the station concourse for toilets. So please do not oppose us by putting up the argument that it is very complicated from an engineering perspective to build toilets underground. I hope Honourable colleagues from the engineering or architecture sectors would rise and speak in support of the amendment later. We all shared this toilet dream in the Bills Committee anyway.

With respect to the rail merger, we have indeed lost a lot of ground. We do not have the platform screen doors, we do not have the Railway Development Fund and I have lost my penalty points system. Toilets are the only things I can hope for. If it is said that it is not possible to build toilets for us to ease the pressure in us, then honestly, Deputy Chairman, I think this Council is weird. Because that motion was not passed in the panel but in the Bills Committee less than one month ago. It has indeed been passed. If that which is passed in the Bills Committee is negated here today, then I would really feel totally disappointed.

To be honest, members of the public are showing their concern about this problem, that is, the toilet problem which I have raised. Actually, I am not the only person who talks about it, for many other Honourable colleagues have done the same. I think many Members and their ward offices have received e-mails on this subject, saying that the Legislative Council should demand that toilets be provided in the MTR. This issue has become a widespread social concern already.

The community should not spend so much time on showing concern for the toilets. I really hope that the Secretary, and I would also expect the same from Honourable colleagues, to talk more about this issue. As for me, I will go upstairs and finish my meal before I come back. I will be listening all the time from the live telecast. I will listen to views expressed by Honourable colleagues. It seems that those Members who are prepared to speak all support the amendment. I hope those Honourable colleagues who want to oppose my amendment can put forward arguments. I hope we can bring ourselves together. As Ms Miriam LAU said yesterday, if all the major political parties would unite on this issue, I think the Secretary will be convinced that this is really something that ought to be done.

Those few staff members from the MTRCL sitting up there have been listening to the debate during the past 80-odd hours. This meeting today, as of now (including that held yesterday), has been held continuously for some 10 to 20 hours. I hope we will not be disappointed again in this issue of toilets and that there would not be another disappointment to add to our long list of disappointments.

Deputy Chairman, I so submit.

DEPUTY CHAIRMAN (in Cantonese): Members may now have a joint debate on the new clauses 20A and 21D proposed by Mr LEUNG Kwok-hung and Mr Andrew CHENG respectively.

DEPUTY CHAIRMAN (in Cantonese): Does any Member wish to speak?

MR JAMES TO (in Cantonese): Deputy Chairman, I have not joined this Bills Committee, but in the course of the deliberations on the Bill, that is, when Mr Andrew CHENG, you and the other Members were examining the Bill, as the issue of toilets was brought up, at first I did not see why this subject should ever be discussed. I asked myself, "Why is that so?" I thought that with the rail merger, everything should have been settled and in good order. But the most ridiculous thing today is that now it is eight o'clock something in the evening and in the news bulletin at 6.30 pm, there was this fascinating story about Members debating the issue of toilets. Last evening, it was also said that it seemed that the toilet issue was a key point in the debate.

Frankly, last night when I reached home, my wife asked me why Members had to discuss the toilet issue. I said we had to do so because the Government was not willing to get the job done and so was the MTRCL. Mr Andrew CHENG asked this question earlier on in a rather mocking tone and said that this was baffling. We have to discuss the issue to press the Government and the MTRCL into making a pledge to comply with certain standards. We must remember that these standards meet the requirements laid down in the public health law. In other words, this public health law can be universally applied and these are standards for Hong Kong. But now an attempt is made to exempt from these standards and we are asking if the exemption should not be given. What a mockery this is. Will this not show what kind of a corporation is the MTRCL and what kind of performance it has?

Earlier on it was said that if the argument put forward by the Government is — no, it should be the argument from the MTRCL, we should not say that this is the argument of the Government, for the Government may only hope that it is the argument of the MTRCL after all. However, nothing can be done about it, the Government is now in the same boat as the MTRCL. They are clinging onto each other, for it is defending the MTRCL. Actually, it is the staff of the

MTRCL who should come here today to make a response. But the Government is now speaking for the MTRCL, saying that it will run into problems and difficulties, and so on. What members of the public now see in the MTR is that wherever there is any space in the stations, it will let it as premises for shops. So shops spring up everywhere in the stations. What comes next is to streamline things. According to them, this is to make the exits look better so that there can be exits at every location. But why do these exits have to be made smaller? Because when the exits have become smaller, there can be a few more shops, not toilets, in their place. And rentals can be collected from these shops. It is also said that more shops selling food and drinks would be set up, but toilets would be out of the question.

I have heard about an argument before and I managed to have it verified. The argument is about the question of why there are toilets in the KCR stations. This is because the trains run on long journeys. If passengers have to answer the call of nature, it would be too bad if no toilet can be found. As a matter of fact, for decades up to the present, the railway lines we have are very long. In the past, people might say jokingly that aids to the mainland people went in the form of parcels and articles carried on a pole placed on the shoulder of Hong Kong residents going into the Mainland. But things have changed now and it is now our mainland compatriots coming over to help us. Aid comes in the form of mainland residents coming here under the Individual Visit Scheme. It may be that at that time some people thought that the KCR line was so long and passengers had to ride on a train for many stops on the line, so throughout the history of the KCRC, toilets have been a necessity. Now the MTRCL says on the other hand that it is serving short distances and all it needs to do is to keep the place tidy and clean and that is all. I remember these are the arguments put forward.

However, MTR journeys have become very long now and the time taken for a ride is also very long. I recall in the past, the late Mr NG Ming-yam was able to write an article en route a MTR ride from Tsuen Wan to the destination. He was really a speed writer. He would write all the time when riding on the MTR. He is dead now. As far as I know, CHEUNG Man-kwong says that he can do the same thing now and he can get an article ready on a MTR ride to Mei Fu. So as a matter of fact, journeys on the MTR have now become much longer. And so this should not be cited as the reason for applying for exemption as it was in the past.

Well, if this is the case, I assume that technically this is really the case..... The public officer may rise later and criticize the view expressed by Andrew CHENG, saying that he has made this request all of a sudden. If his request is accepted and passed and the Government cannot put things in order, this would result in a contravention and a charge may be laid. If there is such a case, the Government should take the initiative and propose conversely that it should be given some time so that it can follow the procedures in the law and abolish this exemption. Such a practice in fact has got some precedents. This is by the use of the so-called "sunset clause". I think Members all know by now what this is. After the saga of the wiretapping law, Members must have learnt a lot of methods about that and they may even know how to draft something on that. Now if it thinks this cannot be done and if it is carrying out work in a sensible manner, the Legislative Council may pass a resolution to extend the exemption. This is also workable. Right?

There are certainly many possibilities. But the Secretary does not want to choose any one of them. I do not know if later on she would call on Members to oppose this motion. As a responsible Director of Bureau, what should she do? She should have made the call before or she may have proposed a motion herself to replace Andrew CHENG's motion. This means stating how long the transition is, what the time limit for it is and when the exemption is to lapse, and so on. Should she not do this? But this is not what the Secretary is doing and she is saying repeatedly that the Bill should be passed first and the exemption should be given and continued.

Then how long should we wait? Are we going to enact a law in future specifically on repealing the exemption granted to the MTRCL on the subject of toilets? Do we have to do this? Toilets are the focus of attention in society these days and Members are bargaining on this subject of toilet cubicles. Earlier on she talked about costs and I do not know if she would make an argument on costs. She said that broadcasting service would cost \$100 million, and some hundreds of million dollars would be used on screen doors. She said that for the toilets, it was not that they were not possible, but some tens of million dollars would have to be spent. It should be noted that toilets are essential service for the passengers. Another thing is that after the merger, there would be an interesting thing and that is, there are two sets of standards in the facilities provided by the same corporation. Why?

Also, though in theory it can be done and an exemption in law can be given to it also in theory, it does not mean that only train carriages on the MTR lines are given the exemption, but the same exemption is also given to the KCR lines. This is because they belong to the same corporation. Can the Secretary clarify this application of the provisions? If this is so, it would mean that even if toilets exist now, it should be made clear that they will no longer be provided and the situation will be reverted to the old case when there were no toilets. It means that shops can be put in their place and would it not be better for the corporation? Would it not be better if these toilets are converted into retail shops? However, the point is how an exemption in law can be traced back so that the KCR can be given exemption as well? It is not possible. We have many masters and professors in architecture among us and they all point out that this practice is totally not justified. How can the Secretary convince these people from a technical point of view that it is impossible to install toilets?

I recall we once vetted an application for funding to build toilets at the Po Lin Monastery. At that time, I was surprised to note why some tens of million dollars had to be spent on building toilets and it was so expensive. It turned out that a cesspool had to be built. Mr LAM would certainly recall this event. I was surprised why such a huge sum of money had to be spent and later on I found out that it was only natural because the Po Lin Monastery is situated in a remote area and there is no good sewage system that it can use. In the end, the Government made a funding of some tens of million dollars to finance the project because that was considered necessary. The place is a tourist spot. But now the MTR journeys are very long and after the merger, the journeys on the MTR may get even longer. It is surprising that there are no toilets in some of the stations.

So if the Secretary uses this argument and even agrees and believes in what the MTRCL says, that is, that this is not possible, then frankly, the experts in the Government may have to come out and face a trial. That is to say, they should be asked to come forth and have their views examined to see if this idea is really not possible. If this is not the case, and if this is actually the Government closing its eyes and taking in everything the MTRCL is saying, without compelling the MTRCL to find the best solution, then I would even go to the extent to say that the Secretary has been in dereliction of her duties. Because the department under the Secretary's charge has got enough experts and

manpower in that matter. You must remember that if you tell people that it is not possible even to build toilets in our MTR, it would indeed be unthinkable.

However, although the Secretary says that all staff toilets will be made available to passengers in need, this is still a problem. What Andrew CHENG said earlier is of course some past experience, but a friend of mine has had the same experience recently. The process as he described does not seem to be that long, but even so he had to walk through two doors. As for the question of whether it was freezing cold there, he did not talk about it. In my opinion, the place is actually the ticketing office of the MTR — no, it is not the ticketing office but the back office for internal operations, that is, it is behind the place where the station supervisor is working. Of course, there are stations which are not like this. We call this critical infrastructure, that is, infrastructure of strategic importance. Now outsiders can gain access to it so easily. I am not saying that no permission should be given for passengers to use the toilets there, but there would be a problem either way no matter if permission is given or not given.

Suppose terrorists or some other people pretend that they want to use the toilets but in fact they are planting a bomb there, it would be very easy. The MTRCL is now adding some security risk for itself. Such places should be cordoned off and there is no reason that other people can get in so easily. Right? Once these people have gained entry, they may hold up those people inside, lock the door and then do a lot of other things. Sometimes, I think that this should not be allowed from the security point of view.

Since there are seven or eight such toilets on some platforms, even if they cannot satisfy all the demand, at most part of them instead of all should be given exemption. If partial exemption is given and this leads to insufficient toilet cubicles, and as a result a queue is formed, there is no helping it. People should queue up in that case, right? The question is, if not even one toilet is provided or if toilets can only be used when a request is made, what would happen? We should know that not every passenger knows that a request can be made. I do not know how far Andrew CHENG had to walk when he had that experience of loose bowels before he found the station supervisor and where that person went to before he got a key and then how far they had to go before finding the toilet. I cannot help but ask, "Is this user-friendly at all? Must people need to ask for it? Are toilets a special service?" They should be some normal and general service, something which is provided all the time. How can toilets be seen as

some kind of very special service and something which can only be provided after some special arrangement is made? Why should staff be specifically called for to serve those in need?

I really hope that the Government can explain all these in detail. I think in the end I can only arrive at a conclusion and that is, if the MTRCL is advancing such paradoxical arguments and if they are agreed by the Government, this is the final conclusion I will get: The MTRCL is a kingdom of its own and we have given it such a vast territory for it to rule and it is telling us that no toilets will be provided. On the other hand, it is collecting the rentals, and passengers are forced to look at the advertisements and listen to the broadcasts in the compartments without being able to make any choice. Everything they see and everything they come across will be charged, right?

In such a vast territory, it is true that the authorities are regulating things, even in some very trivial matters. Let me give an example as a kind of joke. If someone speaks foul language within the MTR precincts and he swears because there is no toilet in the station, he keeps on swearing, saying that his belly is feeling awful and demands to know why there is no toilet, then what can be done about this person? Should a charge be laid against him for speaking foul language? When the person appears in Court, he may tell the Judge, "Of course I swore, why not? My belly was aching terribly and there was no toilet." This example is meant to be only a joke. But let me say something honestly, there may in fact be people who swear on the MTR premises precisely because there is no toilet around.

Originally, it would be no big deal if this expectation is not mentioned. But Members have been discussing this issue all the time recently. Perhaps after much thinking, Members would ask why there are no toilets. Why should Members keep on talking about this subject here? Also, 37 meetings were planned and held and I do not know on how many occasions this subject of toilets was brought up. At least, there were two or three such occasions. This is because I often read from the newspaper about this. Why should there be such begging, imploring or kowtowing or going down on one's knees? When the Secretary gives a reply later, I wonder if she would say that she would look at the responses from the Members. I hope that Honourable colleagues would help things out, for the matter has been made a great mockery. Everyone thinks that it is crazy. Why should there be a need to argue over something like this?

Why should there be such insistence and request for exemption? What kind of a corporation is the MTRCL? It makes billions of dollars a year, so why can it not afford to provide a toilet to the public?

In my opinion, its mentality is simple indeed. It is just like a real estate company. The services it provides actually incur losses. It says that it is charging passengers \$10 or \$11 and now they are asking for a reduction in fares. Well, you may get what you want and that can be given. But a charge of 50 cents is to be collected every time you use it. Or the charge may be calculated on each use. Because you say that there is a need for it. Why do you not go to a toilet when you are aboveground? Will the MTRCL say such things? Does it have a mentality like this? This is a miser mentality, and it would be out of the question if you ask it to spend money or pay for anything. It jumps at every opportunity of making money. Also, please remember, it still has got a lot of large development sites and it may make any change it likes. There are times when it sells flats that it states that there is a garden in the estate, but it can make a complete change in the design subsequently. The reason behind this could be a shopping mall under these flats. In order that there can be a change in the underground shopping mall, even toilets have to be given up. How can these things happen? What kind of a company this is?

Deputy Chairman, I am only looking at the matter from the perspective of a third party and I have not taken in any discussions directly. I only learnt about the issue from the newspaper. After listening to the arguments in detail, I think that the issue has caused great antagonist feelings among the people against the MTRCL. We may say that there are many areas in its operation that we like and we are saying this because we have been to other places and made a comparison, but we still have to ask, the rails in other places are also laid underground, but they have got toilets. But why can we not have toilets? If you are telling other people that this is a technical problem, I am sure they will laugh their heads off. Do not let those countries which are our competitors hear things like these, otherwise, they will report today that Legislative Council Members of Hong Kong are showing great concern and it turns out that there are no toilets in the MTR there. I am sure they would badmouth us.

I hope the Government can change its mind before it is too late. Can the Government not make a better pledge? I do not care if these pledges are not

passed later on. The most important thing is that the Government can make such pledges. This will prevent the people from getting so antagonized by the MTRCL. Also, if the Government supports this exemption, it will only serve to project people's bad feelings onto the Government itself, and in other words, they too will become very much antagonized by the Government.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MR LEUNG YIU-CHUNG (in Cantonese): Deputy Chairman, on the issue of toilets, as the two Honourable colleagues have said earlier, it is outrageous. It is not outrageous in the sense that this subject of toilets has to be brought up in the Legislative Council because the Chief Executive used to say that all of his policies are devised from a people-oriented perspective. Toilets are also related to a people-oriented policy. So I think that it is perfectly normal to talk about it in this Council. For if not, how can policies measure up to the Chief Executive's platform? The only ridiculous thing that Members may think is that the subject is actually not brought up only today, it would be ridiculous if it is. The problem is actually a very long-standing one and it has been around for a very long time.

Although Mr James TO has said just now that he would understand, because the MTR lines used to be not very long and it would not matter if there were no toilets. But now MTR lines are longer and so there is a greater need for toilets. Actually, I do not quite agree with this point. It is really not the case. There was a demand for that in the past. In those days if people travel from Tsuen Wan to Central, it would take some 20 to 30 minutes at first. Why is it said that there is no need for toilets? When the time for waiting for the train, going on board and alighting is counted, it would take more than half an hour. How come there is no such a need? Certainly there is such a need.

In addition, Deputy Chairman, sometimes it is not really a matter of time or distance, when a need arises it is a need. How can it be said that there is a need when the distance is longer and there is not such a need when the distance is shorter? As in the case of Mr Andrew CHENG who had loose bowels once, how would he know that this would happen? Such things can come anytime and they are beyond our control. Once my son had the cramps in a MTR station suddenly and he had to go to the toilet. I told him that there were no toilets

there and so what should we do? I suggested that he might ask the staff there if he could allow him to use the toilet. But he was very shy and he said that he did not want to cause trouble to other people. So what should I do in that case? There my son was having cramps and he did not want to ask for permission to use the toilet there for fear that it would mean trouble for other people. So what could be done? This was something I could not help him. How could I be of any help? It was really an embarrassing experience. This happens because kids are afraid of asking other people for permission. Deputy Chairman, this is a problem that really exists.

Now there are more problems. In the past, the MTR used to have more staff and it was rather easy to get help. It is much harder to get help from the staff now. Even if people call for help from the platform, in the same way as we hit the gong a while ago to fetch Members, there would be no staff to be found. What should people do if something really happens?

I can give one example. The staff toilet in the Tsuen Wan station is located underneath the platform. If people need to go to the toilet while they are on the platform, what should they do? Even if they can see that the toilet is there, they cannot go in because they do not have the key. They need to go up to the platform and ask the staff for help, then they must return to go to the toilet. Just think, suppose it is a very urgent call of nature that I have to answer, will I still have that much time to go back and forth? This is impossible. So this is a very serious problem indeed.

Now there is an exemption in law to exempt the MTRCL from installing toilets. The problem is the whole thing strikes me as rather strange. As far as I know, the reason put up previously was that there were technical difficulties. But if technical problems are really involved, then Deputy Chairman, may I know why staff toilets can be built? Both kinds are located near the platform, why were they not made larger at the design stage or another one is built next to them? Why are staff toilets built, but not toilets for passengers? This is really puzzling.

The only explanation I can see is that in those days, the concern was to keep the toilets clean over a longer period of time. This could be a reason, because it was no easy task to keep toilets clean at the early stages of the MTR. Even if this is the case, should we avoid building toilets just because it is hard to keep them clean? As the popular saying goes, do we have to trim our toes to

suit the shoes? This is not the way to look at the issue. This is a sanitation problem and what should be done should indeed be done and it should never be avoided.

Moreover, things are different now. We have more experience of that, for the KCRC has got toilets and we know how they operate and the so-called problems in managing toilets can be overcome. Why can toilets not be installed in the MTR? I am really baffled and I fail to understand why it does not do that. The only possible reason is as Mr James TO has mentioned earlier, and that is a point I agree very much, and it is, first, building toilets will not boost the business turnover. Conversely, it would only lead to more expenditure. Both spending money to build toilets or managing them to maintain their hygiene mean huge expenses. When so much money is to be spent, what good will it bring to the corporation? Apart from this reason, I do not think I can find a second one.

A possible second reason as pointed out by Mr James TO is that the space is to be used to open up more shops. This is not a very sound reason because the shops are situated at the upper levels, that is, in the concourse. If it is to build toilets in the concourse, it may not be aesthetically justified. The MTRCL may not like to do so either. That means, even if no shopping mall is built there, the MTRCL may not like to turn the space into toilets. This is understandable.

In any case, there can be only one conclusion from these two reasons, and that is, money. As I see it, this is still a problem of money and nothing else. In other words, when this service is added, would there be an increase in income? This is the most cogent line of reasoning. Of course, building toilets will not increase the number of passengers. This is the most important point. It is true to say that building toilets does not mean a greater passenger volume, but the point is, the passenger volume alone can bring in huge increases in income for the MTRCL. We know that each year the corporation makes colossal surpluses and certainly some of these can be used on services to improve environmental hygiene. The question is whether or not it is willing to make less profit and offer more services.

So I think the corporation is being unfair to the general public on this issue. Fairness is involved because we have paid so much, but we are not getting any reasonable service for our money. This is actually the greatest problem. Moreover, this kind of reasonable service is essential. That makes it so

important because it is essential and reasonable service, not just any other kind of service.

With respect to this issue, I would think that ever since the Government mooted a merger of the two railway corporations, there are many areas that we hope the Government can really think in the direction of being people-oriented as advocated by the Chief Executive. Unfortunately, although all the amendments moved by Members today stem from this people-oriented approach, they are all voted down. I do not know if Members like to raise objection to policies introduced by the Chief Executive, including this people-oriented approach, just like the way we oppose his other policies. If this is not the case, then why do Members not make good use of this opportunity to do something?

I feel that the Government is aware of this problem, the problem of installing toilets. But the question is that it is also aware of another problem and that is, it should respect the MTRCL's autonomy in service provision and operations. That is why exemption is proposed. In other words, it is not that the Government has never considered this problem or that it does not attach any importance to it, only that it does not see that it is an important issue and look at it from the people-oriented approach. This is as simple as that.

Today we discuss railway services, and in any case, the Bill will certainly be passed. I would have nothing to say if Members feel no twinge in their conscience. When we discussed the provision of half-fare concessions for people with disabilities, I once said, "When I see tears fall from the Secretary's eyes, I have not the slightest doubt about her sincerity, but when it comes to offering services for the general public, is she doing it with all her heart and soul?" I have to ask this question again. If she really uses all her heart and soul, then this people-oriented approach would be very important, for it can really show whether she is handling the problem with all her heart and soul.

This toilets issue may sound funny, but when someone is in such a need, he or she will feel the embarrassment and distress of it. Members may not have had that experience, but if they do, they will certainly see how desperate the situation can be. As a matter of fact, I have had one such experience myself. It was lucky that I came across a staff member nearby and I was led to the toilet very quickly for a quick relief. So it was not a big problem after all. The

point is, no one can be so lucky on every occasion because this is something beyond our control. I therefore think that the issue should not be considered from the perspective of money and instead it should be considered more from the people-oriented approach.

Deputy Chairman, I so submit.

DEPUTY CHAIRMAN (in Cantonese): Does any other Member wish to speak?

MT ABRAHAM SHEK (in Cantonese): Deputy Chairman, I actually did not have any strong intention of speaking. But just now, Andrew suddenly turned around, looked at me with a smile and said he hoped that I would not have any "urgent need".

Deputy Chairman, I wish to share my personal experience with Members, my personal experience relating to toilets. The views of Andrew, James TO and even LEUNG Yiu-chung are perfectly reasonable, in the sense that there is indeed a very great need for toilets. But the point is that toilets can create very big problems for the KCRC and the MTRCL.

Let me narrate my personal experience to Members. Twenty-three years ago, I was the Director-Commercial Services of the KCRC. At that time, I spent a great deal of time handling the issue of toilets. (*Laughter*) I am not talking about any toilet culture but the very serious problems relating to toilets. Toilets were then provided on platforms, in ticket concourses and even in train compartments. Every day, we must spend lots of time..... People must at times answer a call of nature, so they do need toilets. But passengers at that time were simply unable to use all those toilets. Why? Whenever they moved close to those toilets, they must cover their noses. Though they really needed to go to the toilet, they just would not do so because all the toilet bowls were clogged.

I am not saying that the KCRC did not spend any money on toilet maintenance. Quite the contrary, we did expend lots of energy, manpower and material and financial resources to handle toilet problems every day. I suppose Members did not have such experience personally. Even though we cleaned those toilets every day, they would all be clogged half an hour after cleaning.

Why? Because every day, the wallets of many Lo Wu-bound passengers were stolen, and after taking all the cash, pickpockets would throw the stolen wallets into toilet bowls, causing their clogging day in, day out. It was impossible to see the wallets which were disposed of in this way, and just minutes later, all those toilet bowls would be clogged. That would be disastrous, Deputy Chairman, because a whole toilet would be turned into something like a pool. Therefore, I can say that I am very experienced in handling toilet problems. *(Laughter)* It was really big trouble. What were we supposed to do? Are we supposed to dip our hands into those toilet bowls to extract the stolen wallets? We could not possibly do so, so those toilets remained clogged all the time.

We then designed a very special machine at huge costs. Looking like an electric fan, the machine could shred all those stolen wallets into pieces, thus removing all obstruction. But the whole process must take at least four hours. Therefore, even though there were toilets, passengers could not use them. This was also the case with platform toilets. But the situation was even worse. Whenever a train was approaching, people in a toilet would turn very angry, yelling at the people inside the cubicles and urging them to hurry up. If the people inside the cubicles did not come out quick enough, there might be a scuffle, and there would be big trouble. The toilets in train compartments were even more annoying. At that time, a train was made up of three carriages but the toilet alone would take up half of a carriage. Since the situation was so annoying, we.....

MR LEE CHEUK-YAN (in Cantonese): Deputy Chairman, a point of order.

DEPUTY CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, do you have a point of order?

MR LEE CHEUK-YAN (in Cantonese): Deputy Chairman, a point of order. He seems to have deviated from the question. We are discussing the MTR, not the KCR.....

DEPUTY CHAIRMAN (in Cantonese): No, he has been talking about toilets.

MR LEE CHEUK-YAN (in Cantonese): But he has been talking about the KCR.

DEPUTY CHAIRMAN (in Cantonese): He has been talking about toilets. He has not deviated from the question. Mr LEE Cheuk-yan, please sit down.

MR ABRAHAM SHEK (in Cantonese): I have been giving an account of the toilet issue.....

DEPUTY CHAIRMAN (in Cantonese): Mr LEE Cheuk-yan, please sit down.

MR ABRAHAM SHEK (in Cantonese): It is alright for us to share our experience.

DEPUTY CHAIRMAN (in Cantonese): Mr Abraham SHEK has been talking about toilets. This is precisely the question under discussion.

MR ABRAHAM SHEK (in Cantonese): If I have really deviated from the question, I will just stop. But since Andrew asked me to say a few words, I thought I might as well do so.

DEPUTY CHAIRMAN (in Cantonese): Please address the Chair.

MR ABRAHAM SHEK (in Cantonese): Yes, Deputy Chairman. I am very sorry. Please pardon me, our great Deputy Chairman. *(Laughter)*

Where was I? Yes, I was talking about platforms. No, I was talking about train compartments. At that time, we purchased many carriages because passenger volumes started to increase. I thought that it was not necessary to have any toilets in train compartments, so I removed all the toilets and luggage

racks there, thus enabling the Government to save huge sums of money. The room thus vacated was quickly converted to passenger seats. That is why there are no toilets in KCR compartments now. The credit should be mine. Deputy Chairman, I really think that this is a great achievement.

However, why has there been no need for any toilets on the MTR since its very inception? The reason is that unlike the KCR, which was then a sub-urban railway bound for the New Territories, the MTR, which is now a popular mode of transport, has always been an urban railway operating in the urban areas. Since shopping arcades are found near all MTR stations in the urban areas, and since there must be toilets in shopping centres, passengers do not need to go to the toilet in MTR station concourses. They can simply go to nearby shopping centres. We can thus see that there is indeed a reason for the absence of toilets on the MTR. It is not necessary to provide any toilets on the MTR because there are shopping arcades in the vicinity as part of the overall design. The case of the MTR is different from that of the KCR years ago. Since toilets are found in nearby shopping centres, it is not necessary to provide any toilets in MTR station concourses. The reason is so simple.

Therefore, every case..... I have given a historical account of the whole thing. If Members think that..... The population of Hong Kong is ageing, and old people usually find it more difficult to stand a call of nature. So, if new railways are constructed in the future, your proposal today..... I think when the new railway corporation constructs any new railways in the future, it may consider the provision of toilets. But it will be very difficult to build any toilets in existing KCR stations.

Some Members query why shops can be constructed in station concourses. The construction of shops and the provision of toilets are two different matters. I think it is necessary to provide toilets. However, since there are so many MTR stations and there are always toilets in nearby shopping arcades, we should not expend any manpower and resources to build toilets on the MTR. If new railways are constructed in the future, the MTRCL should consider following the KCRC's example of providing toilets.

I oppose Andrew CHENG's amendment. Thank you, Deputy Chairman.

MISS TAM HEUNG-MAN (in Cantonese): Deputy Chairman, I rise again to speak in support of Mr Andrew CHENG's amendment.

Years ago, the MTR Corporation Limited (MTRCL) was granted exemption from the relevant provisions of the Buildings Ordinance and the Public Health and Municipal Services Ordinance, so it does not need to comply with these provisions and provide toilets in MTR stations. After so many years, the public may already be used to the fact that there are no toilets in MTR stations. However, in tandem with social development, railway passengers have turned increasingly demanding, and they are no longer concerned only about the frequencies and punctuality of service.

As revealed by an opinion poll conducted by the Civic Party in May, as high as 83% of the respondents hoped that public toilets could be provided in all the 53 stations of the MTR system, so that they did not have to rush through turnstiles to look for a toilet in case of need.

However, in the Bills Committee, representatives of the MTRCL persistently refused to answer the request of the public and passengers on the grounds of technical difficulties and underground cables. The MTRCL has only undertaken to complete the study report on the construction of toilets in eight at-grade stations.

Deputy Chairman, we maintain that the MTRCL should also explore the feasibility of constructing toilets in underground stations. Actually, Mr Vincent NG, concurrently a Civic Party Executive Committee member and a Vice-President of the Hong Kong Institute of Architects, has already conducted an examination from the building and engineering perspectives and concluded that the MTRCL should face no insurmountable technical difficulties.

Toilet construction simply does not require any advanced technologies. Rather than saying that there are technical difficulties, it is better to say that the MTRCL is not sincere in answering people's aspiration. There are many coffee shops and fast-food shops in MTR stations, and they must also be equipped with water pipes. Therefore, the excuse of the MTRCL is just not valid. Nor can it convince us that it is not even able to build a toilet. The MTRCL has constructed so many fine and superb railways. It is really a big joke for it to claim that it cannot even build a toilet.

We also hope that the MTRCL can step up publicity to let its passengers know that if ever they are "in urgent need", they may request assistance from

MTR staff and use their staff toilets. The survey conducted by the Civic Party shows that more than 80% of the respondents did not know that they could ask for permission to use MTR staff toilets in case of need.

I understand that the MTRCL may have avoided such publicity on purpose, because if passengers frequently ask for permission to use MTR staff toilets, its staff will not have any more time for their work. Precisely so, there is all the more reason for the MTRCL to satisfy the need of passengers by implementing the policy of building toilets in all MTR stations. Direction signs should also be erected to inform passengers of the location of the nearest toilet in an MTR station or its vicinity.

Deputy Chairman, I now wish to respond to the remarks of Mr Abraham SHEK. His remarks certainly made us all laugh, but I do have doubts about one of his points. According to him, since passengers can go to the toilets in nearby shopping centres, it is not necessary to build any toilets in MTR stations. Deputy Chairman, if a passenger leaves an MTR station and goes to a nearby shopping arcade, he must pay the fare for another trip when he continues with his journey on the MTR. This means that passengers must pay additional fares just for the purpose of going to the toilet. Therefore, instead of asking people to use toilets in shopping arcades, why do we not simply build toilets in MTR stations? In order to go to a shopping centre, one must go through the turnstiles. This will mean the fare for one journey. If one wants to continue with one's journey, one must enter through the turnstiles again. This will mean the fare for another trip. Who is going to pay all these fares? The MTRCL? Will the MTRCL say that because a passenger must leave the paid area for going to a toilet in a shopping centre, it will pay the fare concerned for the passenger? Is there such a "rebate" for the public? What I mean is that the MTRCL should pay the fare for me since I must go to a shopping centre for using the toilets there. It will be wonderful if the MTRCL agrees to do so,

Mr Abraham SHEK also talked about how he had dealt with the problems relating to the toilets on the KCR several decades ago. But it has been so many years. Mr SHEK is not here now, but I hope he can realize one point. During the times he talked about, pickpocketing might be most common. But pickpocketing is no longer common nowadays. Something else may be more common. The problem he talked about, that is, the problem of pickpockets throwing away stolen wallets in toilets, may not be found anymore nowadays.

He talked so much about things in the past, but circumstances have already changed now. How can anyone still argue that toilets have brought many problems and constraints to the KCRC, thus giving the MTRCL an excuse for claiming that since toilets have brought so many problems to the KCRC and wasted so much of its money, no toilets should be built in MTR stations?

The money we are talking about is the money of the MTRCL. Why is Mr Abraham SHEK so concerned about the money of the MTRCL? Concerning the demand of the public, the survey conducted by the Civic Party can already show that more than 80% of the general public think that toilets should be built in MTR stations. This is the aspiration of the public. Why does the Government refuse to share their concern and accede to their demand? What actually are the difficulties in building a toilet? I hope Prof Patrick LAU can say a few words on the feasibility or otherwise of building toilets in MTR stations. I hope Prof LAU can provide some valuable advice.

(THE CHAIRMAN resumed the Chair)

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): It is now almost 9 pm. I wish to inform Members that around 10 pm, I shall suspend the meeting until 9 am tomorrow.

MR ALBERT HO (in Cantonese): Chairman, just now, Mr Abraham SHEK looked so proud and satisfied when narrating his experience of dealing with toilet problems during his days in the KCRC. It is a pity that he is not in the Chamber now. Frankly, I do not see anything funny at all, because I really think that his remarks are an insult to our wisdom. Though I am on good terms with him, I just do not think that he should have said those things.

Why? Because such remarks can only reflect his low management competence. As the Director-Commercial Services, he even failed to solve the problems with toilets. Well, then, it may be necessary to demolish all the toilets in shopping arcades because they may be affected by the same problems.

What he said seemed to suggest that all toilets had been demolished because the problems with them could not be solved. This is not the case in reality. There are toilets in KCR stations. There are toilets in Ma On Shan Rail stations and there are also toilets in West Rail stations. Secretary, the toilets in West Rail stations are quite satisfactory. She may wish to respond to me on this point later. I have the experience of using the toilets in West Rail stations, and I must say that they are quite satisfactory, in keeping with the standards and image of a modern corporation.

I do not know why Mr Abraham SHEK failed to solve it. This probably explained why he could rise to the post of Director-Commercial Services only, not the post of YEUNG Kai-yin. Because he could not even solve the problems with toilets.

Actually, I think the toilets in West Rail stations are quite satisfactory in terms of cleanliness. This projects a very good corporate image, and the public are provided with very comfortable facilities to meet their needs. If people claim that the proposed merger will enable the MTRCL to better meet the needs of society, they are in fact saying that the railway corporation that has been providing toilets must be a fool, and that since the MTRCL is so good already, there is no need to spend such money. In that case, I must say that the standard of service will decline as a result of the merger. Therefore, I often say that there are many aspects to competition. Management is one such aspect. Fortunately, there is comparison. The facilities of the toilets in West Rail stations are very good.

Chairman, Members have said a lot on this issue. I do not wish to make any repetition here. However, I wish to reiterate that the aim of the debate on this amendment is not to beg MergeCo to offer any favour or special benefits to the public. I am just saying that, like ordinary enterprises, it should abide by the law and meet the same legal requirements. Why should it be given exemption? Why should it be offered such a privilege? Do they want to collude with the MTRCL? Why was exemption offered years ago?

Years ago, we argued over one point for a very long time. We thought that the point was a big insult to our wisdom — toilets may lead to security problems because there may be many robberies. This is totally unconvincing. Fortunately, another railway can provide contrast. How many robberies or even cases of pickpocketing are there in those toilets? If the worry is indeed

justified, we will only need to station police officers in toilets, right? This will certainly yield good results, and policemen stationed in toilets will surely get promoted soon.

Having to discuss the issue of toilets in the Legislative Council is actually very ridiculous. But I also think that this is a very serious issue because it concerns the life of the people and involves the fundamental social and moral responsibility of enterprises, especially such a gigantic enterprise.

Therefore, I do not want to say anything more. I simply cannot see any reason for granting exemption to it. It is incumbent on the railway corporation to prove that it really cannot do so. But then, I also think that any proof thus produced will all be lies. And, it is equally absurd to cite any technical difficulties. Even if there are any technical difficulties for individual stations, exemption should still be applied for on a case to case basis. No blanket exemption should ever be granted. I hope the Government can stop behaving in such a way which makes people think that there is collusion between it and the MTRCL. Mr Albert CHAN is not present today. If he were, he would have chided the Government for colluding with business again. I do not think that there is any reason for granting exemption to it.

Thank you, Chairman.

MR FREDERICK FUNG (in Cantonese): Chairman, I hope you will not query why I did not raise the following views in the Bills Committee. I have to express these views today because although the issue of toilets may not be necessarily related to the overall policy of rail merger, I still think that toilets are about people's basic needs; both defecation and urination are people's basic needs.

Before I come to my views, I wish to refute the several points made by Mr Abraham SHEK just now. First, the examples he cited are all about the KCR. The worst thing is that all these examples are just not correct because toilets are now found on the entire KCR — Tsim Sha Tsui Station, Kowloon Tong Station and Lo Wu Station in Shenzhen, for example. He talked on and on, saying that he introduced the very benevolent policy of getting rid of all toilets on KCR trains. I therefore did not understand what he was talking about. Did he drink

too much over dinner this evening? Therefore, I must say that his first argument is totally unconvincing.

The second unconvincing argument he put forward is that in case of need, passengers can use the toilets in shopping centres near MTR stations because MTR stations are usually connected to shopping centres, and they can then continue with their MTR journeys after going to the toilet. This is simply terrible, most unfair to my constituents in Sham Shui Po again. There are five MTR stations in Sham Shui Po: Shek Kip Mei Station, Sham Shui Po Station, Cheung Sha Wan Station, Lai Chi Kok Station and Mei Foo Station. With the exception of Mei Foo Station, all these MTR stations are not linked to any shopping centres. What are passengers going to do? Therefore, the several points made by Mr Abraham SHEK are not at all convincing. His argument may sound a little better if he advises passengers to first find a toilet somewhere before continuing with their journeys. But he cannot possibly ask passengers to go to the toilet in shopping centres linked to MTR stations and then continue with their MTR journeys, because not every MTR station is connected to a shopping centre. His second argument is therefore not convincing either. I hope that such "flippant" remarks can be avoided because they may become a laughing stock in the Official Record Of Proceedings.

Chairman, the second thing which I think involves the question of principles concerns the Public Health and Municipal Services Ordinance. This Ordinance was passed by us in a solemn manner. And, it was also endorsed by the Government. It should be enforced as a result, especially because it involves people's basic needs. Consequently, there should be no exemption. I think the most important point is that since we have already enacted the legislation and all businesses in Hong Kong must abide by it, and especially since it involves people's basic needs, there are no justifications to exempt the MTRCL or the future MergeCo.

Chairman, the last point I wish to raise is that Hong Kong has already developed into a very affluent place, a world city — I have repeatedly talked about this in this Chamber. We have moved from the level of basic needs in our development (I do not know whether I should call this the under-metaphysical level) to the metaphysical level marked by one policy. What is this policy? The Government has always emphasized that first, no one in Hong Kong will be starved to death through lack of means; no one will be homeless through lack of means; no one will be denied medical care through lack

of means; and, no one will be deprived of schooling through lack of means. Schooling is already a need at the metaphysical level, not a basic physical need. But at the same time, we are still embarrassed so much by the absence of any toilets in MTR stations. There can be no convincing justifications for this. How can we imagine such an affluent metropolis would cause people such embarrassment?

The worst thing is that there is no policy consistency. There are toilets in West Rail stations and KCR stations. The journey time between two stations is now roughly the same in the case of the KCR, the West Rail and the MTR. There are toilets in the stations of other railways, so why should the MTR be the only exception? From whatever perspectives, we simply cannot see why the stations of MTR lines should be exempted from the Public Health and Municipal Services Ordinance. I support the amendment.

DR FERNANDO CHEUNG (in Cantonese): It is indeed true that the Legislative Council should not waste any of its meeting time on the issue of toilets. However, in the course of this debate, I have been trying to find out whether there are any discussions on MTR toilets in the Internet. I have discovered that this issue is actually discussed in several fora. (*Laughter*) Not only this, Chairman, as I continued to surf the web, I even noticed that our MTR is famous worldwide for having no toilets. In some tourism websites providing advice to tourists, people are reminded of points to note when visiting Hong Kong. One important reminder is that there are no toilets in MTR stations. Tourists are therefore advised that if they are coming to Hong Kong with children or elderly people, they must first go to the toilet before taking the MTR. There is such a reminder in the Internet. Do Members think that this is really proof of Hong Kong's notoriety worldwide. Does Mr Abraham SHEK want the KCR to be world-famous also? Does he want the world to know that before travelling on Hong Kong railways, passengers must first go to the toilet?

Frankly speaking, Chairman, we people in the social welfare sector must of course look after many senior citizens and persons with disabilities. I am being very honest. For example, in the course of organizing an outing and sightseeing trip, the first important thing we must do is to find out as much information as possible about the toilet facilities along the way, at the departure point, on the MTR and in the destination. I have also searched the Wikipedia

— I believe the Chairman also knows that it is an encyclopedia on the Internet that allows the input of information by everyone. Information about the MTR is also found there. One of the descriptions is very detailed, and I almost thought that it was the official website of the MTRCL. In the Wikipedia, there is one such description, "Unlike other major underground railway systems in the world, the Hong Kong MTR..... is not equipped with any toilets." The description is very clear. Members can imagine the situation when even the Wikipedia carries such a description. Hong Kong is a world city in Asia. Are we supposed to take pride in this, in having no toilets in MTR stations?

Let me now talk about our service targets again. According to the MTRCL, there should be no big problem because people can always ask for staff assistance in case of need, and the latter are all very polite, ready to take passengers to a toilet. Mr Andrew CHENG and Mr LEUNG Yiu-chung both have this experience before, and I believe it must be very good, though painful, experience. I totally believe that MTR staff are all very polite. Actually, we also have similar experience before.

However, Chairman, although there are as many as seven staff toilets on average in every MTR station, many of these toilets are not suitable for persons with disabilities. Members can well imagine how embarrassed such passengers will be when they really need to go to the toilet in an MTR station. In the case I talked about earlier on, a person with disabilities using that "monster" must be delayed for an hour. If he needs to go to the toilet, how can we find a toilet suitable for wheelchair-bound people? At present, even if there is a toilet, we cannot help him. This explains why we insist so much on requiring the MTRCL to think about the convenience of its passengers — the vulnerable, the able-bodied and senior citizens alike. We are talking about "mother's calling", a natural need, something everyone must do. Why should there be any difficulties in meeting this need?

Speaking of the design of the MTR, it can be said that passengers are not allowed to do anything at all — no loud conversations, no display of slogans, no placing of legs on seats, no skating boards, no shoes with rollers, no radios, no cassette-tape players, no hubbub, no foul language, no food and drink and no attempts to eat or drink. In brief, once after entering the paid area, passengers must sit like a robot and exit through the turnstiles like a robot, as rapidly as possible and never ever thinking of going to the toilet. Is it really true that the

MTRCL does not want to provide users and the public with a more human transport system? Is it really its sole intention to provide just a mass transit system, where passengers are not supposed to linger but just to enter and exit as rapidly as possible? Is it its sole intention to keep on collecting fares?

I believe that this must not be the objective of the rail merger. Therefore, whether we look at the needs of the vulnerable, whether we talk about the convenience of tourists, whether we consider how the world looks at us, whether we look at the railways as a major mode of public transport in this metropolis of ours, and whether we adopt the legal perspectives mentioned by some Members just now, we fail to see why the MTRCL should be exempted under the law. From all these perspectives, I cannot see why we should not support the amendment of the two Members concerned, why we should not support their request for public toilet facilities suitable for all people (including persons with disabilities) after the merger. Thank you, Chairman.

MR ANDREW CHENG (in Cantonese): Madam Chairman, I am very glad to hear Mr Abraham SHEK's voice of opposition. It does not matter whether he agrees with me, because I can at least hear from him some ideas different from those expressed by other Members.

But before I respond to Mr SHEK's remarks, I wish to share with Members an e-mail I received 27 minutes ago from a Taipei citizen who comes to Hong Kong on a regular basis. He saw on television that this legislature would discuss the issue of toilets today. His e-mail is entitled "Toilet Facilities in MTR Stations!!" He said that he had to travel very frequently between Hong Kong and Taiwan, that he was surprised to notice that even toilet facilities were to be discussed in the legislature, and that he very much supported the idea. But he also wondered why the legislature had to discuss an issue like this. He went on to remark that in Taipei, toilet facilities were found in all underground train stations, and there were always more than one toilet. He thought that in a place as prosperous as Hong Kong, the legislature should not and has no reason to spend so much time on discussing the provision of toilets, remarking that the MTRCL must thus think about the whole issue. He added that although he was not a Hong Kong resident, he was already used to the Hong Kong way of life because he had been travelling between Hong Kong and Taiwan for more than a decade. However, he continued, he still could not adapt to many things in Hong Kong, such as the absence of any toilets in MTR stations. He maintained

that as a world city, Hong Kong should strive to make all foreign visitors feel at home during their stay, so the MTRCL should give more thoughts to the provision of toilet facilities.

Madam Chairman, I have actually received many similar e-mails. But this e-mail was sent to me by a Taiwan resident. Dr Fernando CHEUNG has also told us some very special information, enabling us to know that the absence of any toilet facilities in Hong Kong MTR stations is also discussed by the rest of the world, in e-mails and on the Internet. Should we be ashamed? I think I should.

I also heard Mr SHEK's remarks. Sorry, I can only respond to his remarks with a wry smile. Let me try to analyse his experience 23 years ago from a different perspective. He was at that time the Director-Commercial Services, but he is now a director of the Kowloon-Canton Railway Corporation (KCRC). I am right, Madam Chairman. What I mean is that he has been promoted (*laughter*) because as the Director-Commercial Services, he discovered that while neither train carriages nor station platforms should be equipped with any toilets, toilets should continue to be provided in station concourses. I suppose in the past 23 years, he certainly did much more than simply flushing toilets and scooping up the wallets thrown into toilet bowls by pickpockets. He must have thought about how the toilet facilities in train carriages and on station platforms should be abolished while retaining those in station concourses. He must have thought about the management of the remaining toilets afterwards.

The management of KCR toilet facilities is not very poor despite complaints about the stink in some West Rail toilets. As a director of the KCRC, he should have heard about such complaints. I naturally understand that the Food and Environmental Hygiene Department is basically responsible for the management of toilets. Toilets are bound to pose some minor problems relating to cleanliness and stink. There are bound to be such problems. But the presence of such problems should not lead him to argue that there is no need for any toilets. What is even more difficult to understand is his mention of management and security problems. If his argument is indeed valid, there must be no public toilets in Hong Kong. Security problems are common in all public toilets at night. There are many such problems. But public toilets are basically meant to address the needs of cityscape. If there are no public toilets,

many places will be stinking in the morning. This explains the need for toilets, and all is just a question of culture and management.

Therefore, I hope that Mr SHEK..... I am actually praising him because he has been promoted for enabling the KCR to retain toilet facilities and make improvements for some 20 years..... I hope he can become a director of the new MTRCL. What I mean is that if he can introduce the KCRC's toilet culture to the MTRCL, then he will be promoted again. Some Members mentioned shopping centres in Sham Shui Po. Their remarks hit the nail on the head actually. In the Bills Committee, I heard some Members comment that since there were shopping arcades all around, passengers could in fact go to the toilet immediately after leaving an MTR station. Well, I may be going to extremes, but I must still say that if their argument is valid, it will not be necessary to have any toilets in people's homes. There are also shopping arcades near my home. I may go to the toilets in the shopping arcade downstairs. These arguments are really very weird. Madam Chairman, a shopping centre is very large. When I am in need, I must first exit through the turnstiles, and it will invariably take quite some time before I can find a toilet. Is the MTRCL really so mean as to refuse our request with such a reason?

Therefore, I hope..... For all these reasons, and also because I could not argue with them during the scrutiny of the Bill, I started to consider whether it was possible to amend the legislation, so that toilets could be built. At the very beginning, I could not think of any solution because the provision of toilet facilities was a very big issue. How should I go about the task? How should I handle the issue? In the end, I discovered that the MTRCL was actually given exemption. I therefore thought that there was room for me to do something. Members can also notice this point. Miss CHOY SO-yuk has just left the Chamber. She is an environmentalist. (*Laughter*) That is right. I want her to give a response because in the DAB, she is the only..... I know that no matter how I ask Mr TAM Yiu-chung, he will not give any response. The toilet issue is not like the 4 June incident, Madam Chairman. Many Members do not want to speak on the 4 June incident. But now, they even refuse to talk about the toilet issue. Ms Miriam LAU, the Deputy Chairman, left the Chamber a moment ago and she is not yet back. Miss CHOY So-yuk frequently calls herself an environmentalist Member, and she takes pride in her work in this area. I think she should speak a few words of fairness. I do not know the DAB's position on this issue. Can she, as an environmentalist and a Member, tell us what she thinks the position of the DAB is? In the Bills Committee, the DAB

supported the non-binding request for the construction of toilets. She is all smiles, so I suppose she must have something in mind. Can she give a response?

Madam Chairman, I will keep on requesting because I do not want to lose the battle in this way, without any good reasons. The discussion on the provision of toilets relating to the Bill here has lasted for six or seven hours. Madam Chairman, we have spent six to seven hours. Every time, the representatives of the MTRCL, the KCRC and the Bureau to the Bills Committee filled up all the seats over there. They must consider how much time they have spent discussing this issue. It is obvious that my amendment today will not receive the support of The Alliance. Mr SHEK has already made their views very clear, so I will lose the several votes from The Alliance. Since no one from the Liberal Party has spoken, I guess there will be no support from it. I am very sad. I once thought that of all the amendments, this one might stand some chances of passage. But it will not be passed either.

Therefore, I wish to put everything down on record. I hope that those who oppose my amendment can still express their views. I know that the Secretary will speak later. But I still urge those Members who oppose the amendment to explain their position a little bit, to tell us why they oppose the proposal. That way, even after my amendment has been negated, there can still be a record. I do not wish to see the complete absence of any record afterwards. Thank you, Madam Chairman.

PROF PATRICK LAU (in Cantonese): Chairman, I should provide some input on this subject as well. In fact, Chairman, if you ask us architects, actually there is nothing that cannot be constructed. This is the simplest truth. However, this is not what I intend to say. What I want to discuss most now is, Chairman, the spirit of the Buildings Ordinance because this is very important.

In fact, the Buildings Ordinance regulates two very important issues. Many people may have mistaken the Ordinance for regulating how many buildings can be built or what can be done inside such buildings, and so on. In fact, there are two points in its primary spirit: the first point is safety, and the other point is hygiene. Safety and hygiene are two most important elements to both human beings and buildings. Therefore, we understand that the MTR

must maintain a very safe system in such aspects as its access and fire protection, and so on. But with regard to hygiene, this is really a very major problem.

When I bring up this question, I would also like to find out why there are so many things that the MTRCL cannot do. But, Chairman, I still have not heard any reasonable explanation put forward by it. This is where the problem lies. Of course, I can understand that, or you may say that, you have not done these all along, so there must be certain difficulties, thus making them impossible. However, we must think about the situation: Actually, many entrances and stations of the MTR are built at-grade. If the MTRCL cannot do it, the Government must do something to enable it to do so.

In fact, the crux of the matter is: This is only something catering to some very major human needs, not any specific problems. Therefore, I think the issue is very basic. Since the motion mentions that the MTRCL should expeditiously study ways of providing convenience to the people, I very much hope that this can be done promptly.

Why was it possible for the Buildings Ordinance to provide exemptions in these aspects in the past? It was because government buildings..... Such a practice does give them some flexibility. However, we all know that, since the occurrence of the "substandard piling works" incident, everyone knows why the Buildings Ordinance is so significant, because it regulates the safety aspect. So, in the aspect of hygiene, I very much hope that we can study the issue from this perspective, so as to enable people to understand how we make the whole system better and better. In this connection, may I ask the MTRCL to consider this issue very prudently.

Thank you, Chairman.

MR LEE CHEUK-YAN (in Cantonese): Chairman, I wonder if it is a misunderstanding on my part, but having heard Prof Patrick LAU's speech, I have a feeling that he should be casting a supportive vote; so we should not say that The Alliance will vote against this amendment. Having heard his remarks, I think he is supportive. Therefore, from this we can see that Mr Abraham SHEK did not speak on behalf of The Alliance.

Having listened to his speech, I think this is a case of psychology. Although he is a grown-up now, he may still be under the influence of his negative childhood memories. I think Mr Abraham SHEK is being haunted by his negative childhood memories. In those days, some 20 years ago..... 23 years ago, he was once responsible for the management of the toilets of the KCRC. He hated the "pickpockets" so much..... I do not know if he had ever picked something up personally..... but his hatred has kept lingering on. Unable to release his pent-up sentiments, he hates the idea of having toilets built in railway stations. I hope Mr Abraham SHEK can give it a second thought. He has said this, and I remember clearly what he has said just now. He said as the population of Hong Kong is ageing, people would have to go to the toilet more frequently. As such, he should not put his hands over his own bladder while he casts his vote. *(Laughter)* Because all of us, Mr Abraham SHEK included, are getting older. To me this is a very solemn issue, so I hope he can give it a second thought. Furthermore, I hope he is not opposing this on behalf of The Alliance.

Dr Fernando CHEUNG has made an excellent point just now, and I wonder if that could persuade the Liberal Party to give us their support. I am not yet sure what the position of the Liberal Party is, because none of their Members has spoken yet. As Mr Andrew CHENG has said just now, many Members have not spoken yet. I do not know if Mr Jasper TSANG will be delivering any speech, and I hope the DAB will not play the trick of "remaining silent" — the attitude they adopted in dealing with the 4 June incident. We are just giving our views, which is not a big deal, is it? State your opposition or give your support as the case may be. All they need to do is to hold themselves accountable to the voters and to the people.

Talking about the Liberal Party, I wonder if the Liberal Party can have one more reason to be supportive. Mr James TIEN takes the tourists very seriously. If this issue should evolve into a laughing-stock in the international community, and if tourists should circulate the remark on the Internet, to ask others to be aware of the fact that no toilet is provided in the MTR of Hong Kong, I think that will bring Hong Kong into disrepute.

Just now Dr Fernando CHEUNG said — I hope the Government would not be reacting the way it did in the Action Blue Sky Campaign. I remember on one occasion, in a remark made in response to the Action Blue Sky Campaign,

the Government said that Hong Kong had been under attack by the foreign media, who had described Hong Kong as having a serious pollution problem. I hope the Government can stop thinking that the foreign media are attacking Hong Kong or trying to "badmouth" Hong Kong when they mention that Hong Kong's MTR is not provided with any toilets. As a matter of fact, it is the fault of the MTRCL. They are being "badmouthed" because they do not provide these facilities. Of course, it is not only the tourists that we care about. In fact, we care about Hong Kong people all the more.

We have seen Mr TUNG Chee-hwa making public appearances during the past few days. Whenever we see Mr TUNG, it always reminds us of one of his famous phrases: "sensing the people's sense of urgency". Now we have this problem which is truly about the urgent "needs" of the people. This is a matter about the health of the people, and it is clearly a matter about satisfying the "needs" of the people. There is no reason that, up till now, the MTRCL still has not provided such facilities.

I have never come across any listed company, or any company with the Government being its major shareholder, that cannot solve the toilet problem — I really do not know what the directors are up to, and the Secretary is one of the directors too — it has taken such a long time, and still the needs of the people are not addressed, which is most disappointing indeed. From what we have seen, the MTRCL is not people-oriented. How annoying it is, that it is unwilling to sort out such a trivial issue.

Perhaps Members may wonder why we have spent so much time discussing the toilet issue today. In fact, this has reflected a very basic problem, that is, the problem with the attitude of MTRCL. The MTRCL completely disregards — let us not say that it has no regard for the lives of the people, but at least it has no regard for the health of the people. I find it totally inexplicable why it has failed to provide such facilities all along.

Let me remind Members of one more point. The motion Mr Andrew CHENG moved was clearly and unanimously approved in the previous meeting held by the Bills Committee. If Mr Andrew CHENG should be defeated today, I would have no idea how he could be defeated at all. Since he had Members' support previously — I do not know how the Liberal Party and DAB will vote, but if they should vote against it later on, it would give me a feeling that they are voting against their own conscience and they must be putting their hands over

their bladders while casting their votes. They must not do that, because this is something they actually supported, something they have claimed to be supporting all along. How can changes take place at the most crucial moment, at the time when they are actually casting their votes? They would pledge on everything and vow to give their support, only when things were non-binding.

Chairman, I remember when discussion was held on the Railway Development Fund, I talked about the need for building toilets, and I mentioned Mrs Selina CHOW as well. Rarely did I see her so angry. She said most emotionally that Mr Albert CHAN was very "radical" and that although she was not as "radical" as he was, she had to make a case of expressing her rage and to make it clear that it was impossible that the MTRCL should opt not to provide toilets. How could they make all the pledges and the most profound accusations, but back off when it comes to actually pressing the voting button, casting their votes, and deciding if the MTRCL should provide the toilets? It is impossible that they should do that. If they should do that, I wonder how they can face their own conscience, and how they can face Hong Kong people. The people have chosen you to be their representatives, thinking that you are awesome and you are the ones to speak up for them, but in the end you betray them when it comes to casting your vote. I do think that you have the responsibility to give the people an explicit explanation on this.

Thank you, Chairman.

MS MIRIAM LAU (in Cantonese): Madam Chairman, members of the Liberal Party would never cover up their own conscience when they cast their votes, nor will they cover up other parts of their bodies.

First of all, I wish to clarify several points. Mr Andrew CHENG said earlier on that a motion had been passed in the Bills Committee. In fact, the original motion on that day was moved by Mr Andrew CHENG, but the wordings were subsequently amended by two other colleagues, one of whom was Mrs Selina CHOW, and the motion that was eventually passed was an amended version. I would like to read out the wordings of the motion. In fact, I had already read out the motion in the Second Reading debate, which was roughly like this, "the Bills Committee strongly urges the Government to instruct the MTRCL to expeditiously formulate a policy on the provision of public toilets at railway stations, and to provide public toilets within the areas of the stations for

the convenience of the public, including separate toilets specially for people with disabilities." I can recall that the last but one phrase was added by Dr Fernando CHEUNG, to which we all agreed.

The opening paragraph was proposed by Mrs Selina CHOW. I understand the position held by Mrs Selina CHOW on that day, which was also the position of the Liberal Party, that is, we strongly agree that the MTRCL should provide toilets as far as possible. We think that, in this day and age, the people do have such demand. However, Mrs Selina CHOW had also made it very clear then that, though she strongly supported the retrofitting of public toilets, she thought that the demand for the MTRCL to make such improvement should not be bundled up with the rail merger. She declared this position very explicitly on that day.

Regarding this motion, why are there the wordings ".....strongly urges the Government to instruct the MTRCL to expeditiously formulate" the relevant policy? The reason is that everybody would like the provision of such toilets. The Liberal Party has always been rational, and we would always look at issues in depth. Although we want the provision of such facilities very much, we understand that since the MTRCL has been operating for several decades now, and since these facilities were not provided when the construction project of the MTR was first undertaken, retrofitting these facilities today will certainly impose certain technical difficulties. We hope the MTRCL can identify some ways of resolving these technical difficulties and formulate a policy accordingly.

We are giving some room to the MTRCL to identify solutions, but we are not relinquishing the demands we made of it. We believe that the corporation should be given the room to seek advice from professionals and people with the technical know-how such as Prof LAU on how the problem could be resolved, with a view to retrofitting these facilities expeditiously. It may not be possible for it to retrofit these facilities at all stations, but the MTRCL should have started to conduct studies on retrofitting these facilities at at-grade stations, where these facilities should be provided. With regard to underground stations, is it true that there are difficulties that cannot be overcome? If there are really difficulties that cannot be overcome, we, as Members of the Legislative Council, have the obligation to look into the matter thoroughly to see if those are really insurmountable problems, and we must listen to what the experts have to say.

However, it takes time for all these to be done. It is not true that once the legislation is passed, which removes all the exemptions granted to the MTRCL, then it would proceed immediately to retrofit the relevant facilities. Of course, there could be room for "discretion". The MTRCL could request us not to prosecute it in case it fails in the undertaking or while they are carrying out the undertaking. But to us this is not how things should be done. Although we very much want to have these facilities, which Mrs Selina CHOW and the Liberal Party genuinely believe that it is good to have such facilities, we believe that it should be done in a step-by-step and reasonable manner.

There is one more piece of information which I would like to share with Mr Andrew CHENG. Just now he said if his amendment could not be passed today, the MTRCL would never discuss this issue with us again. That is not true. The MTRCL has informed the Subcommittee on Matters Relating to Railways that it will attend the meeting to be held by the Subcommittee on 16 July to explain or explore the toilet issue with us. I believe that is an appropriate platform for us to express our views and discuss the issue candidly, with a view to further following up the issue.

Furthermore, on the issues of retrofitting platform screen doors and automated gates, both the MTRCL and the KCRC have given us some active responses in the Subcommittee on Matters Relating to Railways by undertaking to have screen doors and automated gates retrofitted at railway platforms by 2012 and 2013 respectively. Therefore, it is not true that if the amendment is not passed today, no more discussions will be held or definitely no toilet facilities will be provided, and so on. I believe this is not the case. Nor does it mean that certain political parties are turning their back on the call for the provision of toilets if they do not render their support today or if they do not bundle up this issue with the rail merger. I believe this is not a case of either black or white. We have to do our best as far as possible, depending on the objective circumstances.

Madam Chairman, as we conduct our debate on this group of amendments today, we have focused our discussion on the toilet issue. But let us take a look at the amendments proposed, and I hope Members can see that there are other complicated issues involved in addition to the toilet issue. For example, both Mr Andrew CHENG and Mr LEUNG Kwok-hung have demanded that Schedule 2 to the Public Health and Municipal Services Ordinance be removed altogether

— pardon me, it should be Schedule 2 to the Mass Transit Railway Ordinance. Mr Andrew CHENG demanded to have sections 1, 2, 3, and 4 of Schedule 2 removed, whereas Mr LEUNG Kwok-hung demanded to have sections 1, 2, 3, 4 and 5 of Schedule 2 completely removed. I hope Members can notice that the toilet issue is related to only one of the sections among sections 1, 2, 3, 4 and 5, and we must also look at other issues, which must not be completely disregarded. As responsible Members of this Council, I believe we have to examine such issues as well while we are conducting the debate on this group of amendments.

As a matter of fact, section 1 of Schedule 2 is related to ventilation. Undoubtedly, the MTRCL has to provide ventilation in the urban areas for its systems, particularly ventilation for their underground installations, referring to the ventilation of its ventilation system. How effective ventilation could be achieved if external vents are not allowed for the purposes of ventilation? If section 1 was removed, the ventilation system will have difficulties operating, affecting not only the ventilation of the stations but also the passengers. Now it is not as simple as just granting it the exemptions. The exemptions must have been granted to the MTRCL for certain reasons or needs. They must have been granted due to some specific needs. In fact, it does not call for a particularly special reason at all, it is just about the specific way the MTR operates: The MTR stations are located underground, so is the railway, for which ventilation is required. In some ways or other, some air has to be released to the ground level for the purposes of ventilation, and these masses of air, the temperature of which may be higher or lower than the ambient temperature, may cause some disturbances, which nobody wants. Of course, if this poses a problem, we should not tackle it just by removing the exemptions granted. Instead, we should look for remedial measures to allow the corporation to handle the issue in a better way, instead of prohibiting it from installing a ventilation system.

Furthermore, section 2 of Schedule 2 is related to section 22 of the Ordinance, which states that the MTRCL has the right not to allow cleaning workers to enter areas belonging to the MTR during the course of the construction process. As a matter of fact, the construction of the MTR involves a large number of safety issues in respect of the operational safety of the railway as well as the personal safety of many people. Exemption is therefore granted to the MTRCL so that it has the right to restrict cleaning workers, refuse workers or municipal officers from gaining access to work in areas belonging to the MTR. Of course, the railway corporation itself has to be responsible for these jobs. In

fact, it has carried out its own cleansing duty. This is due to the fact that there are many systems and installations, and the MTRCL is worried about the issue of personal safety if somebody should meddle with these systems and installations, purposely or inadvertently. This is the last thing the MTRCL would like to see.

Finally, section 5 of Schedule 2 is related to advertisements. Due to safety concerns, exemption has to be granted to the MTRCL in respect of signs and advertisements, so that it could exercise control on what kinds of advertisements and signs could appear in the railway system. If exemption is not granted, signs appearing in railway stations may cause confusion to a certain extent in respect of the operation of the railway; it may also lead to some safety consequences.

I believe, in our present examination of the proposed amendment, apart from examining the toilet issue, we must also examine other proposals that demand the removal of the exemptions. We must examine whether all the problems can be remedied automatically soon after all the exemptions are removed. I do not think so because it is a rather complicated problem. In the entire railway system, there are many signs, signals or signalling systems that are highly sensitive or have a bearing on safety. We should not easily allow such systems to stand any chance of being compromised. We have certain responsibility to protect and ensure our railway corporation can have the authority in all aspects to protect its facilities and enable the entire railway system to operate safely, so as to provide the public with safe services.

Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): Does any Member who has not spoken wish to speak?

(No other Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, then I shall call upon those Members who have already spoken to speak. I shall first call upon those Members who have spoken for fewer times to speak again.

MR LEE CHEUK-YAN (in Cantonese): Fine, Chairman, I just heard Ms Miriam LAU mention toilets, and I tried to listen to her very attentively in order to find out what reasons she had. The only reason I could hear was, on the day when that motion was passed, they had already said that they did not want to have any bundling arrangement. However, if there is no bundling arrangement, that is, if the issue is not resolved here, is she thinking that it can be resolved on 16 July?

Then she said that the issue was not completely non-negotiable. Of course, I know this is not absolutely non-negotiable. The Secretary frequently holds discussions with her. She is the most favoured person with whom the Secretary likes to hold discussions. But the problem is, even though discussions were held and completed, they brought no fruitful results. How long will such discussions go on? The discussions can go on for another 10 years or 20 years, and they can go on forever. But today, if we decide through voting that it must do it, then the motion can really be enforced, and in addition, in the way also supported by Mrs Selina CHOW — that the toilets will have to be built "expeditiously", not just mere discussions. Now, all we are doing is just going on discussing. But if this amendment is passed by us today, we do not need to discuss it anymore. Instead, the works must be launched immediately. By then we may need to hold discussions only on the implementation timetable, as the situation would have become very explicit then: The works must be implemented.

Therefore, Chairman, I absolutely cannot accept the Liberal Party's viewpoint — it seems the Liberal Party intends to grant the greatest liberty to the railway corporation. It is not until now that I start understanding what "the Liberal Party" means, that is, it actually means "the Railway Liberal Party", which intends to grant the greatest liberty to the railway corporation — that the railway corporation is granted the greatest liberty — so that it could enjoy the complete liberty of doing it or not. Then this is liberty. But, why?

In fact, what makes me most dissatisfied is: When they have the authority to make the decision, they choose not to make the decision, thus allowing the corporation to get away with it. And then when they do not have the authority to make the decision, they would say it is necessary to conduct discussions, and when the discussions do not bring fruitful results, they are at the end of their wits, and there is nothing else they can do. The situation is all too obvious.

And I can predict that this issue will drag on for a very long time, and God knows how many months or years it would take before this toilet problem can be solved. Therefore, today is a critical moment. If we miss this critical moment today, we do not know how long we shall have to wait — perhaps we shall never have another opportunity like this one because the 50 years would have lapsed by then. Ms Miriam LAU, they will hold discussions with you for 50 years.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr James TO, speaking for the second time, are you?

MR JAMES TO (in Cantonese): Chairman, I have listened very carefully to the speeches delivered by Members. Now I would like to share with you a point which has not been raised yet.

When Ms Miriam LAU said in her speech that exemptions were definitely necessary, I also believed that the issue involves a number of historical reasons. One of the reasons is that both railways were wholly owned by the Government in the past. Companies that are wholly owned by the Government are different in that even when exemptions are given, theoretically, they have a major obligation to comply with the provisions of the Buildings Ordinance, since they are wholly owned by the Government. There is another body which is very similar in this respect, namely the Housing Authority (HA). In the past, buildings built by the HA were not subject to the Buildings Ordinance, but why? It was because a special team was in place under the Housing Department, and its job was to ensure that those building projects could comply with the regulations of the Buildings Ordinance. Yet, this team of professionals did not report to the Buildings Department or other government departments. They were hired by the HA, but they carried out their work using the same set of standards. For example, since the flats of the HA are sold under the Tenants Purchase Scheme and the Home Ownership Scheme, the justifications for this practice are no longer valid. As a matter of fact, for certain premises that the HA has already sold, consideration should be given to the revocation of exemptions granted to those premises in complying with the Buildings Ordinance. Some premises owned by The Link REIT should no longer be given exemptions in complying

with the Buildings Ordinance either. The reason is simple. For a company with more than 25% private share ownership, the company must have its own policy goal, such as making profits, because they have to take care of the interests of minority shareholders. Therefore, for an organization that is wholly owned by the Government, there will be pressure and aspirations when it comes to making profits, which may not be the same as those of the stakeholders of other funds. As such, will it continue to be fully committed in complying with the Buildings Ordinance, as it did in the past? If railway corporations are required to comply with certain safety and health standards, and so on, conflicts and contradictions will arise.

Therefore, in the light of the current circumstances, we should gradually apply the safety standards and other standards of the Buildings Ordinance to private companies, which is something we should do. Of course, the railway corporation is different from the HA, because it involves the operation of railways. However, we must remember that, from a legal perspective, if there are circumstances under which the corporation is unable to comply with the regulations and subsidiary legislation under the Buildings Ordinance, the Government ought to examine those circumstances carefully to determine if exemptions should be granted in connection with its operation. I am fairly worried that if a general exemption was given in respect of the Buildings Ordinance, then the Government will not be able to monitor the corporation and hold it accountable by using the same set of standards, because the railway corporation would be exempted from complying with the provisions of the legislation. If there are circumstances where exemptions are really necessary, the Government should inform us and let us know that exemptions will be given in connection with the operation of the railway with respect to certain provisions of the Ordinance. In addition, in granting those exemptions, some qualifying words may be needed for defining certain conditions the compliance of which is needed if the exemption is to be granted, such as for the purpose of railway operation. As far as I know, compliance with the regulations of the Buildings Ordinance has been relaxed for buildings or shopping arcades built above railway stations for the purposes of increasing the gross area of shopping centres, for which compliance with the provisions of the Buildings Ordinance has been exempted. This is why some people are bullish on its share prices, because it no longer needs to comply with the regulations of the Buildings Ordinance and therefore it can enjoy larger areas of shopping centres.

For this reason, if exemptions have to be given to the railway corporation in connection with railway operation in complying with certain provisions of the Buildings Ordinance, they should only be given in respect of specific provisions, or when certain conditions are met. In fact, what are the advantages of defining conditions the compliance of which is needed for exemptions to be granted? The advantages are: When those conditions are not met, the Government or the Buildings Department could, under certain circumstances, hold the company accountable, raise objection and carry out supervision, and so could the Legislative Council. If something should happen that causes widespread grievances in society, for example, if some places were converted into shopping centres, or if there are complaints or questions with regard to issues unrelated to railway operation, actions can be taken by the Government pursuant to the conditions thus defined. Because this has become a matter of public interest with legal implications. If a blanket exemption was granted, the Government can do nothing in future. At that time, the only thing the Government can do is to express concern to the railway corporation through Directors of Bureaux, Secretaries of Departments, or the Chief Executive, and to demand replies or reports, so that the Government could explain the matter to Members of this Council and the public. However, the Government will have lost its legal power, the power endowed by the law to carry out law enforcement actions and supervision, or even all powers for that matter. In the end, there will not be much power left to the authorities. Maybe there will be bits and pieces of power left here and there, but generally speaking, the power is fragmented and incomprehensive. There will be no guarantee that the Government can assume its responsibility to the public and carry out law enforcement actions and impose other preventive measures on the railway corporation.

I hope that if the Government really does that, it should do so only if certain conditions are met. Even if we take a thousand steps backward to allow a blanket exemption to be given to the corporation, the Secretary should sign a memorandum of understanding with the corporation prior to the enactment of this piece of legislation, and there should be a contract with provisions requiring information to be submitted in case the corporation has to be held responsible. There must not be a case when the Secretary will have to say: "Since I am a Secretary who has to be held accountable politically, so I would appreciate it very much if the railway corporation can do me a favour by providing me with some information so that I can answer questions on certain issues". Imagine a scenario in which Mr Andrew CHENG raises a number of questions in this

Council, but the Secretary responds by saying that theoretically and legally there is no interface between the corporation and her, and that the two parties are totally unrelated because exemptions have been granted to the corporation. In that case, how is the Secretary supposed to answer questions presented to her? There is no way she could answer the questions. By that time, should we invite the railway corporation to answer those questions? No, that cannot be done either. Would that be the case?

MS MIRIAM LAU (in Cantonese): Chairman, perhaps Mr James TO still has not had the opportunity to read section 54 of the Mass Transit Railway Ordinance, which we are discussing. We are now discussing a Committee stage amendment involving the revocation of exemption in this regard. Perhaps allow me to read out the relevant provisions, so as to enable us to understand how the exemption is granted and what we are discussing.

Section 54(2) of the Mass Transit Railway Ordinance reads, "The Building Authority may, having regard to the exceptional nature of building or other works connected with the operation or construction of the railway", and I am going to omit several words which are not so important, and then "exempt any of those works from any provision of the Buildings Ordinance (Cap. 123)." Section 54(3) reads, "Except as provided in subsection (2), the Buildings Ordinance (Cap. 123) applies to any building or other works carried out by or on behalf of the Corporation." Therefore, subsection (3) let us know that, unless the Building Authority grants the exemption due to the exceptional nature of the railway corporation, all the provisions of the Buildings Ordinance apply to the works of the MTRCL. This is the first point.

Therefore, now let us take a look at what kind of exemption the Building Authority has granted due to the exceptional nature of the MTRCL? As far as I know, the exemption granted is in fact rather narrow. The exemption only applies to the approving and related procedures under the Ordinance. With regard to the works of the railway corporation now, their design and construction are not required to be submitted to the Buildings Department for approval. So, are they really not regulated at all? Not so. The works of the railway corporation must be approved by a relevant committee of the Government. Who are the members of this committee? It consists of representatives of the Hong Kong Railway Inspectorate, the Fire Services Department, the Hong Kong Police Force, the Highways Department and the Buildings Department. So, in

effect, this committee has taken over the job of the Buildings Department. Although certain approving procedures under the Buildings Ordinance are exempted, another set of regulatory and approving procedures is in place to regulate its overall operation. Therefore, the question of having no regulatory control in fact does not exist, and the works are actually regulated.

I would like to reiterate that, the so-called exemption from compliance with the Buildings Ordinance is only confined to such a narrow scope. However, the exemption is not blanket because it is only confined to certain aspects. On the other hand, another committee is in place to exercise regulation. Besides, the two railway corporations have to comply with the health and safety standards stipulated in the Buildings Ordinance in the design and construction of railways. Therefore, in the process of conducting this debate, we must clearly know what we are negotiating and discussing. Of course, I can now see that Mr James TO is shaking his head. However, with regard to the relevant provisions I have just read aloud, and as far as the situation I understand, these are the facts. If he can identify any errors on my part in understanding the situation, or in understanding the law, I would be most obliged if Mr James TO can tell me right away.

MR ANDREW CHENG (in Cantonese): Madam Chairman, here, I wish to thank Ms Miriam LAU for voicing the views of the Liberal Party and I will respond to them one by one.

First, concerning the more complicated provisions mentioned by Ms Miriam LAU, I wish to remind her immediately that, as the Chairman of the Bills Committee, there is no reason that she does not know there is a big difference between my amendment and that proposed by Mr LEUNG Kwok-hung on Mr Albert CHAN's behalf. What she read out just now was the pithiest remarks made by Mr Albert CHAN in the meetings of the Bills Committee. "Why is the MTRCL, which is a listed company, granted so many exemptions, such as from compliance with the Buildings Ordinance?" Therefore, he proposes that all exemptions granted to the MTRCL under the Buildings Ordinance, including those read out by Ms Miriam LAU just now, be revoked.

My amendment..... Madam Chairman, I hope Members will understand that I agree with the original intent of Mr Albert CHAN's amendment, however,

I know that should this opportunity be missed, it would be very difficult for me to do anything further. This is because, as I have anticipated, some Honourable colleagues would talk about technical problems, just as Ms Miriam LAU did, if I propose that all the exemptions under the Buildings Ordinance be revoked. If no exemption whatsoever is granted, would this be feasible? For many years, the MTRCL has relied on these exemptions in its operation and in implementing projects. I am not an architect, so I dare not comment in any way.

In view of this, Madam Chairman, I hope Ms Miriam LAU can be fairer, and she has to give a clear account of the matter. If you say that you support the provision of toilets, my amendment only seeks to remove the existing exemptions granted to the MTRCL under the Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) Regulations and the Buildings Ordinance (Laws of Hong Kong Cap. 123) because it should not be given such exemptions. Next, I remove the exemptions relating to the management of toilets granted in accordance with the Public Health and Municipal Services Ordinance, as set out in items 1 to 4 of Schedule 2. Of course, other issues raised by you just now include such things as ventilation. Of course, in providing a toilet, the ventilation must be good. You talked about the problem of ventilation, which the MTRCL could not solve when constructing the MTR, saying that it should be given time to solve the problem and that we should not exert undue pressure on it. In fact, the cooking fumes of those food establishments also have to be discharged by means of ventilation, Madam Chairman. In the past, I have raised questions relating to this issue. When the MTRCL wants to receive rental income, it is possible to solve the problems one by one. When people request the provision of free toilets, you cite the ground of ventilation, saying that we should not exert undue pressure on it and it should be given time to carry out a study. Therefore, on item 5 in Schedule 2 relating to the control of publicity materials, posters and cleanliness, which was mentioned by Ms Miriam LAU just now, I do not support granting any exemption.

Therefore, I call on Ms Miriam LAU to be fairer. As a lawyer and the Chairman of the Bills Committee, when she looks at this kind of legislation, there is no reason that she cannot tell the difference clearly. I hope she can differentiate between them clearly. We are now having a joint debate. The amendment that Mr Albert CHAN asked Mr LEUNG Kwok-hung to move on his behalf is very broad and he thinks that no exemption from any provision should

be granted, whereas the amendment that I have moved is only related to the exemptions on toilets.

I will continue to respond to the comments made by Ms Miriam LAU just now. She said I had not read out the entire motion passed in the meeting of the Bills Committee on that day and she was correct. It is true that I did not read out the whole motion. However, I believe that as far as I understand it, we should deal with this matter more fairly. Concerning the motion on that day, the longer one is now here. It contains the amendment made by Mrs Selina CHOW to my motion. I can tell Members that her amendment is even more strongly worded because she said, "strongly urging the Government to instruct MTRCL to expeditiously formulate a policy on the provision of public toilets at railway stations". Furthermore, she did not delete any part of my original motion. After formulating a policy, the motion also wants the MTRCL to be instructed or wants the Secretary to instruct the MTRCL to provide public toilets. It then goes on to demand that toilets be provided within the precincts of the stations for the convenience of the public, including separate toilets specially for people with disabilities.

Had Mrs Selina CHOW said on behalf of the Liberal Party on that day, "Sorry, Andrew, I do not want you to bundle things up like this. I only strongly demand that the Government instruct the MTRCL to expeditiously formulate a policy on the provision of public toilets at railway stations", and then struck out what follows, I would have had nothing to say because you really did not bundle things up. This is because insofar as pure policy is concerned, it really is the case that we only have a policy. We have been talking about a policy for eight or 10 years and the policy has still remained a policy. However, after formulating a policy, it will then be necessary to provide public toilets within the precincts of the stations. This should be very clear.

The reason that I read out Mrs Selina CHOW's motion is that I believe my motion is in fact the milder one and the amended version is even more strongly worded. Moreover, since you said that we should not bundle things up, sometimes, I really find it necessary to ask why some Members have double standards. When the Government, the Liberal Party, the DAB and the MTRCL bundled the rail merger up with fare reduction, they found this acceptable. If the Rail Merger Bill is not passed, there will not be any reductions. This is a very rude act of bundling things up. Then, an advertisement on the merger was produced and in the meetings, Members were asked to..... today, Mr WONG

Kwok-hing is not present. He was involved in a very heated debate on this matter in a meeting of the Bills Committee. After he had lambasted the advertisement on the merger, the MTRCL said the advertisement would be withdrawn, so he trumpeted that he had successfully lobbied the MTRCL to withdraw the advertisement on the merger.

I hope that when Members speak in this Council..... sometimes, I think that when Members speak in this Council and when they are discussing non-binding motions and engaging in empty talks, they would often sound very formidable and make extravagant promises. In the reports of the mass media, it would then appear as though all Members had lobbied constantly for public toilets, co-operated with one another, reached a consensus and moved a motion. Now, you are telling me that you support the passage of this non-binding motion, however, after I had voiced my view on the exemptions when discussing this piece of legislation, which was in effect a demand to provide public toilets, you said (and I must repeat it), "If the MTRCL cannot provide toilets, can you penalize it?"

Madam Chairman, I have stressed time and again that only sections 29 and 30 of the Mass Transit Railway Ordinance are provisions on penalties. I call on Ms Miriam LAU to respond to me on this point because you did not give any response on this point just now. Section 29 is about the offence of negligent act or omission by employee and section 30 is about the offence of wilfully endangering safety. Failure to provide any toilet will only be covered by section 16 and it can perhaps be considered a default. However, if we look more closely, this cannot be considered a default because a default must involve the element of causing "a substantial breakdown of the service". A failure to provide toilets will not lead to a substantial breakdown of the service. "The safety of persons travelling on the railway or being on the railway premises being endangered" is not applicable either and "serious injury to or the death of persons..... being on the railway premises" is also definitely not applicable.

Therefore, basically, this move will only prevent the MTRCL from being granted the exemptions in law. The most that it will do is to revoke the exemptions granted to the MTRCL under the Public Health and Municipal Services Ordinance. In this way, it will be obliged to carry out the work in this regard. If the MTRCL already has a plan to carry out the work in this area, we hope that after the legislation is enacted properly, the relevant provision can be used to instruct it — and in that event, we will really be able to instruct it.

Madam Chairman, it is only by doing so that we can instruct it. Without such a provision, with what can we instruct it? With what can we take it on? Are we going to ask "Burly SHEK", that is, Abraham SHEK, to take it on? It is only with the legislation that we can strongly urge this tiger with fangs called the Government to say in its meetings with the Board of Directors of the MTRCL, "Sorry, as you can see, the Legislative Council has passed the legislation and you really have to go ahead and do it, otherwise, you will be penalized."

If it really carries out the work, why would you still penalize it? Members all know that it takes time to build toilets and it will not be the case that after the legislation is passed today and when no toilet is provided tomorrow, summons will be issued immediately to prosecute it. The actual situation will not be like this and all Members of the Legislative Council are reasonable people. Therefore, it is only when the Government has the real legal basis that it can invoke the relevant provision, make such a request and instruct the MTRCL to provide public toilets.

In addition, I also hope that Ms Miriam LAU can respond to a question concerning penalties that she did not respond to when discussing the platform screen doors of the two railway networks, that is, the question that I have just raised. We are both members of the legal profession. In the past, on such issues, if a piece of legislation was passed, we would allow the individuals or the corporation concerned to put up a reasonable defence because on this issue, the MTRCL obviously has a reasonable defence. If we enact legislation immediately, it will then begin to provide toilets.

In addition, Members must also understand that exemptions will continue to be granted with regard to new railway lines. Of course, the MTRCL will keep saying in this Council that this matter will be considered, however, what actually does it still have to consider? I hope Members will pay attention to this. It often says that it will consider this matter. I will read it out, "It" — meaning the MTRCL — "would also carry out a review of the feasibility of installing public toilets at or in the vicinity of its at-grade railway stations.". It then says, "For new railway projects, the corporation has taken on board members' views to include the provision of toilet facilities within, or adjacent to, stations in the overall design parameters for all future new railway lines, subject to" — and I stress "subject to" — "any concerns raised by residents in the vicinity about the location of external ventilation exhausts." Members can see that there are many underlying conditions, and the toilets will not be located in

the stations and it is possible that they will be located adjacent to the stations, just like the make-shift toilets outside the Hong Kong Stadium. Why would the situation be like this?

Therefore, I hope Members will respect this non-binding motion that was passed and will not try to find ways to back out or find an excuse not to support this motion. Leaving this motion that seeks to, so to speak, instruct the MTRCL aside, at that time, it was Mrs Selina CHOW who said on behalf of the Liberal Party that they did not want to bundle the issue of public toilets up with the rail merger. In fact, there was no such intention at that time. I hope this non-binding motion can become a binding provision today.

I so submit, Madam Chairman.

SUSPENSION OF MEETING

CHAIRMAN (in Cantonese): It is now six minutes past 10 pm. I now suspend the Council until 9 am tomorrow.

Suspended accordingly at six minutes past Ten o'clock.