

HONG KONG LEGISLATIVE COUNCIL -- 13 March 1991 1

OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 13 March 1991

The Council met at half-past Two o'clock

PRESENT

HIS HONOUR THE DEPUTY TO THE GOVERNOR (PRESIDENT)

THE CHIEF SECRETARY

THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

DR THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE PETER POON WING-CHEUNG, O.B.E., J.P.

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, O.B.E., J.P.

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

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

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

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

THE HONOURABLE POON CHI-FAI, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS ROSANNA TAM WONG YICK-MING, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

DR THE HONOURABLE DANIEL TSE, C.B.E., J.P.

THE HONOURABLE ANDREW WONG WANG-FAT, J.P.

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

THE HONOURABLE GRAHAM BARNES, C.B.E., J.P.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.
SECRETARY FOR TRANSPORT

THE HONOURABLE EDWARD HO SING-TIN, J.P.

THE HONOURABLE RONALD JOSEPH ARCELLI, J.P.

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

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS NELLIE FONG WONG KUT-MAN, J.P.

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE

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

DR THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE MRS SO CHAU YIM-PING, J.P.

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE YEUNG KAI-YIN, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE ALISTAIR PETER ASPREY, O.B.E., A.E., J.P.
SECRETARY FOR SECURITY

THE HONOURABLE MRS ELIZABETH MARGARET BOSHER, J.P.
SECRETARY FOR ECONOMIC SERVICES

ABSENT

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

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

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

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE JAMES TIEN PEI-CHUN, J.P.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL
MR LAW KAM-SANG

Oath

Mrs Elizabeth Margaret BOSHER took the Oath of Allegiance.

Papers

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

Subject

Subsidiary Legislation	L.N. No.
Public Revenue Protection Ordinance	
Public Revenue Protection (Motor Vehicles)	
(First Registration Tax) Order 1991.....	80/91
Public Revenue Protection Ordinance	
Public Revenue Protection (Fees Increase)	
(1991 Budget) Order 1991.....	81/91
Public Revenue Protection Ordinance	
Public Revenue Protection (Banking)	
Order 1991.....	
82/91	
Public Revenue Protection Ordinance	
Public Revenue Protection	
(Dutiable Commodities) Order 1991.....	83/91
Public Revenue Protection Ordinance	
Public Revenue Protection (Air Passenger	
Departure Tax) Order 1991.....	84/91
Public Revenue Protection Ordinance	

Public Revenue Protection (Rating) Order 1991.....	85/91
Public Revenue Protection Ordinance Public Revenue Protection (Stamp Duty) Order 1991.....	86/91
Civil Aviation (Aircraft Noise) Ordinance Civil Aviation (Aircraft Noise) (Limitation on Operation of Engines and Auxiliary Power Units) (Amendment) Regulations 1991.....	87/91
Dangerous Goods Ordinance Dangerous Goods (General) (Amendment) (No. 2) Regulations 1991.....	88/91
Waterworks Ordinance Waterworks (Amendment) Regulations 1991.....	89/91
Securities and Futures Commission Ordinance Securities and Futures Commission (Corporate Finance Fees) (Amendment) Rules 1991..... 90/91	
Securities and Futures Commission Ordinance Securities and Futures Commission (Fees) (Amendment) Rules 1991.....	91/91
Trustee Ordinance Trustee Ordinance (Amendment of First Schedule) Notice 1991.....	92/91
Public Revenue Protection Ordinance Public Revenue Protection (Fees Increase) (1991 Budget) (Withdrawal) Order 1991.....	93/91

Public Revenue Protection Ordinance
Public Revenue Protection (Fees Increase)
(1991 Budget) (No. 2) Order 1991..... 94/91

Sessional Papers 1990-91

No. 60 -- Director of Hospital Services
1989-1990 Departmental Report

No. 61 -- Report on the Samaritan Fund and Income and Expenditure
Account for the year ended 31 March 1990 with Certificate of the
Director of Audit

No. 62 -- Revenue Estimates for the year ending 31 March 1992

White Paper

White Paper on Social Welfare into the 1990's and beyond
March 1991

Address by Member

White Paper on Social Welfare into the 1990's and beyond
March 1991

SECRETARY FOR HEALTH AND WELFARE: Sir, laid on the table today is the White Paper on Social Welfare into the 1990's and Beyond.

This White Paper sets out the Government's policies and strategies for the future development of social welfare services. It represents the culmination of a year's collaborative effort by a working party comprising mainly non-officials drawn from organizations and institutions involved in social welfare and other areas of the private sector. Great credit and gratitude is due to these persons for the creativity and hard work they have offered for the benefit of social welfare in Hong Kong.

The working party sought public views at the beginning of its work in early 1990 and again on its draft report in September last year. During the second round of consultation, the working party received many helpful comments and suggestions through the district boards, seminars, written submissions and the debate in this Chamber. The use of this transparent drafting process has meant that the final White Paper has been able to respond, both in direction and substance, to many of the public desires and concerns for the development of social welfare services.

The White Paper tabled today differs, therefore, in several respects from the working party's draft report issued in September last year. Comments about the vagueness of proposed future developments and the apparent lack of commitment to funding have been addressed by the inclusion of an implementation schedule giving planned targets and planning targets to be achieved. The need to clarify confusion over the possibilities of fee-charging has also been recognized through the undertaking to form a working party of Government and service agencies to study further how this concept might be developed.

There was a strong call for the White Paper to address the consequences of an ageing population on the provision of services for the elderly. This is frequently linked to the subject of providing for financial security in old age through contributory schemes. Retirement provision for the elderly did not fall within the terms of reference of the working party or the scope of the White Paper. However, the Foreword to the White Paper does acknowledge the view that the issue of financial support for the elderly should continue to be examined by Government. This will be done. Not only will the existing schemes be kept under constant review but other related areas will be examined such as the development of a health insurance scheme suitable for Hong Kong.

Comments were received on other issues falling outside the scope of the White Paper. One request concerned coverage of rehabilitation services in the White Paper. This will be met through the comprehensive Green Paper on Rehabilitation announced by you, Sir, in your October address. Work on the Green Paper has begun, and we should be able to be ready for public consultation later this year.

The White Paper itself does not adopt a narrow focus, and a wide range of issues has been considered in its formulation and before establishing that the needs of families, children and youth at risk and the elderly must all carry high priority.

The White Paper aims to promote the well-being of the elderly through services which will enable them to remain active and valued members of our community. Community support services in the form of home help, multi-service centres, day care and social centres for the elderly will be expanded. A high priority will be given to meeting the growing demand for residential care in the form of subvented care and attention homes and homes for the aged. In addition, properly regulated private and non-profit making homes will be encouraged to play their part.

The White Paper looks upon the family as one of the most important elements of our society. Traditionally, it is through the family that young and old alike have been cared for and supported. With the increase in smaller families, this network of family support has become weaker at a time when the stresses and strains of our rapidly developing society have increased the pressures on all family members. Family casework and counselling services will be stepped up to help and reach out to families experiencing personal and family problems. Support services such as home help and day care for children will be strengthened. Special attention will be paid to the needs of the growing number of single parent families and to those families who cannot provide for themselves the basic necessities of daily life. In particular, the White Paper proposes that the special needs of children in families receiving Public Assistance be recognized by an additional Child Supplement. As provided for in the implementation schedule of the White Paper, this supplement will be introduced later this year.

The future development of social welfare in Hong Kong is not solely a matter of more money or services and facilities. Much will also depend upon Hong Kong's ability to provide more social workers of the same calibre and commitment as those who already serve, so admirably, the needs of our community. The White Paper recognizes difficulties in expanding the supply of certain social work personnel, and the Advisory Committee on Social Work Training and Manpower Planning and the Social Welfare Advisory Committee will continue to explore ways and means to improve the situation.

Sir, Hong Kong is a prosperous and caring society. This is evident by the considerable progress that has already been achieved in the area of social welfare in the past decades. There is a solid foundation upon which to build and we will continue to build on this firm foundation.

The White Paper tabled today is a statement of government commitment for the

future development of social welfare in Hong Kong. It sets out clear objectives and proposals to cope with the challenges, constraints and demands of meeting the changing needs and evolving aspirations of our society. I am confident that with the support of the community and through the dedication and efforts of government and non-government organizations, working in partnership, these objectives will be achieved.

Oral answers to questions

Night time curfew at Hong Kong International Airport

1. DR TSE asked (in Cantonese): Will Government inform this Council whether the impact of the Gulf war on flights between Hong Kong and Europe has given rise to a situation where some flights taking off or landing at the Hong Kong International Airport have broken the restrictions of the midnight curfew?

SECRETARY FOR ECONOMIC SERVICES: Sir, to enable civil aviation to avoid overflying the Gulf area during the recent hostilities a number of airlines have been using a new alternative routing from Hong Kong to Europe over China, Mongolia and the USSR, on a contingency basis.

Although the flight time on this routing is slightly shorter than that on existing routings, it has not given rise to a situation where flights have taken off or landed during curfew hours at Hong Kong International Airport because the airlines concerned have re-scheduled the arrival times of their flights to Europe.

DR TSE (in Cantonese): Sir, according to reliable sources and the personal experience of my honourable colleague Mr TAM Yiu-chung, planes did often land and take off at Kai Tak Airport during curfew hours over the past few months. Will the Secretary provide an explanation?

SECRETARY FOR ECONOMIC SERVICES: Sir, I am very surprised to hear of this from Dr TSE. If I can be provided with specific dates and times, I would of course be happy to raise this directly with the Director of Civil Aviation. I would only point out that there are certain circumstances under which planes are allowed to land during

curfew hours if for unforeseen difficulties they have to make a technical stop or there is a sudden deterioration in the weather.

MR EDWARD HO: Sir, will the Secretary inform this Council how many times in the past year flights have landed or departed during curfew hours, and for what purpose?

SECRETARY FOR ECONOMIC SERVICES: I am sorry, Sir, I do not have that information with me but I will be happy to provide it in writing to the Honourable Member. (Annex I)

MISS LEUNG: Sir, will the Secretary reassure this Council that the Administration will try its very best not to break the restrictions of the midnight curfew so as to minimize the impact of noise nuisance at the time when the majority of the affected residents are sleeping?

SECRETARY FOR ECONOMIC SERVICES: Sir, I can assure Miss LEUNG that every effort is made to avoid causing disturbance to residents and if any other alternatives at all exist they are always taken.

MR PETER WONG: Sir, in view of the shorter flight time and less fuel burnt, can the Secretary please inform us whether there is any prospect of reducing the cost of air fares to Europe?

HIS HONOUR THE PRESIDENT: I think, Mr WONG, that question is well outside the ambit of the original question. Perhaps you could put it down for a separate answer.

Establishment of medical doctors in the Hospital Services Department

2. DR LEONG asked: Sir, I am sorry to ask a triple-barrelled question. Will the Administration inform this Council:

(a) of the current establishment and strength of medical doctors in the Hospital

Services Department;

- (b) how the establishment figures provided above compare to the manning ratio recommended by the Medical Development Advisory Committee (MDAC); and
- (c) whether the additional posts of Senior Medical and Health Officers and Consultants promised by the Secretary for Health and Welfare in 1989 have been created?

SECRETARY FOR HEALTH AND WELFARE: Sir, I shall answer the three-part question seriatim:

First, the establishment and strength of medical doctors in the Hospital Services Department stand at 1 444 and 1 423, respectively.

Secondly, the establishment figure, together with the additional 253 doctors from the medical faculties of the universities who are required to contribute 65% of their time to patient service, makes for a total provision equivalent to 1 608 doctors in our hospitals. This compares with an estimated figure of some 1 700 posts, calculated by reference to the guidelines of the manning ratio recommended by the MDAC for planning purposes.

In early 1989, we decided to seek creation of additional posts in the Medical and Health Officer grade. That is to say,

- (a) 18 Consultant and about 70 Senior Medical and Health Officer posts to alleviate the workload of doctors and to improve promotion prospects for the grade as a whole; and
- (b) 23 Consultant and about 50 Senior Medical and Health Officer posts which were expected to be required for new and improved services.

These add up to 41 Consultant and about 120 Senior Medical and Health Officer posts.

All these posts have not only been created but filled as well.

Additionally, we have identified the need for a further 73 Consultant and 53

Senior Medical and Health Officer posts, both to meet service needs and to further enhance the promotion prospects for doctors. Of these, all Senior Medical and Health Officer and three Consultant posts have been created and filled. The remaining Consultant posts are being processed and will be created in step with service development and subject to the normal processes for the creation of these posts.

DR LEONG: Sir, the establishment of medical doctors as quoted by the Secretary is in the region of 1 444. Could the Administration inform this Council whether this is the original establishment as planned, or whether this is an establishment after cutting down the numbers because certain posts are not filled?

SECRETARY FOR HEALTH AND WELFARE: These were based on the original estimates as improved by additional service needs. I would like to draw particular attention to the fact that although in 1989 we expected an increase of 141 Senior Medical and Health Officer posts for 1989-90 and 1990-91, a total of 173 such posts have actually been created and filled during these two years. So facts speak for themselves. We have done more -- and I think the staff have done better -- than we had originally promised in 1989.

MR LAU WAH-SUM: Sir, will the Secretary please reassure this Council that when the Hospital Authority takes over from the Hospital Services Department, the grant will be based on the full complement of posts according to the guidelines on the manning ratio recommended by the MDAC?

SECRETARY FOR HEALTH AND WELFARE: Yes, Sir. Indeed, as I said in my main reply, we do already take reference from MDAC ratios. Members will also recall that in his Budget speech last week, the Financial Secretary indicated that provision for the Hospital Authority well occupied a lion's share. I will be happy to answer questions on the Estimates at next week's meeting of the Finance Committee.

Public works project estimates

3. MR POON CHI-FAI asked (in Cantonese): Will Government inform this Council:

(1) of the number of public works projects completed over the past three years which

required (i) approval of additional provision from the Finance Committee or (ii) transfer of funds from other programmes within the department, and the amount of provision involved;

(2) whether the substantial increase in the cost of public works projects was caused by the dereliction of duty by Government officials or inaccurate assessment on the part of consultants in their studies of the projects; and

(3) what steps have been taken by the Administration to deal with such problems and enhance the accuracy of project estimates?

FINANCIAL SECRETARY: Sir, over the past three years from 1988 to 1990, about one-third of the projects approved required an upward revision of the original approved project estimates by the Finance Committee. The increase in project estimates amounted to about \$10 billion, and I have given details in an annex which will be included in the official record. In most cases, the increase in project estimates was to cater for price fluctuations since the original approved project estimates were based on rates prevailing when the original estimates were drawn up, without any allowance for price increases. This has been our normal practice for many years. For some projects, the increase in approved estimates was necessitated by changes in the original scope of projects or by unforeseen technical problems such as difficult ground conditions.

Sir, there is no indication in any of the cases in which there has been an increase in project costs to suggest any dereliction of duty by government officials. As for consultancy studies, with the exception of one case which is now under active investigation, to my knowledge there have been no cases in recent years of incompetence by consultants leading to major errors in project estimates.

A working group has been set up in the Works Branch to review departmental practices with a view to enhancing the quality of project estimates. The working group's report is expected to be ready by April. In the meantime, works departments have been seeking to improve the accuracy of their project estimates. The departments are setting up planning, estimating and cost control groups and instituting computer based measuring and cost data based systems.

Annex

Number and value of projects with increase in
Approved Project Estimate in 1988-1990

(A) (B) (C) (D) (E) (F)

Year	No. of cases in APE	No. with increase %	Original total project	Revised total project	% increase in APE	% increase			
							(B)	(C)	(D)
							(A)		(E)
			(\$M)	(\$M)	(\$M)				
1988	361	118	32.7	14887	19146	4259	28.6%		
1989	299	97	32.4	13102	17031	3929	30	%	
1990	187	67	35.8	12277	14335	2058	16.8%		
Total	847	282	33.3	40266	50512	10246	25.4%		

MR POON CHI-FAI (in Cantonese): Sir, as mentioned in the first paragraph of the main reply, a large number of works projects in the past involved consultancy and the departments concerned had taken into account such factors as price fluctuations and technical problems before submitting their application for funds. Why then were there still many projects that involved supplementary provisions amounting to \$1 billion during the last three years? Does this \$1 billion exclude the transfer of funds from other programmes within certain departments?

FINANCIAL SECRETARY: Sir, I do not know whether the pattern has changed over the previous three years. I have not carried out any research into that. My guess is that the pattern has been more or less constant. I think it is probably fair to say that projects are becoming more complicated in recent years and it is possible that that factor has caused a number of cases to come forward for revision.

MR EDWARD HO: Sir, according to the information in the annex to the Financial Secretary's reply, the increases in the Approved Project Estimate in 1988-90 were 28.6%, 30% and 16.8% for the three years respectively. Will the Financial Secretary inform this Council how much of the increases was due to price increases and how much was due to changes in the original project scope?

FINANCIAL SECRETARY: Sir, I think I would like to give an answer to that question in writing, if I may. (Annex II)

MR PETER WONG: Sir, in the first paragraph of his reply the Financial Secretary said that no allowance is made for price increases. Can the Secretary please explain why in the Public Works Sub-Committee papers there are quite often requests for contingency amounts which are used for price fluctuations?

FINANCIAL SECRETARY: Sir, we do include contingency sums in each cost estimate. Basically we include provision to cater for unforeseen expenditure incurred on a project arising from, say, additional materials required, difficult ground conditions, extended contract periods due to inclement weather, and so on. These contingency sums have been drawn up on the basis of past experience and normally represent a fractional proportion of the estimated cost.

MR PAUL CHENG: Sir, in view of the predictable lag time between approval and actual implementation -- often due to bureaucratic delays -- will the Government advise this Council why it does not adopt a policy whereby an allowance is made for price increases in all estimates?

FINANCIAL SECRETARY: Sir, that is something that we will consider in the context of this working group that I mentioned in the third paragraph of my answer.

MR POON CHI-FAI (in Cantonese): Sir, what bad consequences will frequent requests for additional funds and excessive supplementary provisions have on government budgeting? Will the Administration consider drawing up the upper limit in percentage

terms for supplementary provisions?

FINANCIAL SECRETARY: I do not think there are "bad consequences" as, I think, Mr POON Chi-fai has suggested, although to a certain extent it is tiresome to have to go back for additional provision. As to the last part of the question, I will consider what has been suggested.

MR PETER WONG: Sir, in his main reply the Financial Secretary said there is no allowance for price increases, and yet in his verbal answer to my supplementary question he said the contingency figure does provide for price increases. Which one is right?

FINANCIAL SECRETARY: Sir, the contingency figure does not deal with some of the other price increases, for example, increases in relation to inflation, increases in construction costs, and so on; there is a distinction.

Exchange of visits between Hong Kong and Chinese officials

4. MR BARROW asked: Will the Government inform this Council of the progress in building up the exchange of visits between officials of Hong Kong and Mainland China for both specific exchanges on key issues as well as for promotion of mutual understanding?

SECRETARY FOR HOME AFFAIRS: Sir, we have established numerous contacts with Chinese officials, both for special exchanges on key issues and for promotion of mutual understanding.

There were well over 100 working visits to China by Hong Kong official delegations in 1990. Subjects covered a wide range of government business. Numbers in 1991 so far are higher than that for the equivalent period in 1990. There were also over 75 inward visits by Chinese officials or delegations for meetings with various government departments in Hong Kong.

We have also been running since 1988, in conjunction with the Chinese authorities, a series of sponsored visits and legal study visits. Under these schemes, each side organizes and finances a visit led by a senior official from the other side. These visits are designed to enable Hong Kong Government officers to obtain a first hand understanding of the Chinese system of government; and for visiting Chinese officials to be briefed on the system in Hong Kong. There have so far been four legal studies visits and six general sponsored visits. The next general sponsored visit under this programme, which I myself will hope to lead in April, is at an advance stage of preparation.

We are now planning a new series of familiarization visits to China for officers at a less senior level as part of our China training programme. The first of these, to Beijing, will take place later this month. Arrangements for another visit to Guangdong in April/May are also underway. The object of these visits is to promote mutual understanding, and to enhance opportunities for Hong Kong Government officers, at different levels and with different responsibilities, to better understand the operation of the Chinese system. In addition, two visits to Beijing by the Senior Staff Course have been arranged since 1988 as part of the regular overseas component of the course.

MR BARROW: Sir, the buildup of these exchanges is welcome news. Could the Secretary advise as to the difference in scope between the general sponsored visits and the new familiarization visits? Or is it just a matter of the seniority of the participants?

SECRETARY FOR HOME AFFAIRS: Sir, the sponsored visits are generally undertaken by teams led by officers at Secretary level and the selection of candidates is done by the respective governments concerned. The other visits are less formal and at a slightly lower level. At the moment these visits are undertaken mostly by Administrative Officers of a suitable rank.

MR McGREGOR: Sir, is there any intention by the Hong Kong Government to set up a permanent office for the Hong Kong Government in Beijing?

SECRETARY FOR HOME AFFAIRS: Sir, I submit that that question perhaps is outside the scope of the original question. I am not ready to answer that.

HIS HONOUR THE PRESIDENT: Perhaps you could put it down for a separate answer, Mr McGREGOR.

MR BARROW: Sir, could the Secretary advise if the programmes for the general sponsored visits of Chinese officials are limited to seeing how the Civil Service works, or if private sector activities are also included?

SECRETARY FOR HOME AFFAIRS: Sir, these visits are designed to enable visitors to have a comprehensive understanding of Hong Kong systems and government. Most of the arrangements are within Government; however visits to private sector organizations are often included.

MRS FONG: Sir, there are certainly a very impressive number of visits made to China. Can the Secretary explain how these visits are planned and initiated and which government branch or Secretary handles this?

SECRETARY FOR HOME AFFAIRS: Sir, these sponsored visits are visits organized by the respective governments, and it is the government machinery which is involved in organizing these visits.

MR PETER WONG: Sir, does the Secretary have any views on unsponsored visits by government officials to China?

SECRETARY FOR HOME AFFAIRS: Sir, the general rule for civil servants visiting China is that civil servants do not require any special permission for private visits to China.

MR BARROW: Sir, the Secretary has described the new series of familiarization visits to China as part of an overall China training programme. Could he describe to us what else goes on in the China training programme?

SECRETARY FOR HOME AFFAIRS: Sir, this programme comprises two elements one of which is a China studies seminar and the other consists of familiarization visits to China. At present there are two types of seminars organized for senior civil servants to enhance their understanding of China. The first type is a seminar on Hongkong-China interface issues, and the second type focuses mainly on China's domestic issues and development. The first two familiarization visits will take place in March, and then April/May, and their destinations are Beijing and Guangdong. The content of the programme has yet to be worked out.

MRS FONG: Can the Secretary further clarify his answer to my earlier question? When he mentioned Government, did he mean each government department organizes its own visits, or the Governor in Council initiates and plans the overall approach and the visits, or a government branch actually has an overall plan on how these visits should be conducted and the area they should cover?

SECRETARY FOR HOME AFFAIRS: Sir, these visits, as I said earlier, are sponsored visits and are organized between governments. It is not a particular department or a particular branch of the Secretariat that would be responsible for it. The visits are sometimes organized through diplomatic channels and sometimes through the usual channels of contact. There is no particular organization that will be particularly responsible for these visits.

MR CHEONG: Sir, given the good intention of letting us as well as the Chinese government officials familiarize with how the Hong Kong Government works, has the Secretary considered the important function of the Finance Committee of this Council which is material to the smooth functioning of any government department?

SECRETARY FOR HOME AFFAIRS: Yes, Sir.

MR McGREGOR: Sir, with all these familiarization tours and visits to China, would the Government not find it very helpful to have a permanent station in Beijing?

SECRETARY FOR HOME AFFAIRS: Sir, I certainly have not considered this particular aspect in preparing answers to this question. Perhaps Mr McGREGOR might wish to ask the question again separately.

MRS LAM (in Cantonese): Sir, will the Secretary inform this Council of the number of government officials who have been on study visits to China since 1988 and also how useful these visits are? Does the Government have any assessment on this?

SECRETARY FOR HOME AFFAIRS: Sir, so far we have made two sponsored visits to Beijing and other parts of China; there have been four legal study visits; and there have been other general sponsored visits of the order of three or four. Sir, I do not have the exact figure of the number of officers who have actually visited. We may or may not be able to gather these figures for Mrs LAM. If we have the figures I shall circulate them in writing. As to the value of these visits, we find these visits highly valuable.

MR ANDREW WONG: Sir, may I ask whether or not these visits or programmes include language classes, such as "Master Mandarin," learning eventually to become "Mandarin masters"?

SECRETARY FOR HOME AFFAIRS: Sir, these visits do not include training in languages.

MR PAUL CHENG: Sir, when Chinese officials visit Hong Kong, are the programmes that we design for them limited to government-to-government visits, or are they exposed to the private sector as well?

SECRETARY FOR HOME AFFAIRS: Sir, I think I have already answered the question. The

answer, if I may repeat it, is that we do organize mainly government-to-government department visits but, where it is desirable, certainly private sector organizations will also be included.

Littering and hawking at Chater Road pedestrian precinct

5. MRS LAM asked (in Cantonese): In view of the environmental nuisance created by the crowds at the Chater Road Pedestrian Precinct and the areas nearby during Sundays and public holidays, which may have an adverse effect on Hong Kong's reputation as a tourist paradise, will Government inform this Council whether any measures will be taken to solve the problem?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Chater Road pedestrian precinct and the areas nearby certainly do provide popular and crowded meeting places on Sundays and holidays, and as in all places where crowds congregate regularly, in Hong Kong or Manila for that matter, there is a litter problem; and there is some illegal hawking. The Urban Council takes out regular prosecution of these offences, puts out large numbers of extra litter receptacles and broadcasts anti-litter messages in English, Chinese and Tagalog. Nevertheless, considering that there may be between 10 000 and 20 000 people in the area on Sundays, the Council believes its actions have been reasonably successful in keeping it tidy. It certainly compares very well with other areas in Hong Kong with big crowds of people using them. However in view of the prominence of these areas within the city, the Council would like to do better, and intends to increase its prosecutions and propaganda.

MRS LAM (in Cantonese): Sir, the Secretary has mentioned in his main reply that the Administration intends to increase prosecutions and propaganda as a means to abate environmental nuisance. Could the Secretary advise this Council of the more effective publicity measures which the Administration intends to take; the strength of the Hawker Control Unit on patrol there during Sundays and public holidays and the number of summonses issued to and prosecutions instituted against litter offenders and illegal hawkers during the last year?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, there are a lot of figures and I am not sure whether I will get them all. But anyway, I will give something on

summonses first. In the last three months 119 on the spot summonses have been issued to litter offenders and 31 prosecutions have been instituted against those selling goods and articles within the garden areas in the same period. 102 hawkers have been arrested and their goods seized in the last three months and 138 sets of abandoned hawking articles and goods have been seized. Regarding publicity measures, the Urban Council has a broadcasting van there at least on alternate Sundays and sometimes every Sunday disseminating the messages in Tagalog, English and Chinese. It is also setting up some special anti-littering notice boards in its attempt to step up action on tidiness of the area. It is setting up anti-littering notice boards to remind the public that littering is an offence and that offenders are liable to fines and these notices are also in Tagalog. There has also been a programme planned on Radio Television Hong Kong to disseminate the message of Keep Hong Kong Clean in Tagalog through the on-sight radio programme known as Mabuhay. So there is a good deal of action coming and already under way in this area to do our best to keep the area clean.

MR EDWARD HO: Sir, in view of the fact that Chater Road pedestrian precincts and Statue Square are prominent places, and in view of the fact that there is a genuine need for a particular group of foreign nationals in Hong Kong to congregate and relax on Sundays and holidays, will Government consider providing an alternative suitable venue for these nationals to satisfy that particular need?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the matter has been thought of before now because it is such an obvious problem every Sunday, but the area needed would be large and besides nobody has any freedom to direct anybody in Hong Kong to go to any particular place. All the people who visit these areas on Sundays and holidays and all the maids who come there and congregate and enjoy themselves are doing so perfectly legally. On the whole, I would suggest that this Council, and possibly the Urban Council, might be worried about the principle of any arrangements which were aimed at particular sections of the community in directing them to other places. There is throughout Hong Kong a regular programme of building recreational areas and it has been noticed that quite a lot of the domestics who are the main people in Statue Square in fact are using these areas more.

MR MICHAEL CHENG (in Cantonese): Sir, it is the Government's intention that Chater Road be designated as pedestrian precincts on Sundays and public holidays and Statue

Square to remain as recreational areas for the public. Unfortunately, these areas have now become the meeting place of Filipino maids, illegal hawking areas and even canteens of some kind. The environmental problem thus created is beyond toleration. Why does the Government, instead of taking some long-term effective measures to improve the situation, continue to allow these people to occupy without restraint the areas around the pedestrian precincts and the square?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I can only say that the activities which are carried on in Statue Square are essentially legal activities, or where they are illegal, proper legal action is taken and that there is nothing illegal about the congregation of people in this general area. Besides it would be extremely difficult to make special provision for a particular group of people, who would have no obligation in fact so to do, to use designated facilities provided at public expense.

MR PETER WONG: Sir, will the Secretary please inform us how much it costs to clean up the mess every Sunday and also to what extent the Administration applies the rule of polluter pays?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I cannot give the exact bill. But let us face it that even if Statue Square was not occupied by Filipino domestics and others and was occupied and used more by Hong Kong people as it formerly had been, there would still be a very substantial litter collection bill to be paid, just as there are in all the other parts in Hong Kong. We are not dealing here with an exceptional problem in terms of the nuisance. Indeed, in almost all the urban centres where people go shopping the litter on Sundays is probably worse than it is in Statue Square.

MR McGREGOR: Sir, in recording my own belief that Statue Square is being taken over by the Filipino maids -- they are quite reasonable in all the circumstances because there is no other place they can go -- it will be of some interest to me, however, to know whether the arrested hawkers are of local or foreign origin. Could I be so advised? The hawking in that area shows great opportunism and entrepreneurial spirit.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I cannot vouch for 100%; but I understand that most of the hawking is by the Filipinas.

MR EDWARD HO: Sir, I wish to correct the impression or the misinterpretation of my question by the Secretary for Planning, Environment and Lands because I did not suggest that we should direct a certain group of people to a certain place. What I suggested the Administration should consider was to provide another venue which would be suitably attractive and perhaps with suitable Filipino hawkers or something like that to attract these people to another place.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, if Mr HO could make a good suggestion of a piece of land suitable for the area and the neighbourhood and perhaps make some suggestions as to how it would be fitted up, I would be very happy to consider it.

MR PAUL CHENG: Sir, has the Government ever raised this issue with the Phillipine Consul General to seek his assistance, and if not, why not?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, I am not sure which issue Mr CHENG is referring to but the question of littering in that area has certainly been discussed with the Phillipine Consul General and indeed he was down there himself helping to clean up the litter very recently and joined in a campaign organized by the Urban Council. If Mr CHENG is talking about a question of providing some area, I suppose the Phillipine Consul General would find it easier to find an area in Manila than he would in Hong Kong. It really seems to me that in any case, if one was talking to a foreign government about helping to provide an area, one would have to give some guarantee that the people concerned were going to be allowed to stay in Hong Kong for a reasonable length of time.

MRS LAM (in Cantonese): Sir, in order to keep the place clean, the Government has to devote extra resources, including manpower, to clean up the area on Sundays and

public holidays. Will the Government consider charging an entrance fee? In many countries nowadays people have to pay to enter certain gardens.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, it is a wide area we are talking about; we are not just talking about Statue Square. A very large number of people are gaining recreation for the use of this area. On a per capita basis I very much doubt whether the littering is any worse generally than by any citizen of Hong Kong so that if one is considering the possibility of charging for littering then probably that is something for the general population as well as for the people who come for recreation in Statue Square.

MRS LAU: Sir, if any Filipino is found guilty of hawking and such activity constitutes a breach of his or her condition of stay in Hong Kong would the matter be referred to the Immigration Department for further action?

HIS HONOUR THE PRESIDENT: That question is more appropriately addressed by the Secretary for Security.

SECRETARY FOR SECURITY: Sir, I am not aware that there have been any such cases.

Information service at Kai Tak Airport

6. MR HUI asked: Will the Government inform this Council:

- (a) of the reasons for closing the information counter at the Kai Tak International Airport; and
- (b) how can it be ensured that members of the public, including visitors to Hong Kong, will not be inconvenienced by the discontinuation of the service?

SECRETARY FOR ECONOMIC SERVICES: Sir, I am advised by the Director of Civil Aviation that the Information Counter at the Arrivals Greeting Hall at Kai Tak Airport was

closed in March 1990 because he considers that satisfactory and more cost-effective means now exist of providing such service. A survey conducted in early 1990 showed that the majority of enquiries made at the Information Counter related to information which was readily available through other channels within the passenger terminal.

For example, up-to-date flight information is available, at all times, via the electronic display boards and television monitors located throughout the Airport. Many airlines now man their own telephone hotlines and information counters while arriving passengers may obtain assistance from the travel industry services counters provided by the Hong Kong Tourist Association, the Hong Kong Hotels Association and the Hong Kong Associations of Travel Agents located in the Restricted Buffer Hall. Other enquiries and complaints may be dealt with by the Airport Management Duty Office which is located at the Departure Hall.

Sir, the Director of Civil Aviation considers that the closure of the Information Counter has not caused undue inconvenience to members of the public or visitors to Hong Kong. He will, nevertheless, keep the situation under review to ensure that the needs of airport users are met fully and efficiently.

MR HUI: Sir, a few overseas friends of mine asked about the non-availability of an information counter at our international airport and that was how I found out about its closure. Since there is no information counter, not to mention a complaints counter, could the Administration inform this Council how the Director of Civil Aviation can effectively monitor the needs of airport users?

SECRETARY FOR ECONOMIC SERVICES: Sir, as I said in my main answer, there does still exist the Airport Duty Office where complaints can be made if people feel there are no alternatives. As I said, the Director is monitoring the situation closely and, as far as I am aware, he has not received any complaints so far from people dissatisfied with the services available.

DR LEONG: Can the Administration inform this Council how much money is saved by the Government by closing down this counter?

SECRETARY FOR ECONOMIC SERVICES: Sir, I do not have the exact amount of money that has been saved although I can provide Dr LEONG with that (Annex III). In fact two staff posts have been saved and have been able to be redeployed as a result of the closing down of this counter.

MR HUI: Sir, could the Administration inform this Council which other international city like Hong Kong has no information counter at its international airport?

SECRETARY FOR ECONOMIC SERVICES: Sir, I am sorry I do not know the answer to that question off-hand but I will be happy to carry out some research and provide it to Mr HUI. (Annex IV)

MR McGREGOR: Sir, would the Secretary not consider that the saving of two posts at the airport in relation to our tourist traffic, for example, is not false economy?

SECRETARY FOR ECONOMIC SERVICES: Sir, as I said, this decision was taken in the light of the fairly extensive alternative services that do now exist at the airport such as those provided by the Tourist Association and the Hong Kong Hotels Association. The Tourist Association is of course in receipt of public funds which help to support provision of that service but, as I say, the situation is being kept closely under review and I am sure the Director will take into account the points that have been raised this afternoon.

MR POON CHI-FAI (in Cantonese): Sir, it is mentioned in the second paragraph of the reply that airlines manned their own telephone hotlines and information counters. Is it because the airlines concerned or the tourists are dissatisfied with the enquiry service provided by the Government and so the airlines set up their own information counters or the tourists make direct enquiries with the airlines concerned?

SECRETARY FOR ECONOMIC SERVICES: Sir, I do not believe so. I think it is just that, as I said earlier, most of the information that people require does relate to flight information and that the airlines have found it worthwhile to set up their own enquiry services to provide immediate information to their customers.

MR CHEONG: Sir, given that the Secretary's answer has been rather comprehensive could the Secretary assure this Council that no unnecessary expenses are going to be incurred on account of this particular questioning this afternoon?

SECRETARY FOR ECONOMIC SERVICES: Sir, that has been, as I said earlier, an important consideration but it is not the only consideration. We are of course also concerned with providing adequate services to the public and for that reason the situation will be kept closely under review.

British nationality scheme

7. MR McGREGOR asked: Under the British Nationality (Hong Kong) Act 1990, the Governor can recommend up to 50 000 heads of households in Hong Kong to be registered as British citizens. To ensure that the full initial quota is taken up, will the Government inform this Council whether the present selection scheme can be modified if necessary to provide a wider net of applicants?

SECRETARY FOR SECURITY: The British Nationality (Hong Kong) Act 1990 empowers the Secretary of State to register up to 50 000 heads of households as British citizens before 30 June 1997 under a scheme or schemes approved for this purpose. Approximately 87% of these 50 000 places are available for allocation in the first phase of the scheme.

We have received about 66 000 applications for some 43 000 places available under the first phase of the scheme. These applications will now be processed in accordance with the laws enacted in the United Kingdom and Hong Kong for this purpose. The occupational groups identified in the scheme have been carefully chosen. They are stipulated in the Order in Council and cannot be changed without parliamentary approval. We believe that the coverage has been broad enough to attract applicants from key professions and occupations, which is the aim of the scheme.

It is not intended to seek approval for a change in the scheme for the first phase, since a change could affect the chances of success of persons who have already applied.

Nor are any such modifications necessary to ensure that the full quota will be taken up before the scheme expires in 1997. It is possible that a small number of places will not be used up in the first phase; such places will be carried forward to the second phases for allocation after 1993. We are confident that the situation will not arise where quotas remain unallocated after the second phase.

The Administration will, however, be reviewing the operation of the scheme, including its coverage, for the purpose of the second phase, in the light of experience and information gained from the current phase.

MR McGREGOR: Sir, despite its indication to the contrary and should there be as anticipated a shortfall of places to be allocated in the first phase, will Government seek to negotiate with the British Government an agreement to permit special categories of people in Hong Kong to have the assurance of British passports on a compassionate basis? I am thinking particularly of ex-prisoners of war and war widows who may not at present enjoy British nationality and to whom Hong Kong owes a special debt of honour. The number, Sir, is very small.

SECRETARY FOR SECURITY: Sir, I do not think that the situation is likely to arise where the number of places is going to be under-subscribed. Indeed, in the first phase, given the number of applications it is unlikely that there will be perhaps more than a few places available. With regard to the second part of the question, the allocation has to be in accordance with the Order in Council and people can apply either under the general occupation class, or if they believe that there are special circumstances applying to their cases, they can of course apply under the sensitive service class.

MRS CHOW: Sir will the Secretary inform this Council how many of the 66 000 applications received so far belong to the occupation groups and whether the breakdown of the respective groups of applications will be publicly announced in order that the implementation of the scheme is and is seen to be as transparent as possible?

SECRETARY FOR SECURITY: Yes, Sir. In due course a full breakdown of the applications will be given. We cannot give a breakdown at this stage. First of all the

applications have got to be checked; secondly, there are some applications which may have failed to apply for any particular category or occupational group. There may be some people who have wrongly applied and we would not wish to announce the figures until we have thoroughly checked all the applications and made sure that no further applications will be coming in.

MRS TAM (in Cantonese): Sir, in processing applications in the first phase, did the Administration encounter any difficulties or problems, such as complaints from the public, which might help the Administration in making improvements in the second phase?

SECRETARY FOR SECURITY: Sir, I am not aware of any complaints. The Immigration Department has certainly had a very large number of enquiries, particularly in the period immediately preceding the closing date on 28 February. But certainly any suggestions and comments that we receive on the scheme will be taken into account in assessing the need for change in the second phase.

MR PETER WONG: Sir, would the Secretary please confirm that there is no pass-mark as such in each category and that for those people actually fulfilling the requirements of each particular class, the ones with the highest marks will automatically go through?

SECRETARY FOR SECURITY: Sir, Mr WONG is correct. There is no pass-mark and provided people meet the qualifications for the particular category or occupational class then they will of course be considered. That is of course subject to the proviso that a person must satisfy the usual test of good character.

DR LEONG: Sir, given the possibility that certain professional categories may be over-subscribed while others may be under-subscribed, will the Administration consider asking Her Majesty's Government to change the allocation quotas in relation to different professional groups so as to make sure that in the second phase the spirit of keeping key professionals in Hong Kong, which is the basic spirit of this particular scheme, will be fulfilled?

SECRETARY FOR SECURITY: Sir, as I said in the main answer or certainly in answer to the first supplementary, I am not at all sure that that situation will arise. But if Dr LEONG is suggesting that we should change the quotas now allocated to the different occupational groups in the first phase, the answer is no. These quotas have been very carefully worked out in accordance with rates of emigration and the numbers in that particular profession. To change them now would be bound to affect the chances of those who have applied. It would in effect be moving the goal posts after the game has started and we do not intend to do that. But as I have said, we will be reviewing the whole question of allocation under the second phase at a later stage.

MR McGREGOR: Sir, since there does not seem to be any category in the British nationality scheme up to now which will permit ex-prisoners of war and war widows to apply with any hope of approval, what will be the position of the Hong Kong Government in regard to discharging Hong Kong's debt of honour to them within the time remaining for this scheme? Sir, I do point out that the Secretary himself said that there may be a shortfall in the first phase and there would therefore seem to have been a difference in allocation of places as between categories. The question by Dr LEONG is therefore quite reasonable.

SECRETARY FOR SECURITY: Sir, I did say also that any places which are unallocated in the first phase will be carried forward to the second phase and that is what we intend to do. I think in fact that arrangements have been made for all ex-prisoners of war to apply for British nationality under a separate provision of the Act, that is section 4(5) of the Act, but any other persons who feel that there are special circumstances that apply to them can mention these in their application and can, if they wish, apply under the sensitive service class.

MRS CHOW: Sir, it is indeed gratifying to hear from the Secretary that it is the intention of the Administration to announce the breakdown of applications of the professional groups since these are the people most likely to be attracted by other schemes and thereby aggravating our brain drain problem. But may I ask the Secretary exactly when the announcement will take place regarding the breakdown?

SECRETARY FOR SECURITY: Sir, I cannot say exactly when, but it will be done as soon as the situation is frozen, that is to say, as soon as we are sure that we have received all applications -- there is still a trickle of applications coming in from overseas by post. I do not expect that will continue much longer but I think we will have to wait a little bit more for that and also after we have clarified omissions and errors in the application forms which may cause some changes in numbers in the particular occupational groups.

MR McGREGOR: Sir, given the Hong Kong Government's very special debt of honour towards the ex-prisoners of war and war widows and given the fact that most of them are now really very old and some of them are infirm and incapable of assisting themselves directly, will the Hong Kong Government set up an office or provide office accommodation or office assistance to these applicants in order to make sure that the applications referred to by the Secretary can be properly made out and properly administered?

SECRETARY FOR SECURITY: Sir, a great deal of effort was put in by the Immigration Department into providing assistance for people who needed it in applying and filling out the application forms. I am sure that if anybody approaches the Immigration Department for assistance they will be happy to help them.

Self-claimed post secondary institutions

8. MISS LEUNG asked (in Cantonese): Will Government inform this Council whether any measures will be taken to effectively control those self-claimed tertiary institutions which are not registered under the Post Secondary Colleges Ordinance?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, by "self-claimed tertiary institutions", I believe Miss LEUNG is referring to the 20 or so private institutions which have been registered as schools under the Education Ordinance, and which claim to offer post-secondary courses.

Section 17 of the Education Ordinance states that the Director of Education shall not, without the consent of the Governor, register any school which provides a post secondary education. Exercise of this power, in practice, requires the Director of Education to take a view as to whether or not a course offered is post secondary in nature. The Director, when registering the schools in question, took the view that the courses offered could not properly be regarded as being post secondary. To date only three schools have received the Governor's consent under section 17 to offer post-secondary courses, and these are not numbered amongst the schools in question.

The Director of Education is now undertaking a survey of these 20 or so schools and will shortly make recommendations to me as to whether any of the courses offered by them are now of a post secondary nature and whether, as a result, the consent of the Governor should be sought. In respect of those courses considered by the Director of Education as being post secondary in nature, the schools involved will be required to make a new application for registration under the Education Ordinance following consent being given by the Governor. In respect of those courses considered as not being of a post secondary nature, the registration of the schools involved will stand, but the Director of Education will warn them to cease advertising their courses as being post secondary. Failure to comply may result in action being taken against the school managers and ultimately in de-registration of the school.

Sir, I would like to assure Honourable Members that our aim is to protect the public interest, and that the Director of Education will continue to apply clear and consistent standards when considering post-secondary courses for recognition by the Governor.

MISS LEUNG (in Cantonese): Sir, does the Government have information on those self-claimed tertiary institutions which claim to offer post-secondary courses but in fact register merely as a society or business entity? Why does the Government tolerate the existence of such institutions?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I am afraid I am not sure I entirely understand the question because organizations which sponsor the creation of schools have to be either a society or a company, or must take some corporate or legal form. That being the case, I do not see how the question of tolerance comes in.

MR DAVID CHEUNG: Sir, will the Secretary please inform this Council how long the exercise will take -- the exercise that he mentioned of the Director of Education looking into these institutions?

SECRETARY FOR EDUCATION AND MANPOWER: I understand from the Director of Education, Sir, that he will be submitting a report to my branch within a few months.

MR PETER WONG: Sir, in order to gain consent under section 17 to offer post-secondary courses, will it require accreditation by the Hong Kong Council for Academic Accreditation?

SECRETARY FOR EDUCATION AND MANPOWER: No, Sir, we are dealing with what is in effect a variety of non-degree or sub-degree courses catering to a small number of people who are mainly adults. In fact the Director of Education took the view that these were in the main not post-secondary courses but more in the nature of courses in adult education. That being the case, the role of the Hong Kong Council for Academic Accreditation in degree validation does not arise.

MISS LEUNG (in Cantonese): Sir, the Secretary said just now that he did not understand my question. What I want to ask is whether any organization, which only register as a society or business entity, can offer educational courses (including those so-called post-secondary courses) without having to apply to the Education Department for registration?

SECRETARY FOR EDUCATION AND MANPOWER: No, Sir, it is not the case that any society or company may operate a school or any other form of educational institution simply by virtue of their being either a society or a company. They have in all cases to comply with the requirements for registration either under the Education Ordinance or the Post Secondary Colleges Ordinance.

MR DAVID CHEUNG: Sir, will the Secretary inform this Council what action the

Government will take if, after the review by the Director of Education, the standard of these institutions are found not up to par?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I thought I had already answered that question in my main reply. If, following results of the survey, the Director of Education takes the view that any course provided by any of these schools are not post secondary in nature then the registration of the school will stand provided the school would desist from advertising its courses as being of a post secondary nature, that is to say, it may continue to operate these courses but it must refrain from misleading the public as to the nature of these courses.

MISS LEUNG (in Cantonese): Sir, will the Secretary inform this Council what action the Government will take if some institutions that offer educational courses are found to have obtained a society or business registration only without having registered under the Education Ordinance or the Post Secondary College Ordinance? And will the Government conduct a full review on this?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Education Department has a district based as well as a curriculum based inspectorate and these two inspectorates make periodic surveys of all establishments which profess to provide education. If these inspectorates should find any establishment that provides education without having been registered either as a school under the Education Ordinance or as a post secondary college under the Post Secondary Colleges Ordinance, then these establishments will be found to be committing an offence under the law and they may be prosecuted.

Written answers to questions

Country Park sector of Route 3

9. MR TAI asked: In the White Paper on Transport Policy in Hong Kong published in January 1990, Government has indicated that it is highly desirable to complete the Country Park sector of Route 3 by the mid-1990s to improve cross-border traffic and relieve the access roads to northwest New Territories. Will the Administration inform this Council whether there is any change to this plan and, if so, what are

the reasons?

SECRETARY FOR TRANSPORT: Sir, the timing of and priority for the various sections of Route 3 were considered in the Second Comprehensive Transport Study (CTS-2). While it is desirable for the Country Park sector of Route 3 to be completed by the mid-1990s, the availability of resources must remain a prime factor in the timing of this project.

The CTS-2 report in fact recommended that the Country Park sector should be scheduled for the late 1990s to avoid overloading the routes through West Kowloon before completion of the West Kowloon Expressway. The consequence of opening the sections north of Kwai Chung without the West Kowloon Expressway in place would be to increase the traffic volume in West Kowloon by 60-70%, resulting in unacceptable congestion. The study also anticipated funding problems if the Country Park sector were to be built at the same time as the southern sectors.

The Administration will continue to keep the timing and priority of the Country Park sector of Route 3 under constant review.

Public enquiry centres

10. MRS TU asked: Due to financial constraints, many public enquiry centres of the district offices have to be closed down. Will the Government inform this Council:

- (a) how the remaining centres can meet the needs of the public;
- (b) what the criteria for designating the remaining centres are and why some of these centres are situated in unpopular locations, for example, such as Hong Kong East Law Court Building; and
- (c) whether there are ways to reduce expenditure in other areas so that the public enquiry centres could be retained to maintain the useful links with the general public?

SECRETARY FOR HOME AFFAIRS: Sir, as announced in October last year, the public enquiry

service will be reorganized on 1 April 1991 to reduce spending and to streamline the operations of the City and New Territories Administration.

The reorganization is based on a review conducted by the Finance Branch in May last year. As many of the 69 public enquiry service centres in the 19 districts are under-utilized, their number will be reduced to 20 on 1 April 1991 : that is, one centre for each district with the exception of Islands District which will have a centre on Lantau and on Cheung Chau. So far, 16 centres in 10 districts have been closed without unfavourable public comment.

As over 40% of all public enquiries are made by telephone and to provide back-up to the 20 centres left, a central enquiry system will be installed in my headquarters on 1 April 1991 to deal specifically with telephone enquiries from the public. In addition, consideration is being given to providing a computerized data bank and computer network between the central enquiry system and the 20 centres.

Apart from the centres on Cheung Chau and Lantau in Islands District which have to be retained to serve the two island communities, the 18 remaining centres have been selected because they are the busiest centres in their districts. Hence, it is not true that they are situated in unpopular locations. Of this number, 17 are attached to the district main offices, including the Eastern District Office. This district office was reprovisioned from leased accommodation in Quarry Bay to the Eastern Law Courts Building in Sai Wan Ho in December last year. Since then, the utilization rate of its public enquiry service centre has increased because the building houses many government departments and attracts many visitors. In my view, members of the public would not hesitate to visit the single public enquiry service centre in their districts if they require its services. Alternatively, they can from 1 April 1991 ring the central telephone system to make enquiries. A press release on the new public enquiry service will be issued before the end of this month.

The reorganization of the public enquiry service is only one of several cost-cutting measures announced by the City and New Territories Administration in October last year for implementation on 1 April 1991. All the measures to streamline the operation of City and New Territories Administration have been drawn up after careful consideration as part of the Government's effort to control the growth of public expenditure while at the same time maintaining standards as far as possible. In the case of public enquiry services, we hope to end up with a more efficient and speedier service backed up by automated records. This process was explained to

Members by the Financial Secretary in his Budget speech last Wednesday.

It would not be possible to maintain standards if cuts were made in other areas in order to retain more public enquiry centres. Let me state once again that the centres to be closed are ones that record a low utilization rate. However, I would like to assure Mrs TU that like the other cost-cutting measures, the new public enquiry service will be closely monitored and modifications made as necessary.

Measures to deal with overstaying visitors

11. MR BARROW asked: Will the Government inform this Council of steps being taken to avoid damaging Hong Kong's international reputation:

- (a) by avoiding a repeat of the occurrence of a recent incident whereby a visitor to Hong Kong was detained in the departure lounge at Kai Tak for some days; and
- (b) by adopting a more reasonable and compassionate approach in dealing with visitors to Hong Kong who commit minor offences against the Immigration Ordinance?

SECRETARY FOR SECURITY: Sir, I believe that the question refers to the case of Mr Peter LITWAK, who was convicted on 20 February this year of contravening a condition of his stay in Hong Kong, and fined \$500.

It is neither the policy nor the practice of the Immigration Department to detain persons in the departure lounge at the airport. Mr LITWAK was not so detained, indeed he was never detained until he was brought to court on 20 February.

The Immigration Department adopts a pragmatic and reasonable approach to all cases of persons overstaying a permitted period of stay. Each case is considered on its merits. Where a visitor has overstayed for a very short period, for reasons beyond his control or through no fault of his own, he is normally granted the necessary extension of stay. However, those who overstay deliberately for lengthy periods without reasonable excuse are normally prosecuted. Mr LITWAK fell very clearly into this category.

There is no intention or need to change the present practice. The majority of overstayers detected at the airport in 1990 were granted an extension of stay and allowed to depart. Only a small number were prosecuted.

Rock blasting

12. MRS LAM asked (in Cantonese): A recent rock slide occurred at a construction site as a result of a rock blast. Tonnes of rock and sand poured down from the cliff and a pedestrian was injured. In view of this accident, will Government inform this Council:

- (i) of the cause of this incident; and
- (ii) whether it will review the precautionary measures to be taken during rock blasts in densely populated areas?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, on 28 February 1991, blasting was being carried out near the top of a 50-metre high old quarry face as part of the site formation works for Shau Kei Wan East housing development. The site was 85 metres away from the nearest occupied building. Immediately following a blast which took place at 1.15 pm a large wedge of rock fell from the top of the quarry face to the ground below. Temporary construction sheds were damaged. The rock mass landed within the site boundary. A person nearby was slightly injured by a small rock fragment.

The quarry face had been studied by consultants before site formation commenced, and the Department's engineers had carefully supervised the blasting operations. Furthermore the blasting work was being carried out under the conditions of a permit issued by the Mines Division. Precautions were taken to minimize the risk of damage or injury. These included:

- (a) construction of a safety fence below the bottom of the rock face intended to catch any small rocks or boulders dislodged during the work;
- (b) clearing all personnel in the area at the bottom of the rock face during blasting. This included people in the nearby construction sheds; and

(c) use of screens and cages to prevent small pieces of rock being projected into the air by the blast and landing outside the site.

Housing Department is currently investigating the incident together with the contractor. Initial findings are that the incident was triggered by the unexpected loosening of a rock joint as a result of the cumulative effects of the blasting nearby which had been going on for several weeks. I cannot anticipate the outcome of the investigation but hope that it will make clear how, in spite of the extensive precautions, this considerable rock fall occurred.

Blasting in the old quarry area was stopped immediately after the incident and no further blasting will be permitted there. Future excavation will be carried out by alternative means. An additional four-metre high barrier is under construction, and an area of Hoi Ching Street has been temporarily closed until the works are completed. The temporary closure will not inconvenience the public.

The fall caused a lot of dust which affected the surrounding area. Housing Department arranged for two nearby schools to be cleaned over the weekend by agreement with the principals.

In conjunction with the transfer of statutory responsibilities of the Mines Division from Labour Department to Civil Engineering Services Department on 1 March 1991, a review of all aspects of the control of blasting is being undertaken. As part of that review, and as a matter of high priority, the circumstances of this incident will be carefully considered, and should it be found necessary, modifications to blasting controls will be introduced.

Motions

HONG KONG EXPORT CREDIT INSURANCE CORPORATION ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:

"That the contingent liability of the Hong Kong Export Credit Insurance Corporation under contracts of insurance shall not at any time exceed the sum of 7,500 million dollars."

He said: Sir, I move the first motion standing on my name on the Order Paper.

In May 1989, the maximum contingent liability of the Hong Kong Export Credit Insurance Corporation was increased from \$5,000 million to \$6,000 million under section 23 of the Hong Kong Export Credit Insurance Corporation Ordinance. Since then, the Corporation's contingent liability under contracts of insurance has risen at a rate of about \$150 million per quarter. As at 1 February 1991, the figure stood at \$5,794 million. In addition, there is potential commitment in respect of new policies, and policies pending renewal, amounting to \$98 million, leaving only \$108 million for new business.

Given this rate of increase, the Corporation estimates that the existing statutory limit will be reached very soon. The Corporation, on the advice of its Advisory Board, has therefore recommended that the maximum contingent liability be increased by \$1,500 million to \$7,500 million. Failure to raise this limit would render the Corporation unable to accommodate further business and hence discouraging our exports.

Sir, I would like to stress that, the maximum liability is a theoretical contingent amount which is never likely to be at risk in totality at any one time.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

PUBLIC FINANCE ORDINANCE

THE FINANCIAL SECRETARY moved the following motion:

"That --

1. Authority is hereby given for a sum not exceeding \$44,502,060,000 to be charged on the general revenue in advance of an Appropriation Ordinance for expenditure on the services of the Government in respect of the financial year commencing on 1 April 1991.

2. Subject to this resolution, the sum so charged may be expended against the heads of expenditure, and expenditure for each such head shall be arranged in accordance with the subheads, shown in the draft Estimates of Expenditure 1991-92 or, where such estimates are changed under the provisions of the Public Finance Ordinance as applied by section 7(2) of that Ordinance, in accordance with such estimates as so changed.

3. Expenditure in respect of any head shall not exceed the aggregate of the amounts specified in respect of each subhead in that head, by reference to percentages, in paragraph 4(a) and (b).

4. Expenditure in respect of each subhead in a head shall not exceed:

(a) in the case of a Recurrent Account subhead, an amount equivalent to:

(i) except where the subhead is listed in the Schedule hereto, 20% of the provision shown in respect of it in the draft Estimates;

(ii) where the subhead is listed in the Schedule hereto, that percentage of the provision shown in respect of it in the draft Estimates which is specified in relation to that subhead in the Schedule; and

(b) in the case of a Capital Account subhead, an amount equivalent to 100% of the provision shown in respect of it in the draft Estimates,

or such other amount, not exceeding the provision shown in respect of the subhead in the draft Estimates, as may in any case be approved by the Financial Secretary.

[para. 4]

SCHEDULE

Percentage
of provision
shown in
draft

Head of Expenditure Subhead Estimates

22	Agriculture and Fisheries Department	452 Royal Society for the Prevention of Cruelty to Animals (Hong Kong).....	25
456	World Wide Fund for Nature (Hong Kong).....		25
91	Buildings and Lands Department	221 Clearance of Crown land -- ex-gratia allowances.....	50
259	Enforcement of the Buildings Ordinance -- works on private property.....		35
26	Census and Statistics Department	149 General departmental expenses	78
28	Civil Aviation Department	170 Airport insurance.....	100
281	Air passenger departure tax administration fees.....		30

Percentage
of provision
shown in
draft

Head of Expenditure Subhead Estimates

43	Civil Engineering Services Department	237 Production and processing of quarried stone.....	100
255	Storage of explosives.....		30
39	Drainage Services Department	120 Maintenance materials.....	30
40	Education Department	330 Assistance to private	

secondary schools and bought places.....	30
350 Refund of rents and rates to kindergartens, private schools and study rooms.....	30
355 Assistance to Lingnan College.....	100
489 Miscellaneous educational services.....	30
46 General Expenses of 013 Personal allowances..... the Civil Service	30
50 Government Land 225 Traffic accident victims Transport Agency assistance scheme - levies.....	100
53 Government 211 Commonwealth Youth Secretariat: City Exchange Programme and New Territories	100
Administration 285 Promotional activities on building management.....	24
286 Activities to be organized by the Commission on Youth	33
60 Highways Department 273 Highways maintenance.....	30

Percentage
of
provision
shown in
draft

Head of Expenditure Subhead Estimates

61 Hospital Services 383 Community Nursing Service	25
--	----

Department		
401 Refund of rates (non-profit-making hospitals).....	25	
62 Housing Department 228 Clearance.....	25	
232 Squatter control.....	25	
268 Clearance of the Kowloon Walled City.....	25	
73 Industry Department 513 Hong Kong Quality Assurance Agency.....	25	
76 Inland Revenue 002 Allowances.....	25	
Department		
149 General departmental expenses.....	25	
189 Interest on tax reserve certificates.....	35	
209 Special legal expenses.....	25	
34 Internal Security: 195 Defence Costs Agreement : Miscellaneous cash contribution.....	25	
Measures		
92 Legal Department 243 Hire of legal services and related professional fees.....	25	
106 Miscellaneous Services 258 Election expenses	30	
120 Pensions 015 Civil, judicial service and police pension benefits and compensation.....	30	
016 Gratuities for officers on		

contract.....	30
Percentage of shown in draft	
Head of Expenditure Subhead Estimates	
017 Widows' and children's pensions, widows' and orphans' pensions and increases.....	30
026 Employees' compensation.....	50
118 Planning Department 149 General departmental expenses.....	30
122 Police: Royal Hong Kong 245 Pay and allowances for the Kong Police Force auxiliary services.....	25
126 Post Office 002 Allowances.....	28
130 Printing Department 002 Allowances.....	25
167 Royal Hong Kong 001 Salaries..... Regiment (The Volunteers) 245 Pay and allowances for the auxiliary services.....	45 30
246 Training expenses for the auxiliary services.....	30
170 Social Welfare 177 Emergency relief..... Department	100
179 Public assistance scheme.....	25
180 Special needs allowances.....	25
410 Rehabilitation services	

(grants).....	25
411 Social welfare services (grants).....	25
412 Refunds of rates.....	25
Percentage of provision shown in draft	
Head of Expenditure Subhead Estimates	
176 Subventions: 416 Commonwealth Parliamentary Miscellaneous Association (Hong Kong Branch).....	80
437 Hong Kong - Japan Business Co-operation Committee.....	25
446 Law Society Legal Advice and Duty Lawyer Schemes	25
475 Outward Bound Trust of Hong Kong.....	25
487 Subventions for performing arts activities.....	30
503 Subventions to voluntary agency camps.....	25
177 Subventions: 429 Consumer Council.....	25
Non-Departmental Public Bodies 441 Hong Kong Productivity Council.....	25

443 Hong Kong Tourist Association.....	25
444 Hong Kong Trade Development Council.....	25
178 Technical Education 468 Grant (Recurrent) Vocational and Industrial Training Council.....	25
Training Department	
186 Transport Department 505 Special transport facilities for the disabled.....	25
188 Treasury 002 Allowances.....	30
163 Write-offs.....	50
Percentage of provision shown in draft	
Head of Expenditure Subhead Estimates	
187 Agents' commission and expenses.....	90
190 Other miscellaneous items.....	100
191 Payment to Cross-Harbour Tunnel Company Ltd.....	100
192 Refunds of revenue.....	100
190 Universities and 002 Allowances.....	25
Polytechnics	
169 Visitation.....	35
492 Grants to universities,	

polytechnics, Baptist College and Lingnan College	25
---	----

496 Refund of rates - universities, polytechnics, Baptist College and Lingnan College	25
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Explanatory Note

This resolution authorizes the expenditure of a sum not exceeding \$44,502,060,000 on the services of the Government prior to the enactment of an Appropriation Ordinance for the 1991-92 financial year.

He said: Sir, I move the second motion standing in my name on the Order Paper.

The purpose of this motion is to seek funds on account to enable the Government to carry on existing services between the start of the financial year on 1 April 1991 and the enactment of the Appropriation Bill.

The funds on account sought under each subhead have been determined in accordance with paragraph four of the resolution, by reference to percentages of the provision shown in the draft Estimates. As the draft Estimates are changed from time to time, by the Finance Committee or under delegated powers, the provision to which the percentages are applied will also change. Thus the provision on account under each head is not constant but may vary, with every increase being matched by an equal decrease. The initial provision on account under each head is shown in a footnote to this speech. The aggregate total under all heads is fixed, however, at \$44,502,060,000 and cannot be exceeded without the approval of this Council.

The resolution also enables the Financial Secretary to vary the funds on account in respect of any subhead, provided that these variations do not cause an excess over the amount of provision entered for that subhead in the draft Estimates or an excess over the amount of funds on account for the head.

A vote on account warrant will be issued to the Director of Accounting Services authorizing him to make payments up to the amount specified in this motion and in

accordance with its conditions. The vote on account will be subsumed upon the enactment of the Appropriation Bill, and the general warrant issued after the enactment of the Appropriation Bill will replace the vote on account warrant and will be effective from 1 April 1991.

Sir, I beg to move.

FOOTNOTE

	Initial		
	Amount shown in the draft	amount of provision	
	Head of Expenditure Estimates	on account	
	\$'000	\$'000	
21 His Excellency the Governor's Establishment		15,397	
3,080			
22 Agriculture and Fisheries Department	283,966	69,072	
25 Architectural Services Department	1,044,733	210,431	
24 Audit Department	56,498	11,300	
23 Auxiliary Medical Services	36,839	8,712	
91 Buildings and Lands Department	759,867	168,954	
26 Census and Statistics Department	240,728	85,036	
27 Civil Aid Services	43,388	8,765	
28 Civil Aviation Department	368,916	87,360	
43 Civil Engineering Services Department	354,448	83,971	
30 Correctional Services Department	1,197,318	251,985	
31 Customs and Excise Department	623,063	132,193	
37 Department of Health		1,287,838	
271,638			
39 Drainage Services Department	384,985	85,469	
40 Education Department		10,698,884	
2,337,989			
42 Electrical and Mechanical Services Department		893,429	195,557
	Initial		
	Amount shown in the draft	amount of provision	

	Head of Expenditure Estimates	on account	
	\$'000	\$'000	
44	Environmental Protection Department	316,580	103,732
45	Fire Services Department	1,214,616	310,107
46	General Expenses of the Civil Service	2,817,136	591,488
48	Government Laboratory	84,668	24,212
50	Government Land Transport Agency	67,610	46,428
51	Government Property Agency	1,428,025	285,605
52	Government Secretariat	619,614	130,925
53	Government Secretariat: City and New Territories Administration	452,746	103,051
29	Government Secretariat: Civil Service Training Centre	50,010	10,002
96	Government Secretariat: Overseas Offices	161,767	40,299
56	Government Secretariat: Planning, Environment and Lands Branch and Works Branch	98,964	23,713
55	Government Secretariat: Recreation and Culture Branch	76,330	21,448
58	Government Supplies Department	94,310	19,583
60	Highways Department	878,799	224,265
61	Hospital Services Department	7,144,086	
	1,557,275		
62	Housing Department	372,887	97,197
70	Immigration Department	951,184	197,680
72	Independent Commission Against Corruption	319,636	64,773
73	Industry Department	96,591	48,376
74	Information Services Department	125,287	26,075
47	Information Technology Services Department	166,933	34,638
76	Inland Revenue Department	519,903	112,592
78	Intellectual Property Department	20,129	4,026
34	Internal Security: Miscellaneous Measures	1,812,784	475,925
80	Judiciary	342,445	
	71,873		
90	Labour Department	238,044	48,343

94 Legal Aid Department	225,200	45,040
92 Legal Department	378,427	83,339
100 Marine Department	440,937	116,738
106 Miscellaneous Services	7,104,541	
	2,190,637	
112 Office of Members of the Executive and Legislative Councils	41,894	11,552
114 Office of the Commissioner for Administrative Complaints	7,744	1,549
	Initial	
	Amount shown	amount of
	in the draft	provision
Head of Expenditure Estimates	on account	
\$'000	\$'000	
120 Pensions	2,841,764	
	853,488	
118 Planning Department	170,837	68,940
121 Police Complaints Committee	5,710	1,142
122 Police: Royal Hong Kong Police Force	5,758,618	1,260,000
126 Post Office	72,657	291,706
130 Printing Department	144,409	33,634
136 Public Service Commission	8,149	1,630
160 Radio Television Hong Kong	262,595	60,814
162 Rating and Valuation Department	129,387	25,878
164 Registrar General's Department	210,045	42,273
165 Registry of Trade Unions	5,453	1,091
166 Royal Hong Kong Auxiliary Air Force	178,675	138,325
167 Royal Hong Kong Regiment		
(The Volunteers)	34,379	12,290
168 Royal Observatory	82,279	17,794
170 Social Welfare Department	5,519,238	1,347,834
174 Standing Commission on Civil Service		
Salaries and Conditions of Service	10,608	2,122
175 Standing Committee on Disciplined Services		
Salaries and Conditions of Service	6,175	1,235
173 Student Financial Assistance Agency	400,214	80,043
176 Subventions: Miscellaneous	120,184	35,330
177 Subventions: Non-Departmental Public		

Bodies	1,410,383
426,058	
178 Technical Education and Industrial	
Training Department	797,245 206,286
180 Television and Entertainment Licensing	
Authority	20,888
5,292	
110 Territory Development Department	137,234 27,831
181 Trade Department	134,609 28,618
186 Transport Department	328,801 81,724
188 Treasury	197,759 61,889
190 Universities and Polytechnics	4,081,338 1,042,713
194 Water Supplies Department	2,229,538 452,082
73,559,295 17,742,060	
184 Transfers to Funds	26,760,000
26,760,000	
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Total	
100,319,295 44,502,060	
=====	=====

Question on the motion proposed, put and agreed to.

DUTIABLE COMMODITIES ORDINANCE

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the following motion:

"That with effect from 1 April 1991 Part III of the Schedule to the Dutiable Commodities Ordinance be amended:

- (a) in paragraph 1(c) by repealing "3.76" and substituting "4.17"; and
- (b) in paragraph 1(d) by repealing "3.76" and substituting "3.72"."

He said: Sir, I move the motion standing in my name on the Order Paper. It seeks to introduce differential rates of duty on leaded and unleaded petrol in order to achieve a price differential of about \$1 per litre in favour of unleaded petrol.

The introduction of unleaded petrol into Hong Kong is an essential step in the control of pollution from motor vehicles. Introduction of unleaded petrol is essential if the most modern petrol-engined vehicles, designed to minimize pollution, are to be used in Hong Kong, since those engines can only operate on unleaded petrol. Most existing petrol-engined vehicles can use unleaded petrol, and, should they do so, would emit less pollution. Hence it is our wish to introduce unleaded petrol, and to encourage its use in Hong Kong.

In order to encourage use of unleaded petrol it has been agreed that it would be desirable for unleaded petrol to be available at a cheaper price than leaded petrol. The oil companies have informed me that they will supply unleaded petrol at about 60 cents a litre cheaper than leaded petrol. To increase this differential to at least \$1, it has been decided to introduce a differential rate of duty for the two types of petrol. It is accordingly proposed that the rate of duty of leaded petrol be \$4.17 per litre and the rate of duty of unleaded petrol should be \$3.72 per litre from 1 April, which is the day from which unleaded petrol will be available to consumers. This rate of duty will make unleaded petrol at least \$1 cheaper than leaded petrol to the consumer. Members will recollect that my honourable friend the Financial Secretary, in his recent Budget Speech, mentioned that a resolution to introduce differential rates of duty to achieve a price differential of about \$1 per litre would be introduced during this month. This is it.

This introduction of differential rates of duty is not a fiscal measure. It has nothing to do with the Budget. It is introduced today solely because 1 April is the most convenient time to introduce unleaded petrol. The two rates will not increase or decrease revenue significantly during this financial year.

Sir, I believe the introduction of this differential rate of duty will be welcomed by the bulk of consumers and by the public at large. It is acceptable to the oil companies.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

CRIMINAL PROCEDURE ORDINANCE

THE SECRETARY FOR HOME AFFAIRS moved the following motion:

"That the Legal Aid in Criminal Cases (Amendment) Rules 1991, made by the Chief Justice on 28 February 1991, be approved."

He said: Sir, I move the first motion standing in my name on the Order Paper.

The purpose of the amended rules is to implement the second of a two-stage increase in the maximum fees payable to counsel and solicitors assigned by the Director of Legal Aid to conduct criminal cases. The fees were reviewed in early 1990. It was proposed that the maximum fees payable should be increased on average by 50%, but with greater increases in respect of appeal cases which require substantially more preparation. The proposed increase was to reflect inflation and the higher operating costs since the fees were last revised in 1987, and having regard to the need to ensure that experienced and able lawyers are available to conduct criminal cases. It was also proposed that the increase should take effect in two stages spreading over two years. The first stage of the increase took effect on 1 April 1990. The proposed amended rules are to enable the second stage of the increase to take effect on 1 April 1991.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

FIXED PENALTY (TRAFFIC CONTRAVENTIONS) ORDINANCE

THE SECRETARY FOR HOME AFFAIRS moved the following motion:

"That, with effect from 22 March 1991, section 20B(1) of the Fixed Penalty (Traffic Contraventions) Ordinance be amended by repealing "\$70" and substituting "\$125"."

He said: Sir, I move the second motion standing in my name on the Order Paper. It seeks to increase the court costs payable under the Fixed Penalty (Traffic Contraventions) Ordinance from \$70 to \$125.

At present, under section 20B of the Ordinance, a person is allowed to discharge liability for a traffic contravention, despite the institution of proceedings against him, by paying double fixed penalty together with a sum of \$70 by way of court costs

at least 72 hours before a court appearance. Court costs are regulatory fees and are based on the need to enforce payment of the fixed penalties concerned. These fees were last revised in 1984. Inflation since then has given rise to the need for an increase to maintain their value in real terms.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE

THE SECRETARY FOR HOME AFFAIRS moved the following motion:

"That, with effect from 22 March 1991, section 9(1) of the Fixed Penalty (Criminal Proceedings) Ordinance be amended by repealing "\$70" and substituting "\$125"."

He said: Sir, I move the third motion standing in my name on the Order Paper. It seeks to increase the court costs payable under section 9 of the Fixed Penalty (Criminal Proceedings) Ordinance from \$70 to \$125 for reasons identical to those for which I moved the second motion standing in my name.

Sir, I beg to move.

Question on the motion proposed, put and agreed to.

First Reading of Bills

TRADE MARKS (AMENDMENT) BILL 1991

ELECTORAL PROVISIONS (AMENDMENT) (NO. 2) BILL 1991

LEGAL AID (AMENDMENT) BILL 1991

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

Second Reading of Bills

TRADE MARKS (AMENDMENT) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Trade Marks Ordinance."

He said: Sir, I move that the Trade Marks (Amendment) Bill 1991 be read the Second time. This Bill seeks to extend the existing system of registration of trade marks to cover trade marks relating to services.

Under the Trade Marks Ordinance, a system of registration is provided for trade marks in relation to goods. Registration gives the owner the exclusive right to use a trade mark in respect of the goods for which it is registered and to protect his mark against infringement. It also gives the public confidence that goods sold in Hong Kong under a particular mark do indeed emanate from the proprietor of the mark. In fact, the availability of a system of trade mark registration has assisted Hong Kong to develop its role as an international manufacturing and trading centre.

In many developed economies in the world there is now a system of registration to protect trade marks for services. Basically, the systems are modelled on those systems designed to protect trade marks for goods. Trade marks for services are now of just as much importance as those for goods. Hong Kong so far has not had a comprehensive system of protection, and this is a gap that now needs to be filled. As at present, protection in relation to service marks is by way of the common law action of passing off, which is a much harder, slower and more expensive process.

With the recent growth in major service sectors, which now accounts for over 60% of our Gross Domestic Product and more than half of our employment, it is important for service industries, especially those operating on a global basis, to be able to register and protect their marks worldwide. For our own benefit and to keep pace with the international trend, it is necessary for Hong Kong to have such a system.

Sir, the explanatory memorandum to the Bill sets out in detail the intent of the various provisions. Basically, the purpose of the Bill is to amend the Trade Marks Ordinance so that it applies to trade marks relating to services in addition to trade marks relating to goods. If this Bill is passed, we do not intend to bring the Ordinance into effect until the first quarter of 1992. This will afford traders and

the legal profession ample opportunity to acquaint themselves with the new provisions, to allow some lead time for Government to recruit and train staff and to expand the existing computer system in the Trade Marks Registry. To avoid an influx of applications on the commencement of this legislation, we propose to invite applications for registration about four months before the commencement date.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

ELECTORAL PROVISIONS (AMENDMENT) (NO. 2) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Electoral Provisions Ordinance."

He said: Sir, I move that the Electoral Provisions (Amendment) (No. 2) Bill 1991 be read a Second time.

Except in relation to Clauses 2, 3 and 8, this Bill is purely a technical "follow-up" to the November 1990 amendments to the Electoral Provisions Ordinance and the Legislative Council (Electoral Provisions) Ordinance dealing with the bringing of election petitions.

Members will recall that those amendments were introduced at Committee stage on the initiative of the Legislative Council ad hoc group on electoral legislation.

Their main effect was to provide that in election petition proceedings the court should make a determination as to whether a person was "duly elected". The legislation which was amended called for the court to make a determination as to whether or not the election was "void", and the November 1990 amendments removed the uncertainty which could follow from this somewhat equivocal determination.

Sir, the Administration supported the ad hoc group's amendments in November 1990, and continues its support now by proposing consequential amendments to other items of election petition legislation which still contain references to a "void" election rather than the "duly elected" formula.

Hence Clauses 4, 7 and 9 of this Bill amend, respectively, section 18(a)(ii) of the Urban Council Ordinance, section 14(1)(a)(ii) of the District Boards Ordinance

and section 20(a)(ii) of the Regional Council Ordinance, so that where the court determines on an election petition that no person has been "duly elected" (rather than that the election is "void") these amended provisions will automatically apply to trigger the relevant by-election provisions.

Also on the same theme, clause 5 amends section 9(1) and (3) of the Corrupt and Illegal Practices Ordinance, which contain references to "void" elections; and clause 6 amends section 25 of the same Ordinance by replacing the reference to the candidate's election not being "void" by a reference to the determination of the court that the candidate has been "duly elected".

So far I have dealt with those clauses of the Bill which are purely consequential amendments. As for the remainder, that is clauses 2, 3 and 8, separate explanations may be helpful to Members because, as well as being largely consequential, they also seek to simplify the structure of the existing provisions.

Clause 2 repeals and replaces section 30 of the Electoral Provisions Ordinance. Section 30 at present provides six grounds for presenting an election petition, several of which refer to the election having been "avoided" or "wholly avoided". These grounds do not sit well with the November 1990 amendments and therefore clause 2 proposes a principal new ground that a person has not been "duly elected". At the same time clause 2 takes the opportunity to remove duplication and repetition in the structure of section 30, so that any questioning of an election will be dependent either on disqualifications under section 19 of the Electoral Provisions Ordinance or the commission of corrupt or illegal practices. This should make it easier for prospective petitioners and their advisers to frame correctly worded election petitions.

Clause 3 repeals and replaces section 35 of the Electoral Provisions Ordinance dealing with time limits for presentation of election petitions. The proposed section 35 merely brings the provision into line with the equivalent in the Legislative Council (Electoral Provisions) Ordinance by providing that an election petition shall be presented within two months after the publication by the returning officer of the result of the election in accordance with regulations made under section 28.

Clause 8 amends section 29 of the Legislative Council (Electoral Provisions) Ordinance in the same way as the equivalent section 30 of the Electoral Provisions Ordinance is amended by clause 2.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

LEGAL AID (AMENDMENT) BILL 1991

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to amend the Legal Aid Ordinance."

He said: Sir, I move that the Legal Aid (Amendment) Bill be read a Second time.

The Bill amends the Legal Aid Ordinance to give effect to a new system of means testing in assessing eligibility for legal aid. The opportunity is also taken to improve and give statutory effect to certain existing legal aid practices required by operational experience.

At present, an applicant is means tested separately on his capital and income, and he has to satisfy the criteria of both tests before he is eligible. This system works to the disadvantage of a person whose financial resources consist mainly of either income or capital, and in favour of those who may have the same amount of financial resources but spread between both income and capital. This anomaly is removed by the provisions in clauses 4, 5 and 9(a).

Under the new system, an applicant will be assessed according to his financial resources, which are defined as being the sum of his disposable income and capital. If the aggregate figure does not exceed \$120,000 the applicant will be eligible on means grounds for legal aid in both civil and criminal cases. A new graduated scale of contribution will also be introduced to replace the existing scale. Under the new scale, no contribution will be required for those whose financial capacity is \$50,000 or less. An applicant will still have to satisfy the Director that he has reasonable grounds for instituting proceedings in civil cases.

Clause 9(b) and (c) seek to close a loophole in the law whereby some applicants deliberately fail to maximize their earning potential so as to bring themselves within the limits of eligibility. The proposed amendment is to provide the Director of Legal Aid with authority to refuse an application for legal aid from an applicant who makes no attempt to obtain gainful employment whilst awaiting the outcome of his legal aid

application, or who remains out of Hong Kong for a continuous period of six months after submitting an application for legal aid, so as to make it impossible to assess his eligibility. The Director of Legal Aid will draw up guidelines to ensure that the discretion will be exercised fairly and equitably, and that no genuine cases will be discriminated against. The statutory right of appeal to the Registrar, Supreme Court against the Director's refusal will remain available.

Clause 20 proposes to extend the Supplementary Legal Aid Scheme to cover employees' compensation claims. At present an applicant under the Supplementary Legal Aid Scheme who is seeking compensation for injuries cannot be assisted in his claim for employees' compensation, although he is eligible for legal aid for the subsequent common law claim. Since the two claims are closely linked and much of the evidence is common to both it is recommended that the Supplementary Legal Aid Scheme should extend to cover both claims.

The rest of the changes that are proposed are to improve existing legal aid practices. Clause 11 allows the Director of Legal Aid to register under the Land Registration Ordinance a debt due to him from the aided person for costs against real property recovered for the aided person. But in cases where the property is to be used as a home for the aided person or his dependants, the clause provides for the Director of Legal Aid to postpone enforcement of the charge, and charge interest on the debt until the property is eventually sold or disposed of by the aided person.

Clause 13 aims at relieving the Director from liability to pay interest on monies paid to him by or on behalf of an aided person. The amendment is to give statutory effect to the current practice.

Clause 14 seeks to clarify the existing basis of taxation of costs proceeding, and gives statutory authority to the existing practice for the Director of Legal Aid to attend any taxation of costs to which the aided person was a party.

Clause 15 extends the protection of confidentiality of information concerning an applicant for legal aid to include that provided to the Director of Legal Aid relating to his income and capital.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

RATING (AMENDMENT) (NO. 2) BILL 1991

Resumption of debate on Second Reading which was moved on 27 February 1991

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

Bill read the Second time.

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

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 6 March 1991

Question on Second Reading proposed.

MRS FONG: Sir, the Mass Transit Railway Corporation (Amendment) Bill 1991 is a clear example of how legislators must act in changing circumstances.

In our common law environment, when the courts pass down a decision or overturn a prior decision, existing rights or practice in totally unrelated situations can be affected. When this happens, prompt action may be necessary to avoid the court decision having unforeseen and unwanted effects on totally unrelated parties. This is the precise background that created the urgent need for the Bill which is before this Council today. A decision of the House of Lords has put certain powers and essential rights previously enjoyed by the Mass Transit Railway Corporation (MTRC) into question and has put its abilities to conduct its financial operations in an efficient manner at risk. Legislative changes to the MTRC Ordinance are therefore necessary in order to restore the powers which the Corporation previously enjoyed and to eliminate doubts concerning its ability to carry out certain financial activities.

The unfortunate incident occurred exactly two days ago to our Mass Transit Railway has clearly demonstrated, though bitterly it may be, the extreme importance of providing the people of Hong Kong with an efficient and effective mass transit system. Indeed, the success of Hong Kong's economy has always relied on our excellent

infrastructure. The unintended limitation of the Corporation's powers, that it presently faces, in handling its financial affairs, would be detrimental to the operation of the Corporation.

An ad hoc group consisting of 11 Members of this Council was set up to study the Bill. It has held two meetings with the Administration, including one also with the Corporation. The group has given much attention to whether the powers of the Corporation to enter into financial agreements or arrangements, as conferred to them under the proposed new section 11A(1), is too wide and whether the power to form subsidiaries, as proposed under the new section 11A(2), is necessary.

The proposed new section 11A(1) gives the Corporation the same powers as a natural person to enter into commercial transactions connected with its authorized financial affairs.

According to the Administration, the Corporation requires an appropriate measure of flexibility in the management of its financial affairs to enable it to conduct them in the most efficient and effective manner that businesses of its size and complexity require in the present environment.

The drafting technique employed in the Bill, including the conferment of the power of a natural person of full age and capacity, has been adopted to confer this flexibility. The "natural person" concept is not a new one. It is to be found in the Corporation's own Ordinance.

While the ad hoc group fully and strongly supports the Administration's view that flexibility is essential for the MTRC if it is to handle its financial affairs successfully, it has not lost sight on the need to prevent the Corporation from abusing its powers.

Therefore in performing its review, the ad hoc group also focussed on the manner in which the Corporation conducts its financial operations. The ad hoc group has been assured by both the Administration and the Corporation that there are very strict system of control within the Corporation to ensure that its financial arrangements are proper and appropriate: these do not only involve the management but also the Board of Directors which comprises senior members of our community who are appointed by the Governor. They include a number of responsible and experienced businessmen and government officials. Further, the ad hoc group found that the Corporation's

powers are also subject to existing limitations, contained in the relevant parts of the Ordinance. The Corporation is required by statute that it shall conduct its business according to prudent commercial principles. The Ordinance further establishes that the Governor in Council may give directions to the Corporation should the public interest so requires.

The ad hoc group is therefore satisfied that sufficient checks and balances are in place to regulate the financial activities of the Corporation.

Regarding the technical drafting of the proposed new section 11A(1), the ad hoc group was given to understand that its wording is the result of a tripartite effort between the Law Draftsman of the Legal Department, the leading counsel of the Hong Kong Capital Markets Association and the leading counsel of the MTRC. Despite such fact, however, the ad hoc group, in its deliberation of the Bill, still has doubt as to whether it is flawed for its purpose or not and has requested the Administration to re-examine the drafting of this section. I am glad to report that the Administration has assured the ad hoc group that after re-examination by all of the three parties mentioned above, the proposed new section 11A(1) is found to be in order and no re-drafting is therefore considered necessary.

Under the proposed new section 11A(2), the Corporation is empowered to form incorporated companies as subsidiaries both inside and outside Hong Kong.

Under the existing Ordinance, there has been no explicit limitation on the Corporation's power to form subsidiaries for the purposes expressed in the Ordinance. However, as a result of the House of Lords decision, the advice of the MTRC's leading counsel in the United Kingdom is that doubts could exist as to its right to set up subsidiaries to carry out the new power given to the Corporation under proposed new section 11A(1). Given that multinational lenders may sometimes require the Corporation for taxation reasons to form financing subsidiaries in other jurisdictions in handling complex financing transactions in future, the inclusion of the proposed new section 11A(2) is considered prudent.

The ad hoc group noted and I believe it proper to stress that the proposed section 11A(2) is linked to the proposed section 11A(1). In other words, the Corporation's power to form subsidiaries under this subsection is confined to those functions of the Corporation in connection with its legal, valid and authorized financial affairs. Furthermore, the power possessed by any subsidiary could be no greater than those

possessed by the Corporation itself, which in turn is subject to a very strict system of control mentioned earlier.

The ad hoc group also discussed the Honourable Martin LEE's proposed alterations, as reflected in his proposed amendment which he is going to move during the Committee stage. Mr LEE proposes to remove the rights as a natural person and to remove the rights to form subsidiaries, both locally and overseas. The proposed amendments are not technical drafting proposals but change the entire principle behind the Bill. The majority of the ad hoc group members concluded that they would unnecessarily restrict the powers of the Corporation in handling important aspects of its financial affairs.

Sir, in conclusion, the majority of the ad hoc group members are convinced that no change to the Bill is required and seek Members' endorsement of the Bill. Individual Members are however encouraged to express their views.

Sir, with these remarks, I support the Bill.

MR CHENG HON-KWAN: Sir, first of all, I have to declare an interest as a member of the Board of the Mass Transit Railway Corporation (MTRC).

As I am fully aware, the MTRC has for many years, through its professional financial management and under stringent control of its Board, entered into a number of transactions, including swap transactions, designed to reduce its exposure to interest rate and currency fluctuations.

The recent House of Lords' decision has indeed raised serious doubts on the Corporation's statutory power to enter into swap transactions. It is therefore in the best interests of the Corporation that swap transactions would not be ultra vires and void. Retrospective legislation amendments are urgently required.

The Board of the MTRC held a special meeting on 5 February 1991 to discuss the matter in detail and resolved that it should agree with the Government to implement such legislative actions to enable the Corporation to continue to enter into swap transactions. The Bill has since been carefully studied by the ad hoc group under the convenership of my honourable colleague, Mrs Nellie FONG. The discussions within the group and with representatives of the Administration and MTRC together with the

legal advice from leading counsel in the United Kingdom have been useful in the group's deliberation.

The Bill provides the required flexibility for the MTRC in the management of its financial affairs to enable it to take advantage of opportunities in the financial markets as and when they arise. And yet the power provided in the Bill is subject to the overriding obligation laid on the Corporation that it acts according to prudent commercial principles.

The Corporation's Treasurer and Finance Director develop ideas for financial instruments with their many relationships with the financial community to bring specific ideas to development. Specific developed proposals are presented to the Corporation's Executive Committee and subject to support these are recommended for Board approval. Specific proposals and techniques are approved by the Board all of whom are appointed by the Governor. The power is also subject to existing limitations that the Governor in Council may give directions where required to the Corporation to ensure that the Corporation would not enter into risky or inappropriate transactions. And the Annual Report of the Corporation is tabled in this Council and is subject to audit. I therefore consider the flexibility and power provided in the Bill necessary and the risk of abuse covered by the stringent controls.

Sir, with these remarks, I support the Bill.

MR HO SAI-CHU (in Cantonese): Sir, first of all, I have to declare interest as a Board Member of the Mass Transit Railway Corporation.

Since its operation in 1979, the Mass Transit Railway has provided the people of Hong Kong with a convenient and safe means of mass transport in the urban areas. It has won popular support as it is effective in alleviating traffic congestion. There was a disruption in services two days ago though; we all feel sorry, however, that such an incident should happen after more than a decade of smooth operation. Since the incident is still under investigation, I do not propose to dwell on it any further. All in all, the Corporation has been effective in providing a transport service and has won popular support in Hong Kong. The Mass Transit Railway Corporation is a body corporate with the bulk of its capital derived from credit facilities. It is the main objective of its financial management to ensure that the Corporation is able to repay its outstanding loans without indiscriminately

increasing the burden of the public, still less subjecting the Corporation to financial risks as such risks, should they arise, will ultimately be borne by the people of Hong Kong. The current outstanding loans of the Mass Transit Railway Corporation amounts to about HK\$17 billion, a portion of which is in foreign currencies. As we all know, foreign exchange rates and interest rates are subject to great fluctuations in Hong Kong. Being accountable to the public, the Mass Transit Railway Corporation is obliged to take a prudent approach by minimizing its exposure to currency fluctuations so that the Corporation's ability in repaying loans can be ensured. For the past years, the Mass Transit Railway Corporation, in its financial management, has made "hedging" arrangements through various swap transactions and interest agreements so as to reduce its exposure to interest rate and currency fluctuations. The money involved in these arrangements amounts to HK\$11.5 billion. The adoption of such positive measures has enhanced the repaying ability as well as the financial credit-worthiness of the Corporation. At present, as far as the qualification for borrowing is concerned, the Hong Kong Mass Transit Railway Corporation excels all other similar underground railway corporations of the world. This has created a favourable condition for MTRC's future business development and at the same time, indirectly boosted the credit rating of Hong Kong on the international level.

As the present Mass Transit Railway Corporation Ordinance and the Kowloon-Canton Railway Corporation Ordinance do not provide for the various financial operations of the two Corporations, and in view of the great success achieved in financial management by the two Corporations over the years, I consider it necessary that new provision be added to the existing Ordinances to empower the two Corporations to manage its own financial affairs. This does not only recognize the rationality and legitimacy of practices adopted by the two Corporations over the past years, but also enables the two Corporations to lose no time in taking new and more effective measures in response to international financial developments to protect their financial position. In this way, they will be able to develop their business for the provision of more convenient services to the people of Hong Kong.

Sir, I am also aware of the possible concern that the two Corporations will be given excessive power, and may not be accountable to the public. In my view, such worries are unnecessary because power of the two Corporations is conferred upon them by the Governor through legislation enacted by the Government. Power can be "conferred" as much as "taken back" while legislation can be "enacted" as well as "amended". Even the directors of the Corporations are appointed by the Governor.

They are subject to definite tenures and anyone who is found to be incompetent can be replaced. Those who abuse their power for personal gains will be brought to justice and be condemned by the public. As a matter of fact, both the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation are required to submit annual reports to the Legislative Council, which will be examined by the Public Accounts Committee. This is how the two Corporations are basically monitored.

On the basis of the reasons given above, I agree that the legislation should be amended so that the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation will have full discretion to manage their financial affairs. Since it has been the practice for the two Corporations to handle their respective financial affairs in an independent manner, the present amendments will only incorporate into the Ordinances financial arrangements which have all along been working effectively rather than increase the power of the two Corporations.

Sir, with these remarks, I support the motion.

4.30 pm

HIS HONOUR THE PRESIDENT: There are still many Members who wish to speak. Members might appreciate a short break at this point.

5.01 pm

HIS HONOUR THE PRESIDENT: Council will resume.

MR MARTIN LEE: Sir, my speech has nothing to do with the break down of services of the MTR system two days ago, although I observe with regret that the speed at which the MTRC has come to the Administration and this Council for help on this Bill was not matched by its speed in reporting that break down to the Commissioner for Transport.

Sir, when Members were informed during the 22 February Legislative Council In-House Meeting that the Administration intended to have all the three Readings of this Bill in the same sitting on 27 February 1991, I was very much concerned with the rushed nature of the process. By scheduling all three Readings for one day, the Administration in effect was asking the Council to rubber-stamp an important piece

of legislation with retrospective effect -- despite the fact that Members did not have sufficient time or opportunity to study the merits and implications of the Bill and that the necessity for the wide powers sought in the Bill appeared to be wanting.

I therefore welcome the subsequent decision of the Executive Council to follow the normal procedure of adjourning the debate on the Second Reading, though the adjournment was only for one week. With only one week to examine the issues, we are now being rushed into debating a Bill which seeks to give the MTRC extremely wide powers and with retrospective effect. If similar circumstances should present themselves again in future, I insist that the Administration at least warn us of the problem as soon as it appears so that we can set up an ad hoc group to study it before the requisite Bill is gazetted.

Sir, I accept that on this occasion, it is necessary to enact retrospective legislation to validate the swap transactions and other hedging and collateral transactions previously entered into by the Corporation, which were thought to be within the powers of the Corporation until the House of Lords handed down its decision on 24 January. And as there are such on-going swap agreements, we clearly need to validate them by retrospective legislation.

Yet, the powers sought to be given to the Corporation in this Bill are much wider than the avowed objects of the legislation, namely, to validate those transactions entered into by the Corporation so as to in the words of the Financial Secretary "reduce its exposure to interest rate and currency fluctuations" and to give the Corporation power to enter into such transactions in the future.

Sir, the Financial Secretary has made it clear in his speech on the Second Reading that the new power has to be cast in wide terms to ensure that, if necessary, the Bill would validate all of the many types of hedging and collateral transactions which already have been entered into by the Corporation and which it may enter into in the future.

Although the Financial Secretary has used the word "hedging" at least five times in his speech, it is clear that the proposed new section 11A will enlarge the powers of the Corporation well beyond an ability to hedge. The new section will allow the Corporation to engage in speculative trading in relation not only to interest rate and currency transactions but also to "enter into any agreement or arrangement in connection with financial affairs" at its complete discretion. The

Corporation will be permitted to undertake a wide range of financial activities "as if it were a natural person of full age and capacity."

Sir, the present borrowing powers of the Corporation are explicitly limited by statute. Section 11 of the Ordinance provides that the Corporation's borrowing powers are subject to section 6. For its part, section 6 gives powers to the Corporation to take only those actions that are expedient for or conducive to the attainment of the purposes of the Corporation. And the principal purpose of the Corporation, according to the Ordinance, is "to construct a Mass Transit Railway and to operate it having regard to the reasonable requirements of the public transport system of Hong Kong."

Unlike section 11, the proposed section 11A is not subject to this restriction at all because it is not subject to section 6. The absurdity is that while the principal borrowing powers contained in section 11 are limited to the Corporation's statutory purposes, the subsidiary power of entering into hedging transactions is not.

Further, the new power under the proposed section 11A is wide enough to cover any financial agreement or arrangement, which must include borrowing. Indeed, the Administration has told the ad hoc group that the Corporation needs these wider powers so that it can "borrow more money than required when the terms are attractive and then invest it in the low risk financial market." According to the Administration, "it is sensible and wise for the Corporation to borrow as much as they can while situation permits," namely, while lenders are still willing to lend. So it is clear that the wide powers contained in section 11A will render useless the carefully worded restrictions in section 11. For the Corporation would certainly choose to exercise its unlimited powers under Section 11A rather than the much more restrictive section 11.

This problem is further compounded by the last clause in the proposed section 11A(1), which allows the Corporation to enter into agreements "as if it were a natural person of full age and capacity."

Now it has been suggested on behalf of the Administration that this "natural person" clause was added by the draftsman in order to limit the power of the Corporation so that it would have to exercise its new power lawfully just like a natural person must do. This suggestion is completely without merit, for a

corporation is bound to act lawfully in any event. This "natural person" clause, rather, serves only to enlarge the power of the Corporation by enabling it to act with complete freedom just like a normal human being. In doing so, the clause has thrown the principle of ultra vires out of the window. The Corporation will no longer be bound to act in relation to this power of borrowing as if it were an incorporated body, nor will it be bound by its constitution as to what it can or cannot do.

Sir, the OMELO Legal Adviser has compiled a very helpful list setting out all the statutory provisions scattered in our statute books containing the phrase "natural person".

In most of these Ordinances, the expression "natural person" is used in contradistinction to a corporation such as in the Inland Revenue Ordinance, and is thus irrelevant to the situation here. Then there are a number of other instances where certain statutory corporations holding land are given a statutory power to use the land as if they were "natural persons." This includes section 6(3) of the MTRC Ordinance itself which provides that "any land held by the Corporation may be improved, developed and altered by it in such manner and to such extent as the law would allow if the land were held by a natural person in the same interest". In all these instances, the actual users of the land are clearly spelt out in the relevant Ordinances and are subject to the purposes or constitutions of the corporations.

The only example which is not confined to the holding of interest in land is the Hong Kong Girl Guides Association. It seems that this Association is given special treatment by reason of its feminine gender, because there is no similar provision for boy scouts under the name of The Scouts Association of Hong Kong of which I am the Honorary Legal Adviser. Yet, we still do not know whether the Financial Secretary would like the Corporation to be a he or a she. Now the purpose of the relevant provision in the Hong Kong Girl Guides Association Ordinance is to ensure that the office bearers of the Association will not attract a personal liability if the Association should become insolvent. Nevertheless, it is of paramount importance to note that, even with this provision, the Association must still act in accordance with its own constitution, and the good ladies cannot exceed the powers conferred upon them by their constitution.

But as we have seen, section 11A is totally different. If the intention is really to limit the scope of the new power, then surely, this new power ought to be incorporated into the existing section 11 so that the exercise of this new power will,

by virtue of section 11(3), be confined to carrying out the purposes of the Corporation. Alternatively, we should amend section 11A as I shall be proposing during the Committee stage.

Sir, we have been told by the Administration that the Corporation has earned enormous sums of money by the swapping transactions it has entered into in the past. However, we must remind ourselves that the Corporation is not a trading company like the big trading hongs. Although it may be desirable, from the point of view of the Corporation, to ask for unrestricted powers because that would give it more flexibility, nay, complete freedom, it is very much our responsibility as legislators to have every regard to the principal purpose of the MTRC, as defined in the legislation. We must make certain that the powers given to this Corporation can be exercised for this purpose alone. In addition, we should keep in mind that our grant of virtually unlimited powers to the Corporation may actually serve to discourage lenders from entering into agreements with it, since the uses to which the Corporation may put the money is not restricted even by its own constitution.

Sir, the Financial Secretary said in his speech during the Second Reading that it is common practice for trading companies to form financing subsidiaries in other jurisdictions for the purpose of entering into swap transactions. Again, he seems to have forgotten that the Corporation is not a trading company. Further, we are told that up to now the Corporation has not used any subsidiary for entering into hedging transactions. It seems clear that the Corporation in the past has not needed this additional power. As for future dealings, the Administration has not given any compelling reason why it is necessary for the Corporation to have any subsidiaries overseas at all. Nor is there any urgent need for establishing such subsidiaries. Should such a need really arise in the future, this Council can always look at the matter carefully, and I hope the Administration will give us a much fuller briefing than what has been given to us on this occasion.

Sir, if we are to pass this Bill without amendment, we are in effect turning the Corporation into a natural person, and enabling it to have children overseas with foreign passports like so many expectant mothers from Hong Kong.

Sir, by presenting this Bill in its present form the Administration is asking this Council to extend the powers of the Corporation under the guise of having to regularize all its past and current swap transactions entered into for hedging purposes. In actual fact, however, the Bill will grant the Corporation unrestricted

powers which the Administration has not justified at all.

For these reasons, I support the Second Reading of this Bill only on the basis of the amendments which I intend to move at the Committee stage.

MR ARCELLI: Sir, the proposed section 11A is intended to give the Corporation the proper power to enter into financial transactions as if it were a natural person of full age and capacity. If section 11A were in the original Mass Transit Railway Corporation Ordinance when it was considered and passed by this Council, I would be surprised if any issue would have been made then. Indeed, it was assumed that the Corporation had proper powers to enter into any transaction, and I emphasize any transaction, until the decision in the House of Lords raised some doubts about them.

Sir, as someone who is not inexperienced in these matters, I can say quite categorically that lenders and their legal advisers regard the issue as to whether a borrower is empowered to enter into financial transactions as fundamental. If lenders or their legal advisers have the slightest doubt, it would be a brave lender to make loans or enter into such transactions regardless. What the lender will do is to ask the borrower, before entering into such transactions, to take such steps to empower itself to enter into such transactions. It is inconceivable that a borrower would refuse to accede to such a request. Apart from this, the borrower who turns down such a request can only harm itself because it will not get the money if the transaction involves a loan. I believe that the Bill before us achieves the purpose of giving the two Corporations the proper powers. If this Council does not pass this Bill, the credibility of the Corporation and those who manage it will be seriously, if not permanently, impaired and this in turn will also seriously impair the Corporation's ability to re-finance much of the loan standing in the books of the Corporation.

Finally, Sir, on the lighter side, I cannot say whether we should make the Corporation a he or she but what we should not do is to make it a hum or haw.

With these remarks, I support the Bill.

MR PAUL CHENG: Sir, first principles in making any endeavour work well require that one gives the necessary tools for getting the job done well to the people charged

with doing the job. The proposed legislation does just that. It provides a sensible framework. It provides business managers with the parameters that will enable them to operate optimally.

I would like to bring to your attention a poll of leading international banks, which was published in Euromoney Magazine in September 1989. When asked to identify which borrower made the most professional use of the international capital market, the MTRC of Hong Kong was ranked No. 3 -- behind only the World Bank and the Kingdom of Sweden. As a side note, the MTRC undertook no significant transactions during 1990, which is why I did not quote that latest poll conducted that year.

I encourage my honourable colleagues to look at the bigger picture. Hong Kong is a respected member of the international financial market. This is extremely important. During the past few years, we have done a lot to gain our reputation. Unfortunately, as we all know, reputations can be lost overnight and take a long time to re-build. The use of financial instruments that position us positively in the world financial market is a benefit for everybody.

Further debate on this issue leaves the wrong impression. It jeopardizes our standing in the world financial community. Successful business operations rely on management having the power needed to successfully fulfil their given responsibilities. Through the Mass Transit Railway Corporation (Amendment) Bill 1991 and later Kowloon-Canton Railway Corporation (Amendment) Bill 1991, the Government is taking a position to provide for this fundamental management concept. When we look at the situation in light of these fundamentals, I cannot see the need for debate. We should see a unanimous vote in support of both Bills.

Sir, with these remarks, I support the motion.

MR CHOW (in Cantonese): Sir, under the proposed new section 11A(1) of the Bills, each of the Corporations is retrospectively empowered to enter into any financial agreement or arrangement that could be entered into by a natural person, and under the proposed new section 11A(2), the Corporations are empowered to form overseas subsidiaries.

In my opinion, if the two amendment Bills are passed, both the Government and the general public will be exposed to a lot of unnecessary risks. According to

relevant reports, the decision of the House of Lords delivered on 24 January 1991 (Hazell v. Council of London Borough of Hammersmith and Fulham) has shown that it was practically and objectively very difficult to judge whether speculative activities were involved in the swap transactions of statutory corporations. It is because there is no way to find out whether the objective of their entering into swap transactions is merely to reduce their exposure to the fluctuation of interest and exchange rates or whether they intend to engage in speculative activities. Therefore, I am of the view that in amending laws to enable the two Corporations to enter into swap transactions or financial arrangements of a similar nature, it is necessary to make clear and definite provisions that the two Corporations are not allowed to take part in speculative activities by means of such transactions or arrangements.

The Bills submitted to this Council by the Financial Secretary do not have adequate provisions to monitor the financial arrangements entered into by the two Corporations. A piece of legislation containing only relaxation measures but without monitoring provisions is just like a timebomb. In case any problem arises, should the consequences be borne by the taxpayers or the general public? I think the Financial Secretary knows very well what the answer should be. Therefore, I think that the Bills should elaborate on the details and objectives of such financial arrangements, or they should stipulate that swap transactions can only be a means for the two Corporations to reduce their exposure to the fluctuation of interest and exchange rates. As statutory corporations, they are not only accountable to their boards of directors, but also responsible to the Government and the public. The Government must not allow the two Corporations to have excessive power in making financial arrangements, otherwise it will experience resistance in monitoring their operations.

According to the Administration, over HK\$500 million has been saved by the MTRC by entering into swap transactions and other transactions of a similar nature. What will the MTRC do with this sum of money? Neither the MTRC nor the Administration has provided a direct answer. But we all would like to know the disposal of this sum of money. Will it be spent on the improvement of services? Or how will the MTRC make use of the money?

Moreover, I doubt the necessity of the new section 11A(2) proposed in the Bills because the two Corporations have no intention to form overseas subsidiaries. It doubtlessly gives people the impression that such a proposal is superfluous. The Administration should therefore carefully consider the urgency and feasibility of

the two Corporations setting up overseas subsidiaries before reaching a decision as to whether the new section should be added.

At present, many listed companies in Hong Kong set up overseas subsidiaries in order to avoid tax payment. The two Corporations already have their tax burden relieved by enjoying the privilege of tax deferment. They can further avoid payment of tax by forming overseas subsidiaries, since profits of subsidiaries outside Hong Kong are exempted from taxation. Therefore a code of practice must be provided in the legislation regarding the formation of subsidiaries outside Hong Kong, so as to avoid any legal loopholes. Since the Administration has not given consideration to this issue, I think there is no need to introduce this new section at this stage.

Sir, as the two Corporations are public organizations, their management and operation should be subjected to strict monitoring by the Government. Since they are shouldering the responsibility of serving the public, the Government must not treat its monitoring role lightly.

Sir, I wish to state here that while we recognize the importance of these Bills to the two Corporations, we hope that Government can carry out stricter monitoring. I know that the Honourable Martin LEE will move some amendments to the Bills. I hope that the amendments can facilitate stricter monitoring on the two Corporations in order to protect the interest of the public.

DR LEONG: Sir, firstly I would like to thank the Executive Council for the eleventh hour postponement of the introduction of the Mass Transit Railway Corporation (Amendment) Bill for the Legislative Council to pass in one session initially scheduled for 27 February. This has really allowed us time to scrutinize the Bill under the usual procedures of this Council, that is, to go through the First Reading, to set up an ad hoc group to make recommendations before the Second Reading of the Bill and provide a chance for Members to propose further amendments in the Committee stage if deemed necessary before we decide whether the amendments as proposed by the Administration should be accepted and the Bill be passed by this Council.

It may sound redundant for me to emphasize the above procedures as, I am sure, my honourable colleagues are well aware of this. But it is exactly for this procedure that I think we, as law-makers, should be held responsible for safeguarding that no irregularities nor abnormalities should take place to undermine the system. The

advantage of this system is to prevent any passage of Bills or amendments to law too hastily, thereby depriving law-makers in particular and the public at large of a chance to study the relevant Bills and consider whether they should become law.

But what we have learnt from the introduction of the Bill seemed to reveal some very worrying signs. It seems that the Administration is trying to rush through a Bill which delegates considerable powers to one of Hong Kong's major public transport corporations which are financed by tax-payers' money: first to ratify with retrospective effect what they have done in the past in their swap transactions and second, to give them authority enabling them to enter into any financial transactions in the future.

I agree that the decision of the House of Lords in the case of Hazell v. Council of the London Borough of Hammersmith and Fulham and Others may affect the Corporation in that they do not have the power to enter into interest rate swaps and related transactions. This, they have been doing in the past.

I agree too that there is some urgency for the passage of the Bill in this Council to ratify the Corporation's involvement in such transaction as mentioned above. But it should in no way imply that this Council should give them wide powers in future to enter into any financial transactions and agreements.

The decision of the House of Lords was made on 24 January, but the Administration's brief was passed on to this Council only on 20 February, almost a month after the decision and just two days before the Legislative Council In-House meeting during which the Administration requested Legislative Council Members to endorse the complete passage of the Bill in one Legislative Council session on 27 February. The Administration brief even gazed, as it were, into the crystal ball and pre-empted that the Bill would be endorsed by the Executive Council on 26 February!

Why could the Administration not give us more time in advance to consider and discuss a matter of such urgency as claimed? If the Administration could come up in two days with a proposal to contribute some \$230 million to Britain for her military involvement in the Gulf War, I cannot see why it could not pass on to us the necessary information in the same efficient manner?

Why must the Bill be passed in one session? What is the logic behind it? Have there been requests for cancelling of all the concerned transactions the Corporation

has entered? What is the haste? Let me sound a note of warning -- any hasty passage may wrongly or unnecessarily delegate extensive powers to the Corporation that may not be called for.

Sir, allow me to elaborate my reservations to the proposed amendments:

- (1) It is very difficult to differentiate whether the financial transactions the MTRC has entered into are simply risk-reducing in nature or are also profit-making oriented. Let it be remembered that the MTRC was created with public money by a special statute with the primary objective of constructing and operating a railway system to serve the public and not for speculation on currencies and interest.
- (2) The information that the MTRC has submitted to this Council is, in my mind, rather vague. They have neither convinced us that these transactions have achieved the risk-reducing intention nor are there any contingency plans available should speculation turn sour.
- (3) Even though we are bound to ratify all the transactions that the Corporation has made, should we at this stage give them wider power to enable them to enter into financial arrangements simply because they think fit in the future?

I agree that all financial transactions that the amendments are going to cover must be clearly defined in the legislation whilst, for new hedging financial arrangements, they should be included in law or binding procedures after they have been well tried out by the market.

It cannot be right, in my view, Sir, for the Administration to act on behalf of the MTRC to rush through such, I would say, problem Bill. The amendments must surely be in the interest of the two Corporations as it was so emphasized in the Administration's brief; yet should Government also consider the whole matter in the interest of the taxpayers in particular and the public in general?

It is understandable that we have to support what the Corporation has done in the past but I am worried about committing ourselves to a blank cheque which would allow the Corporation to enter into any financial arrangements that they think fit. The wording, Sir, and I quote: "The Corporation may enter into any agreement or arrangement in connection with its financial affairs" is indeed very wide in scope. I feel that it should be somehow altered. We should define clearly in binding

procedures the types of financial arrangements that the Corporation would be empowered to make.

As for the proposed new section 11A(2), there is also no need to give retrospective effect to this provision as there has not been any overseas subsidiary establishment by the Corporation in the past.

I am not fully satisfied that we have been supplied with adequate and acceptable details for the setting up of overseas subsidiaries. Furthermore, I am not convinced of such a need, as it is, and it is a pity that we have been asked to hastily decide on this issue. There may be a risk of public money being caught offshore.

As the amendments to the Mass Transit Railway Corporation Bill and the Kowloon-Canton Railway Corporation Bill are similar, what I said, Sir, to the first Bill would also apply to the second Bill.

With these remarks and very anxious reservations, Sir, I cannot support the motion unless proper amendments are made.

MR McGREGOR: Sir, I will be very short. I believe that virtually every businessman would, in the light of the information placed before this Council in regard to the need for this Bill, support it fully. The Bill seeks to legalize what the Mass Transit Railway Corporation (MTRC) has been doing for years with great success under very considerable supervision not only by its own specialists -- some of whom, I think, are here today -- and its Board but also the Government in the final analysis.

The legal decision which has brought about the need for this Bill was unexpected and caused potential danger for the international standing of the MTRC as a large-scale borrower. The legal case was not the fault of the MTRC and we must therefore move quickly to provide the Corporation with the necessary means to continue to operate in international financial markets successfully.

Sir, I support the Bill.

MR PETER WONG: Sir, much has been said about the undue haste with which the Administration has tried to push through this Bill together with the Kowloon-Canton

Railway Corporation Bill at one sitting. My remarks will largely apply to both Bills and I do not propose to speak separately on the Kowloon-Canton Railway Corporation Bill. Right from the start, I was unimpressed with the arguments put forth in the original brief about the new provisions and it would appear that the Legal Adviser of OMELCO also had his doubts.

Members will recall that at our In-House meeting I raised my queries relating to both the wide scope of the object clause and the apparent intention to introduce extra power to permit the formation of overseas subsidiaries as an emergency measure, without going through the necessary procedure of fully scrutinizing the Bills.

The response from the Administration was indeed disappointing and unconvincing. It would appear that they had already promised lenders that it would be no problem getting the Bills passed by the Legislative Council. Further, it was at this time that an amended set of provisions was produced. The Administration could not have done a better job of instilling suspicion into anyone who wished to do a conscientious job. We had the unholy alliance of myself, the Honourable Martin LEE and the Honourable Kingsley SIT, three most disparate Members but surprisingly representative of Hong Kong's diverse views, up against the passing of the Bills at one emergency sitting. Let no one say that we are rubber stampers of government policies.

I am however pleased to say that the checks and balances of our legislative system eventually triumphed. As instructed by the Executive Council, the Bills had to go through their normal course of being gazetted, read and adjourned for debate so that an ad hoc committee can examine them carefully.

I am now satisfied that although the proposed measures are wide-ranging, they are necessary in the circumstances and the internal controls built into the Corporations will reduce the chances of abuse to an acceptable level. Let this be a lesson to us all. Our procedures have been adopted to protect ourselves from ourselves and we will only over-ride them at our peril.

Sir, I support the motion.

MR CHEONG: Sir, while I fully respect the freedom of speech, I feel saddened by the way some of my colleagues had interpreted the Administration's intention in

presenting these Bills. The purpose of these Bills clearly deals with technical matters in the field of finance as well as legal. I do not profess to know it all. Most of us are not experts in these areas and we would not be able to learn of all the nuances and intricacies within a short period of time, just as some of us are not experts in medicine or law. We should not judge whatever will be done by the experts of the MTRC and its Board of Directors with a high degree of suspicion. The track records of the financial management as managed by the MTRC Board have proven to us that they are prudent, effective and successful.

As to the motive imputed into the establishment of subsidiary companies overseas, that may be likened to the desire of an expectant mother to have her child born overseas. I find it very much on a general track that is not necessarily correct. Hong Kong needs executive expertise. We do not need too much politics.

I support the motion.

FINANCIAL SECRETARY: Sir, I would like to thank those Members who have spoken in support of this Bill for their comments and their general appreciation of the urgency of the matter and the motivation of the Administration. I explained the need for urgency in my earlier speech and I do not intend to cover the same ground again. I should today stress that until the full text of the House of Lords decision was published on 24 January and leading counsel have had the opportunity to consider it, the Mass Transit Railway Corporation (MTRC) had no reason to believe that any of the transactions into which it had entered was invalid. Indeed, it had specifically sought advice from leading counsel after the earlier decision of the Court of Appeal in respect of the same case. Leading counsel had confirmed that in the light of that decision the MTRC had the necessary powers to enter into these transactions.

The MTRC has for many years been a major borrower on the international capital markets and has established a high reputation in this regard both through the professionalism of its approach to markets and the sophistication of its borrowing techniques which have enabled it to borrow at prime rates and largely avoid the risks associated with currency and interest rate fluctuations. Contrary to what some have suggested, the Corporation has not earned enormous sums by entering into swaps. It has however saved itself from having to meet extra borrowing costs amounting to sums in excess of \$500 million. The Corporation, as one Member pointed out, has been assigned very satisfactory credit ratings by the two major United States credit rating agencies, Standard & Poor's and Moody's, as well as by the Japan Bond Research Institute.

Sir, the power the present Bill will grant to the Corporation is cast in wide terms so as to enable the Corporation to enter into any agreement that could be entered into by a natural person. The purpose is to ensure that if necessary it will validate all of the many types of transactions that already have been entered into by the Corporation. Some Members have expressed concern at the extent of the power being granted to the Corporation in relation to its future activities. Let me begin by stressing that the position will remain that the Corporation may only use its borrowing and other powers to fulfill its principal functions under the Ordinance. In this respect, I do not accept the argument advanced by Mr Martin LEE that the new powers may be exercised for purposes other than the Corporation's statutory purposes. It is clearly not the case. Whether or not it is spelt out in the new section, the powers must be subordinate to the main purposes of the Corporation.

Secondly, as I have already identified in my speech moving this Bill, in the unlikely event that the MTRC proposes to enter into inappropriate transactions the Governor in Council has the power to give direction to the Corporation. There is no need for further specific restrictions on the powers of the Corporation. Also, I explained the need for overseas subsidiaries when I introduced this Bill into this Council.

Thirdly, and to my mind the most important of all, the MTRC has a record of prudent management of its affairs which is recognized worldwide and with its highly professional staff and the board of directors, including a number of responsible and experienced businessmen, I cannot conceive of its wishing to damage that reputation.

Sir, I beg to move.

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

Bill read the Second time.

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

KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 6 March 1991

Question on Second Reading proposed.

MRS FONG: Sir, the Legislative Council ad hoc group formed to study the Mass Transit Railway Corporation (Amendment) Bill 1991 has also been charged with the responsibility to examine the Kowloon-Canton Railway Corporation (Amendment) Bill 1991 since the intended purpose and the wording of the two Bills are virtually the same.

After careful consideration, the majority of the members of the ad hoc group take the view that the Kowloon-Canton Railway Corporation (Amendment) Bill 1991 should be supported without amendment. The reasons expressed by the ad hoc group are similar to those supporting the passage of the Mass Transit Railway Corporation (Amendment) Bill 1991. To save the valuable time of my honourable colleagues, I do not intend to repeat them here.

Sir, with these remarks, I support the Bill.

MR MARTIN LEE: Sir, for the same reasons I have given during my speech in relation to the Mass Transit Railway Corporation (Amendment) Bill 1991, I also support the Second Reading of this Bill on the same terms that it is subject to the amendments I intend to move at the Committee stage of this Bill.

FINANCIAL SECRETARY: Sir, I have no further points to add to those I made a few moments ago in concluding the Second Reading debate on the Mass Transit Railway Corporation (Amendment) Bill. For the reasons I have already given, I consider this Bill as introduced should be passed.

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

Bill read the Second time.

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

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 21 November 1990

Question on Second Reading proposed.

MRS CHOW: Sir, the Independent Commission Against Corruption (Amendment) Bill 1991, which seeks to clarify the powers of the Independent Commission Against Corruption (ICAC) in the investigation and detection of corrupt practices in relation to conduct of elections, was introduced into the Legislative Council on 23 January 1991.

A Legislative Council ad hoc group consisting of 10 Members was formed to study this Bill in conjunction with two other Bills, that is, the Corrupt and Illegal Practices (Amendment) Bill 1991 and Prevention of Bribery (Amendment) Bill 1991. The group held four meetings including one meeting with the Administration.

In scrutinizing the Independent Commission Against Corruption (Amendment) Bill 1991, Members expressed serious concern that clause 2(1) of the Bill would enable the ICAC to arrest without warrant even for minor electoral offence detected during the course of investigation of a suspected offence under the Corrupt and Illegal Practices Ordinance (Cap. 288). There were also some concerns that if such power were to be exercised by the ICAC before the completion of the electoral process, it would unduly prejudice the election results. The Administration explained that although the ICAC already enjoyed such power during an investigation of an offence under the Prevention of Bribery Ordinance, it was rarely exercised as a matter of policy, except in very special circumstances and serious offences.

After some consideration, Members agreed to the passage of the Bill but suggested that in order to allay the fear that ICAC's power might be abused, a policy statement should be made by the Administration in the resumption of Second Reading debate to the effect that the ICAC's power to arrest without warrant would be exercised with the greatest caution and restraint and in the case of very serious offences only.

Sir, with these remarks, I support the motion.

ATTORNEY GENERAL: Sir, I would like to express my thanks to Mrs Selina CHOW and her colleagues on the ad hoc group for their work and support for the Bill.

Some Members of the ad hoc group have understandably expressed their concern at the possibility that the Independent Commission Against Corruption's power to arrest in respect of related offences uncovered during an investigation under the Corrupt and Illegal Practices Ordinance may in practice be abused.

The Commissioner of the Independent Commission Against Corruption has asked me to assure Members that the Commission will exercise this power with great caution. The need for this power is to ensure that, in relation to elections in Hong Kong, major offences and mischiefs outside the Corrupt and Illegal Practices Ordinance can be dealt with more effectively. As a matter of policy the Commission has not arrested and will not arrest for merely minor or technical offences which are mostly the result of forgetfulness or over-enthusiasm.

Sir, I beg to move.

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

Bill read the Second time.

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

HEUNG YEE KUK (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 27 February 1991

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

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).
JUBILEE SPORTS CENTRE (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 27 February 1991

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

Bill read the Second time.

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

Committee stage of Bills

Council went into Committee.

RATING (AMENDMENT) (NO. 2) BILL 1991

Clauses 1 to 3 were agreed to.

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1991

Clause 1 was agreed to.

Clause 2

MR MARTIN LEE: Sir, I move that clause 2 be amended as set out in the paper circulated to Members, that is to say, by replacing subsections 1 and 2 of section 11A with the following:

"The Corporation may enter into any agreement or arrangement in connection with its financial affairs with a view to reducing its exposure to interest rate and currency fluctuations on such terms and conditions as it thinks fit"

Sir, I cannot claim originality for the material words contained in my amendment, for the Financial Secretary has made it quite plain during the Second Reading of this Bill last Wednesday that this Bill is necessary in order to validate past and existing transactions including swap transactions entered into by the Corporation which were "designed to reduce its exposure to interest rate and currency fluctuations".

Sir, that is the basis on which the Administration has put its case to this Council and that is what the Administration should get, nothing more, nothing less.

And hence my proposed amendment.

Sir, I so move.

Proposed amendment

Clause 2

That clause 2 be amended, in the new section 11A, by deleting subsections (1) and (2) and substituting --

"The Corporation may enter into any agreement or arrangement in connection with its financial affairs with a view to reducing its exposure to interest rate and currency fluctuations, on such terms and conditions as it thinks fit."

Question on the amendment proposed.

MISS TAM: Sir, I agree with the speeches of the Honourable Mrs Nellie FONG and other Members in the ad hoc group to support the Second Reading of this Bill. Initially I had taken the view that the Bill should only give power to the Mass Transit Railway Corporation (MTRC) to carry out swap transactions only and the Administration's proposed amendments could be too wide. I then joined the ad hoc group and met with the Administration on two occasions one of which was also attended by the Chairman of the MTRC and his financial controllers. I think it is somewhat sad that at first the Administration had based the case mainly on the problems created by the Hazell case which took place on 24 January 1991. However, in having attended those two meetings, it was made clear to me that the necessary scope of financial activities to be conducted by the MTRC and KCRC should not be restricted to "swap" transaction only. The reasons are as follows:

- (1) It is difficult to define in law each and every hedging and collateral transaction as these transactions are very complex;
- (2) If the Corporations are not allowed to enter into new types of financial arrangements other than swap transactions, their ability to raise funds would be adversely affected, as lenders' attitudes as well as methods of lending do change from time to time. There are already arrangements in the pipeline which are not swap

transactions but are nonetheless well known practices in the business world to raise funds;

(3) The new section 11A(1) gives the MTRC the same powers as natural persons to enter into prudent commercial transactions (including swap transactions) connected with its authorized financial affairs only. So Mr Martin LEE's worrying about ultra vires problem, I think, is a red herring.

Let us not forget that the power of the Corporation is subjected to existing limitation provided by the Mass Transit Railway Corporation Ordinance that the Governor in Council may give directions to the Corporation. This includes the power to direct the Corporation not to enter into transactions which are considered to be too risky. Frankly, I do not see that the MTRC can, as a result of the Bill proposed today and, in particular, as the result of the wording of section 11A(2), move its assets away from Hong Kong or register itself as a company in Bermuda or as a subsidiary of a company registered in England or elsewhere, without having attracted the attention of the Governor in Council. And I shall be extremely surprised if appropriate action would not be taken to prevent any abuse of power on the part of the Corporation.

In my view, the powers given to the MTRC under this Bill is totally subjected to existing control and scrutiny by a board appointed by the Governor. And the Public Accounts Committee can look into any areas of concern vis-a-vis public expenditure.

All members of the ad hoc group are concerned that MTRC should not be given unnecessarily wide power in managing its financial affairs. However a great majority of us believe that the proposed Bill, with the existing control, is appropriate to meet the needs of not only the Corporation, but also in providing the right kind of flexibility in its conduct of financial affairs in furtherance of its stated objectives in the Mass Transit Railway Corporation Ordinance.

Mr Martin LEE's amendment will unduly restrict the flexibility required for the MTRC to deal with presentday -- not even to mention future -- problems. I believe that the Corporation should be allowed to use a subsidiary company to conduct such business if required. For the reasons that I have stated above, I do not believe that the Corporation can move its assets out of Hong Kong through a subsidiary company because of the checks on its activities by the Governor in Council. I therefore do not support the amendment.

MR CHENG HON-KWAN: Sir, I have earlier on touched upon the necessary flexibility and power provided in the original Bill and the stringent controls sufficient to avoid their abuse.

Mr Martin LEE has now proposed that the words "including any agreement or arrangement for reducing or compensating for any financial risk" be deleted from the new sub-section (1) and that the words "with a view to reducing its exposure to interest rate and currency fluctuations" be inserted instead. While the amendment probably empowers the Mass Transit Railway Corporation to enter into swap transactions, it does not cater for the corporation's stated financial objectives and enable it to enter into other kinds of financial transactions.

The Corporation is seeking to establish beyond doubt that it has power to enter into not merely currency and interest rate swaps but also other transactions which can properly be entered into in connection with its financial affairs.

Mr LEE has also proposed that the words "as if it were a natural person of full age and capacity" should be deleted.

The concerns underlying Mr LEE's proposal to delete the reference to the Corporation having the powers of a natural person in relation to its financial affairs are unwarranted. The words "natural person" do not, in my view, add anything substantive to the words which precede it and appear to have been inserted for the avoidance of doubt. In fact, these are words of limitation. Whatever the position may be, it is worth noting that the Mass Transit Railway Corporation Ordinance already confers on the Corporation the powers of a natural person in relation to activities connected with its land holdings. I can see no objection to the same approach being adapted in relation to its financial affairs.

Finally, Mr LEE has proposed that the new sub-section (2) which empowers the Corporation to form subsidiaries in any territory or jurisdiction should be deleted. The concern here appears to be the belief that this power will enable the Corporation to achieve an offshore domicile. This belief is unfounded. The way to achieve offshore domicile is to establish a new holding company. One cannot achieve this objective by establishing a subsidiary.

I think that it needs to be emphasized that the power to establish subsidiaries is a power to establish companies controlled by the Corporation. This being the case, it seems to me that it does not matter whether the company is incorporated in Hong Kong or elsewhere. I am aware that the Corporation is a regular user of the international capital markets and if the Board of the Corporation were to conclude that it would be advantageous to the Corporation to enter into a financial transaction through the medium of a subsidiary, whether incorporated in Hong Kong or elsewhere, I believe that it should have the power to do so.

Sir, I understand the past performance of the MTRC in its financial affairs has resulted in it being considered internationally as one of the most professional borrowers in the world. This is a reputation that has not only benefited the Corporation, particularly when financial markets become tight, but has also been a factor in enhancing the standing of Hong Kong as an international financial centre.

As Mr Martin LEE's proposed amendment, if passed, would result in unnecessary restriction to the MTRC against professional financial management and may lead to substantial financial losses which are certainly not in the best interest of the public, therefore, Sir, I do not support Mr Martin LEE's proposed amendment.

6.00 pm

HIS HONOUR THE PRESIDENT: It is now 6 o'clock. Under Standing Order 8(2) this Council should resume and should then adjourn.

ATTORNEY GENERAL: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be completed.

Question proposed, put and agreed to.

MR HO SAI-CHU (in Cantonese): Sir, in my earlier speech to this Council, I expressed support for the proposal to grant full powers to the Mass Transit Railway Corporation and Kowloon-Canton Railway Corporation to run their financial operations. This support stems from my personal confidence in the way the financial operations of the two corporations were run during the past 10 years, which has yielded excellent

results. But the amendments moved by the Honourable Martin LEE will fetter the two corporations in such a way as to restrict their freedom of action in the positive development of their businesses.

As I said earlier, the world's financial and monetary markets are highly volatile, so is the profile of the international financial community's credit exposure to Hong Kong. Having regard to this, the MTRC would avail itself of any opportunity to borrow at relatively low interest from any international financial source in order to ensure its own liquidity to meet maturing debt obligations. The Corporation may even earn a modest profit from the difference in interest rates if the loans concerned happened to time right. This sort of activity is necessary and is one of the many normal and indispensable modes of corporate financial operation. It would, however, seem that Mr LEE's amendment would have the effect of excluding such activity from the Corporation's legitimate sphere of financial activity. As financial operations need to adapt to external developments, it would be difficult to provide for each and every activity by means of detailed legislation. Moreover, these two corporations had an excellent track record in financial management and we do hope they will continue with the good work. I would have thought that, if their scope of financial operation was restricted, it would be like a eager worker with hands and feet tied and not being given enough food to keep him going. Therefore, I am opposed to the Honourable Martin LEE's proposed amendment.

MR ARCELLI: Sir, there are three differences between the Bill and the amendment proposed by the Honourable Martin LEE and these have already been highlighted by some of my colleagues so I do not propose to dwell on them. In addition to the reason I have given for supporting the Bill, I wish to make two additional points on the proposed amendments to clause 2. First, the power set out in the proposed amendment does not cure the doubts raised. It could be argued that the words and I quote "with a view to reducing its exposure to interest rate and currency fluctuation" imports a test of purpose for which the Corporation proposes to enter into any transaction and it may well be difficult for lenders to satisfy themselves that the Corporation entered into such transaction for the very purpose. Such a subjective test is unlikely to find favour with lenders.

Secondly, financial markets being what they are and being under constant development with new products appearing from time to time, the limitation set out in the proposed amendment is not in my view either practical or desirable. I believe

it is right that the Corporation should be placed in a position where it finds itself able to enter into financial transactions rather than to be placed in a position where it finds it cannot, due to a lack of powers. The limitation proposed in the proposed amendment would do exactly that.

Finally, Sir, the decision of the House of Lords showed that we should not argue about the niceties of legal points. What we must do is to put the matter beyond doubt. The Bill does it and, with respect to the Honourable Martin LEE, his proposed amendment does not. For these reasons. Sir, I find I am unable to support the proposed amendment.

MR PAUL CHENG: Sir, financial management of corporations is fundamentally a business issue. As effective legislators, we should not try to micro-manage businesses. We need to leave financial management of the MTRC and KCRC to the experts and hold them accountable.

The amendment put forward by our honourable colleague, Mr Martin LEE, constrains the array of financial transactions that the management will be permitted to undertake. Putting too many constraints on their options for effecting good management is not wise.

Further, it sends the wrong message to the international financial community. The world financial market needs to know that we continue to be one of the major players in international finance. Let us not send signals that do not support this position.

Historically, Hong Kong has put the handling of business affairs with the right people -- the business people. So long as Government holds them accountable for their performance, that is sufficient safeguard for the people of Hong Kong. It is also the best way to take advantage of the expertise they have to offer to the community.

Sir, with these remarks, I cannot support the amendments to the Bills.

MR CHOW (in Cantonese): Sir, I support the amendment moved by the Honourable Martin LEE because they convey more effectively the original intentions of the Administration in proposing these two Bills. The content of the amendment is mainly that the two corporations should only be given the power to enter into financial

transactions which are designed to reduce the corporations' exposure to the fluctuation of interest and exchange rates, instead of getting the power to enter into any financial arrangement or agreement that could be entered into by a natural person. Apart from positively endorsing the power of the two corporations to be engaged in swap transactions, the amendments moved by the Honourable Martin LEE can also avert the possibility of giving them power through the Bill to take part in speculative activities, and thus help the Government to reduce the chance of getting involved in disputes while examining in future whether the two corporations have actually engaged in speculations in the course of their swap transactions. Among the rulings made by the House of Lords, the most crucial one concerns whether a public organization may be using public funds in speculative activities, such as swap transactions. It is considered very difficult to make such decisions which may cause disputes. As a result, the House of Lords decided to simply abolish the power of such organizations to enter into swap transactions. In fact, the worries of the House of Lords are understandable. For the purpose of avoiding confusion, the amendments moved by the Honourable Martin LEE are very constructive. Therefore, I support those amendments.

DR LEONG: Sir, I have always considered that those of us sitting on this Council do so to reflect not only the views of those who elect us (in the case of elected Members) or to reflect our own expertise -- I happen to be a doctor and not a financier -- but also to state our views on what commonsense dictates to us and, most importantly, to raise objection if we do feel that the public at large are not being properly protected. It does not mean, of course, that we are always right -- we could of course be wrong. If we are wrong, we stand to be advised and corrected.

Sir, it is with this spirit -- as a doctor, not a financier and yet using my commonsense in protecting the public -- that I venture to speak on this particular Bill today.

In my main objection to this Bill, I mentioned my objection to the very wide powers given to the Corporation by the Bill. Mr LEE's amendment, though in my mind not perfect, will to a certain extent curb the wide powers of these public bodies.

Sir, I support Mr LEE's amendment.

MR PETER WONG: Sir, I do not support the Honourable Martin LEE's amendments because I believe that the Corporation need the flexibility to accommodate new financial products and risks that we cannot even imagine today. To adopt the Honourable Martin LEE's amendments will restrict the Corporation to mediocrity that I do not wish to have upon the MTRC. I accept the views of the Corporation and lenders that these measures are commercially expedient.

FINANCIAL SECRETARY: Sir, the amendment proposed by Mr Martin LEE is significantly different from the Bill in three respects. Some Members have already dealt with the points but I would like to give the Administration's views and put them on record.

Mr LEE proposes that the phrase "including any agreement or arrangement for reducing or compensating for any financial risks" be deleted from the proposed subsection 11A(1) and replaced by "with the view to reducing its exposure to interest rate and currency fluctuations". I have two comments on this proposal. First, the words Mr LEE wishes to delete were included by the Law Draftsman at the request of the legal advisers to the MTRC and with the endorsement of the legal advisers to the Hong Kong Capital Markets Association. The words echo a provision in the United Kingdom legislation, a provision that was referred to with approval by the House of Lords in the Hazell case as effective subject to certain procedural requirements, to authorize transactions. Second, the words which Mr LEE wishes to delete are designed to provide an example, but not an exclusive example, of the type of transaction which the Corporation would be empowered to enter into. Even if the change proposed by Mr LEE was effective to permit the Corporation to enter into currency and interest rate swaps, it would not empower the Corporation to enter into other legitimate financial transactions, nor will it validate such transactions which it has already entered into. One example would be a transaction entered into with a view to reducing the Corporation's financing costs.

Next, Mr Martin LEE proposes that the words "as if it were a natural person of full age and capacity" should be deleted from the proposed section 11A(1). I understand Mr Martin LEE regards these words with concern because in his view they would greatly expand the powers of the Corporation. In fact, these words were included by the Law Draftsman to limit the scope of the powers being conferred upon the Corporation by section 11A(1). The Law Draftsman has reconfirmed that in his view it would be dangerous to delete these words.

In Hong Kong, there are many prohibitions that were imposed by Ordinances and the law upon persons and corporations entering into certain transactions. The Law Draftsman considers that if the proposed subsection 11A(1) simply stated that the Corporation may enter into any agreement or arrangement without adding "as if it were a natural person", it would become arguable that this Council had empowered the Corporation to enter into any agreement or arrangement notwithstanding that such an agreement or arrangement would otherwise be prohibited by a preceding Ordinance or the common law. By restricting the power of the Corporation so that it may enter only into those agreements or arrangements that could be entered into by a natural person, this argument would be precluded.

The third difference between the Bill and Mr LEE's amendment is that Mr LEE intends to delete proposed subsection 11A(2) which will empower the Corporation to form subsidiaries in any territory or jurisdiction for the purpose of facilitating an exercise of that power to be conferred by subsection 11A(1). I have already stated in my Second Reading speech the reasons for the proposed section 11A(2). At this stage let me add that section 6(1) of the Mass Transit Railway Corporation Ordinance empowers the Corporation to do such things as are expedient for, conducive to or incidental to the purposes of the Corporation as stated in the Ordinance. This could, in appropriate circumstances, include the formation of a subsidiary in any jurisdiction. The proposed subsection 11A(2) was added on the recommendation of the legal advisers to the MTRC because they considered that the general power in section 6(1) did not extend to financial transactions.

Sir, for these reasons, I cannot support Mr LEE's proposed amendment which should be rejected.

Question on the amendment put and negatived.

Clause 2 was agreed to.

KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT) BILL 1991

Clause 1 was agreed to.

Clause 2

MR MARTIN LEE: Sir, I move that clause 2 be amended as set out in the paper circulated

to Members. The amendment is the same as that I have moved in relation to the Mass Transit Railway Corporation (Amendment) Bill 1991 and the reasons are also the same. I do not intend to repeat them.

Sir, I so move.

Proposed amendment

Clause 2

That clause 2 be amended, in the new section 11A, by deleting subsections (1) and (2) and substituting --

"The Corporation may enter into any agreement or arrangement in connection with its financial affairs with a view to reducing its exposure to interest rate and currency fluctuations, on such terms and conditions as it thinks fit."

Question on the amendment proposed.

FINANCIAL SECRETARY: Sir, again for the reasons I gave in relation to the amendment to the Mass Transit Railway Corporation (Amendment) Bill 1991, I consider that Mr Martin LEE's proposed amendment should be rejected.

Question on the amendment put and negatived.

Clause 2 was agreed to.

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1991

Clause 1 to 3 were agreed to.

HEUNG YEE KUK (AMENDMENT) BILL 1991

Clause 1 and 2 were agreed to.

JUBILEE SPORTS CENTRE (AMENDMENT) BILL 1991

Clause 1 to 21 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

RATING (AMENDMENT) (NO. 2) BILL 1991

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1991

KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT) BILL 1991

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1991

HEUNG YEE KUK (AMENDMENT) BILL 1991 and

JUBILEE SPORTS CENTRE (AMENDMENT) BILL 1991

had passed through Committee without amendment and moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Adjournment

ATTORNEY GENERAL: Sir, I move that this Council do now adjourn.

HIS HONOUR THE PRESIDENT: Thirteen Members have given notice of their intention to speak in the debate. In view of the public interest in this matter, I will exercise

my discretion under Standing Orders to allow Members up to 75 minutes to complete their speeches before the Secretary for Transport replies. But I would like to remind Members that this time will be strictly enforced.

Franchised Public Transport Services in Hong Kong

6.17 pm

MRS LAU: Sir, I rise to lead the debate under the theme of "Franchised Public Transport Services in Hong Kong". I am grateful to you, Sir, for extending the time limit of this debate to enable all 13 Members to speak.

Sir, although the theme of this debate covers all franchised public transport services, the debate is actually prompted by the recent applications for fare increases by China Motor Bus Company (CMB) and Kowloon Motor Bus Company (KMB). I shall therefore focus my remarks on franchised bus services alone but the scope of the theme would enable my honourable colleagues to comment on other mode of franchised transport services if they so wish.

Over the past few years, in particular the last two, the fares charged by CMB and KMB have escalated at a rate far exceeding that of normal inflation. The issue of bus fare increases has become a matter of considerable public concern. The concern of the public is not just on the inflationary effect of the hefty increases but the effectiveness of the profit control scheme applicable to both franchised bus companies has been called in question.

Under their franchises, CMB and KMB are respectively allowed annual permitted returns of 15% and 16% of their average net fixed assets. This fixed percentage of permitted return has given rise to considerable controversy. Public concern has been expressed in regard to :

- (1) Whether the permitted return is a guaranteed entitlement or whether it is a ceiling on annual profits which a franchisee is entitled under the franchise.
- (2) Since the permitted return is based on assets, whether the Government is capable of effectively controlling the asset expansion of a franchisee so as to ensure that the permitted return will not be unduly inflated.

(3) Whether by allowing a fixed percentage of permitted return, a franchisee would still have the incentive to continue to improve its service performance.

On the first point, different interpretation has been placed on the true meaning of the profit control scheme. The bus franchisees contend that permitted return means guaranteed return. Others do not agree. Under section 28 of the Public Bus Services Ordinance (Cap. 230), the expression "permitted return" is not qualified by the word "maximum". Be that as it may, after the examining of the provision it is clear to me that the legislation comprehended the imposition of a ceiling on annual profits and not a guarantee for a fixed level of profits. No where in the law or the relevant franchise is there any assurance that the franchisee shall be entitled to the permitted return regardless of operating results. No where in the law or the relevant franchise is it provided that the franchisee may seek fare increase on the ground that it would otherwise be unable to obtain the full amount of the permitted return. To my mind, a shortfall in permitted return should not be the determining factor for approval of fare increases. Personally, I believe that this principle is observed by the approving authorities. But unfortunately the public never gets to know specifically on what basis an increase in bus fares is approved, as information and data supporting the applications are privy only to the Transport Department, the Transport Advisory Committee and the Executive Council. The result is that every application for fare increase is viewed by the public with the greatest of suspicion. I believe that Government has the duty to remove such suspicions. This can be done firstly by openly clarifying the correct interpretation of "permitted return" under the profit control scheme; secondly by disclosing to the public in as detailed a fashion as is legally permissible the relevant considerations applicable when dealing with fare increase applications; and thirdly by encouraging the franchisees themselves to respond positively to comments and criticisms and to release to the public such information or data concerning their operations as may be pertinent to their case for fare increase.

In regard to the second point, the rationale behind an asset-based permitted return must be to encourage the franchisee to reinvest its profits on its assets for service improvement. But the natural criticism is that a franchisee may unduly expand and tot up its assets so as to boost its permitted return. It is true that the five-year Forward Planning Programme required to be produced every year by each franchisee helps to control over-expansion. However in a rapidly expanding society such as ours, the pressure is constantly on for the provision of new and improved

services. It is therefore difficult to resist expansion unless the franchisee itself co-operates by taking measures to maximize usage of existing resources. To a large extent, the success or otherwise of such control depends on the self-motivation of the franchisee concerned. The root of the problem still remains with permitted returns being linked to assets and so long as this is so, so long will there be the criticism that assets are acquired for the purpose of increasing profits.

On the third point, we frequently hear the criticism that despite fares being increased, services have not improved. This is particularly so where a franchisee is reluctant to invest on its own development to match rising public demands. The public inevitably concludes that by reason of permitted returns being fixed, there is little incentive for any franchisee to provide better service to the travelling public. In this regard, CMB has long been frequently criticized for its aged fleet, rude drivers, inadequate services, bus accidents and poor customer relations. The CMB labour dispute over the question of pension in late 1989 clearly exposed the fact that management problems exist in this company which problems have affected the standard of service delivered to the public. Of course, unfavourable comments and criticisms in regard to unsatisfactory service are not exclusive to CMB; KMB also has a fair share of these.

Sir, the duty of Government is to protect the interests of the travelling public and to ensure that the services provided are proper and efficient. The granting of bus franchises aims at achieving this. But if a franchisee fails to attain the required standards of efficiency, what remedies are there? The ultimate sanction is cancellation of the franchise but I am sure that this course will not be lightly taken in view of the serious repercussions that may result. There is also the sanction of withdrawing the right to operate certain routes but I am not aware of this being ever invoked in the past. How else do we bring home to a franchisee the message that it does not pay to deliver poor service. In this regard, I welcome the Executive Council's decision at the end of January to open up new routes for competitive tendering. Bus franchisees can no longer take their franchises for granted. They no longer have geographic monopolies but only route-operating rights. If they do not pull up their socks to provide the quality of service which the travelling public deserves, then even if they do not lose their franchises or their routes, they stand to lose a share of the market provided for operators. Although I support the concept of introducing competition with a view to boosting efficiency and improving service performance, I must urge Government to closely monitor the effect which this new proposal may have on our existing franchises. Our present bus franchise system depends to a large extent on cross-subsidization so that loss incurring routes are

supported by profitable ones. If only profitable new routes are tendered out on competitive basis, this may discourage existing franchisees from planning ahead and improving their route development programmes for the future benefit of the territory. If this were allowed to happen, it is the travelling public who will suffer in the end.

Before I close, I wish to say that there is clear evidence that the profit control scheme so far as related to franchised buses has produced more problems than would ever be intended. Not only has the scheme created misunderstanding, caused controversy and attracted criticism but in the final analysis, it pleases neither the franchisee nor the consumer. The franchisee does not think it is getting its fair share but the consumer thinks that he is already paying too much. It is high time that Government reviewed the scheme in the light of these controversies and confusion to see whether there is any continued need to maintain the scheme in its present form. Incidentally, I note that the New Lantau Bus Company, which is also a franchise holder, does not at present operate under any profit control scheme which provides for a fixed percentage of permitted return. There is no reason why CMB and KMB should continually to be treated differently. Finally, Sir, the current franchise of CMB is due to expire in 1993. I must emphasize that if any change is to be made to the scheme, it ought to be made before Government makes any commitment to renew that franchise.

MRS CHOW: Sir, since you have given warning to enforce strictly the 75-minute rule, I shall endeavour to do my share.

Fare increases, Sir, without fail are unpopular. Yet in spite of that unpopularity, it is generally recognized to be inevitable. The questions that need to be satisfactorily answered are: How often and how much?

Others who are much more qualified than me have measured increases against economic, social and scientific indices, parameters and criteria in order to determine the reasonableness and acceptability of the increases proposed by the franchised services. But rarely do we take a macro view of where we stand in relation to other cities in the region or in the world. For instance, my impression is that public transport of an inferior quality and reliability costs considerably more in London than in Hong Kong. But how do we compare with other Asian cities such as Singapore, Manila and Tokyo? How do our fares relate to our household disposable

income, and in this respect, how do we compare with others? I understand the Administration has some data for meaningful comparison and the sooner they are published, the more our travelling public will be able to assess increases in perspective.

Sir, in today's sophisticated world of advertising and public relations, it is so easy to pin the blame on poor public relations when in fact the real culprit is poor product or service. With franchised bus services, the quality of service to the travelling public is the soul. Everything else is the icing on the cake. It is therefore useless to have smooth talking public relations personnel handling complaints which have arisen from continuously poor service or consistent lack of action. For example, delays in erecting canopies over bus stops cannot be explained away no matter how skilled the public relations officer is. The need of the commuters must be met, or better still, anticipated. If a franchisee does not show the sincerity or commitment to put before all else the need of his customer, then he is not entitled to any increase, he is not entitled to any permitted profit under the scheme of control, and he is certainly not entitled to an automatic renewal of the franchise.

MISS TAM (in Cantonese): Sir, one characteristic of Hong Kong's policy on transport services is to encourage the participation of private investors so that the travelling public may be adequately provided with high quality transport services through benign and effective competition among individual and corporated transport operators. As an incentive for private investors to commit themselves to enterprising expansion projects and long-term development programmes, agreements have been separately agreed and signed between each of the two franchised bus companies (commonly known as KMB and CMB) and the Government in the form of profit control schemes which allow these companies to make permitted returns within a reasonable margin of not exceeding 15% and 16% of their net fixed assets respectively in each relevant year, rather than pegging it to the inflation rate.

An analysis made by the Transport Advisory Committee on this subject has concluded that in the case of responsible companies which are effective in managing their business and meeting the needs of the commuters, it is still worthwhile to maintain the existing profit control schemes. But the respective scheme would need to be modified in respect of a company of relatively poor management. Although it is stipulated in the agreements that the companies can be permitted a profit return

within a reasonable margin of not exceeding 15% and 16% respectively of their net fixed assets, they can usually achieve these target returns. However, there are exceptions and one instance was when the Government declined last year to grant KMB and CMB the levels of increase asked for in their applications which were aimed at the said target figure of return. From the point of law, we cannot say that the CMB or KMB is certain to obtain the 15% or 16% reasonable profit margin, but it does not necessarily mean they cannot appeal to the Financial Secretary.

The Kowloon Motor Bus Company is a relatively well-organized and properly managed corporation with great ambitions and firm resolution to develop its business. The Government has urged the company to reorganize its bus routes, slow-down the expansion of its fleet, make better use of its existing resources by effective redeployment, improve the cost-effectiveness of various routes and contain the growth rate of its fixed assets and so on. The company has accepted all these recommendations and succeeded in opening up new sources of revenue while cutting down expenses to the benefit of the travelling public.

In my view, the other one large franchised bus company should also take upon themselves the responsibility to upgrade the quality of their service, re-formulate their financial strategies, abandon their out-dated system of centralized management and to gradually improve staff welfare. They should not take advantage of the permitted return provided for by the profit control schemes and expect automatic approval of their proposed rate of increase in every fare revision exercise. Otherwise, this will not only lead to a lack of drive for making improvements but also give rise to a misconception of the intended purpose of the profit control schemes. It is my hope that this company will step up efforts to catch up with their counterpart and take a more positive approach in operating their services which are, after all, viable and profitable.

The profit control scheme is a contract signed between the Government and the private organization concerned. Its terms cannot be changed unilaterally. For this reason, I hold that although the scheme has been widely criticized (not without justifications) for its shortcomings and various proposals on the introduction of a performance-based permitted return system have been put forward to the Government for consideration, we must not take these criticisms and proposals all in one package without reservation. Nevertheless, they do carry some points that are worthy of our deliberation. Before we are able to come up with a new control scheme, we have no alternative but to promote competition for the sake of public interest through

Government's decision of openly inviting tender for the franchise of each single bus route or group of bus routes, a method which has been working with great success in Hong Kong. By this way, all qualified candidates are given a fair chance to compete for the franchise which, by principle, is awarded to the best tenderer. I think this measure can help enhance the quality of service for the travelling public and so I fully support it.

Finally, I hope that the franchised bus companies may be outspoken enough to account to the public for their polices as well as the steps taken and methods used in determining the fare structure. As far as listed companies are concerned, neither the Transport Department, nor the Transport Advisory Committee, nor the OMECO Standing Panel on Transport, nor the Executive Council is in a position to disclose or explain any business-related data on their behalf. This accounts for the spate of queries from the general public upon each announcement of fare increase despite the fact that every application for fare revision is subject to three tiers of objective assessments. Of course, we do not believe that any fare increase would be welcomed by the public. Yet, should the bus companies be consistent in providing good services, ready to get in touch with their service users and willing to release relevant information which is permitted to make available under statutory provisions, it will surely help the public understand the procedures and reasons for fare increase and they will eventually be able to win wider support from the general public.

MR MARTIN LEE (in Cantonese): Sir, as the franchise for the China Motor Bus Company (CMB) is due to expire in 1993, the Government has to consider within this year whether to sign a new franchise agreement with CMB. There is, therefore, a need for the Government to start reviewing the validity of the present supervision machinery for the two bus companies.

The present supervision policy adopted by the Government has been criticized by a large number of local academics and concerned groups time and again as an abuse of the profit control scheme. To peg permitted profits to a fixed percentage of the value of assets is over-protection of the bus companies because their profits will be ensured irrespective of their performance and operation efficiency.

Such being the case, even if a bus company is being mismanaged or improperly run, it can still enjoy profit with the protection afforded by the profit control scheme. Furthermore, it can pass the increased costs resulting from improper management on

to consumers through rise in fares. To consumers, this is grossly unfair.

Besides, it is obvious that the existing mechanism for Government to examine five-year development plans submitted by the two bus companies annually does not work effectively as a means of supervision. The CMB strike at the end of 1989 should tell on the serious management problems of CMB.

In fact, I endorse the need for protection of reasonable returns for franchised bus companies in the early stages of their operation. In the absence of financial subsidy from the Government, if no protection of profit is available it would be difficult to attract operators to provide such services. However, as the development of our two bus companies matures, a monopoly which hinders fair competition has emerged which precludes new operators from joining the game. The profit control scheme which offers profit protection to the two bus companies, coupled with the lack of competition, could easily turn the bus companies into low efficiency operations. Their lack of motivation to improve services is another reason for their services to fall below the standard required of them by the general public. I therefore call on the Government to conduct studies as soon as possible into the feasibility of opening up bus service operations. For the present, I am pleased to note that steps have been taken to open up bus service operations, for example, in permitting bus companies other than the two franchised ones to run non-franchise services in housing estates and in considering the grant of a franchise to Citibus to start new routes. However, I believe all these should be done after careful planning and consideration of the overall transport policy in order to avoid confusion and blundering.

I should like to discuss another point separately. It is to do with the representative capacity of the Transport Advisory Committee (TAC). The TAC is responsible for vetting applications for fare increases filed by the two bus companies. It has a lot to do with the interests of the general public. However, all members of the TAC are appointed by the Government. As the majority of them do not have sufficient representative capacity, the TAC has failed to win wide public support. In fact, the TAC not only needs people with professional knowledge to make fair evaluation of bus fare increases, but also people who will speak for the consumers and the public, in other words, reflect public opinion. The United Democrats of Hong Kong has asked the Government repeatedly for additional seats on the TAC for members who have good representative capacity. But so far there has been no positive response from the Government. I wish to take this opportunity to urge the Government to face this problem squarely and to adopt our proposal.

With regard to applications by the two bus companies for fare increases the companies each and every time refused to divulge relevant information to the general public on the ground of commercial confidentiality. The Consumer Council, with its limited powers, was unable to get hold of adequate information in order to judge whether the applications were reasonable. In this regard, the Government has failed to stand by the principle of consumers having the right to know.

Finally, I urge the Government, before considering the renewal of the franchise agreement with CMB, to review the system of supervising bus services as soon as possible. Special attention should be directed at the controversial profit control scheme in order to close the loopholes and come up with improvement measures. The Government should also study thoroughly the problem of low efficiency of the franchised bus companies and devise ways and means to improve the situation. The Administration should not hesitate, when the need arises, to suspend the licence granted to improperly run franchised bus companies as a form of punishment. To set up a fair system of awards and punishments and to strengthen the government supervisory ability are the urgent tasks for the Government.

In the face of our changing economic circumstances, I urge the Government to conduct a full review of our current public transport policies. We must look at the traditional philosophy of operation in a new perspective to see if it can meet the needs of today's society. We must also find out which mode of operation, be it licence under franchise or open market operation, is best suited to the needs of Hong Kong as a whole. I sincerely hope that after extensive public consultation, the Government will be able to devise an integrated set of public transport policies that will ensure fair competition, enhance operation efficiency and improve service qualities.

PROF. POON: Sir, one of the aims of the Government's transport policy is to expand and improve public transport to meet the increasing demand of the travelling public. Franchised public transport services in Hong Kong include services provided mainly by the franchised buses, ferries and trams. Of these, franchised bus service is by far the most predominant mode. Allow me to present my views on the recent measures taken to improve the service.

At present, in terms of daily boardings, franchised buses enjoy a market share

of about 40%. As a mode of public transport, franchised bus service does therefore merit our full attention.

As it is understood, the Government has recently encouraged the two franchised bus companies, CMB and KMB, to provide air-conditioned buses to improve their services. As I see it, this improved provision of bus service will cater for the needs of those from the higher income brackets. If it is operated efficiently, it may also attract patronage from more car users and thus help in easing traffic congestion. I would therefore regard this as an improvement in our public transport system.

However, the development of air-conditioned bus service must be well planned in respect of routing and timing. The travelling public should be given a fair choice between the two alternatives, the ordinary bus service and the air-conditioned bus service. They should not be forced into paying higher fares for the air-conditioned bus service for the lack of an alternative.

Although it is common practice to allow cross-subsidization between bus routes, it is important to ensure that passengers of the ordinary bus mode should not be forced to cross-subsidize air-conditioned bus passengers.

Although the franchise is on a route basis, it has been the tradition for the Government to award the franchise to CMB for routes on Hong Kong Island and to KMB for routes in Kowloon and the New Territories until recently. This recent change in practice of the Government means that the route basis of the franchise condition is to be more fully implemented. As a result, other bus operators are able to come forward and bid for the right or franchise to operate the bus routes concerned. This is a way of bringing in some degree of competition among bus operators and at the end of the day, it is those operators having good performance records who will be awarded the franchises. This is certainly a way of bringing about improvement through some competition, which in the end will benefit the public.

As franchised bus companies have to face more competition, they themselves have to seek ways to improve their services. In order to be the fittest for survival, they should, among other things, make use of an appropriate set of performance indicators to assess their own operational efficiency and effectiveness and be more market-oriented in the provisions of their services.

MR TAI: Being a member of the Transport Advisory Committee one is always faced with the problem of advising the Administration, year in, year out, in terms of price increase relating to our public transport. And price increase is never favoured by commuters! With the emplacement of the Profit Control Scheme relating to the two bus companies, there is very little that Hong Kong can do if we are going to honour our contract by not sanctioning price increase to a certain level.

We have, over the years, examined in detail the Profit Control Scheme in relation to the franchised bus companies and the advantages and disadvantages are as follows:

Advantages

The advantage is that, firstly, we can be assured of a minimum, if not maximum, quality of service.

Secondly, there is a standard price structure with some form of certainty in the profit of the company, as well as the maximum profit of the company, so that commuters would not be subject to exorbitant charges imposed by franchised companies hiding behind the slogan of commercial operations.

Thirdly, it provides us with continuity of transport services.

Fourthly, in comparison with other transport operators in other countries similar to ours, our standard and charges still offer value for money.

Fifthly, it provides a safeguard against any major disruption to our services, such as corporate failure.

Sixthly, it provides an overall transport system in Hong Kong to the effect that an acceptable level of service is still being provided to loss-making routes.

Disadvantages

Firstly, the disadvantage is that price increment in the past years and in the forecasting years to come will always be higher than inflation. Price increase for the last couple of years ranges from 15% to 20% year by year.

Secondly, there is a lack of incentive for the operators to reach maximum efficiency

because they know that they will get a guaranteed profit and they will not be in a loss situation.

Thirdly, profit control put at not more than 16% is debatable. By practice, profits near that percentage is always permitted by the Administration, and in case of mismanagement and inefficiency the company can easily shore up its profits by fare increases.

Fourthly, the Administration have to provide manpower, and that reflects on our public revenue in providing manpower constantly monitoring the operation and the finance of the transport operators.

Fifthly, once we give franchise to the bus companies it is difficult to replace them without seriously jeopardizing the provision of smooth running services. The franchise to KMB extends to roughly 1997, and that of CMB is nearly due for renewal.

It is a matter of contrast and if we intend to impose any variation to the Profit Control Scheme the question of compensation, unless dispensed with by mutual agreement between the parties, comes in. It would be difficult if a long franchise is not given to operators, because to them it is a very heavy and intensive investment in the transport field. Commercially, I do not think transport operators will enter into any form of agreement without sufficient long terms of franchise so as to provide them with some form of certainty in their operations.

Hong Kong being a commercial centre, I hope its citizens will not be persuaded to see that it is a sin to make a profit out of provision of transport services. On the other hand, transport operators should not be made to hide behind the Profit Control Scheme in order to make a profit. They should be able to administer with sound and efficient management in providing a quality service leading to profits.

Before we can have some constructive and workable alternatives, may I submit that it is dangerous to disturb the Profit Control Scheme which may eventually cause disruption in providing public transport.

Taking this opportunity, may I also suggest that since permitted profit may vary from 0% to 16%, in designing the permitted return more emphasis should be put on effective and sound management, and the quality of service being offered plus our prevailing inflationary rate in determining the permitted returns.

As the Financial Secretary said, excessive wage level leads to high inflation, but, may I also remind the Administration that excessive fees and charges, as well as excessive increment on essential items affecting our cost of living, such as transportation costs, generate greater pressure on wage increment. It is all a vicious circle.

Turning to the Light Rail Transit (LRT) which has an area franchise and has been in service for nearly three years, I would say that it has been a disappointment to the public in northwest New Territories. Because of the inherent defects in design and unwillingness to provide capital investment, a few areas have been under constant complaint. They are:

- (1) constant conflicts between passenger assistants and the commuters,
- (2) the fare structure,
- (3) the corporate image,
- (4) safety record,
- (5) the quality of service, especially the ticketing system. There are insufficient ticket machines causing commuters to wait in long line and frequently miss trains.

Also, no announcements are made to indicate approaching stations and it should also be remembered that because of the influx of new residents many commuters are not familiar with the region.

I have been told that the LRT is nearly at its break-even point, and with a new management I hope the foregoing comments can be looked it.

MR TAM (in Cantonese): Sir, in these days when the inflation rate continues to spiral and the cost of living is sky-rocketing, the vast working population are already having a hard time in making both ends meet. I therefore absolutely disagree that the two bus companies should raise fares to a level much higher than the inflation rate at a time when our economy is gloomy. In response to the fare hike by the two bus companies, I request that the Administration should consider the whole issue carefully and contain the increase to a reasonable level which will be acceptable

to the public at large.

An increase in bus fares to an extent even higher than that of pay rise of the general public is bound to become the targets of public outcry. Nevertheless, we should certainly not let go the culprit behind the increase: the profit control scheme (PCS) as applied to the franchised bus companies. It is the profit control scheme which gives each of the two bus companies the sceptre, beautifully adorned, to raise fare annually; it is this scheme which protects the interests of the franchised bus companies at the expense of the public interests. The scheme, instead of controlling the fares for the franchised bus services, has turned into a plan for guaranteed returns. It is evident that the profit control scheme has given rise to all sorts of abuses. And yet why should the Government strongly reject to conduct any major review on the PCS? Why did the Government only concede to make minor changes to the operation and the technical aspect of the accounting system of the scheme? The paper on The Profit Control Scheme Applied to Franchised Bus Companies may shed some light on it. It is stated in the paper that "There is no provision in either the Public Bus Services Ordinance or the franchises to review the basic terms of the profit control scheme, for example, the rate of the permitted return which is specified in each franchise. Changes to the terms of the PCS would require a legislative amendment; and a change to the rate of permitted return during the validity of a franchise would require negotiation and agreement of the bus company concerned." In other words, the Administration has indicated that there are inherent technical difficulties in conducting any major review on the PCS.

I think the points given above are just pretexts used by the Government to shirk its responsibility. Technical difficulties are not insurmountable. All it takes is a will to make changes. If such changes involve amendments to the Ordinance concerned, the Administration can by all means submit the relevant amendment Bill to this Council. I am sure all our honourable colleagues would be most happy to address the issue.

Regarding amendments to the specific terms of the scheme, it is understood that they cannot be introduced unilaterally as the agreements have been reached between the Government and the companies concerned. Nevertheless, the Government may conduct a major review on the scheme before the expiry of the franchises as a condition for any deliberation on the renewal of the franchises.

It is necessary to monitor the franchised bus services and the operation of the

scheme. However, such monitoring would turn to be futile efforts if the basis of the control on profit levels is not to be changed. Thus, I urge the Administration to conduct an overall review on the PCS without delay.

MR ANDREW WONG (in Cantonese): Sir, I hope I can be brief as I am going to speak on omnibus services only. First of all, may I tell a story -- the legislative history of the Public Bus Services Ordinance (Cap 230) made to regulate our public bus services.

The Bill (as it then was) received its First and Second Readings as early as 18 December 1974 but it was after almost seven months on 30 July 1975 that the Bill was finally passed. Members may wonder why the legislature at that time was so inefficient. As a matter of fact, this was not the case. There was already an ad hoc group, consisting of unofficial Members of the Legislative Council, set up to study the Bill. I have not checked the membership of that particular ad hoc group I am referring to. But as far as I know three Members spoke on the motion on the Bill on 30 July. They were the Honourable T. S. LO, convenor of the ad hoc group, the Honourable Sir S. Y. CHUNG and the Honourable Hilton CHEONG-LEEN, all of them were Legislative Councillors at that time. The greatest contribution of the ad hoc group during its seven-month work was the formulation of a profit control scheme and its success in prevailing on the Government to introduce the scheme to the whole Council during the Committee stage of the Bill. At that time it was the then Attorney General who presented and shepherded the scheme through the Committee stage, which was then endorsed by the Council in Committee.

Sir, the lesson from this story is, in my view, that legislators are not rubber-stamps. The Legislative Council was not a rubber-stamp assembly even when all Members were appointed. With so many elected Members in this Council, the legislature today surely cannot be a rubber-stamp.

But, Sir, I would like to say that the original Bill the Administration introduced in 1975 had three major characteristics, one of which was undone by unofficial Members of the Legislative Council. They were:

First, all franchises had been granted on a regional basis before 1975 under the Kowloon Motor Bus Company Ordinance and the China Motor Bus Company Ordinance. In 1975 the Public Bus Services Ordinance was passed to replace the two Ordinances in a bid to control the franchise of any public bus company. The regional franchise

of a company was then removed and substituted by a route franchise.

The second major characteristic was that a franchise would be open to public tender and no longer would it be a grant at the discretion of the Governor in Council. One condition for tender could be that the lowest bid would succeed. This was laid down in section 5(3)(a) of the Ordinance.

The third characteristic, most disliked by the ad hoc group at that time, was that the Administration would be empowered to levy an additional tax on the profits of a company in case the profits were excessive. Because of this possible tax on excessive profits, the company would naturally prefer to plough profits back into re-investment in bus services.

The ad hoc group turned down this arrangement, what I would refer to as the third characteristic of the Bill. In its place, the group proposed to introduce the profit control scheme -- Part V of the Public Bus Services Ordinance. The scheme allows a franchised company to state in the contract with the Government the upper limit of permitted return for provision of bus services, which, in the case of the China Motor Bus (CMB), is 15% of the net assets and, in the case of Kowloon Motor Bus (KMB), 16%.

As section 5(1) of the Ordinance provides that the Governor in Council may grant to any lawfully registered company a franchise to operate a public bus service, there is nothing improper, as a transitional arrangement, to renew the franchises to allow CMB and KMB to continue operation in their existing routes. But I have learnt that -- it may not be true but somehow I seemed to have come across it in a paper -- the Administration has a tacit agreement with the two bus companies that preference will be given to them for development of new routes. The Ordinance in 1975 was aimed at turning regional franchise to route franchise. The present arrangement, however, is still a grant of franchise on a regional basis. It was not until 29 January 1991 that the Executive Council decided that the grant of a franchise in some new routes would be, in the future, by way of public tender so as to give effect to the original intent of the Ordinance. I am of the view that any sub-standard service of the CMB may be a result of the tacit agreement I have mentioned just now. KMB can develop new routes in the New Territories while CMB, because of the Island's geographical limitation, cannot. The reason for this disparity may be that the legislative spirit of the Ordinance passed in 1975 has not been followed in full, or that there may be flaws in the amendments to the legislation made by the then unofficial Members of

the Legislative Council.

So the second lesson from this historical story, Sir, is that the Administration may not be always wrong, neither are the Members always right.

Sir, in reviewing the services of the two bus companies and the profit control scheme, I hope that a comprehensive approach can be taken and that we can have real imagination to handle the matter. Only in a free and highly competitive environment where more bus companies could vie for franchises through the lowest bid in a tender exercise can the public be provided with high quality services at a low price. Only then will the profit control scheme cease to be a necessity.

MR DAVID CHEUNG: Sir, the problems related to the two franchised bus companies - poor management, unsatisfactory services, untimely and unnecessarily high fare increase call for a thorough study and subsequent solutions.

The crux of the matter is two-fold in my view. First, the scheme of control. It is high time that the scheme be re-examined to see its justification. In one way or another, the scheme must be modified. Second, the question of monopoly. It is also high time to reconsider whether these companies should enjoy such monopoly. No competition, no improvement. The recent decision by Government to allow a competitor to run in certain routes threatens the franchised companies. Quality of services is promptly improved.

The Government should also ensure that the two franchised companies become more transparent. Public companies of this nature should have nothing to hide; greater transparency is inevitable.

The companies should also improve their public relations image not in the sense of rationalization but in the positive sense of building their positive image. In the past, every time their management spoke, it had to do with fare increase, otherwise the public never hears from them.

In conclusion, Sir, we cannot afford piecemeal solution to this problem. Let us get to the root of the problem and reduce it to the least possible extent if not solving it in totality.

MR CHOW (in Cantonese): Sir the two franchised bus companies are the key components of the mass transport system in Hong Kong and they are as important as the two railway corporations. The general public, because of limited income and inflationary pressure, naturally hope that there is a cheaper means of transport to carry them to and from their places of work. However, since the Mass Transport Railway began to operate, the two bus companies have been applying for fare increases on the pretext of competition from the two railway corporations. Application for fare rises was made more and more frequently, at the rate of almost once a year. Moreover, the rate of increase each time has exceeded the inflation rate. As a result, the fare increase of public transport services has induced a vicious circle of price increases and inflationary pressure.

A case in point is the increase in bus fares recommended recently by the Transport Advisory Committee. The rate of increase for CMB is over 20%, while that for KMB is about 15%, both have exceeded the inflation rate. However, are the reasons for the increases valid? We have no actual figures in hand to get an answer. Even the information and data available to the OMECO Transport Panel are very limited. If the two bus companies hope that their application for fare increases can be accepted by the public, they should disclose data showing their actual expenses and the rising operation costs. Only by this means will the general public be convinced.

From the five-year development plan submitted to OMECO by the KMB, new buses purchased will largely be three-axle air-conditioned double-deckers. From now to 1995, the number of additional buses purchased will increase by eight folds. However, the number of two-axle double-deckers will be 326 less than the present figure and only 42 additional three-axle double-deckers will be purchased. According to the explanation of KMB, the reason for purchasing more air-conditioned buses only is that the public prefer in general to have better bus services and by so doing the bus companies can compete with the two railway corporations. However, on what basis did the KMB ascertain the needs of the passengers? What is the actual concern of the passengers -- the provision of air-conditioning or the frequency of service and the time spent on travelling? Is it just because the two railway corporations provide air-conditioning that the public choose to ride on the trains?

Moreover, the cost of service will ultimately be borne by the passengers. If more routes are served by air-conditioned buses, will the bus fares be increased drastically in the future? It is really a question of whether the public can afford

such an increase.

The Administration should look squarely into the question as to whether the bus companies should compete with the two railway corporations or they should be complementary to each other. In fact, the majority of the general public hope that the fares of the two bus companies can be maintained at a relatively low level so that they can have choices. If bus fares are at the same level as those of the two railway corporations, the business turnover and passenger volume of the two bus companies will certainly drop, because travelling time on the two railways is after all shorter.

In the final analysis, the crux of the problem is how to improve the bus travelling time and increase the frequency of service. This is more important than increasing the number of air-conditioned buses. And it is the responsibility of the Government and departments concerned to improve the traffic flow on the roads.

Besides, there is a need to review the profit control scheme of the two bus companies. Whether it is still an appropriate measure today to grant them regional franchise is worthy of in-depth study. Taking the case of CMB as an example, even though the company is gradually improving its management structure in accordance with the consultant's recommendations, the effect is not notable. As the franchise of CMB will expire by 1993, the Government should review the franchise and profit control scheme of the two bus companies as soon as possible. I agree that the quality of service of the two bus companies should be improved, but certainly not by the use of air-conditioned buses as a major solution. I therefore earnestly request the Administration to give the five-year development plan of the two bus companies the most careful consideration.

MISS LEUNG (in Cantonese): Sir, today we Legislative Councillors are debating a very serious public service issue which is closely related to the interest of the public. Recently, the large increases in public transport charges, in particular the intended hefty increase in franchised bus fares, have aroused much public concern. We cannot hesitate any more and should face the problem squarely. Obviously, this is a very complicated issue. We will not be able to conduct a successful and real useful debate when we lack adequate basic background information and data, and more to that, each speaker must finish his/her speech within four minutes.

As regards the time limit of this debate, we were not notified of it until Monday. Except the first speaker, Mrs Miriam LAU, who has been given eight minutes to speak, all other speakers are given only four. On learning this, I immediately expressed my objection. In terms of the nature of this debate, I see no reason why a particular Member should be given double the speaking time of that of others. But my objection was overruled. Again on Tuesday, the OMELCO staff kept reminding us that each speaker could only speak for four minutes. Not until this afternoon when I came to this Chamber did I realize that you, Sir, in fact allow us -- 13 speakers in all -- to finish all our speeches within 75 minutes. As I now have more time, I can explain to you about the time limit arrangement, but this will not affect the contents of our prepared speeches. Those Members who have just given their speeches spoke much faster than they usually do. Why are we so pressed? So I believe it is necessary to review the operation of and the Standing Orders for the Legislative Council sitting.

As regards the theme of this debate, to a certain extent, the so-called proposed solutions coming off the top of the head can hardly cure the problem effectively. But anyway, I will try.

Sir, this adjournment debate was triggered off in haste not long ago when the Transport Advisory Committee approved the hefty 20% fare increase proposed by the China Motor Bus Company which is almost a double of last year's inflation rate. The Executive Council will discuss this application towards the end of this month. As regards the issue of hefty fare increases in franchised public bus and ferry services, under the present legislation, we Councillors can do nothing other than heaving a sigh. Moreover, we have always lacked the decisive information and data to assess whether or not the application for fare increase is reasonable, and therefore we can hardly monitor the service on behalf of the general public.

According to the very limited and superficial information and data given, even if the application for a 20% fare increase is approved by the Executive Council, the annual level of profits to which the bus company concerned is entitled still cannot exceed 15%, that is, the maximum level of profits permitted under the so-called "profit control scheme". It seems that we Councillors cannot but accept such an extent of increase. Those Members who have just spoken generally pointed out that there are many unreasonable features in the profit control scheme which at present is still applicable to franchised public transport services. I would not wish to

repeat those views. However, in particular, I would like to point out that the annual maximum level of profits permitted under the profit control scheme should not be rigidly fixed at 15%. It should be decided in the light of Hong Kong's overall economy, inflation rate and company performance.

As far as applications for ferry or bus fare increases are concerned, I firmly believe that the general public, including we Councillors, should have the right to obtain the decisive information and data for reference, so as to decide whether or not the application should be supported. But in the past, the Government has always believed that the organizations concerned are listed companies and therefore any information and data that will affect their share prices should not be disclosed. As a result, the company is allowed not to provide the real information and data for fare increase. This is a point that the general public, including we Councillors, cannot take.

Sir, I would like to urge the authority concerned to conduct immediately a comprehensive review on the overall concept of franchise, and franchised public transport service strategy, in particular, on franchised bus service. I hope that the Government can propose some improvement measures as soon as possible and prepare the relevant reports for public consultation. In my opinion, the Second Comprehensive Transport Study has not achieved any breakthrough in franchised public transport services. Efforts in this aspect should therefore be doubled. I hope that in the near future we Councillors will be given adequate information and data, so that we can again debate this issue in a more systematic way.

MR McGREGOR: Sir, I have only a few words to say on this issue.

I believe that Hong Kong's transport system including the infrastructure on which it operates is relatively efficient by most standards applied throughout the world. This has been due to highly organized planning and supervisory services and also to the increasing involvement of the private sector and this Council in these operations. The MTRC and KCRC are very efficient carriers of millions of people and they have a fine record of public service despite the inevitable complaints when something goes wrong. By and large, the minibus system also works well and so do our taxis. All these however are not franchised services but they are controlled by licensing and by other means and are part of the transport whole. I have the impression that our ferry services are also by and large efficient except in fog which is not their fault.

The tram service is also quite efficient since it has an one-track line and cannot really change its ways.

Our buses however may not be in quite the same category of efficiency and it may be the case that agreements entered into years ago should be more forcefully used by the Government to ensure that the bus companies provide efficient services for Hong Kong's millions of commuters.

They should also be good employers, if I may say so, in every sense of the designation. It is quite clear that at least one of them has not performed adequately and now faces competition from a highly efficient competitor. I think frankly this is the correct answer to inefficient operators.

I have nothing against the Government licensing transport monopolies as long as each monopoly permits the Government full and effective monitoring, supervision and, where necessary, intervention to maintain efficient and cost-effective operations in the public interest. But do keep in mind that our overall transport system is acknowledged as one of the most efficient and cheapest in the world. Most of our residents and all of our visitors say so and they are quite right.

MRS SO (in Cantonese): Sir, as a cosmopolitan city, Hong Kong is still in great need of upgrading the quality of its bus services, though in terms of quantity, they can generally meet the needs of the public. It has been a long-standing problem that bus services are always behind schedule, and yet a thorough solution is not in sight. When almost all minibuses and taxis are air-conditioned, air-conditioned buses are still considered a luxury. Bus-stops are shabby, most of which do not display bus routes and time-tables of their services. It reflects the lack of any substantial improvements in bus services. However, hefty increases in fares are seen every year. Moreover, there was even the occurrence of a strike by the bus drivers due to the internal management problems of a bus company. That incident has caused public discontent.

Hong Kong is a fast-growing city, yet its bus services are incompatible with such an image. The main reasons lie in the lack of competition and the existence of a profit control scheme which protects the interests of franchised bus companies.

As early as 1975, it was stipulated by law that the franchise for a bus company

should be granted on a route basis. This led to a change in the practice of both the China Motor Bus Company Limited (CMB) and the Kowloon Motor Bus Company Limited (KMB) of monopolizing certain areas in operation over the years, though in reality the two franchised bus companies are still operating on a geographic monopoly basis. It is precisely for this reason that the residents of the Southern District have been made to pay relatively higher fares. If the franchise for the bus services for the Southern District had been granted on a route basis then, there would have been two advantages:

- (1) fares could have been adjusted to a reasonable level sooner; and
- (2) the traffic hold-up resulting from the CMB strike a couple of years ago and the serious impacts on residents thus caused could have been avoided.

Sir, in January this year, the Government decided to invite open tender for the franchised operation of bus route running between Central and MacDonnell Road in the Mid-Levels. While I fully support this, I think that such arrangement should not be limited to coach services. The franchise for the CMB will expire by mid-1993. In view of the possibility of a substantial growth in the demand for bus services in newly developed areas like Tseung Kwan O New Town, the Government may consider expanding the grant of franchise on a route basis. This can generate competition between the existing bus companies as well as bring in operators which are smaller in scale but flexible in operation so as to provide better services for the public. Given adequate monitoring, fair competition can raise the standard of services. Lessons can be drawn from the development of maxicab services by the Administration. I should like to urge the Government to launch a comprehensive review of the operation and fare increase of the two franchised bus companies.

7.15 pm

HIS HONOUR THE PRESIDENT: Members have put their points with admirable brevity and clarity. I am sure the Secretary for Transport will follow their excellent example. (Laughter)

SECRETARY FOR TRANSPORT: Sir, may I first congratulate all Members who have spoken

this afternoon on their very helpful, short but stimulating comments on how to improve our public transport services in Hong Kong.

I suggest to respond by first outlining the policy considerations underlying the present system. I will go on to describe the current franchising arrangements and then address Members' concerns on particular issues, including the monitoring system, fare increases, the Scheme of Control, and future developments.

Policy considerations for franchising public transport services

Apart from railways, which of course are not under the franchise system, public transport services in Hong Kong have largely been developed upon this franchising system over many years. This system has served us well in that:

First, it enables the Government to manage effectively the operation of competing transport modes. Land constraints and our population density require us to make the best economic use of our transport infrastructure;

Second, sensible co-ordination helps avoid wasteful use of resources. This is necessary to achieve a balanced network under which adequate public transport services are available in the busy urban areas as well as locations away from the city centre;

Third, the economies of scale and cross-subsidization made possible by a franchise allow loss-making but socially desirable services to be maintained; and

Finally, a franchise system provides a stable environment which enables public transport operators to raise capital and to continue with investments necessary for meeting future needs.

The 1990 White Paper on Transport Policy reaffirms this policy. The current system of franchising has played an important part in helping us to meet our transport objectives.

The present franchising arrangements

The present franchising system for buses and ferries is contained in the Public

Bus Services Ordinance (Cap. 230) and the Ferry Services Ordinance (Cap. 104).

Five companies now hold a franchise under the Ordinances, namely the Kowloon Motor Bus Company, China Motor Bus Company, New Lantao Bus Company, Star Ferry Company, and Hong Kong and Yaumatei Ferry Company. In return for the security of tenure, the franchisees are required to enter into long-term commitments to meet future demands without public subsidy.

The Government has, in addition, signed a scheme of control agreement with CMB and KMB. This scheme links the level of profits permitted in any one year to a given percentage of their fixed assets. It is designed to give long-term financial stability needed to encourage continued investments. It also ensures that they do not make excessive profits by overcharging consumers.

There is no scheme of control for the other three companies, mainly because of their much smaller size of operations.

Monitoring system

Like other utilities, the five franchised public transport operators are supervised by the Government through a well-established monitoring system.

The safe operation of bus and ferry services is governed by stringent provisions in law, including a licensing system which requires periodic independent certification of the road or sea-worthiness of the vehicles or vessels used by the operators. The Government is also empowered to conduct random safety checks and regular inspections of maintenance facilities.

On service delivery, the law requires the franchised operators to draw up a five-year development plan for Government approval each year. This plan enables the Administration and the Transport Advisory Committee to influence the development of services; avoid undue abrupt fare increases; and make sure that services are adjusted and developed according to actual and forecast demand without undue asset expansion.

The current system also enables active public participation. The annual route development programmes of individual operators (which determine fleet size, depot requirements and ultimately fare levels) are not finalized until the relevant district boards have been consulted and their views taken into account. For instance, particular fare issues such as those raised by residents in the Southern District

have been accepted and acted upon to achieve a more equitable fare structure. Once a programme is approved, the public can monitor the daily performance of operators against certain simple yardsticks, such as frequencies and operating hours.

This is in addition to the checking done by the Transport Department which monitors transport services through field surveys; the analysis of accident records, public complaints and statistical returns from the operators.

Furthermore, two senior government officials sit on the boards of franchised transport companies. They provide an effective link between the Government and the companies for handling matters of concern to the travelling public.

In addition, officials from the Administration also meet the OMELCO Transport Panel regularly to discuss various issues of concern.

The authority to approve fare increases rests with the Governor in Council. Fare increase applications are subject to the closest scrutiny by the Administration and independently by the TAC. Although the Government is precluded by the Companies and Securities Ordinances from making public certain commercially sensitive information in the fare increase applications, I can assure Members that all the information required is provided in full by the companies concerned to enable the Governor in Council to take a decision on fare increase applications.

No fare increases would be approved unless the Government is fully satisfied that the adjustments sought are necessary for continuing existing services and for making improvements to meet demand. Factors taken into account include the impact of inflation on operating costs, such as higher wages and fuel prices; patronage projections having regard to competition from other modes and changes in population distribution; non-recurrent expenses such as pension benefits; service improvements requested by district boards; the need for an equitable fare structure; and public acceptability. Fuel costs in particular are very critically examined having regard to the latest oil supply situation and the terms of the franchised companies' supply contracts.

I consider, Sir, the present monitoring arrangements sufficiently sensitive to the interests of the travelling public.

Scheme of control agreement: major criticisms

I would now turn, Sir, to Members' concern on the current scheme of control and particularly concern on fare increases.

(a) Permitted return

The permitted return sets a limit on the maximum amount of profits which KMB and CMB may obtain. Any excess goes to a Development Fund which acts as a buffer against revenue shortfalls in the future. It has never been intended to set a guaranteed rate of return. Both companies understand the Government's position on this very clearly.

Under existing policy, fares for public transport services are normally set at levels sufficient to give the companies concerned a reasonable return on their investments, subject to a proper and efficient service being maintained. A degree of stability in the rate of return serves to encourage and protect continued investments which also is in the public interest.

This does not mean that a shortfall in permitted return in any one year alone would be a sufficient reason for raising fares. There were indeed cases in the past where, exceptionally, a fare increase was approved by the Government and agreed by the company concerned in the knowledge that the new fares might not enable the company to earn its full permitted return.

However, to reduce arbitrarily the permitted return for any one public utility may affect overall investor confidence in other utilities and in the economy of Hong Kong. This is obviously a course of action not to be pursued without the most careful consideration and consultation.

(b) Rate of return

I should add, Sir, that the permitted return is the gross return to CMB and KMB respectively, and is subject to certain compulsory deductions including interest payments. In practice, the net rate of return achieved is lower. For KMB it has been around 13.4% from 1979 to 1989. For CMB it has been about 14% over the same period.

(c) Fare increases

Some critics have attributed the size of fare increases in recent years to alleged weaknesses in the franchising arrangements or failures in our monitoring system. This is certainly untrue.

In recent years, the costs of public transport operations have increased rapidly in real terms due to a variety of factors. The key factors, namely the supply of labour and average wage levels, are quite beyond the operators' control. Take KMB, for example, the fare for an average KMB trip was \$1.60 in 1987. It rose to \$2.24 in 1990. Close to 60% of the difference is accounted for by increases in staff costs.

In spite of increasing costs, the fares of our public transport services compare very favourably with many other Asian cities, including Kuala Lumpur, Seoul and Singapore. These figures will be suitably publicized.

(d) Incentive for efficiency

Sir, the Scheme of Control Agreement forms only part of the franchising arrangements. The operational efficiency of CMB and KMB is not regulated under the scheme. Rather it is the subject of other provisions in the Public Bus Services Ordinance and the franchises.

To keep fares low, continuous efforts are being made to maintain reasonable economies in franchised bus and ferry services.

Last year for example, KMB responded positively to our request for an economy drive, including a critical examination of its fleet and depot development programmes, reducing loss-making routes, staffing reviews and ways to increase non-farebox revenue.

During the same year, we also saw the completion of the major review of CMB's management. Areas for improvement identified by the consultants are being implemented. Progress will be closely monitored.

On the Government's part, we undertake, from time to time, studies into the financial viability of different modes of public transport, to see how they should complement each other to avoid wasteful competition and wasteful duplication. Recent examples include a consultancy study about the efficiency of the public

transport services in northeast New Territories, completed last year. This recommends a trunk-feeder bus system to Kowloon, which would allow KMB to improve its services without having to buy more buses.

Nor have we overlooked the need to motivate existing franchisees to improve their services to meet changing passenger demand, including quality improvements. Both CMB and KMB have planned to deploy more air-conditioned buses. The further development of air-conditioned bus services will be closely monitored, taking full account of public demand and acceptability. In particular, we will maintain the choice for those commuters who prefer the routes offered by non-air-conditioned buses.

Sir, I am very much heartened by Members' support for our new venture in tendering routes. We recognize that the key to sustained improvement in efficiency lies in healthy competition. To this end, we have now decided to grant the operation rights over certain bus routes through tender. And this will be implemented in the first tender in mid-1991. I take Members' points completely and will monitor the result very closely to ensure that this experiment will be a success.

Concluding remarks

Sir, our public transport system is efficient, well integrated geographically and offers commuters a good range of choice at reasonable fares. By and large it has served Hong Kong well.

Having said that, I would like to assure Members that further refinements to the present franchising system will be made wherever possible. For instance, when considering any further extension of KMB and CMB's franchises, to which the Scheme of Control Agreements are linked, we shall keep an open mind on whether the existing system should be rolled forward in its present form.

Our system is evolving, in response to the requirements of our time. Compared to the 1970s and 1980s, we now have less pressure for additional carrying capacity. However, there remains a need to encourage the franchised operators to carry on investing, to upgrade their services to meet demands. The Government is alert to these changes and will carry on working closely with the public transport operators to ensure that these arrangements are serving the best interests of our community.

Question on the adjournment proposed, put and agreed to.

Next sitting

HIS HONOUR THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday, 27 March 1991 .

Adjourned accordingly at twenty-eight minutes to Eight o'clock.

Note: The short titles of the Bills/motions listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.