

立法會
Legislative Council

LC Paper No. CB(1)1123/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/PL/TP/1

Panel on Transport

**Minutes of meeting held on
Friday, 22 February 2008, at 9:00 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon CHEUNG Hok-ming, SBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Members attending** : Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon LI Fung-ying, BBS, JP
Hon LEUNG Kwok-hung

**Public officers
attending**

: Agenda item IV

Mr Francis HO
Permanent Secretary for Transport and Housing

Miss Rosanna LAW
Principal Assistant Secretary for Transport and Housing (Transport)2

Mr M.R. Demaid-GROVES
Chief Superintendent of Police (Traffic)

Mr LAM Yiu-wing
ex-Senior Superintendent of Police
Traffic New Territories South

Ms CHU Ming-po
Senior Superintendent of Police (Adm) (Traffic)

Dr TAM Wing-yim
Professor, Physics Department,
the Hong Kong University of Science and Technology

Mr John READING, SC
Deputy Director of Public Prosecutions
Department of Justice

Agenda item V

Mr Francis HO
Permanent Secretary for Transport and Housing

Miss Cathy CHU
Deputy Secretary for Transport and Housing

Mrs Avia LAI
Principal Assistant Secretary for Transport and Housing

Mr Alan WONG
Commissioner for Transport

Mr Don HO
Assistant Commissioner/Management and Paratransit
Transport Department

Mr Carey WONG
Principal Transport Officer/Management

Agenda item VI

Mrs Avia LAI
Principal Assistant Secretary for Transport and Housing

Ms Carolina YIP
Deputy Commissioner / Transport Services & Management
Transport Department

Mr Albert YUEN
Assistant Commissioner/Bus and Railway
Transport Department

Mr David TSANG
Senior Engineer/Vehicle Safety
Transport Department

Agenda item VII

Mr Francis HO
Permanent Secretary for Transport and Housing

Miss Cathy CHU
Deputy Secretary for Transport and Housing

Mrs Avia LAI
Principal Assistant Secretary for Transport and Housing

Mr Alan WONG
Commissioner for Transport

Mr Albert YUEN
Assistant Commissioner/Bus and Railway
Transport Department

**Attendance by
invitation**

: **Agenda item VI**

The Kowloon Motor Bus Company (1933) Limited/
Long Win Bus Company Limited

Mr Edmond HO
Managing Director

Mr Tim IP
Operations Director

Ms Winnie HO
Corporate Affairs Director

Citybus Limited/
New World First Bus Services Limited

Mr Samuel CHENG
Managing Director

Mr William CHUNG
Head of Operations

Mr Paul LI
Head of Engineering

New Lantao Bus Company (1973) Limited

Mr Peter MOK
Executive Director

Mr WONG Wah
Administration Manager

Kowloon Motor Bus Workers General Union

Mr LAU Kit-chi
理事長

Mr CHOW Kwok-ye
副理事長

Kowloon Motor Bus Staff Union L.W.B. Branch

Mr MA Pui-kwan
主任

Mr YU Pun-hing
副主任

Motor Transport Workers General Union K.M.B. Branch

Mr LAM Shun-ping
Director

Mr CHUNG Kin-wah
Deputy Director

Motor Transport Workers General Union L.W.B. Branch

Mr KWOK Keung-kwong
Director

Mr CHEUNG Tsz-kei
Deputy Director

Motor Transport Workers General Union New World Bus Branch

Mr CHU Pun-din
主任

Mr WU Kwok-sam
第一副主任

Motor Transport Workers General Union City Bus Branch

Mr TANG Wai-cheong
Director

Mr WONG Ka-lok
Deputy Director

Citybus Limited Employees Union

Mr TANG Sin-hing, Albert
Chairperson

Mr CHAN Cheung-chi
External Vice-chairperson

New World First Bus Company Staff Union

Mr MAK Siu-kei, Johnny
Chairperson

Mr CHENG Kam-hung
Secretary

Franchised Bus Unions Alliance

Mr CHUNG Chung-fai
Coordinator

Agenda item VII

The Kowloon Motor Bus Company (1933) Limited/
Long Win Bus Company Limited

Mr Edmond HO
Managing Director

Mr Tim IP
Operations Director

Ms Winnie HO
Corporate Affairs Director

New Lantao Bus Company (1973) Limited

Mr Matthew WONG
Managing Director

Mr Thomas WONG
Executive Director

Ms Audrey WONG
Assistant to Group Chairman

Mr Peter MOK
Executive Director

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Winnie CHENG
Legislative Assistant (1)5

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I Confirmation of minutes and matters arising

(LC Paper No. CB(1)838/07-08 - Minutes of the meeting held on 28 January 2008)

The minutes of the meeting held on 28 January 2008 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)777/07-08(01) - Submission on review of taxi operation from 的士、小巴權益關注大聯盟

LC Paper No. CB(1)783/07-08(01) - Submission on coaster partition of public light buses from 的士、小巴權益關注大聯盟

LC Paper No. CB(1)799/07-08(01) - Administration's reply to the submission on post-merger rail service dated 20 November 2007 from the Student's Union of PLK Lee Shing Pik College)

2. Members noted the information papers issued since last meeting.

III Items for discussion at the next meeting scheduled for 28 March 2008

(LC Paper No. CB(1)851/07-08(01) - List of outstanding items for discussion

LC Paper No. CB(1)851/07-08(02) - List of follow-up actions)

3. Members agreed that the following items would be discussed at the March regular meeting –

(a) Road access restrictions on South Lantau including Tung Chung Road; and if the Administration was ready,

(b) Safety of reversing goods vehicle.

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(Note: Item (b) was subsequently replaced by the item on "Use of laser guns for detection of speeding", which would be revisited at the March meeting.)

IV Use of laser guns for detection of speeding

- (LC Paper No. CB(1)831/07-08(02) - Administration's paper responding to the requests for information on use of laser guns for detection of speeding made at the meeting on 28 January 2008
- LC Paper No. CB(1)739/07-08(01) - Administration's paper on use of laser guns for speed enforcement (First batch of responses to issues raised at the meeting on 28 January 2008)
- LC Paper No. CB(1)831/07-08(01) - Paper on requests for information on use of laser guns for detection of speeding made at the meeting on 28 January 2008 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)721/07-08(02) - Administration's paper on "Police statement on the accuracy of laser guns" (Press release)
- LC Paper No. CB(1)721/07-08(03) - Administration's paper on User's manual from the manufacturer on laser guns
- LC Paper No. CB(1)639/07-08(04) - Administration's paper on use of laser guns for speed enforcement
- LC Paper No. CB(1)687/07-08(01) - Submission on laser guns for detection of speeding from a member of the public)

The relationship between the case in respect of LAM Kin-ngok and the case in respect of KWAN Wing-kuen Tino and the implications

4. Mr Ronny TONG noted from the transcript of court proceedings (the transcript) in respect of a recent court case (HKSAR v LAM Kin-ngok in TWS 5276 of 2007) (the LAM Case), where Mr LAM had pleaded not guilty to the charge by engaging an expert from the United Kingdom (the defence expert) to challenge the prosecution's case on the accuracy of the laser gun (LG), that the above proceedings actually involved two separate cases (the two cases), namely, the LAM case and the case in respect of KWAN Wing-kuen Tino (TWS 19678/2005) (the KWAN Case). Highlighting a recent case where as he understood the accuracy of the LG was also challenged, he sought to ascertain the dates of the three cases, whether the cases were detected by the same police officer(s) at the same location, and whether reference had been made to the same manual.

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5. In response, the Chief Superintendent of Police (Traffic) (CSP(T)) confirmed that the three cases involved three separate locations and officers. As to the dates, the KWAN Case came to the Police's attention on 3 November 2005, the LAM Case on 5 April 2007, and the latest case closely following the LAM Case. In all three cases reference had been made to the manufacturer's user manual (MM). The Deputy Director of Public Prosecutions (DDPP) added that in the third case, the Marksman LG was used instead of the UltraLyte LG used in the two earlier cases. For both models of LGs however, the MM was available for reference.

6. Ms Audrey EU referred to the Secretary for Justice (SJ)'s explanation (the Explanation) of the justification for the prosecuting counsel's decision to accept the lesser charge in the LAM Case, namely, that during cross-examination the evidence given by the prosecution failed to meet pre-trial expectations, and questioned why the prosecuting counsel in the KWAN Case should have also decided to accept the lesser charge when, as admitted above, the details of the two cases were different. Moreover, as noted from the transcript, the police officer who handled the KWAN Case had yet to give evidence. She queried if serious problems with the operation of the LG in general were the real reason for accepting the lesser charge in both cases, and if so whether other drivers similarly detected and charged with speeding could reasonably doubt that they had been incorrectly charged. In this regard, she also questioned if SJ, by putting forward the Explanation to defend the prosecution's decision about the LAM Case, had misled the public.

7. In response, DDPP explained that SJ had not misled the public. SJ was not aware of the KWAN Case when he made the Explanation. It was only during a review on the speeding cases involving the LG heard in the court over the past few months, which was subsequently conducted by the Department of Justice (DoJ) to address public concerns about the LAM Case that SJ became aware of the KWAN Case.

8. Mr Ronny TONG opined that the two cases had reflected that the Police had doubt about the accuracy of the LG because the prosecuting counsel concerned had decided to accept a lesser charge in both cases. He therefore considered the Police irresponsible for failing to immediately cease use of the models of LGs involved in the two cases. In response, CSP(T) emphasized that at no time during the recent trial on LGs was the accuracy or reliability of the LG challenged. The Police Force had also explained in public that it would need to continue to operate the LG throughout Hong Kong because it was an integral part of the Force's enforcement package against speeding offences, a leading cause of accidents on Hong Kong's roads.

9. Mr Ronny TONG was not convinced that the accuracy or reliability of the LG had not been challenged during the trial of the LAM Case. In his view, if this was the case, the prosecuting counsel would not have decided to accept a lesser charge in the KWAN Case as well, especially as the police officer in the KWAN Case had yet to give evidence. In response, DDPP explained that the two cases were listed to be heard together due to their use of the same expert evidence. In both cases the same procedures had been followed by the prosecutions expert in conducting, with the assistance of the LG operator in each case, tests on the LG to prove its accuracy. As a result, the

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evidence given in the LAM Case would impact on the KWAN Case and, since the credibility of the evidence of the police officer involved in the LAM Case was in question because of his assisting the expert, the prosecuting counsel of the KWAN Case decided to accept a plea of guilty to a lesser speed as well.

10. Mr Ronny TONG was still not convinced that the two cases had not impacted on the operation of the LG, and strongly urged the Police to cease use of the LGs before concerns about their accuracy were properly addressed. In response, DDPP emphasized that in neither of the two cases had the accuracy of the LG been challenged. Even the defence expert in the LAM Case agreed that if the MM was followed, the LG would give an accurate reading. There was however room for human error and this was what happened in the LAM Case. As the same procedure had been followed in the prosecution's expert's site evaluation test in the KWAN Case, there was also question about the procedures adopted in gathering evidence in the KWAN Case, as in the LAM Case, and hence about whether or not due weight should be given to that part of evidence. Mr TONG maintained that as a responsible move the Police should cease operating the model(s) of LGs involved in the two cases. This was because few drivers had the financial means and time to engage professionals to challenge the speeding enforcement procedures to defend their innocence when charged with speeding.

11. Ms Miriam LAU expressed disagreement with other members that the need to amend the charge in both of the two cases was proof that the accuracy of the LG was questionable. She however also saw a need to ascertain the accuracy of the LG and revive public confidence in it to safeguard public interests. As such, she enquired about efforts in this regard, and suspected that there might be a need for the Administration to consider whether the points raised in the defence expert's report should be disclosed for public examination, and whether despite the substantial workload involved speeding cases detected following the procedures in question should be reviewed to do justice to the drivers concerned.

12. In response, the Permanent Secretary for Transport and Housing (Transport) (PSTH) advised that the Panel would be briefed on the recommendations of the working group established under and co-ordinated by the Traffic Branch Headquarters of the Police (the Working Group) in due course. Dr TAM Wing-yim, Professor, Physics Department, the Hong Kong University of Science and Technology (HKUST), assured members of the accuracy of the LG, pointing out that HKUST had been conducting tests on LGs for the Police Force since 2000 according to a yearly renewable contract signed between HKUST's Research and Development Branch and the Police. In this regard, he declared interests that under the contract, apart from subsidizing the operation of his LG laboratory, the Police also paid him a nominal fee. He, however, considered his service a community service provided in the hope of ensuring a fair, equitable, problem-free and accurate LG speed detection system. He then elaborated that he had read the expert reports from both the prosecution and the defence in the LAM Case, and his responses thereto, totalling 13 (the 13 responses), had also been submitted to the court. He however could not divulge the contents of the 13 responses because they were related to the defence expert's report the permission to release which had yet to be secured. Should permission be given to release the report, he would be glad to make public the 13

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responses.

13. Ms Audrey EU referred to DDPP's response in paragraph 7 above and, pointing out that SJ still stuck to the Explanation when responding to enquires in this regard lately, opined that SJ owed the public an explanation of why the KWAN Case was handled in the same manner as the LAM Case, and why the justification therefor could not similarly apply to other speeding cases involving the use of LGs. She also queried the validity of the Administration's claim that at no time during the recent trial on LGs was the accuracy or reliability of the LG challenged, highlighting that as gathered from the transcript, the accuracy of the LG had been challenged although the prosecuting counsel decided to accept the lesser charge before the defence expert gave evidence.

14. In response, DDPP elaborated that speeding cases detected by LG were not often challenged. When DoJ reviewed such cases over the past five months, it was found that the last case in this regard was determined on 25 September 2007, and that the prosecution had prevailed against the defence. All the other cases handled during the period related to the credibility of the police officers concerned without reference to the accuracy of the LG itself. He further explained that the relationship of the KWAN Case with the LAM Case was that expert LG tests which would only be conducted when the accuracy of the LG was attacked were conducted in both cases. Since the two cases were to be heard back to back, and the same criteria were adopted in them both, the two cases were handled in the same way.

15. In this regard, Assistant Legal Adviser 1 (ALA1) explained that the LAM Case might impact on the KWAN Case because in both cases the prosecution and the defence relied on the same reports prepared by the same experts respectively engaged by the prosecution and the defence. The integrity of the prosecution expert's report was challenged in the LAM Case on grounds that the tests concerned were conducted with the assistance of the police officer involved in the LAM Case. The prosecution expert's report in the KWAN Case was similarly prepared and might be exposed to the same challenge. ALA1 further pointed out that as shown in pages 16 to 18 of the transcript, although the defence did query the integrity of the LG, they had not said that the LG could not be used at all. They had only said that it had significant limitations. However, if police officers operated the LG correctly, the limitations could be cured. In fact, the main point raised by Mr LAM's defence counsel when defending him was that the police officer concerned had not operated the LG correctly.

The LAM Case

16. Referring to the Administration's claim that accuracy of the LG had not been challenged technically, Mr Albert HO elaborated that as he understood, in the LAM Case Mr LAM had in fact pleaded not guilty to the charge by engaging the defence expert to challenge the prosecution's case on the accuracy of the LG. The defence expert's report was, however, not referred to during the proceedings as the relevant witness had not been called upon because of the prosecuting counsel's subsequent decision to amend the charge. Pointing out that the above events would inevitably cause people to doubt that the decision to amend the charge had been made because the Police

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did not wish to see reference to the defence expert's report for fear that it would give rise to serious challenge of the accuracy of the LG, he sought to ascertain with the Administration on the availability of the report and its validity. In his view, if the report had raised points worth noting, the Administration should disclose these important points. In response, DDPP explained that three expert reports had in fact been submitted to the court in the LAM Case, one from the prosecution's expert who was a local expert and the other two from the defence experts, one of whom was from the United Kingdom, and the other from Hong Kong all dealing with the accuracy of the operation of the LG. However, since neither report had been referred to during the proceedings, their validity had not been the subject of the submissions and there had been no ruling by the Court thereon.

17. Noting the above response, Mr Albert HO opined that the Explanation was in fact inaccurate, and emphasized that instead of claiming the LG was accurate from the Administration's point of view, there was a need to make known the points raised in the defence expert's report for the public's information and comments having regard that the points might be valid, and that drivers wrongly charged with speeding might not have the financial means to defend themselves. In reply, DDPP explained that DoJ had already written to the defence solicitor conveying the Panel's request for a copy of the defence expert's report. A reply was, however, still awaited. PSTH added that the Administration was prepared to cooperate in the Panel's review of the expert opinions. However, the release of Dr Tam Wing-yim's responses would be contingent upon the release of the defence experts' own report, the permission for which was being sought.

Various views and concerns about the operation of the laser gun

Consistency of guidelines

18. Mr WONG Kwok-hing highlighted the difference between the MM for the Ultralyte (LR) LTI 20-20 LG and the Police internal training notes (TN) on the Functional Tests required at the Police base before the LG was deployed, namely, the difference in the frequency of the Scope Alignment Test, and asked whether the difference would affect the accuracy or efficiency of the LG and hence give rise to enforcement problems. In reply, CSP(T) explained that the difference only meant that the Scope Alignment Test was conducted daily as required in the TN instead of only periodically as required in the MM. This in turn would mean that because the TN took a very cautious line based on an abundance of caution, the Police were actually doing more than was required in the MM where the conduct of Functional Tests on the LG was concerned.

19. Mr Ronny TONG enquired about the types of LGs available and their differences, if any, and whether reference had to be made to different manuals for their use. In reply, CSP(T) advised that there were only two types of LGs as highlighted in paragraph 5 above. He however believed that they were operated in the same way despite the availability of different MMs for them as they were produced by different manufacturers. Addressing Mr TONG's concern about the absence of a standardized set of guidelines for the operation of LGs, DDPP pointed out that the tests to be conducted

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on both models of LGs were similar although the distances in conducting the zero velocity checks on them were slightly different, with those on the UltraLyte LG to be conducted at 60 metres against a fixed object while those on the Marksman LG at a distance of 50 metres only.

Hand-held versus mounted

20. Mr Albert CHAN opined that the two cases had exposed problems with the hand-held operation of LGs and LG's operating procedures. Expressing concern that other drivers might, as he deduced from the two cases, suffer from mistakes committed by police officers in operating the LG, he called upon DoJ to review all prosecutions against speeding detected with LGs by the police officers involved in the two cases so as to ensure fairness to these other drivers who might not have the financial means to engage defence counsels. In response, CSP(T) clarified that in both cases the LGs were operated with tripods instead of hand-held. Moreover, only one police officer had given evidence and been found to have made mistakes. DDPP supplemented that there was no reason to believe that mistakes had been made in other cases. The issues revealed in the two cases were confined to the two cases only. Mr CHAN was however unassured. He considered the Administration irresponsible for failing to see a need to conduct his proposed review, and indicated wish to move a motion to call for conduct of the review.

21. Mr Albert CHAN asked whether the Administration had any plan to require the use of a tripod when using the LG to minimize human errors, pointing out that despite the Administration's confirmation that whether hand held or mounted the accuracy of the LG remained the same, in many overseas places LGs were operated with tripods. In response, CSP(T) advised that the Working Group was already conducting a review on the use of LGs, and tripods would be used whenever practicable.

Efforts made to revive public confidence in the laser gun

22. Following up efforts to revive public confidence in the operation of the LG, Ms Miriam LAU noted that 334 written requests had been received for review of speeding cases detected with LG in the wake of the LAM Case, and enquired about the criteria adopted in examining the requests to assure the public that should there be wrongful charges, the Administration would genuinely take actions to rectify them. In reply, CSP(T) reported that the latest number of requests received was 370. Among them, about 30% had no substance, with only copies of the relevant speeding tickets and a telephone number attached, so that the Administration would have to seek further details before they could process the cases. 43 of the cases were related to traffic offences not related to operation of the LG. Some others involved cases already convicted in court. Presently only those applications which had provided the Police with substance could be examined. Although the processing of cases not accompanied with substance for the Police to work on might be prolonged, the Police would endeavour to examine and make written responses to individuals within two months.

23. Mr LAU Kong-wah sought Dr TAM Wing-yim's views on the reliability of the LG. In this regard, he expressed concern that despite Dr TAM's efforts in conducting

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tests to ensure the soundness of the LG itself, mistakes made in operation and in logging of readings could still affect the accuracy of the LG. He therefore enquired whether Dr TAM could play any role in minimizing such mistakes and, if not, how the accuracy of the LG could be ensured.

24. In reply, Dr TAM Wing-yim pointed out that many tests on LGs had already been conducted. Although irregular data readings could be as significant as 7 km/h at times, they were discovered only rarely and would be handled seriously. For example, in February 2002 when during testing irregular data readings were discovered from ten UltraLyte LGs, the Police immediately withdrew the ten LGs from operational use. It was only after an upgrade of software by the manufacturer and full-scale tests by an independent expert that the LGs were returned to operational use. This incident could show that the Police would not use LGs which were shown to be inaccurate. He further elaborated that the queries raised in the defence expert's report could be clarified with the results of the tests he conducted in 2000 and had in fact been accordingly addressed in the 13 responses. Moreover, the problems highlighted therein would emerge only under special circumstances and when LGs were incorrectly used. He reiterated that the accuracy of the LG would not be a problem if operated normally, and believed that improvements would be made by the Police to the operating procedures to ensure that. In this regard, he had also given advice to the Police and his advice had already been accepted. It was hoped that through such efforts a consistent set of guidelines on the use of LGs could be worked out for frontline police officers in future.

25. Noting the above response, Mrs Selina CHOW saw a need to revive public confidence in LG's accuracy as soon as practicable. This was because, according to Dr TAM Wing-yim, although technically LGs' accuracy could be trusted, human errors could occur. However, to ensure public safety the Police had to continue operating the LG as a check against speeding.

Logging and storage

26. Pointing out that in the two cases the police officers concerned might have made mistakes in logging LG readings, Mr LAU Kong-wah expressed concern that such mistakes might not be restricted to one to two officers only. Moreover, there was always a time gap between the occurrence of speeding cases and their hearings in court. Hence the need for a proper logging system for LG operation to ensure police officers could accurately record the circumstances of every speeding case for use in court one to two years later. He further pointed out that as understood from some police officers, the LG should according to the relevant guidelines be placed in its storage place instead of in the police car after use. This was because the bounce, roll or sway of the car would affect the accuracy of the LG. He therefore urged the management of the Police to improve training and backup facilities for LG operation to ensure police officers could act according to the relevant guidelines, in particular where logging and storage of the LG after use were concerned

27. In response, Dr TAM Wing-yim explained that it would not matter whether the LG was placed in the police car or returned to its storage place after use because

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according to the relevant guidelines, the LG would be checked upon its arrival at and before leaving the point of the enforcement operation. As to logging, there were requirements on police officers to keep good record of the LG readings. CSP(T) also explained that the Working Group would ensure that LG training and operating procedures were consistent with the MM, and good practices would be introduced as necessary with Dr TAM's assistance. The Police would also ensure that all records made at the scene of a speed check operation would be kept as case exhibits and details would be included in computer records once the operation concluded. He further assured members of the accuracy of the LG by pointing out that the LG, though transported on police cars from place to place for use, would be carried in a box specially designed to protect LGs. Apart from the tests highlighted by Dr TAM above, tests would also be conducted at the Police base prior to and at the conclusion of each operation. The purpose was to ensure that all enforcement actions taken during the intervening period would be valid. If any irregularities were discovered during the period, no action would be taken on any speeding case detected in the interim.

Site visit and DVD show

28. In response to Mr WONG Kwok-hing on the status of the proposed site visit to observe the operation of laser guns, which as earlier planned should be arranged prior to this meeting, the Principal Assistant Secretary for Transport and Housing (Transport) 2 reported that the Administration and the Secretariat were actively communicating on the visit. However, due to the intervening public holidays near the Chinese New Year (CNY), the visit could not be scheduled prior to this meeting.

29. The Chairman supplemented that the CNY recess and hence the likely unavailability of sufficient members to join the site visit had made early scheduling of the proposed site visit difficult. Moreover, the Police had indicated that the site visit could only be arranged at the Shek Kong Airfield which was too far away. The Clerk added that the site visit was originally planned to be at the Tamar site. However, with the site's return to the relevant parties for commencement of the construction of the Government headquarters thereon, the Administration had advised that the visit would have to be conducted at the Shek Kong Airfield.

30. After deliberations, members requested the Administration to consider further the visit programme and come up with a concrete proposal prior to the next meeting.

(Post meeting note : The site visit was subsequently held at Kai Tak on 7 March 2008.)

31. Ms Audrey EU pointed out that the operation of LGs was normally recorded with a video camera in overseas places, and questioned why in Hong Kong this was not the case. Noting that permission to disclose the defence expert's report had yet to be secured, and that a DVD (the DVD) illustrating how LGs worked and the circumstances under which inaccurate readings were recorded had been admitted as evidence during the trial of the LAM Case, she proposed that arrangement should be made for members to view the DVD so as to acquire better understanding of the accuracy of the LG, which should

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be followed up by the Panel in recognition of its implications on public interests. The Chairman said that he would discuss further with the Clerk on the arrangements.

The motion

32. Mr Albert CHAN sought to move the following motion, which was seconded by Mr Albert HO –

"本委員會要求律政司全面檢討涉及林及關案件警員所負責檢控的超速案件。"

(Translation)

"This Panel demands that the Department of Justice should comprehensively review the prosecutions against speeding detected by the police officers involved in the cases in respect of Peter LAM and Tino KWAN."

33. Calling upon members to support his proposed motion, Mr Albert CHAN elaborated that since LGs were used worldwide, he was not seeking to ban the use of LGs. However, as the two cases both reflected on the credibility of police officers' evidence and the prosecution procedures, to avoid unfairly prosecuting members of the public and to revive public confidence in the prosecution system, there was a need to comprehensively review the prosecutions against speeding detected by the police officers involved in the two cases.

34. While indicating support for the motion, Mr LAU Kong-wah asked whether there was any time-frame for the review proposed therein. Also indicating no objection to the motion, Mrs Selina CHOW sought to ascertain whether the cases to be reviewed should be detected with LGs. As a result, Mr Albert CHAN agreed to amend his motion to read as follows –

"本委員會要求律政司全面檢討涉及林及關案件警員過去3年所負責與雷射槍有關檢控的超速案件。"

(Translation)

"This Panel demands that the Department of Justice should comprehensively review the prosecutions against speeding detected **with laser guns in the past three years** by the police officers involved in the cases in respect of Peter LAM and Tino KWAN."

35. Members agreed to proceed with the proposed motion and put it to vote. Except for the Chairman who did not exercise his voting right, of the other members present, nine voted for the motion. The Chairman declared that the motion was carried.

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(*Post-meeting note:* The wording of the motion was circulated to members vide LC Paper No. CB(1)904/07-08 on 25 February 2008.)

The way forward

Admin. 36. Summing up, the Chairman directed that this item should be revisited at the March meeting of the Panel, at which the DVD would be shown. He also urged the Administration to provide further information on the following –

- (a) Response to the above motion;
- (b) Progress update on the review conducted by the Police of the training and procedures in respect of the use of LGs;
- (c) Progress update on requests for review from aggrieved parties of their speeding charges as a result of the LAM Case; and
- (d) Technical analysis of the features and limitations/shortcomings of LGs as revealed by the defence expert and the Administration's response to the observations.

Admin 37. In this regard, Mr Ronny TONG also requested the Administration to provide for the March meeting information on the number of the respective models of LGs involved in the LAM Case and the KWAN Case and the number of radar speeding detectors in use.

V Outlying island ferry services

- LC Paper No. CB(1)818/07-08(01) - Administration's paper on outlying island ferry services
- LC Paper No. CB(1)852/07-08 - Paper on the development and operation of major outlying island licensed ferry services in Hong Kong prepared by the Legislative Council Secretariat (Background brief)
- LC Paper No. CB(1)872/07-08(01) - Submission on outlying island ferry services from a Mr LEUNG
- LC Paper No. CB(1)872/07-08(02) - Submission on outlying island ferry services from a Mr FEIGN
- LC Paper No. CB(1)2388/06-07(01) and (02) - Submissions from Lamma Island (North) Rural Committee to the Chief Executive regarding the tendering arrangements for the operation of ferry services on Lamma Island
- LC Paper No. CB(1)133/07-08(01) - Submission on funding of ferry service from Mr R E J BUNKER, Chairman of The Living Islands

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Movement

LC Paper No. CB(1)543/07-08(01) - Administration's reply to the letter on funding of ferry services from Mr R E J BUNKER, Chairman of The Living Islands Movement)

38. Mr WONG Kwok-hing asked about the fall-back arrangements in case a suitable operator(s) could not be identified in the re-tendering exercise for the outlying island ferry services. He opined that the building of an additional storey on top of the Central Piers would take time and would not in the short term help attract bidders for the ferry services. He further enquired about the additional measures to be introduced to assist the ferry operators, and the Administration's stance regarding the proposal of extending the licence period for the ferry services from three to ten years so as to enhance the viability of the ferry services. Mr WONG said that he had received a submission from the Deputy Chairman and seven members of the Islands District Council requesting that, among other things, the Government should set up an inter-departmental committee to deal with the ferry service tendering exercise, and allocate public money to set up a "Quality Ferry Service Fund" for the outlying island ferry services.

39. PSTH responded that whilst it was not appropriate to assume the outcome of the re-tendering unsatisfactory, the Administration would ensure that there would continue to be outlying islands' ferry services. The Administration would consider whether the operating period for the ferry services after the coming three-year licence period should be extended from three to ten years, but given the time constraint, the licence period for the coming re-tendering exercise would remain to be three years.

40. Mr WONG Kwok-hing commented that in case the re-tendering exercise turned out to be unsuccessful, the Government should guarantee that ferry services at the existing fare levels and frequencies would be provided to the outlying island residents.

41. PSTH responded that the Government could not give such an assurance since the service levels and fare levels would be subject to the tenderers' proposals in the bids. Nevertheless, the Government would try its best endeavour to see whether it was possible for the tenderers to provide the best terms of ferry services.

42. Mr LEE Cheuk-yan pointed out that in re-tendering the outlying island ferry services, the level of services had been downgraded, e.g. reduction of non-peak headways, cancellation of overnight sailings, and use of ordinary vessels to run the routes. He asked whether the Administration had consulted the residents of outlying islands on lowering the level of services as he had received a lot of feedback from residents of outlying islands expressing dissatisfaction or concerns regarding the degraded services. Mr LEE opined that the Government should introduce effective measures to avoid the deterioration of ferry services for residents of outlying islands. In this respect, consideration could be given to granting property development rights above ferry piers to ferry operators so as to stabilize ferry fares whilst maintaining the service quality. Alternatively, the Government should be responsible for filling the funding gap

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of providing an effective and reliable ferry services to residents on outlying islands. A possible option was for the Government to own the ferry facilities, and contract out the operation of the ferry services to the operators at an agreed fare level. Mr LEE was of the view that a balance had to be struck between fare adjustments and acceptable services to the commuters.

43. PSTH responded that in conducting the tender for the ferry services, a balance had to be struck between an acceptable fare level and the quality of the ferry services. He stressed that the service level at peak hours would be maintained but the service headways during non-peak hours might be suitably adjusted. PSTH pointed out that the patronage of ferry services during the overnight period was extremely low, and a reduction in service during such non-peak periods would save operating costs which in turn help stabilize the fare level. The Government had taken measures to enhance the non-fare box revenue of ferry operators as mentioned in the paper. The Government would consider, as a longer-term arrangement, allowing a longer operating period to facilitate operators' planning for longer-term investment, which would help to enhance the return on the ferry operation. As regards the consultation, the Government was arranging meetings with the relevant District Council, Rural Committees and local groups on the related matters.

44. Mr CHEUNG Hok-ming enquired as to the costs which would be saved as a result of the waiving of vessel-related fees and adjusting the service level, and the additional revenue that could be generated from subletting the rooftop of the Central piers by ferry operators. Mr CHEUNG further asked about the costs for face-lifting the existing Central Piers No. 4 to 6, and the construction costs for an additional retail/commercial floor.

45. The Commissioner for Transport (C for T) responded that since different operators used different types of ferries, it was difficult to assess the amount of vessel-related fees saved. The amount of saving achieved through the service level adjustment depended mainly on the fuel costs saved. He stressed that the level of ferry services during the peak hours and Sundays/public holidays would not be affected by the service level adjustment, and waiting time during the non-peak periods would only be extended for, say about ten minutes. C for T remarked that it would be difficult to work out the detailed amount of money saved or generated through the measures, which were subject to impact from the fluctuation of fuel costs.

46. Mr CHEUNG Hok-ming requested that the Administration should provide detailed information about the savings and earning potentials in the terms of the licence so as to enable members to assess whether the terms of the tendering exercise would be able to attract operators to provide ferry services for the outlying islands on a viable basis.

47. C for T responded that millions of dollars would be saved in a year as a result of the service level adjustment, whereas the savings on vessel-related fees varied in different routes as the operators used different types of vessels. PSTH supplemented that it might not be advisable to reveal too much details of the information regarding the

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savings and additional revenues accrued from the revised tender arrangements so as not to influence the tenderers in formulating the bids. In fact, the amount of Government fees to be waived was not large as compared to fuel costs which constituted a major part of the operating costs of the ferry services. Service level adjustment would therefore help relieve the pressure on operating costs and fare levels.

48. Mrs Selina CHOW doubted whether the Administration had only gauged the views of local Chinese during the public consultation but ignoring the views of the large number of expatriates living on the outlying islands. Mrs CHOW commented that based on the views received by her from residents of the outlying island, including many expatriates, the residents accepted a reasonable increase in ferry fares, in view of the rising fuel price and other operation costs, in order to maintain the existing level of services. This was in contrary to the views that there should not be any fare increase, and measures had to be taken to save the operation costs and increase the non-fare box revenue of the ferry operators. Mrs CHOW pointed out that the measures listed in the paper to enhance the non-fare revenue of the ferry operators would take time to materialize, and if the tenderers had to maintain the existing fare levels, the only option open to them was to reduce the service level which would not be accepted by the residents of the outlying islands. Mrs CHOW requested that the Administration should conduct a thorough and detailed public consultation, with a view to finding an equilibrium between the fare and service levels of the outlying island ferry services.

49. PSTH responded that apart from the Central-Cheung Chau route, the patronage of the other outlying island ferry services and the population of those areas were relatively low, affecting the viability of the services. Existing operators could not make a profit out of the operations. The Administration aimed to strike a balance between a reasonable fare level and an acceptable level of service, through means to save the operation costs and increase the operators' non-fare box revenues. The first tendering exercise had revealed that in order to maintain the ferry services at existing levels, the fares would have to be drastically increased. To reduce the possible magnitude of fare increases, suitable service level adjustments would have to be introduced in the re-tendering exercise. As far as public views on the fare level were concerned, there were divergent views among residents, especially between expatriates and the local communities. C for T supplemented that the Government had consulted the relevant District Council, Rural Committees and local communities regarding the tendering of the ferry services. The Panel had also invited representatives from different organizations and individuals concerned to express their views at the meeting held on 29 August 2007. Despite that some outlying island residents had expressed their willingness to accept a reasonable increase in ferry fare, the tenderers for the Mui Wo, Peng Chau, Yung Shue Wan and Sok Kwu Wan routes in the first tendering exercise proposed a level of fare increase ranging from 30% to 50% which would not be acceptable to the outlying island residents. A re-tendering exercise, including the measures to enhance the viability of the ferry operation listed in the paper, had to be undertaken. The Government would conduct a series of consultation meetings with the relevant District Council, Rural Committees and local communities in the following one to two weeks. C for T pointed out that the week-day occupancy rates for the Central-Peng Chau, Central-Mui Wo and Central-Yung Shue Wan routes were 18%,

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23% and 35% respectively. Usually there were few passengers using the overnight sailings, despite the high operation costs. The Administration would attempt to work out a viable package for the re-tendering exercise.

50. Mr Jeffrey LAM commented that based on his contacts with the outlying island residents, for the sake of maintaining a stable, safe and quality ferry service, the residents would accept a reasonable increase in ferry fares, as fuel prices and other operation costs had soared. Mr LAM further commented that despite members' request to expedite the measures to increase the non-fare box revenue of ferry operation, the improvement had been slow and ferry operators could not gain much benefit from the measures. Mr LAM asked whether the Administration had assessed the impact of granting a ferry operation licence for a longer period on ferry fares. He opined that the licence condition should include restrictions on the number of fare increases as a result of changes to fuel prices.

51. Mrs Miriam LAU commented that any degradation of the outlying island ferry services would not be acceptable, taking into account the improvements made in the services of other modes of public transport over the years. She pointed out that ferry operators were facing serious difficulties and might not be interested in a protracted operation licence. She opined that the Administration should work out a viable package to attract operators in providing a reliable and quality ferry services to residents of the outlying islands.

52. Mr Albert HO commented that the existing operators had been operating the ferry services at a loss. In order to provide a safe and stable ferry service to the outlying islands at a reasonable fare level, some forms of Government funding support would be inevitable. Mr HO opined that the proposed measures to enhance the non-fare box revenue of the operators were inadequate to make the ferry services viable. Mr HO was of the view that the Administration could consider granting a franchise of a longer period to the ferry service operators so that the operators could develop a long-term plan to improve the viability of the services and the Government could exercise control on the fare levels. Granting of rights to the ferry operators for development of properties above ferry piers would also help enhance the viability of the ferry services. Mr HO reiterated that it was the Government's responsibility to provide ferry services to the outlying island residents at an affordable fare level, as there was no alternative means of transportation for the outlying island residents.

53. PSTH responded that the immediate issue was to ensure the provision of services commencing from 1 July 2008 and the Administration would then look into the longer-term problem in the following three years. It would take time to consider the longer-term arrangements for the operation of outlying island ferry services, e.g. approval of the Town Planning Board would be required to allow the ferry operators to sublet the rooftop level of piers for commercial and retail activities. The Administration agreed that, in the long run, the arrangements for the outlying island ferry services had to be considered fundamentally. C for T supplemented that given the fluctuation of fuel prices and the change of economic situations, it was not possible to impose a restriction

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on the number and the magnitude of fare increases in the licence for the new ferry operators.

54. Mr Albert CHAN commented that the high ferry fare level during Sundays and public holidays had discouraged people from visiting the outlying islands which in turn reduce the income of the operators. He opined that the operators should stop charging higher fares during Sundays and public holidays, and cease using both ordinary and fast ferries to run the routes as such arrangements would reduce the income of the operators and increase the operating costs. Mr CHAN was of the view that the Administration should conduct a comprehensive review on the ferry service licensing arrangements, e.g. whether there should be one or more operators providing the ferry services, and what form of Government funding support should be provided to the ferry operators. Mr CHAN suggested that the re-tendering exercise should be withheld for a short while, pending the completion of the Government's review. Meanwhile, the existing operators should be requested to maintain the ferry services until a new operator(s) was selected.

55. In view of time constraints, the Chairman invited members to raise their questions in batches, and the Administration to give a consolidated response as appropriate.

56. Mr Ronny TONG commented that given that the Government had taken up the responsibilities for providing the infrastructural facilities for other public transport modes, it should introduce some form of funding assistance with a view to providing a reliable ferry services for the outlying island residents at a reasonable fare level. In this regard, Mr TONG opined that, in order to enhance the viability of the ferry operation, the Government should provide tax waivers, e.g. waiver of fuel tax, to the ferry operators; promote tourism on the outlying islands with a view to improving patronage for the ferry services; and grant rights to the ferry operators for the development of properties above ferry piers.

57. Mr Albert CHAN commented that it was most regrettable that the new tendering exercise could not be deferred, and the appointment of new ferry operators would only lengthen the suffering of the ferry operators and the outlying island residents.

58. Mr WONG Kwok-hing reiterated that the Deputy Chairman and seven members of the Islands District Council had requested that a "Quality ferry service fund" and an inter-departmental committee should be set up to improve the ferry services for the outlying islands. Mr WONG asked whether the Administration would consider granting a longer operating period, say for ten years, for the new ferry operators.

59. Mr Miriam LAU enquired whether the new operators were required as a licensing condition to use a higher quality fuel which would result in higher operation costs for the ferry services. Mrs LAU asked what measures the Government would take to assist the operators in meeting the higher fuel costs.

60. PSTH responded that the fuel duty for ferry services had already been waived. The Administration would further consider the suggestions made by the Islands District

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Council members. He said that it was not advisable to defer the timetable for the re-tendering exercise. During the three years of the new licence period, the Administration would review the arrangements for operation of the outlying island ferry services. Considerable time would be needed to look into the complicated issues involved. It also required coordination with other concerned bureaux/departments. C for T supplemented that the ferry operators were required to comply with the standard set by the Marine Department on the use of vessel fuels. Since the fuel costs constituted more than 30 % of the ferry operating costs, the proposal to adjust the ferry service level during non-peak periods would reduce the operating costs.

61. In response to the Chairman's enquiry regarding the time-table for the re-tendering exercise and the schedule for reporting the outcome of the re-tender exercise to the Panel, the Deputy Secretary for Transport and Housing (DSTH) responded that tenders would be called in the first week of March 2008 and the evaluation of the tenders would be completed by end of April 2008.

62. Mrs Miriam LAU raised objection to using the conditions proposed in the paper for re-tendering the ferry service licences. She opined that the proposed arrangements represented a degradation of the ferry services which was an affront to the transport service sector.

63. PSTH responded that the re-tendering arrangements would be based on the proposed arrangements set out in the paper, and the relevant District Council, Rural Committees and local communities would be consulted before the tender conditions would be finalized.

64. Mrs Selina CHOW remarked that the outlying island residents had strongly expressed their views that they would not accept the reduction of ferry services proposed in the paper.

65. Mr LEE Cheuk-yan commented that if the Administration maintained its original proposal for the re-tendering exercise even after hearing the views of the Panel and the relevant District Councils and local communities, it was not a genuine consultation. He pointed out that there was a strong view among the interested parties that there should not be a degradation of the outlying island ferry services, and the Administration should draw up measures to enhance the viability of the ferry operation without undermining the level of ferry services. Mr LEE opined that it was most unsatisfactory that the re-tendering exercise for the outlying island ferry services would be based on the arrangements to reduce the service level. He doubted whether the situation would improve if the existing arrangements continued for another three years.

66. Mr WONG Kwok-hing suggested that the Administration should consider extending the operating period from three years to six years, so as to attract bidders during the re-tendering exercise.

67. PSTH responded that the proposed tender arrangements were made after careful consideration. The relevant District Council and local communities would be consulted

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regarding the new arrangements before they were finalized for tendering. DSTH supplemented that in the absence of a stable non-fare box revenue, the potential ferry operators might not consider a longer licence period favourable, and hence the three-year licence period would be maintained in the re-tendering exercise.

68. The Chairman pointed out that since the outlying island ferry licences would be re-tendered in the first week of March, the consultation period would be short and the process would be conducted in a hasty manner. Taking into account members' views on the re-tendering arrangements, the Chairman put forward and read out the following motion, which was considered relevant to the agenda item under discussion, for consideration by the Panel. All members present agreed that the motion should be processed. The Chairman put the motion to vote. Seven members voted for the motion. The Chairman declared the motion passed.

"本會強烈反對當局採納倒退服務水平的方式及不合理增加票價來進行離島渡輪服務的重新招標。"

(Translation)

"This Panel strongly objects to the re-tendering of the operation of outlying island ferry services by the Administration by means of reducing the level of services and increasing the fares unreasonably."

(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(1)904/07-08 on 25 February 2008.)

VI Safety of franchised bus operation

(LC Paper No. CB(1)639/07-08(03) - Administration's paper on safety of franchised bus operation

LC Paper No. CB(1)631/07-08 - Paper on safety of franchised bus operation prepared by the Legislative Council Secretariat (Background brief))

Meeting with trade unions of bus companies

69. The Chairman welcomed the trade unions of bus companies to the meeting and apologized for the delay in starting this agenda item due to prolonged discussion on the last item. He suggested and members agreed that in order to better manage the meeting time, each union would be given two minutes to present views. To allow more time for attending parties to exchange views over the related matters, trade unions which had submitted joint submissions would be called on to present their views collectively. He then invited the unions to take turns and present their views on the remuneration

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packages of bus captains, and whether these had any implications on the safety of franchised bus operations.

Kowloon Motor Bus Workers General Union (KMB Union)

70. Mr LAU Kit-chi, 理事長 of KMB Union, briefed members on KMB Union's views. Members noted that there were already various effective channels and forums to communicate with the management and, through its active efforts, KMB Union had already succeeded in urging KMB to review many aspects of the working conditions of bus captains although some aspects were still being followed up. KMB Union would continue to negotiate with the management for longer rest time and meal breaks for bus captains.

Kowloon Motor Bus Staff Union L.W.B. Branch

71. As Kowloon Motor Bus Staff Union L.W.B. Branch was a branch of KMB Union, its representatives did not find any need to separately express the Branch's views.

*The KMB Branch, the L.W.B. Branch, the New World Bus Branch and the City Bus Branch of the Motor Transport Workers General Union (the General Union)
(LC Paper No. CB(1)827/07-08(01))*

72. Noting that the KMB Branch, the L.W.B. Branch, the New World Bus Branch and the City Bus Branch of the General Union had prepared a joint submission circulated to members on 18 February 2008 already, the Chairman invited the branches to brief members on their joint submission collectively. In response, Mr CHUNG Kin-wah, Deputy Director of the General Union's KMB Branch, highlighted the following salient points of the joint submission –

- (a) The General Union had regularly arranged for bus captains to attend Road Safety Seminars organized by the Police to enhance their safety awareness and improve their driving attitudes. Most bus captains also recognized the need to drive safety;
- (b) Many factors led to the increase in bus accidents. Among them there was the pressure from the need to compete with rail transport, which had resulted in decreasing scope of business for franchised buses and indirectly affected the job security of bus captains and hence bus safety. To address bus captains' concerns in this regard so as to enhance bus safety, the Government should review its transport policy to ensure the viability of different transport modes; and
- (c) The General Union had made use of various channels to effect close communication between bus captains and bus companies on the former's remuneration packages and working hours.

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City bus Limited Employees Union (the Employees Union)

73. Mr TANG Sin-hing, Chairperson of the Employees Union, briefed members on the views of the Employees Union. Members noted that it was the wish of the Employees Union that to ensure bus safety, bus captains would be allowed to drive mainly one route instead of always having to change routes. It was also hoped that Citybus Limited could improve its bus captains' remuneration packages and align the remuneration packages of bus captains employed on contract and non-contract terms, in particular where fringe benefits were concerned.

New World First Bus Company Staff Union (the Staff Union) and Franchised Bus Unions Alliance (the Alliance)

74. Members noted the joint submission from the Staff Union and the Alliance tabled at the meeting.

(Post-meeting note: The above joint submission was issued to members vide LC Paper No. CB(1) 892/07-08 (02) dated 25 February 2008.)

75. Mr MAK Siu-kei, Chairperson of the Staff Union, and Mr CHUNG Chung-fai, Co-ordinator of the Alliance, briefed members on the joint submission tabled and highlighted the following salient points –

- (a) Government's transport policy was seriously tilted in favour of rail transport, leaving little room for bus to operate. As such, bus companies were under pressure to cut costs and this would in turn adversely affect bus captains' remuneration packages and the maintenance of bus accessories. For example, the air conditioning at the driver cabin was always insufficient despite complaints for over nine years, demisters were always not functioning properly, thereby affecting bus safety;
- (b) The Transport Department (TD) did not meet with trade unions of bus companies regularly to understand bus captains' concerns. TD was only concerned about bus operation in general and considered bus captains' complaints about their working conditions labour issues that should be handled by the Labour Department. However, problems in this regard could affect bus captains' performance and hence bus safety. As such, to enhance bus safety and safeguard the interests of all relevant parties, there should be regular meetings among TD, the trade unions and bus companies;
- (c) Bus captains presently had to work against a tight schedule with insufficient rest time. For example, according to the Guidelines on Working Schedule for Bus Drivers (the Guidelines), there should be no less than 8 minutes of rest within 4 hours of duty. However, this was insufficient and the rest period should be increased to at least 15 to 20 minutes; and

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- (d) Bus safety hinged on many factors and improvement to the working schedule alone would not suffice. For example, due to the need to compete with rail service, bus companies had to change their mode of operation. As a result, bus captains were required to drive two to three different bus routes every day. Such a change would affect bus safety and should be rectified.

Discussion

Support provided by bus companies for their bus captains

76. To ensure bus safety, Mr WONG Kwok-hing saw a need to provide a safe and secure working environment for bus captains in recognition of the mounting pressure on them in the face of increasing challenges on the roads. In this regard, he pointed out that labour legislation could not protect bus captains involved in bus accidents. Apart from failing to provide legal assistance to these bus captains when they faced prosecution as a result of the accidents, some bus companies even fired bus captains involved in accidents before ascertaining whether the driver factor was to blame. Mr WONG therefore enquired whether TD had made any joint efforts with the Labour Department to explore ways to address problems in this regard to ensure fairness to bus captains.

77. In reply, the Deputy Commissioner for Transport/Transport Services & Management (DC for T/TS&M) advised that in recognition of the great responsibility of bus captains for passenger and road safety, TD attached great importance to both the physical and mental health of bus captains. As such, TD had all along been closely liaising with the Labour Department on various labour issues relating to bus captains. She further explained that since many factors could lead to bus accidents and the causes of bus accidents and whether the driver factor was to blame could not be ascertained until completion of the relevant investigation, it was believed that bus companies would provide some sort of assistance to their bus captains involved in bus accidents. Notwithstanding the assistance provided, suspension from bus driving duty or redeployment might also need to be made in consideration of the post-accident trauma these captains suffered, so as to allow them time to get over the accidents and receive additional training to better prepare themselves for taking up driving duties again.

78. Mr Tim IP, Operations Director of The Kowloon Motor Bus Company (1933) Limited/Long Win Bus Company Limited (KMB/LWB), explained that as a responsible transport service provider, KMB/LWB had to strike a balance among the interests of various parties including bus captains and passengers. As such, whenever a bus accident involving KMB/LWB occurred, even the driver factor was not the cause, KMB/LWB would arrange driving improvement training for the bus captain concerned as necessary to ensure passenger safety. If the accident was serious, professional counselling service would also be provided to the bus captain to relieve him of the pressure so arising, and arrangement would be made for him to work at the depot instead temporarily. Internal investigation into the accident would then proceed, and only after completion of the investigation and remedial training for the bus captain would he be redeployed to take up driving duties again. In so doing, KMB/LWB would also take

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into account the decision of the Judiciary towards an accident if applicable, and make arrangements accordingly as appropriate. As to the legal assistance to bus captains, Mr IP elaborated that in case a bus captain needed to face civil proceeding or claim for damages, KMB/LWB would provide legal assistance and pass the case to its agent concerned for follow-up. If the bus captain faced criminal prosecution, KMB/LWB would consider whether to provide legal assistance according to a number of factors including whether the bus captain involved would like to plead guilty or not and the relevant responsibility for the accident.

79. Mr Samuel CHENG, Managing Director of Citybus Limited/New World First Bus Services Limited (Citybus/NWFBS), said that as a responsible public transport provider, Citybus/NWFBS had its own bus accident investigation and penalty mechanism, and different degrees of penalties ranging from reprimands, warnings and retraining for mild accidents to dismissal for serious accidents would be meted out. To ensure fairness, an appeal mechanism was also available. As to the provision of legal assistance, since every bus of Citybus/NWFBS was insured, Citybus/NWFBS would pass all bus accidents involving it to its insurance company for handling and for deciding whether legal assistance should be made available to the bus captains concerned on the basis of the circumstances of individual accidents. In Citybus/NWFBS's view however, if the bus captain was to blame for the accident, he should bear the consequences, and legal assistance should not be provided to enable him to evade the responsibility.

80. Mr Peter MOK, Executive Director of New Lantao Bus Company (1973) Limited (NLB), explained that since NLB's bus fleet was small and its routes mainly in the countryside, a safety bonus system was implemented under which safety bonus to a bus captain would be withheld if he was involved in a bus accident. If, however, investigation showed that the bus captain was not to blame, the bonus would be paid back to him. Where legal proceedings were involved, NLB's practice was similar to that of Citybus/NWFBS.

81. Mr LEE Cheuk-yan cast doubt on KMB/LWB's response above, highlighting a case where a KMB bus captain had to take sick leave after having got hurt at work. According to him, the bus captain was subsequently dismissed during his sick leave with his Long Service Payment forfeited. As a result, the morale of KMB/LWB's bus captains and possibly bus safety was adversely affected. The Administration noted his views.

Bus captains' working hours

82. Mr LEE Cheuk-yan opined that bus safety was mainly affected by two factors, the driver factor and bus maintenance. In this regard, he shared the Staff Union and the Alliance's view that the eight-minute rest every four hours was insufficient. He also pointed out that as he understood, some bus companies were exploiting bus captains by reducing the journey times of bus routes, so that bus captains could barely complete the bus trips concerned in time to get sufficient rest. He therefore saw a need to review the

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Guidelines to increase the above rest period to 20 minutes to meet the standards of the European Union, and to address the above problem on journey times.

83. In reply, DC for T/TS&M made the following points –

- (a) Improvements to the Guidelines had been introduced only recently in July 2007. As a result, bus captains should have a break of at least 30 minutes after six hours of duty and within that 6-hour duty, the captains should have total service breaks of at least 20 minutes, at least 12 minutes of which should be within the first four hours of the duty. The Administration would continue to review the Guidelines from time to time with regard to views of bus captains and bus companies; and
- (b) As to journey times of bus routes, bus companies had to comply with the scheduled journey times. Bus companies also kept up close communication with their staff and their unions in this regard. Should they become aware that the actual journey time of a certain bus route was prolonged because of such factors as road works, they might apply to TD for adjustments to the scheduled journey time. In fact, TD had given approval for increasing the scheduled journey times of 36 bus routes in 2006 and 18 in 2007.

84. Mr William CHUNG, Head of Operations of Citybus/NWFBS, supplemented that Citybus/NWFBS had been closely liaising with trade unions and would review the scheduled journey times of bus routes in the light of problems they highlighted. Citybus/NWFBS had also time and again made it clear to its bus captains through their trade unions that the company did not encourage them to speed to make up for trip delays, and regulators at bus terminus would make appropriate operational arrangements for the bus captains to make up for the delay or the companies would make overtime pay to them should their driving duties be prolonged because of such delays.

85. Mr Edmond HO, Managing Director of KMB/LWB, supplemented that KMB/LWB had always endeavoured to ensure the scheduled journey times of bus routes were adequate, and bus captains were encouraged to report to KMB/LWB for follow-up and adjustment as necessary if the scheduled journey time of a certain bus route was prolonged because of such factors as road works, etc. The representatives of bus captains and trade unions could also highlight problems in this regard at their monthly consultative meetings with KMB/LWB. KMB/LWB had also taken the initiative to regularly review journey times to ensure bus captains would have enough rest time. In the previous two years, KMB/LWB had made around 30 applications to TD for extension of journey times.

86. Mr LEE Cheuk-yan, however, opined that service breaks of at least 12 minutes in total within the first four hours of duty might not be sufficient even for the bus captains to go to the toilet. As to journey times, he said that the most important thing to do when there were trip delays was not to make overtime payment to the bus captains concerned

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but to ensure they would have sufficient rest notwithstanding the delays to ensure bus safety. He maintained that there was a need for further improvements to the Guidelines.

87. On a similar note, the Chairman expressed concern that the trade unions might, due to likely impact on bus drivers' take-home pay, be hesitant in revealing all problems related to bus captains' rest time and duty periods and seek reduction of the latter. He therefore urged TD to take the opportunity of the fare increase applications by franchised bus companies to ensure the working schedule and the remuneration packages of bus captains were reasonable because bus captains' rest time and hence performance would affect bus safety, and quality of service had been highlighted as one of the factors to be taken into account when deciding whether to approve fare increase applications. He also expressed regrets that improvements in the working hours were slow to come despite repeated discussion of bus safety by the Panel.

88. In response, DC for T/TS&M emphasized that TD would actively follow up the problems highlighted at this meeting to enhance bus safety. In fact, concerned about the working hours of bus captains and journey times of bus routes, TD had already stepped up direct liaison with trade unions in this regard, and would arrange regular meetings with them as they proposed to understand the problems bus captains faced for follow-up with bus companies.

Bus maintenance

89. Highlighting the importance of proper maintenance to bus safety, Mr LEE Cheuk-yan pointed out that the establishment of NWFBS's maintenance staff was only half of what it used to be ten years before. Referring to the problem with demisters highlighted by the trade unions, he also urged TD to monitor bus companies' maintenance standards and their staff establishment in this regard.

90. In reply, DC for T/TS&M explained that since TD monitored the bus maintenance activities based on the output, TD had set certain requirements in this regard for the bus companies to comply. For example, apart from requiring franchised bus companies to conduct monthly inspections on their buses, every franchised bus had to undergo an annual examination by TD to ensure its safety and roadworthiness before it could continue to operate on the roads in Hong Kong. TD would also conduct random spot checks on franchised buses to monitor their maintenance. There were also requirements on bus companies to replace major spare parts regularly. It was found that the number of problems identified from such random checks and the number of buses which broke down on roads had been stable in recent years. Notwithstanding, the maintenance problems highlighted by the trade unions would be followed up with the bus companies.

91. Mr Samuel CHENG of Citybus/NWFBS emphasized that problems with demisters and driver cab air-conditioning were absolutely unrelated to the decrease in the establishment of Citybus/NWFBS's maintenance staff because such problems were not new problems. It was also unfair to compare the present establishment of Citybus/NWFBS's maintenance staff with that ten years before because the need for

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maintenance then had been much greater because NWFBS took over from China Motor Bus Company Limited (CMB) its aged bus fleet and operation of bus service. Since many of such aged buses had already been replaced over the years, the need for maintenance had decreased significantly, leading to the reduction in NWFBS's maintenance staff. Moreover, the reduction had also been partly caused by the deletion of certain job categories unrelated to bus safety. For example, the carpenter category had been deleted because woodwork was no longer necessary on bus and the painting of bus bodies was done by spray machines nowadays instead of manually in the past. Some posts had also been cut because of synergies and hence greater efficiency gained by having the staff of Citybus and NWFBS pooled into one unit as a result of the joint management in maintenance. Mr Edmond HO of KMB/LWB said that as KMB/LWB's average fleet age had been relatively stable, the ratios of maintenance staff to bus number of KMB/LWB had remained stable over the years.

Admin.

92. Mr LEE Cheuk-yan found Citybus/NWFBS's above response unconvincing, and opined that TD should monitor the staff resources of bus companies in the area of maintenance, in particular the staff to bus ratio. He also enquired how such ratios of the bus companies in Hong Kong compared with those of their overseas counterparts. In reply, DC for T/TS&M said that there was difficulty in imposing a rigid requirement in this regard because the operating conditions and bus fleets of different bus companies were different. She further advised that the ratio was similar in different bus companies. When compared to that in London, Hong Kong's figure in fact fared better with one staff member looking after only two to three buses whereas in London one staff member had to look after eight buses. At Mr LEE's request, she agreed to provide to the Panel with the respective staff to bus ratios of the bus companies in Hong Kong.

Admin

Other views and concerns

93. Mr WONG Kwok-hing referred to the General Union's comments on road facilities in paragraph 4 of its joint submission, and considered it undesirable that the Administration should have failed to respond to bus captains' proposals for improvement in this regard, in particular the installation of vehicular countdown display devices (VCDDs) or flashing green light system so as to allow drivers to know when the traffic light would be changing and thus enhancing road safety.

94. In reply, DC for T/TS&M pointed out that the Administration had kept abreast of overseas development in this regard and reviewed the applicability of the devices in Hong Kong. However, overseas experience had shown that installation of VCDDs or flashing greenlight at road junctions had led to more instead of fewer accidents. As such, there was a need for more careful and detailed examination before applying VCDDs and flashing green in traffic signals in Hong Kong.

VII Fare increase applications by franchised bus companies

(LC Paper No. CB(1)828/07-08(01) - Administration's paper on fare increase applications by franchised bus companies

Action

- LC Paper No. CB(1)829/07-08 - Paper on fare increase applications by franchised bus companies prepared by the Legislative Council Secretariat (Background brief)

Briefing by the Administration

95. PSTH apprised the meeting on the applications for fare increase from KMB, LWB and NLB.

Briefing by representatives of the bus companies

96. Representatives of the three bus companies briefed members, with the aid of different sets of PowerPoint materials about the operating environment of the companies and the justifications for application of fare increase.

(Post-meeting note: The presentation materials were issued to members vide LC Papers Nos. CB(1) 874/07-08 (01) to(03) dated 22 February 2008.)

Discussion

97. Mr WONG Kwok-hing remarked that the Administration should seriously take into account members' views in considering the fare increase applications from the bus companies. He pointed out that the Public Affairs Committee of the Hong Kong Federation of Trade Unions had made a public statement raising strong objection to KMB's application for a bus fare increase of 9% which showed the bus company's failure to shoulder its social responsibility, and its failure to consider public affordability. The committee was of the view that if the Government approved KMB's fare increase application, it would have knock-on effects on other bus companies, public utilities and trades, and adversely affect Hong Kong's recovering economy. Mr WONG opined that the formula for calculating the supportable fare adjustment rate was incomprehensive, failing to reflect the profit situation of the bus company. Mr WONG pointed out that KMB had made a profit of about \$216 million last year, which was not mentioned in KMB's application for a fare increase. The inflation rate in the past year was only about 2% whereas the increase in the monthly median household income from the first quarter of 2006 to the third quarter of 2007 was only 2.3%. Mr WONG reiterated that the fare increase application from KMB had failed to take into account public affordability, and was totally unacceptable. The lower working class in the New Territories who had to travel to the urban area to work would suffer most if KMB's application was approved. The Government's cross-district transport allowance to the workers would then be directly transferred to the bus company. With regard to the fare increase application from NLB, Mr WONG opined that the Government should review its overall public transport policy with a view to improving the operating environment of the bus companies. Mr WONG remarked that it was unreasonable to charge a fare of \$3 from Yat Tung Estate to the bus terminus in Tung Chung for the sake of cross-subsidizing the non-profit making routes of NLB.

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98. Mr Mathew WONG, Managing Director of NLB, responded that interchange concession was provided to passengers of the Yat Tung Estate bus route.

99. Mr Albert HO remarked that the public's sentiment against KMB's proposed fare increase had been strong. He pointed out that while the bus company had not increased its fare since 1997, it had neither reduced its fare during the period between 1998 and 2003 when the deflation rate had accumulated to about 11.4%. During the same period even the payments under the Comprehensive Social Security Assistance Scheme (CSSA) had already been reduced by about 11.4% to 11.6%. The bus company's lead in applying for a fare increase had aroused stung public antipathy because during the time of economy downturn, the bus company had refused to adjust the fare downward whereas when there was a slight economic recovery, the company immediately sought a considerable increase in bus fare. Mr HO queried why the 2006-2007 Composite Consumer Price Index (CCPI) was used in bus fare adjustment formula but not CCPIs of previous years when there was a deflation. Mr HO was concerned that the rate of fare increase for long-haul routes might be higher than those short-haul routes, which would create unfairness to passengers of the former.

100. DSTH responded that as explained during the consultation with the Legislative Council Panel, the formula would take effect on the date when the Chief Executive-in-Council approved the bus fare adjustment, and like many legal amendments, the formula did not take retrospective effect. DSTH stressed that any bus fare adjustment would not be purely based on the outcome of the formula; instead, the Administration would take into account a basket of factors in the Modified Basket of Factors (MBOF) approach, including the financial situation of the bus companies and public affordability. The rate of fare increase, if any, approved by the Chief Executive-in-Council would be an average increase rate for the whole network of service operated by a company.

101. Mr CHEUNG Hok-ming remarked that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) strongly objected to the fare increase proposals from the bus companies. A recent survey conducted by DAB also showed that the public objected to the fare increase proposals. Mr CHEUNG pointed out that there was a contradiction in the Government's policy in providing transport allowance to workers living in the remote areas and having to work in the urban areas, and the approval for the bus companies to considerably raise their fares. The DAB had all along objected to purely using the formula outcome to assess the bus fare adjustments, and insisted that public affordability should be taken into account in any fare adjustments. He asked whether the Government had reviewed its overall policy for public bus operations, such as measures to enhance the non-fare box income of the bus companies like the arrangement of granting property development rights to the railway company.

102. DSTH responded that the Administration would invariably take into consideration public affordability, such as the change in monthly median household income, in assessing the bus fare adjustment applications. The MBOF approach also included factors like the changes in the bus companies' operating costs and revenue since the last fare adjustment and forecasts of future costs, revenue and return. As

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regards the development of railway lines, since the projects involved enormous capital investment, and impact on the economic and environmental development of Hong Kong, the Government had a policy to provide public funding support to fill the funding gap of construction of the railway projects. However, the railway company also needed to raise debt to finance the construction and bear fully the operating costs. She also pointed out that the Government provided the bus companies with transport facilities like transport interchanges, but would not provide direct subsidy for their daily operating expenditure.

103. Mr LEE Cheuk-yan pointed out that in calculating the rate of adjustment for the CSSA, the Labour and Welfare Bureau had used a rolling average of the CCPI in 2007 which resulted in an increase of only 2.8% for the CSSA. For the bus fare adjustment formula, the applied rate of CCPI was 6.022%. It was apparently that the Government had adopted different standards when applying the CCPI for different policies/programmes/situations. Mr LEE remarked that the number of low-income families had increased from about 370 000 in 1995 to about half a million in 2005, and the Government should take into consideration the affordability of these families in coping with the bus fare increase as members of these families were the main users of bus services. The Government should also take into account KMB's profits from converting its depots into property developments, e.g. KMB made a profit of about three billion in the recent development of Manhattan Hill. Mr LEE reiterated that the public was strongly against the fare adjustment applications from the bus companies.

104. DSTH clarified that the CCPI used in arriving at the formula result in the Panel paper was based on the index between January 2006 and December 2007, as the new formula was approved by the Chief Executive-in-Council in January 2006 and did not take retrospective effect. DSTH stressed that the Administration would not approve any bus fare adjustments purely based on the outcome of the formula. It would also consider other factors such as the bus companies' financial situation, and the public acceptability and affordability of the fare adjustment. As for the site for development of Manhattan Hill, the land was procured by the shareholders of KMB from the open market long time ago, and based on the franchise clauses, profits accrued from such developments would not be taken into the account in KMB's franchise account.

105. Mr LEE Wing-tat commented that since KMB had earned a reasonable return of about 9% from its investment, its application for a fare increase of 9% was unacceptable. Mr LEE pointed out that sites were granted to the public utilities companies at a negotiated land premium which was much lower than the market price if the sites were disposed of through land auctions. Hence there were hidden subsidies from the Government to the bus companies. Mr LEE opined that even an increase of 3.91% in bus fare was unreasonable as most employees received a pay increase in 2007 at a much lower percentage. Mr LEE was of the view that the Government should take into account the non-fare box revenue of the bus companies in dealing with the bus fare adjustment applications.

106. DSTH responded that the 9.7% reasonable rate of return was applicable to the bus industry, while the actual financial situation of different companies might vary during

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different periods. In addition, the Government collected rents at market rates from the companies for depot sites rented to the bus companies. Mr Edmond HO, Managing Director of KMB explained that most of KMB's depot sites were currently rented from Government through short term tenancy agreements. The lands of a few sites were procured from the open market long time ago. When the bus depots were no longer required, such sites were disposed of in the market. In accordance with the franchise clauses, any profit or loss derived from such a disposal would not be booked into the account of franchised bus operations. Mr HO added that the CCPI could not fully reflect the cost structures of franchised bus companies, e.g. there had been substantial increases in fuel expenses and staff costs over the years despite the CCPI showing a deflationary trend. However, KMB/LWB had been providing fare concessions to passengers since 2003.

107. Mr Albert CHAN remarked that it would seem that based on the bus fare adjustment arrangement approved in 2006, KMB would be allowed to increase the bus fares despite having amassed tens of millions of profits. Mr CHAN asked whether the Administration would withdraw the franchise of KMB if it considered the proposed 9% increase in fare unacceptable.

108. DSTH responded that it would be up to the bus operators to apply for fare increase if they saw a need for adjustment of bus fares, regardless of the outcome of the formula. She added that the outcome of formula, including the change in CCPI and the Wage Index applied, was only used as a reference when the Government assessed the bus fare adjustment applications. It would not automatically become the rates of bus fare adjustments. By adopting the MBOF approach, the Administration would take into account other factors such as public affordability and the financial situation of the bus companies in considering applications for bus fare adjustments. The Administration was still examining the relevant data and consulting the relevant bodies regarding the current applications for bus fare adjustments. The final proposal would be considered by the Chief Executive-in-Council. On the duration of the franchise, DSTH pointed out that KMB was operating under a franchise for ten years which would expire in 2017.

109. Ms Miriam LAU stated that the Liberal Party objected to KMB increasing its fares by 9% but this did not mean that the Party objected to any upward adjustment of bus fares. The Party would not agree to disregard the bus fare adjustment arrangement agreed in 2006 which was being applied for the first time, although the Party would not support a significant increase in bus fares. Ms LAU pointed out that the formula had deliberately excluded a fuel cost index and factors like increase in fuel costs, the bus company's past performance, whether the bus fares had been adjusted downward as a result of deflation, and public affordability were taken into consideration under the MBOF approach. Ms LAU asked, since a 3.91% fare increase had been worked out based on the agreed formula, how the Administration would apply the MBOF approach in considering the bus fare adjustment applications. Ms LAU further asked whether, if the bus companies were allowed to increase their fares by 3.91%, the bus companies' reasonable rate of return with reference to the Weighted Average Cost of Capital (WACC) could reach the rate of 9.7%.

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110. DSTH responded that the Administration was still examining the relevant data of the bus companies, and would take into account the financial situation of the bus companies in making the final proposal for bus fare adjustment for consideration by the Executive Council. Mr Edmond HO of KMB supplemented that bus companies were currently facing unprecedented pressure from the sharp upsurge in fuel oil prices. Since September 2007 when KMB submitted its application for a fare increase of 9%, international oil price had increased by about US\$30 per barrel up to now. This factor alone would increase KMB's operating costs by over \$300 million a year, thereby hindering the company's ability in meeting the needs and expectations of its stakeholders including passengers, Government and shareholders.

111. Mr HO Chun-yan and Mr WONG Kwok-hing put forward the following motion, which was seconded by Mr LEE Wing-tat and Mr CHEUNG Hok-ming. The motion was circulated to members at the meeting:

"本委員會反對巴士公司申請大幅加價，敦促政府在審批巴士公司加價的申請時，必須充份考慮以往在累積通縮超過11.4%的期間，巴士公司從沒有減價的事實，並據此否決九巴等加價的申請；並促請政府進一步完善票價調整方程式。"

(Translation)

"This Panel objects to the applications for substantial fare increases by franchised bus companies, and urges the Government to, when vetting the applications for fare increases by these companies, fully take into account the fact that they had never reduced fares during the period when a cumulative deflation rate of over 11.4% was recorded, and to reject the applications for fare increases by these companies, including the Kowloon Motor Bus Company Limited, on the basis of this fact; this Panel also urges the Government to further improve the relevant fare adjustment formula."

112. The Chairman considered that the proposed motion was directly related to the agenda item under discussion, and that it was appropriate for the Panel to deal with it. All members present agreed that the motion should be processed. The Chairman put the motion to vote. Four members voted for the motion. Two members abstained from voting. The Chairman declared the motion passed.

(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(1)904/07-08 on 25 February 2008.)

III Any other business

113. There being no other business, the meeting ended at 1:00 pm.

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Council Business Division 1
Legislative Council Secretariat
31 March 2008